

GUIDANCE NOTE  
MEMBERS' VOLUNTARY LIQUIDATIONS  
A SHAREHOLDERS' GUIDE TO LIQUIDATORS' FEES

December 2019



# LIQUIDATIONS – A SHAREHOLDERS’ GUIDE TO LIQUIDATORS’ FEES

## ENGLAND AND WALES

### 1. Introduction

- 1.1 When a company goes into members’ voluntary liquidation the costs of the proceedings are paid out of its assets unless otherwise agreed by the directors and shareholders. The insolvency legislation recognises this interest by providing mechanisms for shareholders to fix the basis of the liquidators’ fees (also referred to in this guide as ‘remuneration’). This guide is intended to help shareholders be aware of their rights to approve and monitor fees, explains the basis on which fees are fixed and how shareholders can seek information about expenses incurred by the liquidator and challenge those they consider to be excessive.

### 2. Liquidation procedure

- 2.1 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.
- 2.2 A solvent liquidation is called a members’ voluntary liquidation

### 3. Fixing the liquidator’s fees

#### 3.1 Basis

- 3.1.1 The basis for fixing the liquidator’s fees is set out in Rules 18.16, 18.17 and 18.19 of the Insolvency (England and Wales) Rules 2016. The Rules state that the basis of fees must be fixed:

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

- 3.1.2 Any combination of these bases may be used to fix the fees, and different bases may be used for different things done by the liquidator. Where the fee is fixed as a percentage, different percentages may be used for different things done by the liquidator.

#### 3.2 Who fixes the fees?

- 3.2.1 It is for the shareholders to determine on which of these bases, or combination of bases, the fees are to be fixed. Where it is fixed as a set amount or a percentage, it is for the shareholders to determine the amount, percentage or percentages to be applied. Rule 18.16 says that in arriving at its decision the shareholders 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 winding up of the company
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties;

- the value and nature of the property with which the liquidator has to deal.

3.2.2 If the fees are not fixed as above, the basis will be fixed by the court on application by the liquidator, but the liquidator may not make such an application unless he has first tried to get his fees fixed by the shareholders as described above. The liquidator may not make such an application more than 18 months after his appointment.

#### **4. Review of fees**

4.1 Where there has been a material and substantial change in circumstance since the basis of the liquidator's fees was fixed, the liquidator may request that it be changed. The request must be made to the same body as initially approved the fees, and the same rules apply as to the original approval.

#### **5. What information should be provided by the liquidator?**

##### **5.1 General principles**

5.1.1 The liquidator should provide those responsible for approving his fees with sufficient information to enable them to make an informed judgement about the reasonableness of the liquidator's request. The information should be presented in a manner which is transparent, consistent throughout the life of the case and useful to shareholders, while being proportionate to the circumstances of the case.

5.1.2 The liquidator should disclose:

- Payments, fees and expenses arising from the administration paid to the liquidator or his or her associates;
- Any business or personal relationships with parties responsible for approving the liquidators' fees or who provide services to the liquidator in respect of the appointment where the relationship could give rise to a conflict of interest.

5.1.3 The liquidator should inform shareholders and other interested parties of their rights under insolvency legislation, and should advise them how they may access suitable information setting out their rights within the first communication with them and in each subsequent report.

##### **5.2 Key Issues**

5.2.1 The key issues of concern to those with a financial interest in the level of payments from the company will commonly be:

- the work the liquidator anticipates will be done, and why that work is necessary; and the anticipated cost of that work, including any expenses expected to be incurred in connection with it;
- whether it is anticipated that the work will provide a financial benefit to shareholders and if so what anticipated benefit (or if the work provided no direct financial benefit, but was required by statute);
- the work actually done and why that work was necessary;
- the actual costs of the work, including any expenses incurred in connection with it, as against any estimate provided;
- whether the work has provided a financial benefit to shareholders, and if so what benefit (or if the work provided no direct financial benefit, but was required by statute).

5.2.2 When providing information about payments, fees and expenses, the liquidator should do so in a way which facilitates clarity of understanding of these key issues. Narrative explanations should be provided to support any numerical information supplied.

