

COURT LIQUIDATIONS (SCOTLAND)

Basis

Reference

Basis - liquidator	Remuneration may be fixed –	
	(a) as a percentage of the value of the assets which are realised, but there shall in any event be taken into account	
	(i) the work which, having regard to that value, was reasonably undertaken; and	R4.32
	(ii) the extent of the responsibilities in administering those assets	S53 BSA R4.68
	(b) The creditors at the first meeting of creditors may resolve, inter alia, unless a liquidation committee is to be established, the terms on which the liquidator is to be remunerated.	R4.12

Priority

	The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets, of the expenses incurred in the winding up in such order of priority as the court thinks just.	S156
Basis – provisional liquidator	The remuneration of the provisional liquidator shall be fixed by the court on his application.	R4.5
Provisional liquidator	The remuneration of the provisional liquidator shall be fixed by the court from time to time.	R4.5
Provisional liquidator	In fixing remuneration, the court shall take into account:	
	(a) the work which, having regard to that value, was reasonably undertaken; and	R4.5
	(b) the extent of the responsibilities in administering those assets	S53(4) BSA R4.16 R4.68

Priority

Priority of payment – remuneration	Without prejudice to any order of the court as to expenses, the provisional liquidator's remuneration shall be paid to him, and the amount of expenses incurred by him (including the remuneration and expenses of any special manager appointed under s177) reimbursed	
	(a) if a winding up order is not made out of the property of the company, and	R4.5(3)
	(b) if a winding up order is made, as an expense	

Reference

	of the company.	R4.47
	The provisional liquidator's remuneration ranks ahead of the liquidator's remuneration subject to any order of the court.	S156
	The cost of providing the caution required by the provisional liquidator under the Act shall unless the court directs otherwise be – (a) if a winding up order is not made, reimbursed to him out of the property of the company, and the court may make an order against the company accordingly, and (b) if a winding up order is made, reimbursed to him as an expense of the liquidation.	R4.3
	In any winding up by the court which follows immediately on a voluntary winding up (whether members' voluntary or creditors' voluntary), such outlays and remuneration of the voluntary liquidator as the court may allow, shall have the same priority as the outlays mentioned in R4.67 (1) (a)	R4.67(2)
How fixed		
Matters for consideration	In arriving at its determination, the committee shall have regard to – (a) the work, which having regard to the value, was reasonably undertaken; (b) and the extent of the responsibilities in administering the estate	S53 BSA R4.68
Determination by liquidation committee	It is for the liquidation committee (if there is one) to fix remuneration	
If no committee	If there is no committee or the committee does not make the requisite determination, the remuneration is fixed by the court.	S53 BSA R4.68
Realisations for secured creditors	Where the liquidator realises assets on behalf of a secured creditor, he should reach agreement with the secured creditor to be remunerated out of the proceeds of sale. This will be a matter between the liquidator and the secured creditor, providing that it has no impact on any other secured creditor or class of creditor. Liquidators should ensure that fees which have an impact on funds available to non-secured creditors are approved in accordance with the appropriate provision contained in this guideline.	

Allocation of Fees	In particular, in relation to the prescribed part set aside for the benefit of unsecured creditors, fees incurred in relation to the prescribed part issues (such as the administration of and agreeing unsecured creditors' claims) should be applied against the funds of the prescribed part, and should not be treated as general fees chargeable against total distributable funds. Fees incurred in respect of meetings of creditors and general creditor correspondence are chargeable against total distributable funds.	R7.31
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Information to be provided

Provision of information to those approving remuneration	The liquidator must provide those responsible for approving his remuneration with the information required under Statement of Insolvency Practice 9	SIP 9
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Disbursements

Disbursement requiring creditor approval	Category 2 disbursements, as defined by Statement of Insolvency Practice 9, must be approved in the same manner as remuneration.	SIP 9
Disbursements not requiring creditor approval	Category 1 disbursements, as defined by Statement of Insolvency Practice 9, do not require approval prior to payment.	SIP 9

Recourse to meeting of creditors

Request for increase	If the basis of the liquidator's remuneration has been fixed by the liquidation committee and the liquidator considers the amount fixed to be insufficient, the liquidator may request that it be increased by resolution of the creditors.	R4.33
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Recourse to the court

Liquidator may apply to court or by resolution of the creditors	If the liquidator considers that the remuneration fixed by the liquidation committee is insufficient he may apply to the court for the amount or rate to be increased.	R4.34(1)
Notice to liquidation committee	The liquidator must give at least 14 days' notice of his application to the members of the liquidation committee. The committee may nominate one or more members to appear, or be represented, and to be heard on the application.	R4.34(2)
Where no liquidation committee	If there is no liquidation committee, the notice of the liquidator's application must be sent to such one or more creditors as the court may direct, and those creditors may nominate one or more of their number to appear or be represented.	R4.34(3)

Reference

Expenses	The court may order the expenses, including the costs of any member of the liquidation committee or any creditor appearing or being represented, to be paid as an expense of the liquidation	R4.34(4)
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Creditors' claim that remuneration is excessive

Who may apply	(a) If the liquidator's remuneration has been fixed by the liquidation committee or by the creditors, any creditor or creditors of the company representing in value at least 25% of the creditors may apply to the court for an order that the liquidator's remuneration be reduced. (b) If the liquidator's remuneration has been fixed by the court any appeal must be made to a higher court, in accordance with normal court rules. Such rules normally provide for an appeal to be made within 14 days of the court's decision.	R4.35(1)
Grounds for application	Application may be made on the grounds that the remuneration is, in the circumstances, excessive.	R4.35(1)
Time limit	The timescales for such appeals are not later than 8 weeks after the end of the accounting period to which the remuneration has been fixed. Where the timescales have not been met, technically an application may be made under s63 BSA to cure this defect. However common practice is to allow the debtor and creditors 14 days in which to appeal from the date advising them of the determination.	S53 Bankruptcy (Scotland) Act 1985
Court order if application well-founded	If the court considers the application well founded, it shall make an order fixing the remuneration at a reduced amount or rate.	R4.35(2)
Expenses	Unless the court orders otherwise, the expenses of the application must be paid by the applicant and not payable as expenses of the liquidation.	R4.35(3)