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# Insolvency practitioner fees in the UK - all alone in the world?[1]

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## I Introduction

The issue of Insolvency Practitioner ("IP") fees has long been a controversial subject in the UK.[2] When a company or individual enters a formal insolvency procedure, not all creditors will be paid in full, yet often the IP carrying out the administration of the estate will get paid. This can naturally rankle with creditors who may see no dividend on their debts but witness the IP still receiving a fee. It does not, of course, necessarily follow that the IP has acted in any untoward manner. It would be wholly unrealistic to expect IPs to act without remuneration, as if they were some kindly, independently wealthy fiduciary from the eighteenth or nineteenth century. In the twenty-first century, they do generally act in a fiduciary capacity but understandably require to be paid a fair fee for carrying out their statutory obligations of, inter alia, investigation, publicity, realisation, negotiation and distribution. The thorny issue is how best to quantify that fee.

The Government has recently carried out a consultation ("the Consultation") looking at the regulatory regime governing IPs generally and IP fees in particular.[3] The Consultation recognises that where a secured creditor is not going to be paid in full in the insolvency, the secured creditor will exercise sensible control over the IP fees. A similar point is made about the situation where, although there is no secured creditor going unpaid, there is a creditors' committee which has been constituted. Again, it is accepted by the Consultation that such a committee exercises appropriate control over IP fees. Where there is no secured creditor or creditors' committee to exercise this level of control, the Consultation suggests a requirement for IP fees to be set based either upon a fixed fee or a percentage of assets realised.[4] It is this suggestion which this article seeks to address, mainly by considering whether other jurisdictions currently use such a system and to analyse some of the problems which the suggestion might create.

## II Current Law and Practice

The current system of setting IP fees is found in the Insolvency Rules.[5] Creditors may agree a fee to be calculated in one of three ways: 1) a fixed fee (a possibility introduced in 2010[6] but not one which is widely adopted by IPs); 2) a fee based upon a percentage of

realisations and/or distributions; or 3) a fee based upon the IP charging an hourly rate for his or her work. This last possibility, the time cost basis, is by far the most common in practice (its adoption seems virtually universal).

Under the pre-Insolvency Act 1986 system, IP fees were determined, in virtually all procedures, by reference to a percentage of realisations and/or distributions. That system was heavily criticised by the Cork Committee in 1982 as seldom having "any connection with the actual work done in a specific administration."7 Recommendations made by Cork were introduced by the provisions of the Insolvency Act 1986 and continue largely intact today. Cork recommended that fees could be fixed on a percentage basis or otherwise (for example, on a time cost basis), but in either case "should take into account:

- The time occupied by the insolvency practitioner and his staff;
- The complexity (or otherwise) of the case;
- The responsibility borne by the insolvency practitioner;
- The effectiveness of his action; and
- The value of the assets dealt with by him."8

The 1986 amendments still permit fees based upon a percentage of assets realised or distributed but also permit remuneration to be determined on a time cost basis (in both cases subject to the agreement of the creditors, or the court in the absence of such consent). The time cost basis has now become the standard practice of the profession.

Since the Cork recommendations were adopted in the 1986 legislation, a number of further developments have placed IP fees in the spotlight. Infamous cases, such as *Mirror Group Newspapers Plc v Maxwell (No.1)*9 and *Re Cabletel Installations Ltd*,10 have emphasised that the court will, when considering fees charged on a time cost basis, look at the value of the service provided by IPs, not the cost of the time in providing that service.11 Subsequent independent reviews of IP fees12 have led to some changes13 in the detail of the law and practice but the fundamental basis of determining IP remuneration in practice has remained largely intact.

## III Reform Proposals

In recent times the Government has commissioned two independent reviews of IP fees. The first, which reported in 2010, was by the Office of Fair Trading14 and considered, inter

alia, the fees charged in a sample of 500 administrations commenced in 2006. The second was conducted by Professor Elaine Kempson and reported in 2013 (hereafter "Kempson").15 Both the OFT and Kempson identified that IPs charged differential fees depending upon whether a secured creditor had influenced the appointment of the IP (by the use of formal or informal panels). Where there was a secured creditor, it was common for the IP to provide a discount on his or her hourly rates relative to the hourly rate charged in cases where there was no secured creditor. This led the OFT (upon whose findings Professor Kempson relied) and Kempson to conclude that unsecured creditors were being overcharged by IPs.

