Getting the Court's tick of approval on your fees

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It is the aim of every insolvency practitioner to avoid having to approach the Court for a determination of his or her fees or be subjected to the Court's review of his or her fees. There are occasions, however, when it is unavoidable. This paper outlines what an insolvency practitioner needs to know when those occasions arise.[1]

Where are we at now?

The legislative provisions regulating the remuneration of insolvency practitioners (voluntary administrators, administrators of deeds of company arrangement ('DOCAs'), liquidators and *receivers*) are found mostly in the *Corporations Act* 2001 ('the Act').[2] These provisions are complemented by the procedural requirements of the Corporations Regulations, the requirements of the Courts' (the various Supreme Courts and the Federal Court) Corporations Law Rules and various practice notes of the Courts[3]. The Insolvency Practitioners Association ('IPA') maintained a Statement of Best Practice over the years[4] as well and has recently adopted a new Code of Professional Practice for Insolvency Practitioners.[5]

The *Corporations Amendment (Insolvency) Act* 2007 ('Amendment Act') commenced on 31 December 2007. It is the first comprehensive reform to the corporate insolvency law framework since 1993. The Amendment Act amends the existing provisions in relation to the remuneration of insolvency practitioners. Except in one respect, the amendments relating to remuneration apply only to appointments after 31 December 2007. There will therefore be a period of time during which two remuneration regimes exist. We expect, however, that the steps required to comply with the new regime will become the norm in practice for all appointments.

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[1] It is beyond the scope of this paper to examine the regime that exists for registered trustees in bankruptcy to obtain approval for their fees, although it will be of interest to trustees that ITSA released a Proposals Paper on 'Remuneration of Registered Trustees' in May 2008, submissions on which close on Friday, 4 July 2008.

[2] s425 (receivers); 449E (voluntary administrators and deed administrators); 473 (provisional liquidators, Court-appointed liquidators); 495, 499, 504 (liquidators in a voluntary winding up).

[3] For example, Practice Note SC Eq 4 of the Supreme Court of NSW.

[4] *IPAA Statement of Best Practice – Remuneration*, 1 July 2000.

[5] A copy of the *Code of Professional Conduct for Insolvency Practitioners* can be downloaded at www.ipaa.com.au.

Why are the reforms seen to be necessary?

A review of the Explanatory Memorandum to the Amendment Act may leave the reader with the impression that it was the decision of Justice Finkelstein of the Federal Court in the case of Korda *in the Matter of Stockford Limited (Subject to Deed of Company Arrangement)* (2004) 52 ACSR 279 ('*Stockford*') that created the impetus for reform. The reality is that the issue of the remuneration of insolvency practitioners has long been on the reform agenda.[6] For example, in June 1997, the Federal Treasury prepared a Review of the Regulations of Corporate Insolvency Practitioners – Report of the Working Paper, in which it was noted (at Chapter 10) that "*the common occurrence of unsecured creditors seeing most, or all, of the available assets used to cover the expenses and remuneration of practitioners has led to a perception in some quarters that the insolvency industry generates more benefits for itself than for the creditors.*" The current reforms aim to eradicate any such perception by encouraging insolvency practitioners to be transparent in the process for approval of their remuneration.

In the *Stockford* case, the Australian Securities and Investments Commission ('ASIC') was concerned that $2.4 million of the administrators' remuneration had not been properly fixed by the creditors or the Court. The administrators disagreed but sought directions from the Federal Court on their position. Justice Finkelstein found that the remuneration had not been properly fixed and took steps to rectify the situation. Along the way, his Honour's comments included:

- *"There is a widespread belief, not confined to Australia, that there is overcharging and that overcharging is rife."*
- *"To date, at least in Australia, no legislative action has been taken, despite many recommendations for change. This suggests to me that there is a need for closer judicial scrutiny of fees."*
- *"There is a surprising gap. ASIC has no power to apply for a review [of an administrator's remuneration]."*
- *"Although s 449E requires the remuneration to be "fixed" by the creditors or the court, the section does not specify how it is to be "fixed"…The matter is simply left at large. So also is the basis upon which the quantum of the remuneration is to be determined. …The only guidance that is given, and it is given by necessary implication, is that an administrator is entitled to reasonable remuneration. That offers little assistance to the tribunal that is required to decide what is reasonable in a particular case."*

