

A SHAREHOLDERS GUIDE TO LIQUIDATORS FEES - ENGLAND AND WALES

1. Introduction

1.1 When a company goes into Liquidation the costs of the proceedings are paid out of its assets. The members (shareholders), who hope to recover some of their investment, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner(s) appointed to act as Joint Liquidator(s).

The insolvency legislation recognises this interest by providing mechanisms for members to fix the basis of the Joint Liquidator's fees. This guide is intended to help members be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how members can seek information about expenses incurred by the Joint Liquidator(s) and challenge those they consider to be excessive.

2. Liquidation procedure

2.1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.

2.2 Voluntary Liquidation is the more common of the two. A solvent voluntary liquidation is called a Members Voluntary Liquidation (often abbreviated to 'MVL'). In this type of Liquidation an Insolvency Practitioner acts as Joint Liquidator(s) throughout and the members vote on the appointment of the Joint Liquidator(s) at a General Meeting of Members or by passing resolutions under the Companies Act 2006.

3. Fixing the Joint Liquidator's remuneration

3.1 The basis for fixing the Joint Liquidator's remuneration is set out in Rules 18.16, 18.17 and 18.19 of The Insolvency (England & Wales) Rules 2016. The Rules state that the remuneration shall be fixed:

- as a percentage of the value of the assets which are realised or distributed or both,
- by reference to the time properly given by the Joint Liquidator(s) and his staff in attending to matters arising in the liquidation, or
- as a set amount.

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the Joint Liquidator(s). Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the Joint Liquidator(s).

It is for the Liquidation Committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the Committee to determine the percentage or percentages to be applied. In arriving at its decision, the Committee shall have regard to the following matters:

- the complexity (or otherwise) of the case.
- any responsibility of an exceptional kind or degree which falls on the Liquidator in connection with the insolvency.
- the effectiveness with which the Liquidator appears to be carrying out, or to have carried out, his duties.
- the value and nature of the assets which the Liquidator has to deal with.

3.2 If there is no Liquidation Committee, (which is usually the case in an MVL) or the Committee does not make the requisite determination, the Joint Liquidator's remuneration will be fixed by a resolution of a General Meeting of Members. The members take account of the same matters as apply in the case of the committee. A resolution specifying the terms on which the Joint Liquidator(s) is to be remunerated may be taken at the meeting which appoints the Joint Liquidator(s).

4. Review of remuneration

Where there has been a material and substantial change in circumstances since the basis of the Joint Liquidator's remuneration was fixed, the Joint Liquidator(s) may request that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

5. What information should be provided by the Joint Liquidator(s)?

5.1 When fixing bases of remuneration

5.1.1 The Joint Liquidator(s) should provide those responsible for approving the basis of remuneration sufficient information to enable the Committee or the members to make an informed judgement about the reasonableness of the Joint Liquidator's request. The information should be presented in such a manner which is transparent, consistent throughout the life of the case, while being proportionate to the circumstances of the case.

5.2 Fees estimates where remuneration is based on time costs

5.2.1 If any part of the remuneration is sought on a time costs basis, the Joint Liquidator(s) should provide detailed information in the form of a written fees estimate which specifies:

- Details of the work the Joint Liquidator(s) and staff propose to undertake.
- The hourly rates to be charged for each part of that work.
- The time the Joint Liquidator(s) anticipates each part of the work will take.

In addition, the Joint Liquidator(s) should provide an estimate of the expenses that will be or are likely to be incurred.

5.3 Other

5.3.1 General principles

When reporting, the Joint Liquidator(s) should disclose:

- Payments, remuneration and expenses arising from the Liquidation paid to the Joint Liquidator(s) or any associates.
- Any business or personal relationships with parties responsible for approving the Joint Liquidator's remuneration or who provide services to the Joint Liquidator in respect of the insolvency appointment where the relationship could give rise to a conflict of interest.

The Joint Liquidator(s) should inform members of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights, within the first communication and in each subsequent Report.

Where the proposed charge is calculated on a time costs basis, the Joint Liquidator(s) should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The Joint Liquidator(s) should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Joint Liquidator(s) or his or her staff.

5.4 After the bases of remuneration have been fixed

The Joint Liquidator(s) is required to send Progress Reports to members at specified intervals (see paragraph 6.1 below). When reporting periodically to members, in addition to the matters specified in paragraph 6.1, the Joint Liquidator(s) should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed.

Members should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the Joint Liquidator(s) must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate).

Where any remuneration is on a time costs basis, the Joint Liquidator(s) should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The Joint Liquidator(s) should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the Joint Liquidator(s) or his or her staff.

Where a fees estimate has been provided, remuneration cannot be drawn in excess of the fees estimate without the approval of the Liquidation Committee, (if there is one) or more likely, the members themselves. The Joint Liquidator(s) should state:

- Why the estimate has been, or is likely to be exceeded.
- The additional work required to be undertaken.
- The hourly rates proposed to be charged for each part of the additional work.
- The time the additional work has taken or is anticipated it will take.

