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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No. 347**

**The Insolvency (Scotland) (Receivership  
and Winding up) Rules 2018**

**PART 7**

**WINDING UP - REPORTING, ACCOUNTS,  
REMUNERATION, CLAIMS AND DISTRIBUTIONS**

**CHAPTER 3**

**Liquidator's remuneration**

[Note: a document required by the Act or these Rules must also contain the standard contents required as set out in Part 1.]

**Determination of outlays and remuneration: members' voluntary winding up**

**7.10.**—(1) In a members' voluntary winding up, it is for the company in general meeting to determine the basis of remuneration.

(2) Subject to paragraph (3), the basis of remuneration must be fixed—

- (a) as a percentage of the value of the company's assets which are realised by the liquidator;
- (b) by reference to the work which was reasonably undertaken by the liquidator and the liquidator's staff in attending to matters arising in the winding up; or
- (c) as a set amount.

(3) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (2) (a) to (c) and different bases may be fixed in respect of different things done by the liquidator.

**Determination of outlays and remuneration: creditors' voluntary winding up and winding up by the court**

**7.11.**—(1) The liquidator's claims for the outlays reasonably incurred and for the liquidator's remuneration must be made in accordance with this rule (and subject to rules 7.12 to 7.15).

(2) The liquidator may within 14 days after the end of an accounting period submit to the liquidation committee or, if there is no liquidation committee, to the court in respect of that period and any other previous accounting period in which no submission has been made under this paragraph—

- (a) the liquidator's accounts of the liquidator's intromissions with the company's assets for audit;
- (b) a claim for the outlays reasonably incurred by the liquidator and for the liquidator's remuneration (where the liquidator intends to submit such a claim in respect of that accounting period); and
- (c) where funds are available after making allowance for contingencies, a scheme of division of the divisible funds (unless rule 7.31(8) applies).

(3) The liquidator may, at any time before the end of an accounting period submit to the liquidation committee (or if there is no liquidation committee, to the court) an interim claim in respect of that period or any other previous accounting period in which no submission has been made under paragraph (2) for:—

- (a) the outlays reasonably incurred by the liquidator; and
- (b) the liquidator's remuneration.

(4) If the liquidator submits an interim claim under paragraph (3), the liquidation committee or the court may make an interim determination in relation to the amount of the outlays and remuneration.

(5) If the liquidation committee or the court makes such an interim determination, it must take into account such an interim determination when making a determination under paragraph (7)(a)(ii).

(6) Accounts in respect of legal services incurred by the liquidator must, before payment, be submitted for taxation to the auditor of the court before which the liquidation is pending, unless—

- (a) the account has been agreed between the liquidator and the person entitled to payment in respect of that account; and
- (b) the liquidator is not an associate of that person.

(7) If the liquidator makes a submission under paragraph (2) to the liquidation committee or, if there is no liquidation committee the court, within 6 weeks after the end of an accounting period—

- (a) the liquidation committee or, as the case may be, the court—
  - (i) may audit the accounts; and
  - (ii) must issue a determination fixing the amount of the outlays and remuneration payable to the liquidator; and
- (b) the liquidator must make the audited accounts, scheme of division and the determination available for inspection by the creditors and contributories.

(8) Subject to paragraph (9), the basis of remuneration must be fixed—

- (a) as a percentage of the value of the company's assets which are realised by the liquidator;
- (b) by reference to the work which was reasonably undertaken by the liquidator and the liquidator's staff in attending to matters arising in the winding up;
- (c) as a set amount.

(9) The basis of remuneration may be fixed as any one or more of the bases set out in paragraph (8) (a) to (c) and different bases may be fixed in respect of different things done by the liquidator.

(10) In fixing the amount of the liquidator's remuneration and outlays in respect of any accounting period, the liquidation committee or, as the case may be, the court may take into account any adjustment which the liquidation committee or the court may wish to make in the amount of the remuneration and outlays fixed in respect of any earlier accounting period.

### **Appeal against fixing of outlays and remuneration: creditors' voluntary winding up and winding up by the court**

**7.12.—**(1) Within 14 days after issue of a determination under rule 7.11(4) or (7)(a)(ii), by a liquidation committee, the liquidator, any creditor or any contributory may appeal against that determination, to the court.

(2) An appeal may only be made against a determination issued under rule 7.11(4) or (7)(a)(ii) by a creditor or contributory if notice is delivered to the liquidator of intention to appeal.

### **Recourse of liquidator to decision of creditors: creditors' voluntary winding up and winding up by the court**

**7.13.** If the liquidator's outlays or remuneration has been fixed by the liquidation committee and the liquidator considers the amount to be insufficient, the liquidator may request that it be increased by the creditors by a decision procedure.

### **Recourse to the court: creditors' voluntary winding up and winding up by the court**

**7.14.—(1)** If the liquidator considers that the outlays or remuneration fixed by the liquidation committee, or by decision of the creditors, is insufficient, the liquidator may apply to the court for an order increasing the amount of the outlays or the amount or rate of remuneration.

(2) The liquidator must give at least 14 days' notice of the liquidator's 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.

(3) If there is no liquidation committee, the liquidator's notice of the liquidator's application must 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) The court may, if it appears to be a proper case, order the expenses of the liquidator's application, including the expenses of any member of the liquidation committee appearing or being represented on it, or any creditor so appearing or being represented, to be paid as an expense of the liquidation.

### **Creditors' claim that remuneration is excessive: creditors' voluntary winding up and winding up by the court**

**7.15.—(1)** If the liquidator's outlays and remuneration have 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 outlays or remuneration be reduced, on the grounds that they are, in all the circumstances, excessive.

(2) If the court considers the application to be well-founded, it must make an order fixing the outlays or remuneration at a reduced amount or rate.

(3) Unless the court orders otherwise, the expenses of the application must be paid by the applicant, and are not payable as an expense of the liquidation.

**Changes to legislation:**

There are currently no known outstanding effects for the The Insolvency (Scotland) (Receivership and Winding up) Rules 2018, CHAPTER 3.