



ACCREDITED

**Licensed Insolvency
Practitioners**

Statement of Insolvency Practice (SIP) 9 (E & W)

Appendix A

Rules relating to remuneration of office holders

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A.1 Administration

A.1.1 Petition presented before 15 September 2003

Rule 2.47 Fixing of remuneration

- 2.47(1) [Entitlement to remuneration]** The administrator is entitled to receive remuneration for his services as such.
- 2.47(2) [How Fixed]** The remuneration shall be fixed either:
- (a) as a percentage of the value of the property with which he has to deal, or
 - (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.
- 2.47(3) [Determination under r. 2.47(2)]** It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- 2.47(4) [Matters relevant to r.2.47(3) determination]** In arriving at that determination, the committee shall have regard to the following matters:
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
 - (d) the value and nature of the property with which he has to deal.
- 2.47(5) [If no committee or determination]** If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.
- 2.47(6) [Fixed by court]** If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.
- 2.47(7) [Where joint administrators]** Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:
- (a) to the court, for settlement by order, or
 - (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

- 2.47(8)** **[Where administrator solicitor]** If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Rule 2.48 Recourse to meeting of creditors

- 2.48** If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Rule 2.49 Recourse to the court

- 2.49(1)** **[Administrator may apply to court]** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2.49(2)** **[Notice to committee members etc.]** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.
- 2.49(3)** **[Where no committee]** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 2.49(4)** **[Costs of application]** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

Rule 2.50 Creditors' claim that remuneration is excessive

- 2.50(1)** **[Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 2.50(2)** **[Power of court to dismiss etc.]** 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 an ex parte hearing, of which he has been given at least 7 days' notice.

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.

- 2.50(3)** **[Notice to administrator]** The applicant shall, at least 14 days before the hearing, send to the administrator 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.

2.50(4) **[Court Order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

2.50(5) **[Costs of application]** 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 administration.

A.1.2 Application or appointment made on or after 15 September 2003

Rule 2.106 Fixing of remuneration

2.106(1) **[Entitlement to remuneration]** The administrator is entitled to receive remuneration for his services as such.

2. 106 (2) **[How Fixed]** The remuneration shall be fixed either:

- (a) as a percentage of the value of the property with which he has to deal,
or
- (b) by reference to the time properly given by the insolvency practitioner (as administrator) and his staff in attending to matters arising in the administration.

2. 106 (3) **[Determination under r. 2. 106 (2)]** It is for the creditors' committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.

2. 106 (4) **[Matters relevant to r.2. 106 (3) determination]** In arriving at that determination, the committee shall have regard to the following matters:

- (a) the complexity (or otherwise) of the case,
- (b) any respects in which, in connection with the company's affairs, there falls on the administrator any responsibility of an exceptional kind or degree,
- (c) the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties as such, and
- (d) the value and nature of the property with which he has to deal.

2. 106 (5) **[If no committee or determination]** If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.

2.106 (5A) **[Approval where insufficient to pay unsecured creditors]** In a case where the administrator has made a statement under paragraph 52(1)(b), if there is no creditors' committee, or the committee does not make the requisite

determination, the administrator's remuneration may be fixed (in accordance with paragraph (2)) by the approval of-

(a) each secured creditor of the company: or

(b) if the administrator has made or intends to make a distribution to preferential creditors-

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval;

and paragraph (4) applies to them as it does to the creditors' committee.

2. 106 (6) **[Fixed by court]** If not fixed as above, the administrator's remuneration shall, on his application, be fixed by the court.

2. 106 (7) **[Where joint administrators]** Where there are joint administrators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

(a) to the court, for settlement by order, or

(b) to the creditors' committee or a meeting of creditors, for settlement by resolution.

2. 106 (8) **[Where administrator solicitor]** If the administrator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Rule 2.107 Recourse to meeting of creditors

2.107 (1) If the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

2.107 (2) In a case where the administrator has made a statement under paragraph 52(1)(b), if the administrator's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by the approval of-

(a) each secured creditor of the company: or

(b) if the administrator has made or intends to make a distribution to preferential creditors-

(i) each secured creditor of the company; and

(ii) preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

Rule 2.108 Recourse to the court

- 2. 108 (1) [Administrator may apply to court]** If the administrator considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2.108 (1A)** In a case where the administrator has made a statement under paragraph 52(1)(b), if the administrator considers that the remuneration fixed by the approval of the creditors in accordance with Rule 2.107(2) is insufficient, he may apply to the court for an order increasing its amount or rate.
- 2. 108 (2) [Notice to committee members etc.]** The administrator shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard on the application.
- 2. 108 (3) [Where no committee]** If there is no creditors' committee, the administrator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 2. 108 (4) [Costs of application]** The court may, if it appears to be a proper case, order the costs of the administrator's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the administration.

