

APPENDIX B A CREDITORS' GUIDE TO ADMINISTRATORS' REMUNERATION SCOTLAND

This guide applies to all appointments on or after 6 April 2006. Any creditor requiring guidance on a case where the Insolvency Practitioner was appointed prior to 6 April 2006 should refer to the previous guide, which should have been issued to all creditors at the time of appointment.

1 Introduction

1.1 When a company goes into administration the costs of the proceedings are paid out of the company's assets in priority to creditors' claims. The creditors, who hope eventually 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 administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's remuneration. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor remuneration and outlays and explain the basis on which remuneration and outlays are fixed.

2 The nature of administration

2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the objective of:

- (a) rescuing the company as a going concern, or
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
- (c) realising property in order to make a distribution to one or more secured or preferential creditors

Administration may be followed by a company voluntary arrangement or liquidation.

3 The creditors' committee

3.1 Where a meeting is held by the Administrator the creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is established at the meeting of creditors which the administrator is required to hold within 10 weeks of the administration order (or longer with the consent of the court) to consider his proposals. The administrator must call the first meeting of the committee within 3 months of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide such information as it may require.

4 Fixing the administrator's fees

4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.39 of the

Insolvency (Scotland) Rules 1986 which states that it may be a commission calculated by reference to the value of the company's property with which he has to deal.

It is for the creditors' committee (if there is one) to fix the remuneration and Rule 2.39 says that in arriving at its decision the committee shall take into account:

- the work which, having regard to the value of the company's property, was reasonably undertaken by the administrator; and
- the extent of his responsibilities in administering the company's assets.

Although not specifically stated in the rules, the normal basis for determining the remuneration will be that of the time costs properly incurred by the administrator and his staff.

4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration will be fixed by the creditors.

4.3 Where no meeting is held, the administrator's remuneration is approved by each secured creditor of the company or where a distribution to the preferential creditors is proposed by each secured creditor and 50% in value of the preferential creditors disregarding those who do not respond or withhold approval.

5 What information should be provided by the administrator?

5.1 Claims by the administrator for the outlays reasonably incurred by him and for his remuneration shall be made in accordance with Rule 2.39 of the Insolvency (Scotland) Rules 1986 which provides that within two weeks after the end of an accounting period, the administrator shall submit to the creditors' committee or if there is no creditors' committee, to a meeting of creditors.

- his accounts of intromissions for audit;
- a claim for the outlays reasonably incurred by him and for his remuneration, broken down into category 1 disbursements, being those costs where there is specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party, and category 2 disbursements, which are costs which include elements of shared or allocated costs, and are supplied internally by the administrator's own firm and

5.2 The administrator may at any time before the end of an accounting period submit to the creditors' committee or a meeting of creditors an interim claim for category 1 and 2 disbursements reasonably incurred by him and for his remuneration.

5.3 When seeking agreement to his fees and disbursements, the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee and disbursements are reasonable having regard to all 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.

5.4 Where, at any creditors' committee meeting or meeting of creditors, the administrator 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.

5.5 Where the administrator seeks agreement to his remuneration during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed remuneration is based on time costs the administrator 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 administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator 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 administrator 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, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- 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 administrator'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 administrator 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, or the drawing, or agreement of remuneration.
- Any existing agreement about remuneration.

- In cases where there are distributable funds available to unsecured creditors by means of the creditors' prescribed part, how the administrator has allocated remuneration and costs with regard to dealing with the administration of and agreeing of unsecured creditors' claims. Remuneration in respect of time spent dealing with issues specific to the funds for ordinary creditors will be applied against the creditors prescribed part, prior to the funds being distributed, and will **not** be applied against the total funds available to all creditors, including those available to the floating charge holder.
- 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 be relevant, whilst further analysis may be necessary in larger cases.

5.6 Where the remuneration is charged as a commission based on the value of the company's property with which the administrator has had to deal, the administrator should provide details of any work which has been or is intended to be contracted out which would normally be undertaken directly by the administrator or his staff.

5.7 As noted in 5.1, any claim for outlays must be approved in the same way as remuneration. Professional guidance issued to Insolvency Practitioners requires that where the administrator 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) they must be approved as if they were remuneration. Such disbursements must be directly incurred on the case and subject to a reasonable method of calculation and allocation. A charge for disbursements calculated as a percentage of the amount charged for remuneration is not allowed.