5.2.3 When approval for a fixed amount or a percentage basis is sought, the liquidator should explain why the basis requested is expected to produce a fair and reasonable reflection of the work that the liquidator anticipates will be undertaken.

### **5.3 Disbursements**

5.3.1 Costs met by and reimbursed to the liquidator in connection with the liquidation will fall into two categories:

- Category 1 disbursements: These are payments to independent third parties where there is specific expenditure directly referable to the liquidation. Category 1 disbursements can be drawn without prior approval, although the liquidator should be prepared to disclose information about them in the same way as any other expenses.
- 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 may be incurred by the liquidator or their firm, and that can be allocated to the liquidation on a proper and reasonable basis. Category 2 disbursements require approval in the same manner as a liquidator's fees.

5.3.2 When seeking approval, the liquidator should explain, for each category of cost, the basis on which the charge is being made.

5.3.3 The following are not permissible as disbursements:

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

### **5.4 Realisations for secured creditors**

5.4.1 Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 10.1 below), he should disclose the amount of that remuneration in any reports he sends to shareholders

## **6. Progress reports and requests for further information**

6.1 The liquidator is required to send annual progress reports to shareholders. In addition to the items described above and especially those in paragraph 5.2.1, the reports must include:

- details of the basis fixed for the fee of the liquidator (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 fee 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 fee charged during the periods covered by the previous reports, together with a description of the things 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 liquidator during the period of the report, 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 needs to be done;
- a statement of the shareholders' rights to request further information, as explained in paragraph 6.2 and their right to challenge the liquidator's fees and expenses.

6.2 Within 21 days of receipt of a progress report or final account a shareholder may request the liquidator to provide further information about the fees and expenses set out in the report. A request must be put in writing, and may be made either by members of the company with at least 5% of the total visiting rights of all the members having the right to vote at general meetings of the company or a member of the company with permission of the court.

6.3 The liquidator 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 might be expected to lead to violence against any person, or
- the liquidator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing some or all of the information.

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

## **7. Provision of information – additional requirements**

7.1 The liquidator must provide certain information about the time spent on the case, free of charge, upon request by any shareholder of the company.

7.2 The information which must be provided is –

- the total number of hours spent on the case by the liquidator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

7.3 The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the liquidator's appointment, or where he has vacated office, the date that he vacated office.

7.4 The information set out in paragraph 7.2 must be provided within 28 days of the receipt of the request by the liquidator, and requests must be made within two years from vacation of office.

## **8. What if a shareholder is dissatisfied?**

8.1 It is the shareholders as a body who have authority to approve the liquidator's fees.

8.2 If a shareholder believes that the liquidator's fees are excessive, the basis is inappropriate, or the expenses incurred by the liquidator are in all circumstances excessive he may, provided certain conditions are met, apply to the court.

8.3 Application may be made to the court by members of the company with at least 10 per cent of the total voting rights of all the members having the right to vote at general meetings of the company, or a member of the company with the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the liquidator's progress report or final account in which the charging of the fees or incurring of the expenses in question is first reported (see paragraph 6.1 above). If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the liquidator a copy of the application and supporting evidence at least 14 days before the hearing.

8.4 If the court considers the application well founded, it may order that the fees be reduced, the basis be changed or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not out of the assets of the company.

## **9. What if the liquidator is dissatisfied?**

9.1 If the liquidator considers that the fees fixed by the shareholders is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed by decision of the shareholders. If the liquidator considers that the fees fixed by the shareholders is insufficient or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. If he decides to apply to the court he must give at least 14 days' notice to the company's members who may nominate one or more of their number to appear or be represented at the court hearing. The court may order the costs to be paid out of the assets.

## **10. Other matters relating to fees**

10.1 Where the liquidator 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 liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

10.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the fee payable should be apportioned. Any dispute between them may be referred to the shareholders or the court.

10.3 If a new liquidator is appointed in place of another, any determination, decision or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new liquidator until a further determination, decision or court order is made.

- 10.4 Where the basis of the fees is a set amount, and the liquidator 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 liquidator. The application must be made to the same body as approved the fees. Where the outgoing liquidator and the incoming liquidator are from the same firm, they will usually agree the apportionment between them.

## **11. Effective date**

This guidance is effective from 19 December 2019.

Mercer & Hole  
Chartered Accountants