Although Kempson did not make such a recommendation, the Government has latched onto the apparent unfairness of this differential charging policy, by consulting on a new system for setting fees. The Consultation proposes that in future, where there is no secured creditor16 (which includes the situation where there is a secured creditor but that creditor will be paid in full), an IP's fees will be set on one of two bases: 1) a percentage of total realisations and/or distributions or 2) fixed fees. The current time cost basis will no longer be available in such circumstances. ***Insolv. Int. 87** 17

This proposed difference in approach, dependent upon the make-up of the insolvent's creditor base ignores, inter alia, the wisdom of the Cork Committee's view. Cork was:

"firmly of the view that there should be uniformity in this matter and that there should be one set of rules or guidelines to be used in computing the remuneration of trustees, liquidators and administrators."18

The Consultation's proposal is likely to create uncertainty especially in circumstances where it is not clear at the outset whether the secured creditor will be paid in full. In such cases, the applicable IP remuneration regime will not be capable of ascertainment on appointment and this uncertainty is likely to impact on the IP's commercial decision as to whether or not to accept the appointment.

## IV Comparison with other Jurisdictions

There are a number of potential dangers in adopting the change suggested by the Consultation. One significant problem is that such a system would be out of line with those used overseas. The main purpose of this article is to consider what happens overseas. If, as will be suggested, fixed fees are not widely used abroad, it might be that the Government's commitment to the introduction of such a new system might impact on the reputation the insolvency regime in the UK currently enjoys worldwide.

The World Bank's *Doing Business*19 project provides objective measures of business regulations and their enforcement across 189 economies. As part of this study, *Doing Business* assesses the time, cost and outcome of insolvency proceedings involving domestic entities. The ranking on the ease of resolving insolvency is based on the recovery rate for creditors. The cost of the proceedings is recorded as a percentage of the estate's value. The UK economy is ranked seventh.

### *A World Bank Rankings for Resolving Insolvency*

The following table20 replicates the World Bank's top 20 world economies in terms of insolvency resolution (and additionally shows the respective rankings of Spain, Italy, France and South Africa).

| **Economy Name** | **Rank** | **Time (years)** | **Cost (% of estate)** | **Outcome (0 as piecemeal sale and 1 as going concern)** | **Recovery rate (cents on the dollar)** |
|---|---|---|---|---|---|
| Japan | 1 | 0.6 | 4 | 1 | 92.8 |
| Norway | 2 | 0.9 | 1 | 1 | 91.3 |
| Finland | 3 | 0.9 | 4 | 1 | 90.2 |
| Singapore | 4 | 0.8 | 3 | 1 | 89.4 |
| Netherlands | 5 | 1.1 | 4 | 1 | 89.2 |
| Belgium | 6 | 0.9 | 4 | 1 | 89 |
| United Kingdom | 7 | 1 | 6 | 1 | 88.6 |
| Ireland | 8 | 0.4 | 9 | 1 | 87.6 |
| Canada | 9 | 0.8 | 7 | 1 | 87.3 |
| Denmark | 10 | 1 | 4 | 1 | 87 |

| | | | | | |
|---|---|---|---|---|---|
| Iceland | 11 | 1 | 4 | 1 | 84.5 |
| New Zealand | 12 | 1.3 | 4 | 1 | 83.3 |
| Germany | 13 | 1.2 | 8 | 1 | 82.9 |
| Austria | 14 | 1.1 | 10 | 1 | 82.4 |
| Korea, Rep. | 15 | 1.5 | 4 | 1 | 82.3 |
| Taiwan, China | 16 | 1.9 | 4 | 1 | 81.8 |
| United States | 17 | 1.5 | 7 | 1 | 81.5 |
| Australia | 18 | 1 | 8 | 1 | 81.3 |
| Hong Kong SAR, China | 19 | 1.1 | 9 | 1 | 81.2 |
| Sweden | 20 | 2 | 9 | 1 | 75.5 |
| Spain | 22 | 1.5 | 11 | 1 | 72.3 |
| Italy | 33 | 1.8 | 22 | 1 | 62.7 |
| France | 46 | 1.9 | 9 | 0 | 48.3 |
| South Africa | 82 | 2 | 18 | 0 | 35.5 |