Rule 2.109 Creditors' claim that remuneration is excessive

- 2. 109 (1) [Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 2. 109 (2) [Power of court to dismiss etc.]** The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 7 days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing.

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.

- 2. 109 (3) [Notice to administrator]** The applicant shall, at least 14 days before the hearing, send to the administrator 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.

2. 109 (4) **[Court Order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
2. 109 (5) **[Costs of application]** 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 administration.

A.2 Provisional liquidation

Rule 4.30 Remuneration

- 4.30(1) **[To be fixed by court]** The remuneration of the provisional liquidator (other than the official receiver) shall be fixed by the court from time to time on his application.
- 4.30(2) **[Matters to be taken into account]** In fixing his remuneration, the court shall take into account:
- (a) the time properly given by him (as provisional liquidator) and his staff in attending to the company's affairs;
 - (b) the complexity (or otherwise) of the case;
 - (c) any respects in which, in connection with the company's affairs, there falls on the provisional liquidator any responsibility of an exceptional kind or degree;
 - (d) the effectiveness with which the provisional liquidator appears to be carrying out, or to have carried out, his duties; and
 - (e) the value and nature of the property with which he has to deal.
- 4.30(3) **[Source of payment of remuneration etc.]** Without prejudice to any order the court may make as to costs, the provisional liquidator's remuneration (whether the official receiver or another) shall be paid to him, and the amount of any expenses incurred by him (including the remuneration and expenses of any special manager appointed under section 177) reimbursed:
- (a) if a winding-up order is not made, out of the property of the company; and
 - (b) if a winding-up order is made, out of the assets, in the prescribed order of priority,
- or, in either case (the relevant funds being insufficient), out of the deposit under Rule 4.27.
- 4.30(3A) **[Power of retention]** Unless the court otherwise directs, in a case falling within paragraph (3)(a) above the provisional liquidator may retain out of the company's property such sums or property as are or may be required for meeting his remuneration and expenses.
- 4.30(4) **[Provisional liquidator other than official receiver]** Where a person other than the official receiver has been appointed provisional liquidator, and the

official receiver has taken any steps for the purpose of obtaining a statement of affairs or has performed any other duty under the Rules, he shall pay the official receiver such sum (if any) as the court may direct.

A.3 Liquidation

Rule 4.127 Fixing of remuneration

- 4.127(1) [Entitlement to remuneration]** The liquidator is entitled to receive remuneration for his services as such.
- 4.127(2) [How fixed]** The remuneration shall be fixed either:
- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
 - (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up.
- 4.127(3) [Determination under r. 4.127(2)]** Where the liquidator is other than the official receiver, it is for the liquidation committee (if there is one) to determine whether the remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- 4.127(4) [Matters relevant r. 4.127(3) determination]** In arriving at that determination, the committee shall have regard to the following matters:
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the winding up, there falls on the insolvency practitioner (as liquidator) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as liquidator, and
 - (d) the value and nature of the assets with which the liquidator has to deal.
- 4.127(5) [If no committee or no determination]** If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the liquidation committee.
- 4.127(6) [Otherwise fixed]** Where the liquidator is not the official receiver and his remuneration is not fixed as above, the liquidator shall be entitled to remuneration fixed in accordance with the provisions of Rule 4.127A.

[Where company in liquidation before 1 April 2004]

4.127(6) [Otherwise fixed] If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.]

4.127A Liquidator's entitlement to remuneration where it is not fixed under Rule 4.127

4.127A(1) This Rule applies where the liquidator is not the official receiver and his remuneration is not fixed in accordance with Rule 4.127.

4.127A (2) [Application of scale] The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by –

(a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the company (including any Valued Added Tax thereon but after deducting any sums paid to secured creditors and any sums spent out of money received in carrying on the business of the company); and

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories.