5.8 Payments to outside parties in which the office holder or his firm or any associate has an interest should be disclosed to the body approving remuneration and should be treated in the same way as payments to himself. They therefore require specific approval as remuneration prior to being paid.

6 What if a creditor is dissatisfied?

6.1 If the administrator's remuneration has been fixed by the creditors' committee or by the creditors, by virtue of Rule 2.39A of the Insolvency (Scotland) Rules 1986, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than eight weeks after the end of an accounting period for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances excessive.

6.2 Notwithstanding the fact that the statutory time limit for appealing expires eight weeks from the end of the accounting period concerned, it is normal practice to advise the creditors that they may appeal within 14 days of being notified of the determination in cases where this extends beyond the statutory appeal period.

7 What if the administrator is dissatisfied?

7.1 If the administrator considers that the remuneration fixed 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. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's 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 as an expense of the administration.

8 Other matters relating to fees

8.1 Where there are joint administrators it is for them to agree between themselves how remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.

A CREDITORS' GUIDE TO LIQUIDATORS' REMUNERATION SCOTLAND

1 Introduction

1.1 When a company goes into liquidation the costs of the proceedings are paid out of its assets in priority to creditors' claims. 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 remuneration. This guide is intended to help creditors be aware of their rights to approve and monitor remuneration and disbursements, and explains the basis on which remuneration and disbursements 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 court, when it is instituted by order of the court.

2.2 Voluntary and court liquidation are equally common. 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 court liquidation an insolvency practitioner may be appointed to act as provisional liquidator until the making of the winding up order. In all court liquidations, an insolvency practitioner is appointed to act as interim liquidator from the making of the winding up order until the first meeting in the liquidation, and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.

2.4 Where a court liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator.

3 The liquidation committee

3.1 In a liquidation (whether voluntary or court) 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 remuneration and disbursements. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on from 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. This provides the opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's remuneration.

4 Fixing the liquidator's fees

4.1 The basis for fixing the liquidator's (which includes an interim liquidator's) remuneration is set out in Rule 4.32 of the Insolvency (Scotland) Rules 1986 (as amended) ("the Rules"), and in Section 53 of the Bankruptcy (Scotland) Act 1985 (as amended) ("the Bankruptcy Act") which is applied to liquidations by Rule 4.68.

These Rules state that the remuneration may be a commission calculated by reference to the value of the assets which are realised but there shall in any event be taken into account the work which, having regard to that value, was reasonably undertaken, and the extent of the responsibilities in administering the estate.

4.2 It is for the liquidation committee (if there is one) to fix the remuneration and approve disbursements. If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's remuneration is fixed by the court.

4.3 Rule 4.5 lays down that the remuneration of a provisional liquidator can only be fixed by the court.

5 What information should be provided by the liquidator?

5.1 When seeking agreement to his remuneration and disbursements, the liquidator should provide sufficient supporting information to enable the committee or the court to form a judgement as to whether the proposed remuneration and disbursements are 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' 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.

Where the liquidator seeks agreement to his remuneration during the course of the liquidation, he should always provide an up to date receipts and payments account.

Where the proposed remuneration 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, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject.

The guidance suggests the following areas of activity as a basis for the analysis of time spent:

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- Investigations
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The following categories are suggested as a basis for analysis by grade of staff:

- 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, or the drawing or agreement of remuneration.
- Any existing agreement about remuneration.
- 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.

5.2 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.

The liquidator should always make available an up to date receipts and payments account. Where the remuneration is to be charged on a time basis the liquidator should be prepared to disclose the amount of time spent on the case and the charge-out value of the time spent, together with such additional information as may reasonably be required having regard to the size and complexity of the case. Where the remuneration is charged on a percentage basis, the liquidator should provide details of any work which has been or is intended to be contracted out which would normally be undertaken directly by a liquidator or his staff.

5.3 A liquidator's disbursements are subject to approval by virtue of Rule 4.32. Where a liquidator makes, or proposes to make, a separate charge by way of disbursements to recover the cost of facilities provided by his own firm (such as room hire, document storage or communication facilities), (category 2 disbursements) he should disclose those charges to the committee or the creditors when seeking approval of his remuneration and disbursements together with an explanation of how those charges are made up. Disbursements must either be directly incurred on the case or be subject to a reasonable method of calculation and allocation and the basis on which they are allocated must be disclosed. Such disbursements must be directly incurred on the case and subject to a reasonable method of calculation and allocation. A charge for disbursements calculated as a percentage of the amount charged for remuneration is not allowed.