| | | | | | |
|---|---|---|---|---|---|
| | | | | | ***Insolv. Int. 88** |

### *B Examples of Specific Insolvency Practitioner Fee Regimes*

The cost of the insolvency proceedings is recorded in the above table as a percentage of the value of the debtor's estate. The cost is calculated on the basis of responses to questionnaires sent out to insolvency practitioners and includes court fees and government levies; fees of insolvency administrators, auctioneers, assessors and lawyers; and all other fees and costs. IP fees are therefore one of several factors taken into account.

The following are 11 examples of how different countries deal with IP fees. There is no scientific method as to which jurisdictions we have selected beyond a desire to look at some Common Law and some Civil Law jurisdictions. We have based our findings partly on materials available online and from published sources but also on information provided to us, most kindly, by a number of academics and practitioners across the world.

### 1. Singapore

Practitioners' fees are calculated by way of a percentage of realisations or such other basis as is agreed, such as a time cost basis, with creditors (or in compulsory liquidations by the Court). In voluntary liquidations fees are approved by the creditors on the same basis with the right for creditors to apply to the Court to review the liquidator's remuneration.21 The time cost basis for determining fees is virtually universally adopted. In 2005, the Singaporean Law Reform Committee22 did not consider fixed fee arrangements as "appropriate for determining the remuneration of insolvency practitioners"23 and commented that the "practice of charging fees by way of percentage is irrelevant in modern day insolvency practice and should be repealed in the Act."24 No such repeal has been effected but it is clear that Singapore holds very closely to the time cost basis.

### 2. Netherlands

Fees are calculated on a time cost basis. Fees are determined by the Court on the basis of guidelines, providing for a minimum hourly rate that may be adjusted depending on the experience of the practitioner and the complexity of the case.25 In exceptionally large bankruptcies separate arrangements may be put in place that deviate from these guidelines. We have come across no evidence of a requirement to use fixed fees.

### 3. Ireland

Official Liquidators in a compulsory liquidation are entitled to receive such remuneration as the Court may direct.26 The Court has analogous jurisdiction in the case of examinerships

(a corporate rescue process). Fees are normally charged on a time cost basis for the IP and his or her staff, though rates are capped for different levels, for example at €357–375 per hour for partners. The Court has held, however, that consideration should be given to the nature, complexity and value to the creditors of the work being carried out when determining the fees payable and will treat each case on its own merits and facts.27 In practice, remuneration by percentage is not used. In a voluntary liquidation the IP remuneration is a private contractual arrangement between IP and creditors, unless no remuneration is fixed in which case the liquidator can make an application to the Court. We have not come across any evidence of any requirements to use fixed fees.

## 4. New Zealand

Where liquidators are appointed by the Court, their fees are based upon a statutory scale but in practice these fees are seen as too low and a higher fee is charged. If the total fee is greater than NZ$2,000, the Court's approval is required.28 That apart, there are no specified requirements dealing with the rates or overall fees of IPs. Liquidators and receivers may have their fees reviewed by the Court on the application of creditors (or other prescribed parties). It seems that IPs are usually remunerated on a time cost basis. We have come across no evidence of fixed fee arrangements.

## 5. Germany

Insolvency representatives are paid for their services based on the value of the administered and liquidated insolvency estate; that is the assets under their control, not any wider assets of the insolvent entity.29 The courts do not have any discretion or leeway in setting fees. Furthermore, to ensure the independence of the insolvency representatives, it is unlawful for them to agree payment with the creditors. Remuneration is calculated on a degressive scale as follows:

| **Value of estate** | **Percentage remuneration** |
|---|---|
| €1–€25,000 | 40% |
| €25,000–€50,000 | 25% |
| €50,000–€250,000 | 7% |
| €250,0001–€500,000 | 3% |

| | |
|---|---|
| €500,000–€25m | 2% |

Fees have to be drawn within a specified time of becoming payable, otherwise they become statute barred (although the extent of this is subject to debate). We have not come across any evidence of any requirements to use fixed fees.

