

Section 106

Return of Final Meeting in a
Creditors' Voluntary Winding UpPursuant to Section 106 of the
Insolvency Act 1986

To the Registrar of Companies

S.106

Company Number

02643951

Name of Company

Kirby Footwear Limited

I / We

Edward T Kerr, Pannell House, 159 Charles Street, Leicester, LE1 1LD

Ian J Gould, Two Snowhill, Birmingham, B4 6GA

Note The copy account must be
authenticated by the written
signature(s) of the Liquidator(s)

1 give notice that a general meeting of the company was duly held on/summoned for 20 April 2016 pursuant to section 106 of the Insolvency Act 1986, for the purpose of having an account (of which a copy is attached) laid before it showing how the winding up of the company has been conducted, and the property of the company has been disposed of, and that ~~the same was done accordingly~~ / no quorum was present at the meeting,

2 give notice that a meeting of the creditors of the company was duly held on/summoned for 20 April 2016 pursuant to Section 106 of the Insolvency Act 1986, for the purpose of having the said account laid before it showing how the winding up the company has been conducted and the property of the company has been disposed of and that ~~the same was done accordingly~~/no quorum was present at the meeting

The meeting was held at Pannell House, 159 Charles Street, Leicester, LE1 1LD

The winding up covers the period from 15 July 2014 (opening of winding up) to the final meeting (close of winding up)

The outcome of any meeting (including any resolutions passed) was as follows

- 1 That the Joint Liquidators' Final Receipts and Payments Account be approved
- 2 That the Joint Liquidators' Final Report be approved
- 3 That the Joint Liquidators be released following the final meetings of members & creditors
- 4 That the books, documents and records of the company be retained for 15 months following the final meetings of members and creditors and thereafter be destroyed

Signed

Edward T Kerr

Date 20 April 2016

BDO LLP
Pannell House
159 Charles Street
Leicester
LE1 1LD

Ref 00243672/ETK/IJG/HLR/EH/RH/KB

TUESDAY



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#139


COMPANIES HOUSE

Kirby Footwear Limited
(In Liquidation)
Joint Liquidators' Abstract of Receipts & Payments
From 15 July 2014 To 20 April 2016

S of A £		£	£
	ASSET REALISATIONS		
	Brand Registrations	500 00	
200 00	Fixtures & Fittings	200 00	
1,850 00	Computer Equipment	1,850 00	
NIL	Directors Loan	NIL	
1,519 91	Intercompany Debt	1,517 91	
NIL	Prepayments	NIL	
4,938 20	Book Debts	1,193 41	
1,915 22	Deposits and Cash	976 77	
	Cash at Bank	188 07	
	Rates Refund	96 74	
	Bank Interest Gross	4 50	
	Sundry Refunds	205 86	
			6,733 26
	COST OF REALISATIONS		
	Specific Bond	30 00	
	Preparation of S of A	5,000 00	
	Liquidator's Fees	845 86	
	Agents/Valuers Fees (1)	400 00	
	Storage Costs	34 32	
	Statutory Advertising	423 00	
	Bank Charges	0 08	
			(6,733 26)
	PREFERENTIAL CREDITORS		
(13,012 23)	Preferential Wages	NIL	
(3,692 54)	Preferential Hol Pay	NIL	
			NIL
	FLOATING CHARGE CREDTS		
(3,135 06)	HSBC Bank Plc	NIL	
			NIL
	UNSECURED CREDITORS		
(69,758 67)	Trade & Expense Creditors	NIL	
(23,856 89)	Employee Wage Arrears	NIL	
(55,845 05)	Employee Pay in Lieu of Notice	NIL	
(64,015 80)	Employee - Redundancy Pay	NIL	
(2,634 56)	Unsecured Class 1A NIC's	NIL	
(10,531 16)	Unsecured V A T	NIL	
(23,160 40)	Unsecured Corporation Tax	NIL	
			NIL
	DISTRIBUTIONS		
(31,250 00)	Ordinary Shareholders	NIL	
			NIL
(290,469 03)			(0.00)