5.5 Disbursements and other expenses

5.5.1 Costs met by and reimbursed to the Joint Liquidator(s) in connection with the Liquidation should be appropriate and reasonable. Such costs will fall into two categories:

- Category 1 Disbursements: These are costs where there is specific expenditure directly referable both to the Liquidation and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses and equivalent costs reimbursed to the Joint Liquidator(s) or his or her staff.
- Category 2 Disbursements: These are costs that are directly referable to the Liquidation but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the Liquidation on a proper and reasonable basis, for example, business mileage.

Category 1 Disbursements can be drawn without prior approval, although the Joint Liquidator(s) should be prepared to disclose information about them in the same way as any other expenses. Category 2 Disbursements may be drawn if they have been approved in the same manner as the Joint Liquidator's remuneration. When seeking approval, the Joint Liquidator(s) should explain, for each category of expense, the basis on which the charge is being made.

5.5.2 The following are not permissible:

- a charge calculated as a percentage of remuneration.
- an administration fee or charge additional to the Joint Liquidator's remuneration.
- recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

5.6 Realisations for secured creditors

Where the Joint Liquidator(s) realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 11.1 below), he should disclose the amount of that remuneration to the Committee (if there is one), to any General Meeting of Members convened for the purpose of determining his fees, and in any reports he sends to members.

6. Progress reports and requests for further information

6.1 The Joint Liquidator(s) is required to send annual Progress Reports to members. The reports must include:

- details of the basis fixed for the remuneration of the Joint Liquidator(s) (or if not fixed at the date of the report, the steps taken during the period of the report to fix it);
- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report);

- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report;
- a statement of the expenses incurred by the Joint Liquidator(s) during the period under review, irrespective of whether payment was actually made during that period;
- details of progress during the period of the report, including a summary of the receipts and payments during the period;
- details of what remains to be done;
- a statement of the members' rights to request further information, as explained in paragraph 6.2, and their right to challenge the Joint Liquidator's remuneration and expenses.

6.2 Within 21 days of receipt of a Progress Report, a member may request the Joint Liquidator(s) to provide further information about the remuneration and expenses set out in the report. Any request must be in writing.

6.3 The Joint Liquidator(s) must provide the requested information within 14 days, unless he considers that:

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the Liquidation, or
- the Joint Liquidator(s) is subject to an obligation of confidentiality in relation to the information requested.

Any member may apply to the court within 21 days of the Joint Liquidator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

7. What if a member is dissatisfied?

7.1 Except in cases where there is a Liquidation Committee, it is the members as a body who have authority to approve the Joint Liquidator's fees. To enable them to carry out this function they may require the Joint Liquidator(s) to call a members' meeting. In order to do this at least ten per cent in value of the members must concur with the request, which must be made to the Joint Liquidator(s) in writing.

7.2 If a member believes that the Joint Liquidator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the Joint Liquidator(s) are in all the circumstances excessive he may, provided certain conditions are met, apply to the court.

8. What if the Joint Liquidator(s) is dissatisfied?

If the Joint Liquidator(s) considers that the remuneration fixed by the Liquidation Committee, or by the members is insufficient, or that the basis used to fix it is inappropriate, the Joint Liquidator(s) may apply to the court for the amount or rate to be increased or the basis changed.

If the Joint Liquidator(s) decides to apply to the court he must give at least 14 days' notice to the members of the Committee and the Committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no Committee, the Joint Liquidator's notice of his application must be sent to such of the shareholders as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid out of the assets.

9. Other matters relating to remuneration

9.1 Where the Joint Liquidator(s) realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the Joint Liquidator(s) will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

9.2 Where two (or more) Insolvency Practitioners are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the Committee or to a meeting of members.

9.3 If the appointed Joint Liquidator(s) is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the Committee, the members or the court.

9.4 If a new Joint Liquidator(s) is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new Joint Liquidator(s) until a further determination, resolution or court order is made.

9.5 Where the basis of the remuneration is a set amount, and the Joint Liquidator(s) ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing Joint Liquidator(s). The application must be made to the same body as approved the remuneration. Where the outgoing Joint Liquidator(s) and the incoming Joint Liquidator(s) are from the same firm, they will usually agree the apportionment between them.

10. Effective date

This guide applies where a company goes into Liquidation on or after 6 April 2017.



AZETS HOLDINGS LIMITED – FEES AND EXPENSES POLICY

Introduction

Further information about creditors' rights can be obtained by visiting the creditors' information micro-site published by the Association of Business Recovery Professionals (R3) at <http://www.creditorinsolvencyguide.co.uk>.