## 6. Australia

IPs are paid predominantly on a time cost basis, agreed either by the Court or creditors, with the right for creditors (amongst others) to apply to Court to review the remuneration.30 The ARITA Code of Professional Practice states that in most administrations a fee based upon time spent will be appropriate.31 The Code provides for an IP to seek approval from creditors for time based remuneration subject to a specified cap or maximum amount. If that cap is to be exceeded the IP must first obtain the creditors' consent to any increase in the capped figure.32

An attempt to permit creditors to appoint a reviewer to report on the reasonableness of remuneration in a corporate external administration is in abeyance (Insolvency Law Reform Bill 2013). There appears to be no requirement or adoption of either a percentage of realisations methodology or fixed fees.

## 7. Hong Kong

Liquidators are usually remunerated on a time cost basis based upon, but not limited to, the charge out rates agreed between the Official Receiver and the Hong Kong Society of Accountants (Panel A rates33). It is also possible for the creditors or the court to agree to fees on the basis of a percentage of realisations.34 The time cost basis is far more usual. There is no apparent practice of using fixed fees. ***Insolv. Int. 89***

## 8. Spain

An administrator of *concurso de acreedores* is remunerated on the basis of a two-tiered tariff. This is based firstly, on the value of the insolvent estate's assets and secondly, the amount of its liabilities.35 Under this system, a fixed sum is paid for an initial value with a further percentage paid thereafter. For example, where an estate has assets worth €5m, payment would be as follows: €5,500 in respect of the first €1m, and a further 0.4 per cent of the remaining €4m (i.e. €16,000), making a total of €21,500 in respect of the asset value only. The tariff base, set in accordance with the asset and liability values, can then be increased or reduced by specified percentages depending on a variety of factors including the complexity (as assessed on a number of different bases including number of creditors and industry sector) and outcome of the insolvency procedure. We have not come across any evidence of any requirements to use fixed fees.

## 9. Italy

A Trustee in corporate bankruptcy proceedings is a public officer whose fees are determined by the Court at the end of the proceedings. Due to the length of proceedings, interim payments are often allowed. However, it is illegal for the Trustee to receive fees in excess of those awarded by the Court. The Trustee's remuneration is calculated as a percentage of assets realised, claims presented and revenues and profits if the trade is continued. The Court has limited discretion on the percentage awarded, and has to consider the work provided, results obtained, importance of the bankruptcy and how quickly the Trustee acted. The fees for realisations are as follows:

| **Realisations** | **Percentage remuneration** |
|---|---|
| Up to €16,227.08 | 12%–14% |
| €16,227.08–€24,340.62 | 10%–12% |
| €24,340.62–€40,567.68 | 8.5%–9.5% |
| €40,567.68–€81,135.38 | 7%–8% |
| €81,135.38–€405,676.89 | 5.5%–6.5% |
| €405,676.89–€811,353.79 | 4%–5% |
| €811,353.79–€2,434,031.37 | 1.9%–3.8% |
| Over €2,434,031.37 | 0.45%–0.9% |

It would appear that Italians believe this payment system compares unfavourably with remuneration across Europe.[36] We have not come across any evidence of any requirements to use fixed fees.