Kirby Footwear Limited
(In Liquidation)
Joint Liquidators' Abstract of Receipts & Payments
From 15 July 2014 To 20 April 2016

S of A £	£	£
REPRESENTED BY		
Trade Creditors		(198 96)
Vat Control Account		198 96
		<u>NIL</u>



Edward T Kerr
Joint Liquidator

To All Known Members and Creditors

20 April 2016

Our Ref ETK/IJG/EH/CVL/A6

Please ask for
Ed Hamblin
0116 250 4443

Dear Sirs

Kirby Footwear Limited - In Creditors' Voluntary Liquidation ("the Company")**Registered Address: BDO LLP, Pannell House, 159 Charles Street, Leicester, LE1 1LD****Registered Number: 02643951****Joint Liquidators: Edward T Kerr and Ian J Gould****Joint Liquidators Address: BDO LLP, Pannell House, 159 Charles Street, Leicester, LE1 1LD****Date of Appointment: 15 July 2014****Final Report to Members and Creditors Pursuant to Rule 4.49D of the Insolvency Rules 1986**

I refer to my appointment as Joint Liquidator of the Company and confirm I have now concluded the liquidation in accordance with Section 106 of the Insolvency Act 1986.

Please find attached to this letter form 4 72 and the final report, together with attachments

The purpose of the meetings held on 20 April 2016 was to present a final version of the attached final report

Yours faithfully



Edward T Kerr
Joint Liquidator

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**Kirby Footwear Limited
In Creditors' Voluntary Liquidation**

**Final Report to Members and Creditors
As at 20 April 2016**

Progress of the liquidation

As you will be aware, the Company was placed into liquidation on 15 July 2014 and I was appointed Joint Liquidator, together with Ian J Gould. We are now in a position to conclude the liquidation

Investigations

The Joint Liquidators have a statutory duty to undertake an investigation of the financial affairs of the Company and the conduct of any person they believe to have been a director or shadow director of the Company in the three years prior to the commencement of the liquidation. The findings are submitted in a confidential report to The Department for Business Innovation and Skills within six months of the onset of the liquidation

We can confirm that the investigations have been concluded and there are no further investigations or actions to be undertaken.

Receipts and Payment Account

Attached is a copy of the Joint Liquidators' Receipts and Payments Account for the period 15 July 2015 to date and for the whole of the liquidation period commencing 15 July 2014

Asset Realisations

Brand Registrations

The brand registrations trademarks of 'METRO', 'SOLORO' and a symbol were sold to Kirby Holdings Limited ("KH") for £500 plus VAT. KH is the parent company of the Company. The value and the sale of the Brand Registrations were agreed with the directors of the Company prior to the liquidation commencing

Fixtures and Fittings

The fixtures and fittings of the Company were sold to KH for £200 plus VAT. Valuers Knighton Evans confirmed this amount was at market rate. This compares to a book value of £21,677 and is in line with the estimated to realise value of £200 in the Statement of Affairs.

Computer Equipment

The computer equipment of the Company was sold to KH for £1,850. A desktop valuation provided by valuers Knighton Evans confirmed this amount was at market rate. This compares to a book value of £22,015 and is in line with the estimated to realise value of £1,850 in the Statement of Affairs

Intercompany Debt

At the date of liquidation, KH owed £1,520 to the Company. The amount of £1,518 was paid by KH on 21 July 2014. The amount of the difference has been written off.

Book Debts

Book debts of £4,938 were estimated in the Statement of Affairs to be fully realisable and were pursued by the Liquidators.

The sum of £1,193 has been realised to date. One invoice of £2,207 was paid directly to the Bank prior to the appointment of the Liquidators and another of £1,537 was an invoice that was raised in error. Both debts have been written off.

No further book debt realisations are expected.