6 In Australia, insolvency practitioners' remuneration has been examined or subjected to critical comment in the following reports: Australian Law Reform Commission, General Insolvency Inquiry, Report No 45 (1988) (commonly known to as the Harmer Report); Trade Practices Commission, Study of Professions — Accountancy, Final Report (1992); Attorney General's Department, Review of the Regulation of Corporate Insolvency Practitioners: Report of the Working Party (1997); Legal Committee of the Companies and Securities Advisory Committee, Corporate Voluntary Administration (1998); Parliamentary Joint Committee on Corporations and Financial Services, Improving Australia's Corporate Insolvency Laws (Issues Paper) (2003); Parliamentary Joint Committee on Corporations and Financial Services, Corporate Insolvency Laws: A Stocktake (2004).

- *"To have his fees fixed it will be necessary for the administrator to do more than simply state the amount of time spent and the rate to be charged for that time, as happened in this case. The amount of detail to be provided in support of a claim must be proportionate to the size of the estate and the amount of time spent."*

Spurred on by comments such as these, the legislature passed the Amendment Act with its reforms to the remuneration regime. The insolvency profession, guided by the IPA, quite rightly embraced the reforms and has provided insolvency practitioners with additional guidance and tools through the recently launched Code of Professional Practice for Insolvency Practitioners.

What are the key reforms?

We examine below a number of the key areas of reform and look at the position that applies for pre-31 December 2007 appointments and the position that applies for appointments from 1 January 2008.

1. Courts power to determine/fix remuneration

1.1 Position for pre-31 December 2007 appointments

The Court has the power to fix the remuneration of a privately appointed receiver on the application of the company's liquidator, the company's administrator, the administrator under a DOCA or ASIC: section 425 of the Act. However, it is probably unlikely that a Court would interfere and fix remuneration where the debenture specified it (which is rare), except in extenuating circumstances, as the debenture represents the contract made between the parties and it should be upheld.[7] In practice, a receiver and his or her appointer will agree the terms on which the receiver will be remunerated at the time of the appointment.

In relation to the remuneration of a Court-appointed liquidator, the Court has power to determine the amount of remuneration only in the absence of an agreement with a committee of inspection or a resolution of the creditors.[8]

The voluntary liquidation process provides for Court review of the amount of a liquidator's remuneration but not for it to be fixed by the Court. That is the role of the members and/or the creditors.

In relation to the remuneration of an administrator and an administrator under a DOCA, section 449E provides that, on the application of the administrator, the Court can fix the remuneration if it is not fixed by a resolution of the company's creditors passed at the proposal meeting or at a future

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Michael Murray, *Keay's Insolvency. Personal and Corporate Law and Practice,* 5th ed, 2005, Lawbook Co at 422.

[8] s473(3)(b).

meeting convened under section 445F of the Act.[9] The process of obtaining Court approval has been described as administratively burdensome or, at least, unclear. [10] In particular, prior to the Amendment Act there existed ambiguity as to whether the question of remuneration had to be put to creditors before it was put to the Court.[11]

1.2 Position for appointments from 1 January 2008

For appointments from 1 January 2008, a significant amendment is that administrators of companies and DOCAs will be entitled to receive such remuneration as is determined by agreement with a committee of creditors or a committee of inspection.[12] This is in line with that which occurs in liquidations. This change should not only increase the popularity of such committees among administrators but could also lead to fewer applications to Court for the determination of remuneration.

Further, an administrator of a company under administration or under a DOCA can now apply to a Court for remuneration to be fixed even when a committee or the creditors as a group have not met[13]. This is designed to deal with those administrations where creditors are disinterested because there is unlikely to be a return to them. The Explanatory Memorandum to the Amendment Act states: "*it is anticipated that this would generally only be considered where an attempt to convene a meeting of creditors had been made but failed to attract a quorum*".[14] However, there is nothing in the provisions of the Amendment Act itself that would indicate such an intention.