5.4 Payments to outside parties in which the office holder or his firm or any associate has an interest should be disclosed to the body approving remuneration and should be treated in the same way as payments to himself. They therefore require specific

approval as remuneration prior to being paid.

5.5 In Rule 4.12, a resolution may be passed fixing the basis of remuneration at the first meeting of creditors in a court liquidation. The liquidator should immediately notify the creditors of the details of the resolution, and 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 remuneration is based on time costs he also should provide details of the time spent and charge-out value to date and any material changes in the rates charged since the resolution was first passed. Where the remuneration is charged on a percentage basis the liquidator should provide the details set out in paragraph 5.1 above regarding work which has been sub-contracted out.

5.6 Paragraph 5.3 above does not however apply to a voluntary liquidation.

6 What if a creditor is dissatisfied?

6.1 If a creditor believes that the liquidator's remuneration is too high he may, under Rule 4.35, apply to the court for an order that it be reduced. If the court considers the application to be well-founded, it shall make an order fixing the remuneration at a reduced amount or rate. 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.

6.2 As noted in paragraph 4.3 above, the remuneration of a provisional liquidator is fixed by the court and there is no specific provision in the insolvency legislation to give creditors the right of appeal against the court's determination. Consequently if a creditor is dissatisfied, any appeal must be made to the appropriate court in accordance with normal court rules.

7 What if the liquidator is dissatisfied?

7.1 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. He may also request the court for an order increasing its amount or rate, before or after recourse to the creditors. 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, if it appears to be a proper case, order the costs to be paid out of the assets of the company.

8 Other matters relating to remuneration

8.1 Where the liquidator realises assets on behalf of a secured creditor, he will usually agree the basis of his remuneration 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 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

A CREDITORS' GUIDE TO REMUNERATION OF TRUSTEES IN BANKRUPTCY SCOTLAND

1 Introduction

1.1 When an individual becomes bankrupt the costs of the bankruptcy proceedings are paid out of his or her assets in priority to creditors' claims. 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 trustee. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the trustee's remuneration. This guide is intended to help creditors to be aware of their rights to approve and monitor remuneration and outlays and explain the basis on which remuneration and outlays are fixed.

2 Sequestration procedure

2.1 Sequestration is the court procedure for the administration of the affairs of an insolvent individual by a trustee in the interests of his creditors generally. The trustee's role is to preserve the debtor's estate until the assets can be realised and distributed among the creditors in a prescribed order of priority. Sequestration proceedings commence when an Award of Sequestration is made by the court as a result of a petition to the court at the instance of a creditor or a Trustee, or an application to the Accountant in Bankruptcy at the instance of the debtor. The petition for sequestration may nominate a trustee who may be appointed as interim trustee, who must be a registered insolvency practitioner authorised by a recognised professional body or the Secretary of State, or the Accountant in Bankruptcy.

2.2 In certain cases no trustee is nominated in the petition or application for sequestration in which case the Accountant in Bankruptcy automatically becomes the trustee. The Accountant in Bankruptcy is an officer of the court appointed by the Secretary of State and will advise creditors within 60 days of the date award of sequestration as to whether he intends to call a statutory meeting.

3 Commissioner/s

3.1 At the statutory meeting of creditors, or any subsequent meeting of creditors, the creditors or their mandatories have the right to appoint from amongst themselves a commissioner or commissioners (not more than five) to represent their interests throughout the sequestration process.

3.2 The trustee may call a meeting of commissioners at any time but he must hold one when required to do so by an order of the court or when the Accountant in Bankruptcy or any commissioner asks for one.

3.3 The trustee is required to report to the commissioners every 6 months on the progress of the sequestration. This provides an opportunity for the commissioners to monitor and discuss progress made and the level of the trustee's fees.

4 Fixing the trustee's remuneration

4.1 The basis for fixing the trustee's remuneration and outlays is set out in Section 53 of the Bankruptcy (Scotland) Act 1985 (as amended) ("the Bankruptcy Act"). This section states that remuneration may be a commission calculated by reference to the value of the assets which are realised but that there shall be taken into account the work which, having regard to that value, was reasonably undertaken and the extent of the trustee's responsibilities in administering the estate.

4.2 If there are no commissioners, or the commissioners do not make the requisite determination, the level of the trustee's remuneration is determined by the Accountant in Bankruptcy.