Deposits and Cash

The Company held many foreign currencies with a book value of £1,915. Following the liquidation the foreign currencies were banked which totalled £977. The difference is due to some monies that could not be banked because of the type of currency or the denomination was too small. There were also foreign exchange rate differences to be taken into account.

Cash at Bank

Funds from the Company bank account were transferred to the liquidation bank account totalling £188.

Rates Refund

A refund was received from Blaby District Council for the prepayment of business rates totalling £97.

Bank Interest

A small amount of gross bank interest in the sum of £0.32 has been received in the final period. Total interest earned is £4.50. No further funds are expected to be received.

Sundry Refunds

The Company's policy with BUPA was cancelled upon liquidation and a refund was due to the Company. The refund was received by KH and forwarded to the Company on 9 March 2015 totalling £206.

Costs incurred other than Liquidators' expenses

No such costs have been incurred in the period covered by this report. The costs of the liquidation are detailed in the attached Receipts and Payments Account.

Agents/Valuers Fees

Knighton Evans was paid £400 plus VAT for its assistance in valuing and dealing with the sale of the assets of the Company.

The choice of professional advisers is based upon their experience and ability to perform this type of work, the nature and complexity of the assignment and the basis of our fee arrangement with them

Creditors' Claims

Secured Creditors

There are no creditors of this class

Preferential Creditors

Claims have been received totalling £52,148 in respect of employee wage arrears and holiday pay owed. Of this sum £16,703 forms the preferential claims of the employees

Unfortunately, there are insufficient funds for a dividend distribution to this class of creditor.

Unsecured Creditors

Unsecured claims received total £81,330 compared to £109,220 in the Statement of Affairs. There is no likelihood of a distribution to this class of creditor

Prescribed Part

Section 176A of the Insolvency Act 1986 requires the Liquidators to set aside a prescribed proportion of the Company's 'net property' towards the satisfaction of unsecured, non-preferential claims. Net property is the amount of property that would otherwise be available to holders of debentures secured by, or holders of, any floating charge created by the Company after 15 September 2003

As there is no floating charge in the case the provisions of the Prescribed Part do not apply

Distribution

As previously advised, in accordance with Rule 11.7 of the IR 1986, I give notice that there will be no dividend to any class of creditor and that funds realised were allocated for defraying the expenses of the Liquidation

Joint Liquidators' Remuneration and Disbursements

BDO LLP was paid a total of £5,000 for its assistance in preparing the Statement of Affairs. At a meeting of creditors on 15 June 2014, a resolution was passed for BDO LLP to be paid £5,000 for the assistance in preparing the statement of affairs and convening the meetings of Members and Creditors

Time costs from the date of my appointment to 20 April 2016 amount to £22,933.90 and represent 119.90 hours at an average hourly rate of £191.28 per hour. No fees have been drawn in respect of these time costs

Time costs incurred in the period 15 July 2015 to 20 April 2016 amount to £6,976.65 which represents 33.35 hours at an average hourly rate of £209.19 per hour as detailed in the attached schedule. Fees of £864 have been drawn in the period

We attach an analysis of these time costs together with a summary of the policies of BDO LLP in respect of fees and expenses for work in relation to the Liquidation

These amounts are derived from BDO LLP's normal rates for time properly spent by the liquidators and their staff in attending to matters arising in the liquidation. Where members of staff have been employed on this case they have been so based on their experience and abilities in dealing with a case of this nature. Where appropriate certain staff have dealt with a specific area of the liquidation due to their specialist skills in that area. BDO LLP's scale rates may increase from time to time over the period of an assignment.

All staff who have worked on this matter, including cashiers and secretarial staff, have charged time directly to the assignment and are included in the enclosed analysis. The cost of staff employed in central administration functions is not charged directly to the assignment but is reflected in the general level of charge out rates.

Disbursements

Category 1 disbursements are those which generally comprise external supplies of incidental services specifically identifiable to the case.

