HELPSHEETS – REMUNERATION
Developed by R3 STC and approved by ICAS

CREDITORS' VOLUNTARY LIQUIDATIONS (SCOTLAND)

Basis		**Reference**
Basis	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 (ii) the extent of the responsibilities in administering those assets.	R4.32 S53 BSA R4.68
	In a Creditors' Voluntary Liquidation there is no provision to allow the first meeting of creditors to resolve, in the absence of a liquidation committee being established, the terms on which the liquidator will be remunerated.	
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**
Section 98 Meeting of Creditors		
Expenses of preparing section 98 meeting and of the statement of affairs to be laid at the meeting	Payments may be made either before or after the commencement of the liquidation, of any reasonable and necessary expenses incurred: (a) in connection with summoning, advertisement and holding of a creditors' meeting under section 98; (b) in preparing the statement of affairs that the directors are required, under section 99, to lay before the meeting of creditors called under section 98.	R4.14A(1) R4.9(1)
	These payments are an expense of the liquidation.	
Payments made before the winding up	If payments are made before the commencement of the liquidation, the director presiding at the meeting shall inform it of the amount and the identity of those to whom they were made.	
Payments made after the winding up	The liquidator may make payments, but (a) if there is a liquidation committee, he must give 7 days' notice of his intention to make the payment; (b) any such payment may not be made by the liquidator to himself, or to any associate of his, unless he has the approval of the liquidation committee, the creditors or the court.	R4.14A (3) R4.14A(4)

Reference

How fixed

		Reference
Matters for consideration	**In arriving at its determination, the committee shall have regard to –** **(a) the work, which having regard to its value, was reasonably undertaken ; and** **(b) the extent of the responsibilities in administering the estate**	
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.	
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 creditor or class of creditor. Liquidators should ensure that fees which have an impact on the funds available to non-secured creditors are approved in accordance with the appropriate provisions contained within 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

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
Provisions of information to section 98 meeting of creditors	The insolvency practitioner assisting in convening the meeting of creditors under section 98 must provide, to the meeting, the information required under Statement of Insolvency Practice 8.	SIP 8

		Reference
Disbursements		
Disbursement requiring 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 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 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
Recourse to the court		
Liquidator may apply to court	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.	
	The application to court may be submitted before or after recourse to the creditors.	4.34(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)
Expenses	The court may order the costs of the application, including the costs of any member of the liquidation committee or any creditor appearing or being represented, to be paid out of the estate.	R4.34(4)
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.	R4.35(1)
	(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	

		Reference
	normally provide for an appeal to be made within 14 days of the court's decision.	
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 s63BSA 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.	
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)
Costs of application	Unless the court orders otherwise, the expenses of the application shall be paid by the applicant and are not payable as an expense of the liquidation.	R4.35(3)

Final – 28 June 2012