It must be noted that this change is only in relation to the Court's power to determine the remuneration of administrators. In relation to the remuneration of liquidators, the Court can still determine the amount of remuneration only in the absence of agreement with a committee of inspection or a resolution of creditors, although the new provisions do provide a mechanism for a liquidator to receive modest remuneration only ($5,000) when a quorum is not achieved at a meeting convened for that purpose.[15]

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[9] s449E.

[10] CAMAC, *Corporate Voluntary Administration Report* 1998, at 111 [6.25].

[11] *Re Clynton Court* (2005) 23 ACLC 710 at 714 [7]; compare *Re Carlovers Carwash and Ors* (2005) 194 FLR 84 at 88-89, 91. Goldberg J in *Re Ansett Australia Ltd and Mentha* (2002) 40 ACSR 409 at [22] noted it is unclear whether an administrator is able to approach the Court to have remuneration fixed under this section prior to a meeting of creditors occurring.

[12] s449E(1)(a) and (1A)(a).

[13] s449E(1C) and (1D).

[14] At 4.102.

[15] s473(4A); a higher amount might be obtained on application to the Court – s473(6).

2. Courts power to review remuneration

2.1 Position for pre-31 December 2007 appointments

The Court holds a review function as regards remuneration which has been fixed in each type of appointment.[16] In voluntary administrations and deeds of company arrangement, however, ASIC does not have the power to apply to the Court for the review of remuneration. As mentioned above, Finkelstein J described this as a '*surprising gap*' in the *Stockford* case. The same gap seems to exist in relation to Court-appointed liquidations when the creditors (as opposed to a committee of inspection) fix the remuneration[17] and in voluntary liquidations as well.[18]

The pre-31 December 2007 legislation provides little guidance to the Court as to the matters to have regard to when reviewing insolvency practitioners' remuneration. The common law, including cases such as *Stockford*, provide that guidance.

2.2 Position for appointments from 1 January 2008

Most significantly, ASIC has been given the power to apply to the Court for a review of remuneration fixed by agreement between the administrator and the committee of creditors/inspection or by resolution of the creditors in a voluntary administration or a DOCA administration.[19] Insolvency practitioners should expect ASIC to utilise this power, especially through its internal teams focused on insolvency issues which ASIC has staffed with people experienced in insolvency administrations.

Further, the reforms provide for each type of insolvency administration that, when the Court is determining and reviewing remuneration, it must have regard to whether the remuneration is reasonable by assessment against a broad range of factors.[20] These factors are referred to in paragraph 3.2.2 below.

[16] s425 (receivers); s449E (voluntary administrators and deed administrators); s473 (provisional liquidators, Court-appointed liquidators); s504 (liquidators in a voluntary winding up).

[17] See s 473(6).

[18] See s 504.

[19] S 449E(2).

[20] s425(8) – receivers; 449E(4) – administrators; 473(10) – court-appointed liquidators; 504(2) – voluntary liquidators.

3. Reasonable remuneration

The remuneration of insolvency practitioners, if determined or reviewed by the Court, is restrained by the notion of reasonableness.[21] It has been suggested that a "*reasonableness restraint on the recovery of remuneration might flow by implication from the insolvency practitioner's position as a fiduciary*".[22]

3.1 When is the standard of reasonableness relevant?

3.1.1 Pre 31-December 2007 position

The case law is unclear as to whether the 'reasonableness' standard is relevant only in relation to a primary decision of the Court to determine the remuneration of insolvency practitioners or whether is it only relevant to the process of Court review of remuneration.[23]

3.1.1 Position for appointments from 1 January 2008

The reforms clarify any uncertainty. The standard of reasonableness is imported into both the exercise of primary decision-making in relation to the determination of remuneration and the exercise of the review of remuneration by the Courts.

3.2 What constitutes reasonable remuneration?

3.2.1 Pre 31-December 2007 position

The Courts have a very wide discretion in allowing and fixing the level and the basis of remuneration[24]. Scales or guidelines set by various professional associations have in the past been considered to be prima facie reasonable and have been applied.[25] This may be so but the IPA has not set a scale of fees since 2000 and few practitioners would want to be held to the rates in the most recent IPA schedule.

