

Supplemental provisions in relation to sections 646 and 647

648. (1) The terms upon which a liquidator has an entitlement to remuneration, as agreed, fixed or otherwise set in accordance with section 646, may include provision for reference to arbitration of any dispute that may arise as to the amount of remuneration to which the liquidator is thereby entitled under section 647.

(2) If the foregoing terms do not include a provision of the foregoing kind, the liquidator and—

(a) where the case is one of a winding up by the court or a creditors' voluntary winding up, the creditors acting by resolution passed at a meeting of the creditors for the purpose, or

(b) where the case is one of a members' voluntary winding up, the members of the company acting by resolution passed at a meeting of the company for the purpose,

may agree to refer to arbitration any dispute as to the amount of remuneration to which the liquidator is entitled under section 647.

(3) In an arbitration of a dispute as to the amount of remuneration to which a liquidator is entitled under section 647, the matters specified in subsection (9) shall be taken into account by the arbitrator.

(4) Not later than 28 days after—

(a) the date on which an agreement or approval has been made or given in accordance with section 646 (2)(a), (b) or (c), as the case may be, in respect of such terms, or

(b) the date on which any variation referred to in section 646 (5) has been made of such terms,

any creditor or member of the company concerned may apply to the court to review the terms upon which the liquidator has an entitlement to remuneration as so agreed, approved or varied, and, on the making of such an application, the court may, as it thinks fit—

(i) confirm the terms as so agreed, approved or varied, or

(ii) alter those terms.

(5) Not later than 28 days after the date on which an agreement or approval has been made or given in accordance with section 647 (2)(a), (b) or (c), as the case may be, in respect of an amount of remuneration of a liquidator, any creditor or member of the company concerned may apply to the court to review that amount as so agreed or approved and, on the making of such an application, the court may, as it thinks fit—

(a) confirm that amount as so agreed or approved, or

(b) alter that amount.

(6) If, on an application under subsection (4) or (5)—

(a) the court does not vary, in a manner less favourable to the liquidator, the terms of the liquidator's entitlement to remuneration or, as the case may be, reduce an amount of his or her remuneration, the applicant shall bear the costs, fees and expenses of the application, or

(b) the court does vary, in a manner less favourable to the liquidator, the terms of the liquidator's entitlement to remuneration or, as the case may be, reduce an amount of his or her remuneration, the court may make such order as it deems fit as to the costs, fees and expenses of the application.

(7) For the purpose of holding a meeting in accordance with section 646 or 647 or this section, the liquidator may convene a meeting of the creditors of the company, the members of the company or the committee of inspection, as the case may be.

(8) Where a company is ordered to be wound up by the court upon grounds other than those specified in section 569 (1)(d) (company unable to pay its debts) then, upon it being established to the satisfaction of the court that the company is not insolvent, the provisions of sections 646 and 647 and this section that are applicable to a members' voluntary winding up shall, where the court so directs, apply to that company.

(9) In—

(a) fixing the amount of a provisional liquidator's remuneration under section 645; or

(b) the agreeing, approval, fixing or review under section 646 or 647 or this section, as the case may be, of—

(i) the terms of a liquidator's entitlement to remuneration, or

(ii) the amount of a liquidator's remuneration,

the following shall be taken into account by the court, the committee of inspection, the creditors or, as the case may be, the members:

(i) the time properly required to be given by the person as liquidator and by his or her assistants in attending to the company's affairs;

(ii) the complexity (or otherwise) of the case;

(iii) any respects in which, in connection with the company's affairs, there falls on the liquidator any responsibility of an exceptional kind or degree;

(iv) the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his or her duties; and

(v) the value and nature of the property with which the liquidator has to deal.

(10) In sections 645 to 647 and this section “remuneration” includes remuneration for services in the winding up performed by the liquidator personally and by his or her assistants on his or her authority.