Rule 4.127B Liquidator's remuneration where he realises assets on behalf of chargeholder

4.127B(1) [Where liquidator sells for secured creditor] This Rule applies where the liquidator is not the official receiver and realises assets on behalf of a secured creditor.

4.127B(2) [Where charge is mortgage or fixed charge] Where the assets realised for a secured creditor are subject to a charge which when created was a mortgage or a fixed charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any sums received in respect of Value Added Tax thereon but after deducting any sums spent out of money received in carrying on the business of the company).

4.127B(3) [Where charge is floating charge] Where the assets realised for a secured creditor are subject to a charge which when created was a floating charge, the liquidator shall be entitled to such sum by way of remuneration as is arrived at by:

(a) first applying the realisation scale set out in Schedule 6 to monies received by him from the realisation of those assets (including any Value Added Tax thereon but ignoring any sums received which are spent in carrying on the business of the company); and

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6

to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts.

4.128 Other matters affecting remuneration

[Where company in liquidation before 1 April 2004]

4.128(1) [Where liquidator sells for secured creditor] Where the liquidator sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to that which is chargeable in corresponding circumstances by the official receiver under general regulations.]

4.128(2) [Where joint liquidators] Where there are joint liquidators, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:

(a) to the court, for settlement by order, or

(b) to the liquidation committee or a meeting of creditors, for settlement by resolution.

4.128(3) [If liquidator is a solicitor] If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs shall not be paid unless this is authorised by the liquidation committee, the creditors or the court.

4.129 Recourse of liquidator to meeting of creditors

4.129(1) If the liquidator's remuneration has been fixed by the liquidation committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

4.130 Recourse to the court

4.130(1) [Liquidator may apply to court] If the liquidator considers that the remuneration fixed for him by the liquidation committee, or by resolution of the creditors, or as under Rule 4.127(6), is insufficient, he may apply to the court for an order increasing its amount or rate.

4.130(2) [Notice to committee etc.] The liquidator shall give at least 14 days' notice of his application to the members of the liquidation committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.

4.130(3) [Where no committee] If there is no liquidation committee, the liquidator's notice of his application shall be sent to such one or more of the company's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.

4.130(4) [Costs of application] The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the assets.

Rule 4.131 Creditors' claim that remuneration is excessive

- 4.131(1) [Creditor may apply to court]** Any creditor of the company may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the liquidator's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 4.131(2) [Power of court to dismiss etc.]** 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 an *ex parte* hearing, of which he has been given at least 7 days' notice.
- 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.
- 4.131(3) [Notice to liquidator]** 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.
- 4.131(4) [Court order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.
- 4.131(5) [Costs of application]** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable out of the assets.

Rule 4.148A Remuneration of liquidator in members' voluntary winding up

- 4.148A(1) [Entitlement]** The liquidator is entitled to receive remuneration for his services as such.
- 4.148A(2) [How fixed]** The remuneration shall be fixed either:
- (a) as a percentage of the value of the assets which are realised or distributed, or of the one value and the other in combination, or
 - (b) by reference to the time properly given by the insolvency practitioner (as liquidator) and his staff in attending to matters arising in the winding up;
- and the company in general meeting shall determine whether the remuneration is to be fixed under subparagraph (a) or (b) and, if under subparagraph (a), the percentage to be applied as there mentioned.
- 4.148A(3) [Matters in determination]** In arriving at that determination the company in general meeting shall have regard to the matters set out in paragraph (4) of Rule 4.127.
- 4.148A(4) [Otherwise fixed]** Where the liquidator's remuneration is not fixed as above, the liquidator shall be entitled to remuneration calculated in accordance with the provisions of Rule 4.148B.

[Where company in liquidation before 1 April 2004

- 4.148A(4) [Otherwise fixed]** If not fixed as above, the liquidator's remuneration shall be in accordance with the scale laid down for the official receiver by general regulations.]
- 4.148A(5) [Application of r. 4.128]** Rule 4.128 and Rule 4.127B shall apply in relation to the remuneration of the liquidator in respect of the matters there mentioned and for this purpose references in that Rule to 'the liquidation committee' and 'a meeting of creditors' shall be read as references to the company in general meeting.
- 4.148A(6) [Liquidator may apply to court]** If the liquidator considers that the remuneration fixed for him by the company in general meeting, or as under paragraph (4), is insufficient, he may apply to the court for an order increasing its amount or rate.
- 4.148A(7) [Notice to contributories]** the liquidator shall give at least 14 days' notice of an application under paragraph (6) to the company's contributories, or such one or more of them as the court may direct, and the contributories may nominate any one or more of their number to appear or be represented.
- 4.148A(8) [Costs of application]** The court may, if it appears to be a proper case, order the costs of the liquidator's application, including the costs of any contributory appearing or being represented on it, to be paid out of the assets.