## 10. France

Liquidators' fees are charged on a fixed fee basis unless the total exceeds €75,000, in which case the liquidator submits a claim to the president of the Court of Appeals. A fixed fee is received for the reorganisation or safeguard proceedings with further proportional fees received for acts including registering and checking creditor claims, continuation of business operations, sale of various assets and payment of creditor claims. A claim in excess of €75,000 is made on the basis of time spent on the case with appropriate supporting evidence. There is no prescribed fee nationally or regionally, but an appropriate fee is proposed by the liquidator. An initial payment of €50,000 is received with the remainder paid on completion of the liquidation. Administrators' remuneration is based on the same principle. This regime was introduced in 2005 and liquidators' remuneration is estimated to have decreased by 15 per cent as a result.37

A French judge has commented extra-judicially:

"A realistic remuneration system should, however, be based on the amount of time invested by the liquidator, not on fees for individual 'micro-tasks'; but the French government has issues with accepting a remuneration system based on the liquidator's expenditure of time."38

It seems from this that the element of fixed fee remuneration present in the French system is not entirely popular in France. It is interesting to note that the French insolvency system is ranked at number 46 in the World Bank rankings above. It would be difficult to argue from this evidence alone that the proposed introduction of fixed fee IP fees in the UK is necessarily going to improve the efficiency of the insolvency regime.

### 11. South Africa

Remuneration for trustees and liquidators is commission-based. The percentage of the commission varies according to the type of asset. For example, the tariff where movables are sold is 10 per cent of the gross proceeds whereas the tariff for immovable property is 3 per cent.39 The fee claimed is subject to taxation by the Court so the Court is involved in each bankruptcy or liquidation in assessing the IP's fee.40 The remuneration payable to business rescue practitioners is time-based, but with specified rates (limiting hourly rates and total daily rates depending upon the size of the company) and an extra payment contingent upon the rescue being successful.41 The extra contingent payment has not yet been considered by the courts as the legislation has not been in operation very long. There are no requirements to use fixed fees.

## V Reflections on the Consultation

It is a fact of business life that any customer who provides repeat business to a supplier expects and is granted some kind of discount. This is as true in the provision of professional services as it is in any ordinary supply of goods, as it is in any supply of goods and services to Government bodies. The fact that IPs are willing to discount their fees when an appointment is made by a secured creditor is what one would expect of any IP firm which wishes to have repeat business (which is all of them).

The flipside of this is that there is no economic imperative to encourage IPs to discount their fees where there is no secured creditor involved. It must be borne in mind that such appointments are rather different to those where there is a secured creditor. Cases where there is no secured creditor influencing hourly rates are likely to be smaller in terms of overall realisations. Quite frequently such cases lead to an IP writing off a good deal of chargeable time altogether, and in some cases the IP is unable to draw any of his or her fees.

Appointments influenced by secured creditors are likely to be cases where payment of the IP fees is more likely to occur (even if not in full) than cases where there are only unsecured creditors.

Kempson and the Consultation highlight that setting an appropriate fee is more likely when creditors are engaged. It is arguably the lack of creditor engagement, which leads to fees not being challenged. A lack of creditor engagement has long been seen as a weakness in the insolvency regime and the Cork Committee in particular lamented it.42 The role of HMRC might ***Insolv. Int. 90*** be looked at in this context as it is the largest unsecured creditor in any typical insolvency. A more proactive approach from HMRC in challenging fees43 might be economically viable for HMRC to put in place. The costs of monitoring and taking action on perceived overpayment of fees would most likely be covered by the increase in returns by such action.

It would, of course, be possible to continue a time cost basis for IP remuneration but limit the hourly or daily rates which an IP could charge. Such limits exist to a greater or lesser extent in a number of the jurisdictions considered above (e.g. Hong Kong, the Netherlands, Ireland, and New Zealand). As IPs commonly write off a proportion of their chargeable time, any limit on hourly or daily rates might in reality make little difference to the total fees actually drawn.

As Kempson explained, better information for unsecured creditors could be provided in a way similar to the system in Australia.44 Also relying on the Australian system for a precedent, Kempson considered that IPs could be required to provide an estimate to creditors as to the likely costs of the insolvency at the outset, coupled with a requirement to return for the creditors' consent if that estimate is to be exceeded.45 Such suggestions appear eminently sensible.