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[21] *Re Stockford Ltd (subject to deed of company arrangement)* (2004) 140 FCR 424; *Re Alliance Motor Body Pty Ltd* (2005) 150 FCR 345; *Re The Bridal Centre Company Pty Ltd* (1985) 75 FLR 449; *Ide v Ide* (2004) 184 FLR 44.

[22] *Re Stockford Ltd*, above n 21; Kristin Van Zwieten, "Remuneration of Insolvency Practitioners: the Role of the Courts" *Australian Insolvency Journal*, October/December 2007 at 18.

[23] *Re Stockford Ltd* above n 21, compare *Re Alliance Motor Body Pty Ltd*, above n 21.

[24] See for example *In Re Universal Distributing Co Ltd (in liq)* (1933) 48 CLR 171.

[25] *Waldron v MG Securities (A/Asia) Ltd* (1979) ACLC 40-541 (the fact that scale fees were computed so as to make a remunerative liquidation help pay for an unremunerative one, did not mean that the hourly rates were unreasonable or unfair); *Re Queensland Forests Ltd (in liq)* [1966] Qd R 180; compare the position in Victoria: *National Companies and Securities Commission v Greater Pacific Investments Pty Ltd* [1990] VR 558. The practice of the Victorian Supreme Court was to issue a practice note setting out a scale of remuneration. In *Re Fine Food Distributors Pty Ltd; Ex parte Whitehouse* (1992) 9 ACSR 599 the Tasmanian Supreme Court applied the same scale of fees as the Victorian Supreme Court when approving a provisional liquidator's remuneration, rather than applying the rates of the Insolvency Practitioners' Association of Australia. Supreme Court scale costs for liquidation proceedings are generally lower than those fees advocated by the Insolvency Practitioners Association of Australia (IPAA); also see Angela Martin, Allens Arthur Robinson, *Voluntary Administration – An Overview* (2007) at 21.

The practice of the Courts in liquidation cases may be considered as a guide for determining what constitutes reasonable remuneration,[26] however, it has been admitted that there is no absolute rule governing remuneration. To return to the words of Finkelstein J in *Stockford*:

"*Although s 449E requires the remuneration to be 'fixed' by the creditors or the Court, the section does not specify how it is to be 'fixed'… The matter is simply left at large. So also is the basis upon which the quantum of the remuneration is to be determined. That is, the section is silent on the factors to be taken into account both for deciding the appropriate method of 'fixing' an administrator's remuneration and in determining the amount to be 'fixed'. The only guidance that is given, and it is given by necessary implication, is that an administrator is entitled to reasonable remuneration. That offers little assistance to the tribunal that is required to determine what is reasonable in a particular case.*"[27]

The Courts' determination of the reasonableness of insolvency practitioners' fees remains a difficult and expensive task.[28] It has been observed by Finkelstein J in *Re Clynton Court*[29] that the "*Court is ill-equipped to conduct a detailed investigation of receiver's charges on an itemised basis. A judge could not do so without being expensively educated by expert evidence*[30]."

3.2.2 Position for appointments from 1 January 2008

The reforms provide greater guidance to the Courts by identifying relevant factors for consideration in setting or reviewing remuneration, with the proviso that the Courts must have regard to whether remuneration is reasonable. The factors that the Court can consider when setting or reviewing remuneration of insolvency practitioners are:

a) the extent to which the work performed by the insolvency practitioner was reasonably necessary;
b) the extent to which the work likely to be performed by the insolvency practitioner is likely to be reasonable necessary;
c) the period during which the work was, or is likely to be, performed by the insolvency practitioner;
d) the quality of the work to be performed, or likely to be performed, by the insolvency practitioner;
e) the complexity (or otherwise) of the work performed, or likely to be performed, by the insolvency practitioner;

[26] *Australian Insolvency Management Practice,* CCH, at 56-180

[27] *Re Stockford Ltd* , above n 21, at 428.

[28] *Re Clynton Court*, above n 11 at 714 [6].

[29] Ibid.