4.3 In fixing the trustee's remuneration for the final period the commissioners will require to take into account the trustee's best estimate of work required to conclude the case. The commissioners may also take into account any adjustment necessary relative to remuneration fixed in respect of a prior period when fixing the remuneration for any period.

4.4 In cases where a replacement trustee is elected at the statutory meeting of creditors and subsequently that election is confirmed by the Sheriff, the remuneration and outlays of the original trustee are fixed by the Accountant in Bankruptcy in accordance with sections 26 and 26A of the Bankruptcy Act.

What information should be provided by the trustee?

5.1 When seeking agreement to his remuneration and outlays, the trustee should provide sufficient supporting information to enable the commissioners or the Accountant in Bankruptcy to form a judgement as to whether the proposed remuneration and outlays are reasonable, having regard to all the circumstances of the case. The trustee should always make available an up to date receipts and payments account. Where the remuneration is to be charged on a time basis the trustee should be prepared to disclose the amount of time spent on the case and the charge-out value of the time spent, together with such additional information as may reasonably be required having regard to the size and complexity of the case. Where the remuneration is charged on a percentage basis, the trustee should provide details of any work which has been or is intended to be contracted out which would normally be undertaken directly by a trustee or his staff.

5.2 Where a trustee makes, or proposes to make, a separate charge by way of outlays to recover the cost of facilities provided by his own firm, such as room hire, document storage or communication facilities (category 2 disbursements), he should disclose those charges to the commissioners or the Accountant in Bankruptcy when seeking approval of his remuneration, together with an

explanation of how those charges are made up and the basis on which they are arrived at.

6 What if a creditor is dissatisfied?

6.1 If a creditor believes the trustee's remuneration is too high, he may appeal it. The statutory time limits for appealing against the determination are contained within Section 53 of the Bankruptcy Act although it is common practice to give fourteen days in which to appeal from the date of advising creditors of the determination of remuneration. If the determination is made by a commissioner he must do so to the Accountant in Bankruptcy, whilst if a determination is made by the Accountant in Bankruptcy he must do so to the Sheriff. In both instances a simultaneous notice of appeal must be sent to the trustee.

6.2 If a creditor believes that the original trustee's remuneration is too high, he may appeal it within 14 days of the issue of its determination. The appeal must be made to the sheriff and the detailed provisions are contained within Sections 26 and 26(A) of the Bankruptcy Act.

7 What if the trustee is dissatisfied?

7.1 The appeal procedure for a trustee is identical to the procedure noted in paragraph 6.1 above in respect of creditor's appeals with the obvious exception regarding the simultaneous notice of appeal.

7.2 In cases where the original trustee does not himself become the trustee, both he and the trustee have a right of appeal on the same terms as creditors detailed in paragraph 6.2 above.

7.3 In cases where the Accountant in Bankruptcy was the original trustee and some other person becomes the trustee, the trustee (but not the original trustee) has a right of appeal on the same terms as creditors detailed in paragraph 6.2 above. This is because in such cases, the original trustee being the Accountant in Bankruptcy will have determined his remuneration in accordance with a set scale and there is therefore no need for a right of appeal by the original trustee.

8 Other matters relating to remuneration

8.1 There may be occasions when creditors will agree to make funds available themselves to pay for the trustee 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 bankrupt's affairs. Any arrangements of this nature will be a matter for agreement between the trustee and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

A CREDITORS' GUIDE TO REMUNERATION FOR A TRUSTEE ACTING UNDER A TRUST DEED SCOTLAND

1 Introduction

1.1 When a debtor grants a trust deed the costs of the proceedings are paid out of the debtor's assets in priority to creditors' claims. 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 trustee. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the trustee's remuneration. This guide is intended to help creditors be aware of their rights to approve and monitor remuneration, and explains the basis on which remuneration is fixed.

2 Trust deed procedure

2.1 A trust deed is a deed granted by or on behalf of the debtor whereby his estate is conveyed to the trustee for the benefit of his creditors generally. It tends to be less formal and less expensive than a sequestration.

2.2 Under the deed, the debtor conveys his entire estate to a trustee, who is empowered to sell and dispose of all the assets, and to carry on any business formerly conducted by the debtor. The trustee will distribute the balance of funds available after the payment of expenses to the creditors, following which the trustee will obtain his discharge from the creditors.