It is clear that a good proportion of IPs view part of their professional responsibility is to do their utmost to achieve some dividend for unsecured creditors even if it is relatively small and even if it means writing off some of their own time. This practice is laudable and rarely highlighted or mentioned. If this is indeed seen as best practice, why not consider a way to ensure it becomes the norm? A more creative proposal not considered by Kempson or the Consultation, and which would cost the Government nothing, would be to consider a new form of prescribed part deduction mirroring Insolvency Act 1986 s.176A.46 Rather than top-slicing floating charge proceeds, it would instead top slice IP fees once they have reached a certain level.

It is in everyone's interest to ensure that appropriately qualified and committed professionals continue to act as insolvency practitioners. They are needed to administer small and large cases alike. Fixed fees or fees based upon a percentage of realisations are likely to put off practitioners taking on appointments towards the bottom of the market

where there are limited assets, and therefore the level of payment is unlikely to be commensurate with the level of work undertaken. Public policy would be unlikely to permit a "swings-and-roundabouts" approach to allow IPs to recover such losses from more valuable estates. This approach has been dismissed by the courts in South Africa, which operates on a tariff pegged to asset realisations as discussed above. In *Nel v The Master*,47 the South African Supreme Court held that "there is no legal or other reason why creditors in large estates should, albeit indirectly, fund the administration of smaller, less profitable estates."48 As such, the South African courts can review fees that appear "disproportionate to the work done."49 This echoes the comments of the Cork Committee in respect of percentage fees.50

The South African approach is logical; it is surely inequitable to rob Peter to pay Paul. The outcome is, however, that IPs would be expected to carry a loss on fees in smaller estates which could not be recovered. This is not an approach likely to be favoured by private sector IPs in an enterprise economy. If practitioners decide not to take on such cases as they would be uneconomical to run, the cost will fall on the public purse in the form of more work for the Official Receiver. Either that or, more worryingly, such companies will never enter formal insolvency with a consequent lack of scrutiny of the affairs of such companies.

If the current system was left largely untouched but, where fees are being charged above a certain level, a proportion of those fees are set aside for the benefit of unsecured creditors, this would have two effects, both positive. It would lead to more dividends for unsecured creditors and it would also encourage unsecured creditors to be more engaged and specifically more interested in the fees being charged by IPs. A tweak of the current system rather than a return to a discredited system which was jettisoned in the UK decades ago would seem preferable to a leap into the dark which would put the UK out of step with the rest of the world.

## VI Conclusion

Although we have only considered a sample of overseas' jurisdictions, the pattern suggests a number of general points. It seems that all the jurisdictions considered have, to some extent, adopted a system where insolvency practitioners are predominantly or only paid either on a time cost basis or as a percentage of realisations or as a mixture of the two methods. The only exception that has been identified is lower value liquidations in France where the set fees total less than €75,000. Those jurisdictions which are above the UK in the World Bank listings use predominantly the time cost basis (and indeed it seems the view in Singapore is that fees based upon a percentage of realisations or fixed fees are either old fashioned and/or inappropriate to an insolvency context).

Remuneration across the globe is always open to the taxation or scrutiny of the Court on the application of, amongst others, the debtor's creditors. In some jurisdictions, certain procedures require the Court to assess the fairness of the fees in all cases. Some jurisdictions have statutory limits for how much can be charged per hour (and per day) for some procedures although these limits are not always adhered to in practice. Other than low value cases in France, we have not come across any evidence of a jurisdiction where there is either a requirement for fixed fees or where the use of fixed fees is commonly encountered in practice. We have come across no jurisdiction which draws a distinction

between cases where a secured creditor is involved and those where it is not. The Consultation's lack of uniformity in its proposed approach to IP fees would be contrary to overseas practices and to the recommendations of the Cork Committee.

Those jurisdictions which rely significantly on percentage realisations in setting IP fees show that in order to ensure some fairness in how high a percentage can be charged, some differential seems necessary depending upon the type of assets being realised. This type of system is not viewed particularly positively in, for example South Africa, and the potential problems in designing an effective and user friendly system appear significant. It is interesting to note that those countries reviewed here where percentage fees are widely adopted appear lower down the World Bank rankings than the UK.