[30] Ibid.

f) the extent (if any) to which the insolvency practitioner was, or is likely to be, required to deal with extraordinary issues;
g) the extent (if any) to which the insolvency practitioner was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
h) the value and nature of any property dealt with, or likely to be dealt with, by the insolvency practitioner;
i) whether the insolvency practitioner was, or is likely to be, required to deal with one or more other insolvency practitioners;
j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
k) if the remuneration is ascertained, in whole or in part, on a time basis: (i) the time properly taken, or likely to be properly taken, by the insolvency practitioner in performing the work; and (ii) whether the total remuneration payable to the insolvency practitioner is capped; and any other relevant matters.[31]

Initially, the Bill to the Amendment Act proposed that the Court must consider all the factors above when determining or reviewing the remuneration. In August 2007, the IPA expressed its concern that it would be unduly onerous to require insolvency practitioners to report against each one of the matters specified above. The IPA sought, and obtained, an amendment. The Bill was amended to provide that the Court 'must' have regard to whether the remuneration is reasonable by taking into account 'any or all of' the matters above. They do not all have to be ticked off, in theory at least.

It is questionable whether by adding these relevant factors the reforms will facilitate the Court's task in determining or reviewing the remuneration of insolvency practitioners. In large and more complex matters, the evidence of an independent expert insolvency practitioner may be required to assist the Court consider the factors above, adding to the time and expense associated with remuneration applications.

4. A fixed amount of fees where a creditors' meeting lacks quorum

4.1 Pre 31-December 2007 position

Due to the burdensome procedure for obtaining approval for remuneration, on occasions liquidators would not have their remuneration approved because creditors' meetings fail to attract a quorum of creditors. Seeking Court approval may have been impracticable in the circumstances when only limited funds were available.

4.2 Position of appointments from 1 January 2008

The reforms provide for Court appointed liquidators and voluntary liquidators to draw down a maximum of $5,000 once only where a creditors' meeting fails to obtain approval for remuneration

[31] s425(8) – receivers; 449E(4) – administrators; 473(10) – court-appointed liquidators; 504(2) – voluntary liquidators.

because of a lack of quorum and the liquidator does not want to seek Court approval.[32] Importantly, this reform has effect in relation to pre-31 December 2007 appointments as well.

5. Report to be provided to creditors to allow remuneration to be assessed

5.1 Pre 31-December 2007 position

In the cases of *Re Solfire Pty Ltd (No2)*[33] and *Venetian Nominees Pty Ltd v Conlan*[34] the following principles were enunciated:

5.1.1 Sufficiently detailed information must be provided when the Court is asked to 'fix' or 'determine' remuneration, so as to ascertain whether remuneration can be regarded as reasonable;

5.1.2 Sufficiently detailed information should be provided to the Court to enable it to determine whether disbursements have been reasonably incurred and that the amounts claimed are reasonable[35];

5.1.3 A resolution passed by a meeting of creditors will be invalid if made on the basis of insufficient information.

Any creditors' resolution purporting to determine or fix remuneration must be formally valid to have any legal effect.[36] *Stockford* confirms that the resolution must be based on sufficient information having been provided to the creditors before it can have any legal effect.

In addition to the legal principles above that have been enunciated by the Courts, there are rules, mainly at the supplementary level, regulating what information the insolvency practitioner should disclose to creditors in order for them to determine remuneration. However, there has been no statutory formula for insolvency practitioners to provide information that would allow the assessment of the reasonableness of the proposed remuneration to be made.

5.2 Position of appointments from 1 January 2008

The new provisions codify the existing principles that are derived from the case law in relation to the remuneration of administrators and liquidators and provide that insolvency practitioners must provide sufficient information via a report to enable the approving party (normally a committee of creditors, committee of inspection or a meeting of creditors) to assess remuneration as reasonable, including a summary description of the major tasks and the costs associated with each of them.[37]

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[32] s473(4A) and 499(3A).

[33] [1999] 2 Qd R 182.

[34] (1998) 20 WAR 96.

[35] Although *Venetian Nominees* settled the incorrect view that a liquidator's remuneration included his or her disbursements and required creditor or Court approval.

[36] *Re Stockford Ltd*, above n 21

[37] s449E(5), (6) and (7) – voluntary administrations and DOCAs; 473(11) and (12) – court appointed liquidators; 499(5) – members voluntary winding up; 499(6) and (7) – creditors' voluntary winding up.