2.3 Accession of creditors is an essential part of the procedure, as without it there may be problems in discharging the deed. Unless a majority of creditors or not less than one third in value object to the trust deed, the creditors are presumed to have acceded and it becomes a protected trust deed. Once a trust deed has become protected, a creditor who has been notified of but who has not acceded to the trust deed will have no higher right to recover his debt than a creditor who has acceded. It should be noted that if a creditor receives notification of, but does not object to a trust deed, he is deemed to have acceded.

2.4 If a trust deed remains unprotected, creditors can still take action to recover their debts. This covers the various forms of diligence available to them including petitioning for sequestration.

3 Fixing the Trustee's Remuneration

3.1 The remuneration of a trustee will be determined by the trust deed. However, there is provision in the insolvency legislation for the formation of a committee of creditors to assist the trustee, audit his accounts and fix his remuneration.

3.2 Whether or not this provision is included in the deed, Schedule 5 of the Bankruptcy (Scotland) Act 1985 (as amended) ("the Bankruptcy Act") states that on application of the debtor, the trustee, or any creditor, the Accountant in Bankruptcy is specifically authorised to audit the trustee's accounts and fix his remuneration. Schedule 5 also provides that the Accountant in Bankruptcy may, at any time, audit the trustee's accounts and fix his remuneration. The Accountant in Bankruptcy is an officer of the court appointed by the Scottish Ministers.

3.3 The trustee under a protected trust deed, or the debtor, or any creditor may appeal to the sheriff by way of summary application against any determination by the Accountant in Bankruptcy fixing the remuneration to the trustee. A debtor or creditor may appeal only if able to satisfy the sheriff that he or she has, or is likely to have, a pecuniary interest in the outcome of the appeal.

4 What information should be provided by the trustee?

4.1 There are no specific requirements under Schedule 5 of the Bankruptcy Act for the provision of information by the trustee.

A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES UNDER A VOLUNTARY ARRANGEMENT SCOTLAND

1 Introduction

1.1 In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangement. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

2 The voluntary arrangement procedure

2.1 Voluntary arrangements are available to companies and are often referred to as CVAs.

2.2 The procedure enables the company to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement of their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them. A CVA may be used as a stand-alone procedure or as an exit route from an administration. It may also be used where a company is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances. The procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors. The proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

3 Fees, costs and charges - statutory provisions

3.1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency (Scotland) Rules 1986 (as amended) ("the Rules") (rule 1.22). They are:

- any disbursements made by the nominee prior to the decision approving the arrangement taking effect under section 4A of the Insolvency Act 1986 (as amended), and any remuneration for his services agreed between himself and the company (or the administrator or liquidator, as the case may be);
- any fees, costs, charges or expenses which:
 - are sanctioned by the terms of the arrangement (see below), or
 - would be payable, or correspond to those which would be payable, in

an

administration or winding up.

3.2 The rules also require the following matters to be stated or otherwise dealt with in the proposal (Rule 1.3):

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

4 The role of the creditors

4.1 It is for the creditors' meeting to decide whether to agree the terms relating to remuneration along with the other provisions of the proposal. The creditors' meeting has the power to modify any of the terms of the proposal, including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

5 What information should the creditors receive?

5.1 Whether the basis of the supervisor's remuneration is determined at the meeting which approves the arrangement or by a committee of creditors, the supervisor, or proposed supervisor should provide details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

5.2 Where the supervisor's fees are to be agreed by a committee of creditors during the course of the arrangement, the supervisor should provide sufficient supporting information to enable the committee to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case, and should always provide an up to date receipts and payments account. Where the fee is to be charged on a time basis the supervisor should disclose the amount of time spent on the case and the charge out value of the time spent, together with such additional information as may reasonably be required having regard to the size and complexity of the case and the functions conferred on the supervisor under the terms of the arrangement. The additional information should comprise a sufficient explanation of what the supervisor has achieved and how it was achieved to enable the value of the exercise to be assessed and to establish that the time has been properly spent on the case.

5.3 Where the basis of the remuneration of the supervisor as set out in the proposal does not require any further approvals by the creditors or any committee of creditors, the supervisor should specify the amount of remuneration he has drawn in accordance with the provisions of the proposal in his subsequent reports to creditors on the progress of the arrangement. 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 arrangement was approved. He should also provide such additional information as may be required in accordance with paragraph 5.2.

5.4 Where the supervisor 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 supervisor'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. A charge for disbursements calculated as a percentage of the amount charged for remuneration is not allowed.