Details about how an office holder's fees may be approved for each case type are available in a series of guides issued with Statement of Insolvency Practice 9 (SIP 9) and can be accessed at <https://www.azets.co.uk/restructuring-and-insolvency-downloads/>. A hard copy may be requested from Azets Holdings Limited, 5th Floor Ship Canal House, 98 King Street, Manchester, M2 4WU or Anna.MacLeod@Azets.co.uk.

Staff Allocation and Charge Out Rates

Our general approach to resourcing our assignments is to allocate staff with the skills and experience to meet the specific requirements of the case. Work carried out by all staff is subject to the overall supervision of the office holders.

The constitution of the case team will usually consist of a Partner/Director, Manager and an Administrator as well as support staff. The exact constitution of the case team will depend on the anticipated size and complexity of the assignment and on larger, more complex cases, several members of staff may be allocated to meet the demands of the case.

We operate a time recording system which allows staff working on the assignment along with the office holders to allocate their time to an assignment in 6 minute units.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. The work is generally recorded under the following categories:

- Administration and planning
- Investigations
- Realisation of assets
- Creditors
- Trading
- Case specific matters

Time costs are recorded at the individual's hourly rate in force at that time. With effect from 1 February 2022 our charge out rates are shown below, exclusive of VAT.

1 February 2022 to date	£
Partner/Director	400.00 – 580.00
Manager	280.00 – 375.00
Administrator	130.00 – 275.00
Support Staff	120.00

Included within the manager grade are Senior Manager, Manager and Assistant Manager. Included within the Administrator grade are Senior Administrator and Assistant. Where necessary and appropriate, members of staff from other departments of the practice will undertake work on a case. They will be charged at their normal charge out rate for undertaking such work.

Please note that charge out rates are reviewed annually and may be subject to change.

Expenses

On insolvency appointments, an office holder will typically incur expenses which relate to that assignment. Expenses (or costs) are amounts properly payable by an office holder from an insolvency estate which are not otherwise categorised as the office holder's remuneration or a distribution to a creditor or shareholder. These expenses may include, but are not limited to, agent's costs for disposal and realisation of assets, legal costs, specialist pension advice, tax services or other routine expenses associated with an insolvency appointment such as statutory advertising costs, the office holder's specific penalty bond and costs associated with storing the books and records. Expenses also include disbursements which are payments that are first met by the office holder and then reimbursed at a later date from the estate, usually when realisations permit. Details of the anticipated expenses on an insolvency assignment will be outlined in the office holder's fees estimate or other information provided to creditors about the fee basis or bases being proposed.

Expenses recharged to, or incurred directly by, an insolvent estate are subject to VAT at the applicable rate where appropriate.

Some expenses can be paid without prior approval from creditors (referred to as Category 1 expenses) and other expenses which may have an element of shared costs or are proposed to be paid to an associate of the office holder, require approval before they can be paid (referred to as Category 2 expenses).

Category 1 expenses are directly referable to an invoice from a third party that is not an associate of the office holder or the firm, which is either in the name of the estate or Azets Holdings Limited; in the case of the latter, the invoice makes reference to, and therefore can be directly attributed to, the insolvency estate. These costs are recoverable without the prior approval of creditors either by a direct payment from the estate or, where the firm has made payment on behalf of the estate, by a recharge of the amount invoiced by the third party.

Category 2 expenses are directly attributable to the estate but include an element of shared costs or is a payment to an associate of the office holder or the firm. These expenses are recoverable from the estate, subject to the prior approval of the creditors, in the same manner as the approval of the office holder's remuneration.

The Category 2 expenses which include an element of shared costs and are charged by this firm are as follows:

- Postage – charged in accordance with the current Royal Mail price guide for first class.
- Business mileage – charged at standard rates which comply with HM Revenue & Customs limits. The current rate is 45 pence per mile.
- Internal photocopying - charged at 5 pence per sheet for reports and circulars issued to creditors, shareholders, employees and other stakeholders. No additional charge is made for individual items of correspondence.

Please note that these category 2 expenses are reviewed annually and may be subject to change.

Payments to associates (as defined in Section 435 of the Insolvency Act 1986 and the Insolvency Code of Ethics), which are also classified as a category 2 expense requiring creditor approval, are not routinely made by this firm. Any such payments will be considered on a case by case basis and when seeking approval for the payments, the office holder will provide creditors with an explanation of the work to be done, why the work is necessary and the estimated payment that will be made. The form and nature of the relationship with the associate will also be provided.

Provision of Services Regulations

When carrying out all professional work relating to an insolvency appointment, Insolvency Practitioners are bound by the Insolvency Code of Ethics.

To comply with the Provision of Service Regulations, some general information about Azets Holdings Limited, including our complaints policy and Professional Indemnity Insurance and the Insolvency Code of Ethics, is available on our website using the following link: www.azets.co.uk/about-us/legal-regulatory-information/.