In accordance with the principles derived from the case law, the requirements are expressed in general terms. It should not be taken that the creditors' report should address each of the matters that a Court must consider in setting remuneration. Rather, it is intended that the new requirements would provide practitioners with maximum flexibility and avoid the imposition of unwarranted costs.[38]

The Explanatory Memorandum to the Amendment Act suggested that reports should be no more than two pages in length for routine matters.[39] The IPA has produced a template report for insolvency practitioners to use as a guide but the template is longer than two pages in length.

We expect that a Court asked to determine or review remuneration in the future will wish to see early in the application the reports prepared by insolvency practitioners in accordance with these provisions. A key issue in these types of applications will be whether insolvency practitioners and their lawyers will have to produce significantly more detailed than is contained in these reports for the purpose of getting their remuneration successfully determined or reviewed by the Court

What has been the insolvency profession's response to the reforms?

In recent years, the IPA has been pro-active in placing a greater emphasis on self-regulation and co-regulation for the insolvency profession rather than be subject to the alternative of having regulation imposed on the profession by the relevant authorities. The IPA's recently launched Code of Professional Practice for Insolvency Practitioners is part of that pro-activity. As regards remuneration, the Code contains three remuneration principles:

1. A Practitioner is entitled to claim remuneration and disbursements, in respect of necessary work, properly performed in an administration;
2. A claim by a Practitioner for remuneration MUST provide sufficient, meaningful, open and clear disclosure to the approving body so as to allow that body to make an informed decision; and
3. A Practitioner is entitled to draw remuneration once it is approved and according to the terms of the approval.
4. The Code also contains the IPA's recommended remuneration report template referred to above.

In launching the Code at the recent IPA National Conference in May, Justice Austin of the Supreme Court of New South Wales indicated in effect that the Court, while not bound by the Code in making its decisions, would certainly look closely at the Code, when considering issues concerning insolvency practitioners that come before it, as a guide to the type of conduct and procedures expected of insolvency practitioners by their own kind. We expect the Supreme Court

[38] *Explanatory Memorandum to Corporations Amendment (Insolvency) Bill* 2007, at 4.94 - 4.95

[39] At 4.95.

in New South Wales, at least, to have close regard to the remuneration principles and remuneration report template when determining and reviewing remuneration claims by insolvency practitioners. We therefore commend the Code to you.

Practical tips to help you get the Court's tick of approval on your fees

Division 9 of both the *Supreme Court (Corporations) Rules* 1999 and the *Federal Court (Corporations) Rules* 1999 contain the essential steps for applications to either of those Courts for the determination or review of the remuneration of insolvency practitioners. The respective Rules are the same, although each Court may have its own internal procedures and practices for applying the Rules. The procedural steps diverge depending on the type of administration and whether the application is one for determination or review of remuneration. For the purposes of this paper, we focus on an application by an insolvency practitioner appointed after 1 January 2008 for Court determination of his or her fees. The essential steps are as follows.

1 At least 21 days before the application is filed with the Court, the insolvency practitioner must serve the relevant stakeholders with a specified notice (Form 16) advising of the intention to seek a determination of remuneration and seeking any objections to the determination.

2 At the same time, the stakeholders must be served with a copy of the affidavit for the application – this affidavit should be as comprehensive as possible and seek to cover as many of the requirements of the Rules as is possible at this stage. At a minimum, the affidavit needs to:

- 2.1 demonstrate that the remuneration is reasonable having regard to the categories of matters the Court can now take into account on that question;[40]
- 2.2 include a copy of any remuneration report provided by the insolvency practitioner to a committee of creditors/inspection or the creditors in general;
- 2.3 include a summary of the receipts taken and payments made by the insolvency practitioner; and
- 2.4 if the particular administration is continuing, give details of any matter delaying its completion.

3 The Supreme Court of New South Wales has indicated that the information in the affidavit about the amount of the remuneration should include "the name of the employee, their job description (eg manager 1), their hourly rate and the cumulative hours of work performed. (if a unit of work is not an hour, its value should be stated.) It is helpful if this information is set out in a table."41

[40] s425(8) – receivers; 449E(4) – administrators; 473(10) – court-appointed liquidators; 504(2) – voluntary liquidators.