Rule 4.148B Liquidator's remuneration in members' voluntary liquidation where it is not fixed under Rule 4.148A

- 4.148B(1)** This Rule applies where the liquidator's remuneration is not fixed in accordance with Rule 4.148A.
- 4.148B(2) [Application of scale]** The liquidator shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by-
- (a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the company (including any Valued Added Tax thereon but after deducting any sums paid to secured creditors and any sums spent out of money received in carrying on the business of the company); and
- (b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the company (including payments made in respect of preferential debts) and to contributories

A.4 Bankruptcy

Rule 6.138 Fixing of remuneration

- 6.138(1) [Entitlement to remuneration]** The trustee is entitled to receive remuneration for his services as such.

- 6.138(2)** **[How fixed]** The remuneration shall be fixed either:
- (a) as a percentage of the value of the assets in the bankrupt's estate which are realised or distributed, or of the one value and the other in combination, or
 - (b) by reference to the time properly given by the insolvency practitioner (as trustee) and his staff in attending to matters arising in the bankruptcy.
- 6.138(3)** **[Determination under r. 6.138(2)]** Where the trustee is other than the official receiver, it is for the creditors' committee (if there is one) to determine whether his remuneration is to be fixed under paragraph (2)(a) or (b) and, if under paragraph (2)(a), to determine any percentage to be applied as there mentioned.
- 6.138(4)** **[Matters relevant to r. 6.138(3) determination]** In arriving at that determination, the committee shall have regard to the following matters:
- (a) the complexity (or otherwise) of the case,
 - (b) any respects in which, in connection with the administration of the estate, there falls on the insolvency practitioner (as trustee) any responsibility of an exceptional kind or degree,
 - (c) the effectiveness with which the insolvency practitioner appears to be carrying out, or to have carried out, his duties as trustee, and
 - (d) the value and nature of the assets in the estate with which the trustee has to deal.
- 6.138(5)** **[If no committee or no determination]** If there is no creditors' committee, or the committee does not make the requisite determination, the trustee's remuneration may be fixed (in accordance with paragraph (2)) by a resolution of a meeting of creditors; and paragraph (4) applies to them as it does to the creditors' committee.
- 6.138(6)** **[Otherwise fixed]** Where the trustee is not the official receiver and his remuneration is not fixed as above, the trustee shall be entitled to remuneration calculated in accordance with Rule 6.138A.

[Where bankruptcy order made before 1 April 2004]

6.138(6) **[Otherwise fixed]** If not fixed as above, the trustee's remuneration shall be on the scale laid down for the official receiver by general regulations.]

6.138A **Trustee's remuneration where it is not fixed in accordance with Rule 6.138**

6.138A(1) This Rule applies where the trustee is not the official receiver and his remuneration is not fixed in accordance with Rule 6.138.

6.138A(2) **[Application of scale]** Subject to paragraph (3), the trustee shall be entitled by way of remuneration for his services as such, to such sum as is arrived at by -

(a) first applying the realisation scale set out in Schedule 6 to the monies received by him from the realisation of the assets of the bankrupt (including any Valued Added Tax thereon but after deducting any sums paid to secured creditors and any sums spent out of money received in carrying on the business of the bankrupt); and

(b) then by adding to the sum arrived at under sub-paragraph (a) such sum as is arrived at by applying the distribution scale set out in Schedule 6 to the value of assets distributed to creditors of the bankrupt (including sums paid in respect of preferential debts).

6.138A(3) [Limit on realisation scale] That part of the trustee's remuneration calculated by reference to the realisation scale shall not exceed such sum as is arrived at by applying the realisation scale to such part of the bankrupt's assets as are required to pay the items referred to in paragraph (4).