Category 2 disbursements are generally services supplied internally and require the approval of creditors. No such disbursements have been charged in this case.

Category 1 disbursements incurred and paid since my appointment to date total £485 and are as follows:

	£
Storage Charges	34
Liquidators' Bond	30
Statutory Advertising	<u>423</u>
	<u>487</u>

Statement of creditors' right to further information:

We provide at the end of this report an extract from the Insolvency Rules 1986 setting out the rights of creditors to request further information and/or challenge the remuneration or fees within the Liquidation.

The Insolvency Service has established a central gateway for considering complaints in respect of Insolvency Practitioners. In the event that you make a complaint to me but are not satisfied with the response from me then you should visit <https://www.gov.uk/complain-about-insolvency-practitioner> where you will find further information on how you may pursue the complaint.

Case Completion

We confirm we are not aware of any outstanding matters in relation to the liquidation proceedings and have received no objection from HM Revenue & Customs to the closure of the case.

We trust this report provides you with sufficient information but if you require more or have any questions, please contact Ed Hamblin on 0116 250 4443.

To All Known Members and Creditors
20 April 2016

Yours faithfully



Edward T Kerr
Joint Liquidator
20 April 2016

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- 1 An abstract of the Liquidators' receipts and payments account for the period of the report and from 15 July 2014 to date
- 2 Analysis of the time charged to the liquidation estate in the period of this report, together with a breakdown of the costs incurred from 15 July 2014
- 3 Summary of the policies of BDO LLP in respect of fees and expenses for work in relation to the Liquidators.
- 4 Creditors' guide in relation to Insolvency Practitioners fees.
- 5 An extract from the Insolvency Rules 1986 re Members and Creditors Rights

Kirby Footwear Limited
(In Liquidation)
Joint Liquidators' Abstract of Receipts & Payments

Statement of Affairs	From 15/07/2015 To 20/04/2016	From 15/07/2014 To 20/04/2016
ASSET REALISATIONS		
	NIL	500 00
200.00 Brand Registrations	NIL	200 00
1,850.00 Fixtures & Fittings	NIL	1,850 00
NIL Computer Equipment	NIL	NIL
1,519 91 Directors Loan	NIL	1,517 91
NIL Intercompany Debt	NIL	NIL
4,938 20 Prepayments	NIL	1,193 41
1,915 22 Book Debts	NIL	976 77
	NIL	188 07
	NIL	96 74
	0 32	4 50
	NIL	205 86
	0 32	6,733 26
COST OF REALISATIONS		
	30 00	30 00
	NIL	5,000 00
	845 86	845 86
	NIL	400 00
	34 32	34 32
	84 60	423 00
	0 08	0 08
	(994.86)	(6,733 26)
PREFERENTIAL CREDITORS		
(13,012 23) Preferential Wages	NIL	NIL
(3,692 54) Preferential Hol. Pay	NIL	NIL
	NIL	NIL
FLOATING CHARGE CREDTS		
(3,135 06) HSBC Bank Plc	NIL	NIL
	NIL	NIL
UNSECURED CREDITORS		
(69,758 67) Trade & Expense Creditors	NIL	NIL
(23,856 89) Employee Wage Arrears	NIL	NIL
(55,845 05) Employee Pay in Lieu of Notice	NIL	NIL
(64,015 80) Employee - Redundancy Pay	NIL	NIL
(2,634 56) Unsecured Class 1A NIC's	NIL	NIL
(10,531 16) Unsecured V.A T.	NIL	NIL
(23,160 40) Unsecured Corporation Tax	NIL	NIL
	NIL	NIL
DISTRIBUTIONS		
(31,250 00) Ordinary Shareholders	NIL	NIL
	NIL	NIL
(290,469.03)	(994.54)	(0.00)
REPRESENTED BY		
Trade Creditors		(198 96)