Supreme Court of New South Wales publication "Remuneration applications by office-holders of a corporation" - March 2006.

4 The stakeholders then have the 21 days after the last service of the notice and affidavit to serve any notices of objection stating the grounds of objection to the remuneration sought.

5 If the insolvency practitioner does not receive notices of objection, he or she must indicate that fact in an affidavit, depose that the relevant notice and affidavit has been served on the stakeholders in accordance with the Rules and may request that the application be dealt with in the absence of the public and without the insolvency practitioner's attendance.

6 If the insolvency practitioner receives notices of objection, he or she must serve the filed application (an originating or interlocutory process) on each person who served such a notice of objection.

7 The insolvency practitioner would have to also serve a supplementary affidavit at this time detailing matters like the particulars of any objections the insolvency practitioner has received. It would be prudent for the insolvency practitioner to also prove service of the notice and the original affidavit on the relevant stakeholders.

8 The objecting stakeholders may then serve affidavits in response to the insolvency practitioner's affidavits, which should be reviewed by the insolvency practitioners and replied to if necessary.

9 The insolvency practitioner's lawyers would then have to appear before the Registrar for any interlocutory mentions or hearings and the hearing of the application for determination of remuneration.

In applications for the review of the remuneration of administrators and liquidators, there is also a positive obligation on the insolvency practitioner to prepare an affidavit of the type described in paragraph 2 above. It is clear that having to apply to the Court for determination of remuneration, or having to meet an application for the review of remuneration, will remain an expensive and time consuming exercise; one to be avoided by ensuring that the amount of fees remains within the reasonable range and is capable of being approved at the committee of creditors/inspection and creditor levels.

In light of these requirements for obtaining the Court's approval of your fees, our main practical tips are:

- Adopt the remuneration principles in the IPA's Code of Professional Conduct for Insolvency Practitioners into your day-to-day work practices;
- Review your systems to enable information to be readily transferred into the IPA's remuneration report template in the Code – as matters stand, all of the information contained in the template would be relevant for a Court determination or review of remuneration;
- Encourage your staff to accurately record on their time sheets the nature of the activities they are attending to, the time they spend on those activities and whether the activity relates to the main task areas suggested by the IPA of Assets, Creditors, Employees, Trade On, Investigation, Dividend and Administration, and the time spent by them on those activities;

- Avoid the need to go to Court for a determination or review of remuneration by maintaining regular communication with the committee of creditors/inspection and creditors in general as regards remuneration; changes in hourly rates, the seniority of staff involved, blow-outs in estimates to completion or a specified milestone;
- Note that the Chief Justice of the Supreme Court of New South Wales has indicated in Practice Note No. SC Eq 4 that hourly rates and estimates to completion or specified milestones should be included in insolvency practitioners' first report to creditors and that creditors should be informed when these matters change – the Court may take a dim view if insolvency practitioners fail to take these steps;
- We have contacted the Senior Deputy Registrar of the Supreme Court of New South Wales, who regularly deals with remuneration applications, to ascertain whether the Court requires detail akin to a solicitor's bill of costs for taxation or assessment when determining or reviewing insolvency practitioners' remuneration.[42] The answer was 'yes and no. The material must be sufficient to satisfy the requirements of the Act'. The Senior Deputy Registrar indicated that, while the form of a solicitor's bill of costs would be useful, it was not essential. He indicated, however, that the often provided printout from practitioners' computer systems was of limited assistance. The Senior Deputy Registrar had not yet seen an application based around the IPA's recommended remuneration report template. As the report template has been formulated with the relevant cases in mind, we believe that the information required for the report template will become the minimum standard.
- Note that in Court appointed and voluntary liquidations, in both pre-31 December 2007 and post 1 January 2008 appointments, insolvency practitioners are now entitled to draw $5,000 once only for their remuneration if they are unable to secure a quorum at a creditors' meeting for a resolution regarding remuneration.[43]

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[42] As was suggested in *Re Solfire Pty Ltd (No2)* [1999] 2 Qd R 182 but compare *Venetian Nominees Pty Ltd v Conlan* (1998) 20 WAR 96. The *Stockford* case recently reopened the debate as well.

[43] s473(4A) and 499(3A).