6.138A(4) The items referred to in paragraph (3) are –

(a) the bankruptcy debts (including any interest payable by virtue of section 328(4)) to the extent required to be paid by these Rules (ignoring those debts paid otherwise than out of the proceeds of the realisation of the bankrupt's assets or which have been secured to the satisfaction of the court);

(b) the expenses of the bankruptcy other than

(i) fees or the remuneration of the official receiver; and

(ii) any sums spent out of money received in carrying on the business of the bankrupt;

(c) fees payable under the Insolvency Proceedings (Fees) Order 2004; and

(d) the remuneration of the official receiver.

Rule 6.139 Other matters affecting remuneration

6.139(1) [Where trustee sells for secured creditor] Where the trustee (not being the official receiver) realises assets on behalf of a secured creditor, the trustee is entitled to such sum by way of remuneration as is arrived at by applying the realisation scale set out in Schedule 6 to the monies received by him in respect of the assets realised (including any Value Added Tax thereon).

[Where bankruptcy order made before 1 April 2004

6.139(1) [Where trustee sells for secured creditor] Where the trustee sells assets on behalf of a secured creditor, he is entitled to take for himself, out of the proceeds of sale, a sum by way of remuneration equivalent to the remuneration chargeable in corresponding circumstances by the official receiver under general regulations.]

- 6.139(2) [Where joint trustees]** Where there are joint trustees, it is for them to agree between themselves as to how the remuneration payable should be apportioned. Any dispute arising between them may be referred:
- (a) to the court, for settlement by order, or
 - (b) to the creditors' committee or a meeting of creditors, for settlement by resolution.
- 6.139(3) [If trustee is a solicitor]** If the trustee is a solicitor and employs his own firm, or any partner in it, to act on behalf of the estate, profit costs shall not be paid unless this is authorised by the creditors' committee, the creditors or the court.

Rule 6.140 Recourse of trustee to meeting of creditors

- 6.140** If the trustee's remuneration has been fixed by the creditors' committee, and he considers the rate or amount to be insufficient, he may request that it be increased by resolution of the creditors.

Rule 6.141 Recourse to the court

- 6.141(1) [Trustee may apply to court]** If the trustee considers that the remuneration fixed for him by the creditors' committee, or by resolution of the creditors, or as under Rule 6.138(6), is insufficient, he may apply to the court for an order increasing its amount or rate.
- 6.141(2) [Notice to committee etc.]** The trustee shall give at least 14 days' notice of his application to the members of the creditors' committee; and the committee may nominate one or more members to appear or be represented, and to be heard, on the application.
- 6.141(3) [If no committee]** If there is no creditors' committee, the trustee's notice of his application shall be sent to such one or more of the bankrupt's creditors as the court may direct, which creditors may nominate one or more of their number to appear or be represented.
- 6.141(4) [Costs of application]** The court may, if it appears to be a proper case, order the costs of the trustee's application, including the costs of any member of the creditors' committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid out of the estate.

Rule 6.142 Creditor's claim that remuneration is excessive

- 6.142(1) [Creditor may apply to court]** Any creditor of the bankrupt may, with the concurrence of at least 25 per cent in value of the creditors (including himself), apply to the court for an order that the trustee's remuneration be reduced, on the grounds that it is, in all the circumstances, excessive.
- 6.142(2) [Court may dismiss application etc.]** The court may, if it thinks that no sufficient cause is shown for the application, dismiss it; but it shall not do

so unless the applicant has had an opportunity to attend the court for an *ex parte* hearing, of which he has been given at least 7 days' notice.

If the application is not dismissed under this paragraph, the court shall fix a venue for it to be heard.

6.142(3) **[Notice to trustee]** The applicant shall, at least 14 days before the hearing, send to the trustee a notice stating the venue so fixed; and the notice shall be accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

6.142(4) **[Court order]** If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate.

6.142(5) **[Costs of application]** Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and do not fall on the estate.

A.5 Voluntary arrangements

A.5.1 Company voluntary arrangements

Rule 1.28 Fees, costs, charges and expenses

1.28 The fees, costs, charges and expenses that may be incurred for any of the purposes of the voluntary arrangement are:

- (a) any disbursements made by the nominee prior to the decision approving the arrangement taking effect under section 4A, and any remuneration for his services as such agreed between himself and the company (or, as the case may be, the administrator or liquidator);
- (b) any fees, costs, charges or expenses which:
 - (i) are sanctioned by the terms of the arrangement, or
 - (ii) would be payable, or correspond to those which would be payable, in an administration or winding up.