It would seem at best a brave decision by the Government to alter a fundamental part of the UK insolvency regime when the current system is so highly regarded by the World Bank. It may prove to be a costly mistake to ignore both the lessons from abroad and the wisdom of the Cork Committee.

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1. This article is based upon a short report prepared originally by the authors for R3's response to the Government's consultation on insolvency practitioner fees. We are most grateful for R3's consent for allowing us to replicate some of our report in this article.

2. A clear grasp of developments in the UK in relation to IP fees over the past 40 years may be gleaned by considering some or all of the following: *Cork Committee (Insolvency Law and Practice, Report of the Review Committee 1982 Cmnd. 8558) at paras 883 and onwards*; *Mirror Group Newspapers plc v Maxwell (No. 1) [1998] B.C.C. 324; [1998] 1 B.C.L.C. 638*; *Report to the Lord Chancellor of Mr Justice Ferris' Working Party: The Remuneration of Office Holders and Certain Related Matters (1998)*; *Practice Statement: The Fixing and Approval of the Remuneration of Appointees [2004] B.C.C. 912; [2004] B.P.I.R. 953* now found (with amendments) in *Part Five of Practice Direction: Insolvency Proceedings (2012)* found at http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/preview/Insolvency-Practice-Direction-wef-23-February-2012.pdf [Accessed July 7, 2014].

3. *Insolvency Service consultation, Strengthening the regulatory regime and fee structure for insolvency practitioners (2014)*.

4. *Insolvency Service consultation, Strengthening the regulatory regime and fee structure for insolvency practitioners (2014)* paras 106—114.

5. The Insolvency Rules 1986 (SI 1986/1925) as amended. See e.g. rr 2.106 (administration), 4.127 (liquidation) and 6.138 (bankruptcy). See also r.4.30 (in relation to fees in a provisional liquidation) and s.36 Insolvency Act 1986 (in relation to fees of receivers appointed out of court). Fees charged by

supervisors of voluntary arrangements will be agreed by the creditors when they approve the voluntary arrangement proposal.

6. Insolvency (Amendment) Rules 2010 (SI 2010/686).

7. Cork Committee para.889. For details of the previous regime see e.g. Bankruptcy Act 1914, s.82, Companies (Winding Up) Rules 1949 (SI 1949/330), para.159 and *Re Carton Ltd (1923) 39 TLR 194*.

8. Cork Committee para.895.

9. *Mirror Group Newspapers Plc v Maxwell (No.1) [1998] B.C.C. 324; [1998] 1 B.C.L.C. 638*.

10. *Re Cabletel Installations Ltd [2005] B.P.I.R. 28*.

11. For further cases discussing IP fees see e.g. *Re Independent Insurance Co Ltd (No 2) [2003] EWHC 51 (Ch); [2004] B.C.C. 919*; *Simion v Brown [2007] EWHC 511 (Ch); [2007] B.P.I.R. 412*; *Hunt v Yearwood-Grazette [2009] EWHC 2112 (Ch); [2009] B.P.I.R. 810*; *Freeburn v Hunt [2010] C.L.Y. 1903*; *Brook v Reed [2011] EWCA Civ 331; [2012] 1 W.L.R. 419* and *Salliss v Hunt [2014] EWHC 229 (Ch); [2014] 2 All E.R. 1002*.

12. For example the *Report to the Lord Chancellor of Mr Justice Ferris' Working Party: The Remuneration of Office Holders and Certain Related Matters (1998)*; *Office of Fair Trading The market for corporate insolvency practitioners: A market study (June 2010) OFT1245* found at http://www.oft.gov.uk/shared_oft/reports/Insolvency/oft1245 [Accessed July 7, 2014] and *Review of Insolvency Practitioner Fees: Report to the Insolvency Service Elaine Kempson (July 2013)* found at https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review [Accessed July 7, 2014].