Vat Control Account

198 96

NIL



Edward T Kerr
Joint Liquidator

Kirby Footwear Limited - In Liquidation

Summary of time charged and rates applicable for the period from 15 July 2013 to 20 April 2016

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		TOTAL		AVERAGE HOURLY RATE £ P/H
	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	
A Pre appointment matters			-	-			-				-				-
B Steps on appointment			-	-	-		-				-				-
C Planning and Strategy	1 25	605 00	0 50	142 50			-				-		1 75	747 50	427 14
D General administration	0 20	96 80	0 55	183 95			2 80	537 60	2 00	220 00	0 30	17 10	5 85	1,055 45	180 42
E Asset and realisations/dealing			-	-	-		-				-				-
F Trading related matters				-			-				-				-
G Employee matters			-	-			-				-				-
H Creditor claims			-	-	-		-				-				-
I Reporting	0 50	242 00	0 90	256 50	-		12 65	2,428 80			-		14 05	2,927 30	208 35
J Distribution and closure							11 70	2,246 40			-		11 70	2 246 40	192 00
K Other work			-	-			-				-				
TOTAL	1 95	943 80	1 95	582 95			27 15	5,212 80	2 00	220 00	0 30	17 10	33 35	6,976 65	209 19

Kirby Footwear Limited In Liquidation

Summary of time charged and rates applicable for the period from 15 July 2014 to 20 April 2016

Description	PARTNER		MANAGER		ASSISTANT MANAGER		SENIOR ADMINISTRATOR		ADMINISTRATOR		OTHER STAFF		TOTAL		AVERAGE HOURLY RATE £ P/H
	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	Hours	Value £	
A Pre appointment matters	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
B Steps on appointment	-	-	-	-	-	-	0.75	137.25	-	-	-	-	0.75	137.25	183.00
C Planning and Strategy	1.25	605.00	2.80	775.80	-	-	1.95	356.85	-	-	-	-	6.00	1,737.65	289.61
D General administration	2.30	1,064.90	2.30	586.80	0.35	74.05	32.45	5,963.55	6.65	774.00	3.75	286.20	47.80	8,749.50	183.04
E Asset and realisations/dealing	0.20	92.20	1.15	311.65	-	-	10.45	1,912.35	-	-	-	-	11.80	2,316.20	196.29
F Trading related matters	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
G Employee matters	-	-	3.90	791.70	-	-	4.80	878.40	2.35	232.65	2.30	227.70	13.35	2,130.45	159.58
H Creditor claims	-	-	-	-	-	-	7.65	1,399.95	-	-	-	-	7.65	1,399.95	183.00
I Reporting	0.50	242.00	0.90	256.50	-	-	18.65	3,526.80	-	-	-	-	20.05	4,025.30	200.76
J Distribution and closure	-	-	-	-	-	-	11.70	2,246.40	-	-	-	-	11.70	2,246.40	192.00
K Other work	-	-	0.80	191.20	-	-	-	-	-	-	-	-	0.80	191.20	239.00
TOTAL	4.25	2,004.10	11.85	2,913.65	0.35	74.05	88.40	16,421.55	9.00	1,006.65	6.05	513.90	119.90	22,933.90	191.28



Kirby Footwear Limited - In Liquidation

In accordance with best practice we provide below details of the policies of BDO LLP in respect of fees and expenses for work in relation to the above insolvency

The current charge out rates per hour of staff within our firm, who may be involved in working on the insolvency, follows. This in no way implies that staff at all such grades will work on the case

GRADE	£
Partner	374-484
Director/Senior Manager	285-335
Manager	213-242
Assistant Manager/Senior Executive	192
Executive	163-181
Administration Assistant	104-145
Junior Administrator	82
Support staff/Secretary	57-66

The rates charged by BDO LLP are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads

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. Units of time can be as small as 3 minutes. BDO LLP records work in respect of insolvency work under the following categories -