Rule 1.3 Contents of proposal

1.3(2) **[Other matters]** The following matters shall be stated, or otherwise dealt with, in the directors' proposal:

- ... (g) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
- (h) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed; ...

A.5.2 Individual voluntary arrangements

5.33 **Fees, costs, charges and expenses** [previously rule 5.28, which still applies to pre-2003 cases]

- 5.33** The fees, costs, charges and expenses that may be incurred for any purposes of the voluntary arrangement are:
- (a) any disbursements made by the nominee prior to the approval of the arrangement, and any remuneration for his services as such agreed between himself and the debtor, the official receiver or the trustee;
 - (b) any fees, costs, charges or expenses which:
 - (i) are sanctioned by the terms of the arrangement, or
 - (ii) would be payable, or correspond to those which would be payable, in the debtor's bankruptcy.

Rule 5.3 Contents of proposal

- 5.3(2)** **[Other matters]** The following matters shall be stated, or otherwise dealt with, in the proposal:
- ... (h) the amount proposed to be paid to the nominee (as such) by way of remuneration and expenses;
 - (j) the manner in which it is proposed that the supervisor of the arrangement should be remunerated, and his expenses defrayed; ...

A.6 Receiverships

Section 36 Court's power to fix remuneration

- 36(1)** **[Remuneration]** The court may, on an application made by the liquidator of a company, by order fix the amount to be paid by way of remuneration to a person who, under powers contained in an instrument, has been appointed receiver or manager of the company's property.
- 36(2)** **[Extent of court's power]** The court's power under subsection (1), where no previous order has been made with respect thereto under the subsection:
- (a) extends to fixing the remuneration for any period before the making of the order or the application for it,
 - (b) is exercisable notwithstanding that the receiver or manager has died or ceased to act before the making of the order or the application, and
 - (c) where the receiver or manager has been paid or has retained for his remuneration for any period before the making of the order any amount in excess of that so fixed for that period, extends to requiring him or his personal representatives to account for the excess or such part of it as may be specified in the order.

But the power conferred by paragraph (c) shall not be exercised as respects any period before the making of the application for the order under this section, unless in the court's opinion there are special circumstances making it proper for the power to be exercised.

36(3) [Variation, amendment of order] The court may from time to time on an application made either by the liquidator or by the receiver or manager, vary or amend an order made under subsection (1).

A.7 All cases

Information about time spent to be provided by insolvency practitioner

Regulation 36A, Insolvency Regulations 1994

- 36A.**
- (1) Subject as set out in this regulation, in respect of any case in which he acts, an insolvency practitioner shall on request in writing made by any person mentioned in paragraph (2), supply free of charge to that person a statement of the kind described in paragraph (3).
 - (2) The persons referred to in paragraph (1) are—
 - (a) any creditor in the case;
 - (b) where the case relates to a company, any director or contributory of that company; and
 - (c) where the case relates to an individual, that individual.
 - (3) The statement referred to in paragraph (1) shall comprise in relation to the period beginning with the date of the practitioner's appointment and ending with the relevant date the following details—
 - (a) the total number of hours spent on the case by the practitioner or any staff assigned to the case during that period;
 - (b) for each grade of individual so engaged, the average hourly rate at which any work carried out by individuals in that grade is charged; and
 - (c) the number of hours spent by each grade of staff during that period.
 - (4) In relation to paragraph (3) the "relevant date " means the date next before the request on which the practitioner has completed any period in office which is a multiple of six months or, where the practitioner has vacated office, that date that he vacated office.
 - (5) Where an insolvency practitioner has vacated office, an obligation to provide information under this regulation shall only arise in relation to a request that is made within 2 years of the date he vacates office.
 - (6) Any statement required to be provided to any person under this regulation shall be supplied within 28 days of the date of the making of the request to the practitioner.
 - (7) In this Regulation the expression "insolvency practitioner" shall be construed in accordance with section 388 of the Insolvency Act 1986.

Regulation 3(7), Insolvency Regulations 1994

- 3(7)** Regulation 36A applies in any case where an insolvency practitioner is appointed on or after 1st April 2005.