- Pre Appointment
- Steps upon Appointment
- Planning and Strategy
- General Administration
- Asset Realisation/Management
- Trading Related Matters
- Employee Matters
- Creditor Claims
- Reporting
- Distribution and Closure
- Other Issues

Under each of the above categories the work is recorded in greater detail in sub categories. Please note that the 11 categories provide greater detail than the six categories recommended by the Recognised Professional Bodies who are responsible for licensing and monitoring insolvency practitioners

Where officeholders' remuneration is approved on a time cost basis, the time invoiced to the case will be subject to VAT at the prevailing rate

Where remuneration has been approved on a time costs basis a periodic report will be provided to any committee appointed by the creditors or in the absence of a committee to the creditors. The report will provide a breakdown of the remuneration drawn and will enable the recipients to see the average rates of such costs



Other Costs

Where expenses are incurred in respect of the insolvent estate they will be recharged. Such expenses can be divided into two categories.

Category 1

This heading covers expenses where BDO LLP has met a specific cost in respect of the insolvent estate where payment has been made to a third party. Such expenses may include items such as advertising, couriers, travel (by public transport), land registry searches, fees in respect of swearing legal documents etc. In each case the recharge will be reimbursement of a specific expense incurred.

Category 2

Insolvency practice additionally provides for the recharge of expenses such as postage, stationery, photocopying charges, telephone, fax and other electronic communications, which cannot be economically recorded in respect of each specific case. Such expenses, which are apportioned to cases, must be approved by the creditors in accordance with the Insolvency Rules 1986, before they can be drawn, and these are known as category 2 disbursements.

Where applicable, all disbursements will be subject to VAT at the prevailing rate.

BDO LLP

1 Introduction

- 1 1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees and explains the basis on which fees are fixed.

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. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2 3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and a member of The Insolvency Service, an executive agency within the Department of Business Innovation & Skills. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by the Secretary of State for Business Innovation & Skills. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2 4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator.

3 The Liquidation Committee

- 3 1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3 2 The liquidator must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

4 Fixing the Liquidator's Fees

- 4 1 The basis for fixing the liquidator's remuneration is set out in Rule 4.127 - 4.127B of the Insolvency Rules 1986. The Rule states that the remuneration shall be fixed either
- as a percentage of the value of the assets which are realised or distributed or both, or
 - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the insolvency.

It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to

be applied Rule 4 127 says that 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

4 2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the remuneration is not fixed in any of these ways, it will be in accordance with the scale laid down for official receivers

5 What Information should be Provided by the Liquidator?

5 1 When seeking fee approval

5 1 1 When seeking agreement to his fees the liquidator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on

- the nature of the approval being sought,
- the stage during the administration of the case at which it is being sought, and
- the size and complexity of the case

Where, at any creditors' or committee meeting, the liquidator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case

5 1 2 Where the liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4 1 above. To enable this assessment to be carried out it may be necessary for the liquidator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, and professional guidance has been provided setting out a minimum of 6 category headings under which the work done by the officeholder and his staff should be analysed. As a firm BDO LLP operates a computerised time recording system which analyses work done under the following categories -

- Pre Appointment Matters
- Steps upon Appointment
- Planning and Strategy
- General Administration
- Asset Realisation/Management
- Trading Related Matters
- Employee Matters
- Creditor Claims
- Reporting
- Distribution and Closure
- Other Issues

Professional guidance suggests the following categories as a basis for analysis by grade of staff, but this will be subject to whether each grade is engaged in working on the liquidation

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the liquidator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain

- Any significant aspects of the case, particularly those that affect the amount of time spent
- The reasons for subsequent changes in strategy
- Any comments on any figures in the summary of time spent accompanying the request the liquidator wishes to make
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement
- Any existing agreement about fees
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases

- 5 1 3 Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator or his staff

5 2 After fee approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5 1 3. Where the fee is charged on a percentage basis the liquidator should provide the details set out in paragraph 5 1 4 above regarding work which has been sub-contracted out.

5 3 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

5 4 Realisations for secured creditors

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 8 1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

5 5 Reporting in compulsory liquidations

It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it.

6 What if a creditor is dissatisfied?

6 1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.

6 2 If a creditor believes that the liquidator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. 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. Unless the court orders otherwise, the costs must be paid by the applicant and not out of the assets of the insolvent company.

7 What if the Liquidator is dissatisfied?

If the liquidator considers that the remuneration fixed by the committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors or in accordance with the official receiver's scale is insufficient, he may apply to the court for it to be increased. If he 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 liquidator's notice of his application must be sent to such of the creditors 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.

8 Other matters relating to fees

8 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 the scale laid down for the official receivers. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

8 2 Where two (or more) joint liquidators 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 a meeting of creditors.

8 3 If the appointed liquidator 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 creditors or the court.

8 4 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

9 Provision of information - additional requirements

In any case where the liquidator is appointed on or after 1 April 2005 he must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company. 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

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

The information must be provided within 28 days of receipt of the request by the liquidator, and requests must be made within two years from vacation of office

ETK/IJG/EH/WEC/ADM/C11

Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Liquidators' fees and expenses:

Rule 4.49E Creditors' and members' request for further information

(1) if-

- (a) within the period mentioned in paragraph (2)-
 - (i) a secured creditor, or
 - (ii) an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
 - (iii) members of the company in a members' voluntary winding up with at least 5% of the total voting rights of all the members having the right to vote at general meetings of the company, or
- (b) with the permission of the court upon an application made within the period mentioned in paragraph (2)-
 - (i) any unsecured creditor, or
 - (ii) any member of the company in a members' voluntary winding up,

makes a request in writing to the liquidator for further information about remuneration or expenses set out in a progress report in accordance with Rule 4.49B(1)(e) or (f) (including by virtue of Rule 4.49C(5)) or in a draft report under Rule 4.49D, the liquidator must, within 14 days of receipt of the request, comply with paragraph (3) except to the extent that the request is in respect of matter[s] in a draft report under Rule 4.49D or a progress report required by Rule 4.108 which (in either case) was previously included in a progress report not required by Rule 4.108

(2) The period referred to in paragraph (1)(a) and (b) is-

- (a) 7 business days of receipt (by the last of them in the case of an application by more than one member) of the progress report where it is required by Rule 4.108, and
- (b) 21 days of receipt (by the last of them in the case of an application by more than one member) of the report or draft report in any other case.

(3) The liquidator complies with this paragraph by either-

- (a) providing all of the information asked for, or
- (b) so far as the liquidator considers that-
 - (i) the time or cost of preparation of the information would be excessive, or
 - (ii) disclosure of the information would be prejudicial to the conduct of the liquidation or might reasonably be expected to lead to violence against any person, or
 - (iii) the liquidator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information.

Rule 4.131 Creditors' claim that remuneration is or other expenses are excessive

(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)

(1A) Application may be made on the grounds that-

- (a) the remuneration charged by the liquidator,

(b) the basis fixed for the liquidator's remuneration under Rule 4 127, or

(c) expenses incurred by the liquidator,

is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate.

(1B) The application must, subject to any order of the court under Rule 4 49E(5), be made no later than 8 weeks (or, in a case falling within Rule 4 108, 4 weeks) after receipt by the applicant of the progress report, or the draft report under Rule 4 49D, which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report")

(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss the application, but it shall not do so unless the applicant has had an opportunity to attend the court for a hearing, of which he has been given at least 5 business days' notice but which is without notice to any other party

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly

(3) The applicant shall, at least 14 days before the hearing, send to the liquidator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it must make one or more of the following orders-

(a) an order reducing the amount of remuneration which the liquidator was entitled to charge,

(b) an order fixing the basis of remuneration at a reduced rate or amount;

(c) an order changing the basis of remuneration,

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the liquidation,

(e) an order that the liquidator or the liquidator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just; but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the liquidation