13. See for example, *Practice Statement: The Fixing and Approval of the Remuneration of Appointees [2004] BCC 912* now found (with amendments) in *Part Five of Practice Direction: Insolvency Proceedings (2012)* found at http://www.justice.gov.uk/courts/procedure-rules/civil/pdf/preview/Insolvency-Practice-Direction-wef-23-February-2012.pdf [Accessed July 7, 2014]; Statement of Insolvency Practice 9 found at http://www.r3.org.uk/media/documents/technical_library/SIPS/SIP%209%20E&W.pdf [Accessed July 7, 2014] and the amendments made by the Insolvency (Amendment) Rules 2010 (SI 2010/686) which introduced the possibility of IPs charging fixed fees.

14. *Office of Fair Trading The market for corporate insolvency practitioners: A market study (June 2010) OFT1245* found at http://www.oft.gov.uk/shared_oft/reports/Insolvency/oft1245 [Accessed July 7, 2014].

15. *Review of Insolvency Practitioner Fees: Report to the Insolvency Service Elaine Kempson (July 2013)* found at https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review [Accessed July 7, 2014].

16. Or a creditors' committee has been founded which in practice is very rare—according to the OFT report such committees are only formed in 3 per cent of cases.

17. It will still be available where there is a secured creditor who will not be paid in full.

18. Cork Committee para.890.

19. For details of the methodology see http://www.doingbusiness.org/data/exploretopics/resolving-insolvency [July 7, 2014].

20. The table presented here is an abbreviated form of the table available at: http://www.doingbusiness.org/data/exploretopics/resolving-insolvency [July 7, 2014].

21. See s.268 and s.311 of Singapore's Companies Act (Cap 50, 1994 Rev Ed).

22. *The Remuneration of Corporate Insolvency Practitioners and Certain Related Matters (October 2005)* found at:
http://www.sal.org.sg/digitallibrary/Lists/Law%20Reform%20Reports/Attachments/20/Remuneration%

20of%20insolvency%20practitioners%20-%20final.pdf [July 7, 2014].

23. *The Remuneration of Corporate Insolvency Practitioners and Certain Related Matters (October 2005)* at para.48.

24. *The Remuneration of Corporate Insolvency Practitioners and Certain Related Matters (October 2005)* at para.54 c.

25. See generally the Dutch Bankruptcy Act, s.71 and s.6 of the Recofa-Guidelines.

26. See the Irish Companies Act 1963, s.228.

27. See e.g. *Re Sharmane Ltd [2009] 4 IR 285*.

28. See the New Zealand Companies Act 1993, s.276–s.78 and s.284, the New Zealand Companies Act 1993 Liquidation Regulations 1994 (as amended) and *Flynn v McCallum [2009] NZHC 2318*.

29. *Insolvenzordnung* (the German Insolvency Code), s.63.

30. See the Australian Corporations Act 2001, s.504 which lists the matters the court will take into account upon a review of a liquidator's remuneration.

31. The Code whose third edition came into force in January 2014 may be accessed at: http://www.arita.com.au/docs/default-source/code-third-edition-2014/009b-code-3rd-edition---final-arita-version-v3.pdf?sfvrsn [July 7, 2014]. See in general Chs 14 and 15 and in particular s.15.2.

32. *ARITA Code of Professional Practice* at s.15.2.2.

33. The hourly charge out rates currently in force, which date from 2012, vary from HK$6,124 (approximately £470) for a partner/principal to $566 (approximately £45) for clerical staff.

34. See generally the Hong Kong Companies (Winding Up and Miscellaneous Provisions) Ordinance, s.196 and the Companies (Winding-up) Rules, r.146 and *Re Peregrine Investments Holdings Ltd (No1) [1998] HKLRD 670*.

35. See the Spanish insolvency statute, Ley 22/2003, de 9 de Julio de concurso de acreedores, art.34.

36. See the comments of Luciano Panzani, President of the First Instance Court of Torino in *H Vallender The Remuneration of the Insolvency Representative in Europe INSOL Europe Judicial Wing (Sept 2012) at p.70*.

37. See the comments by Yves Merlat, Honorary Judge at the Commercial Court of Evry in *H Vallender The Remuneration of the Insolvency Representative in Europe INSOL Europe Judicial Wing Sept 2012 at p.33*.

38. *H Vallender The Remuneration of the Insolvency Representative in Europe INSOL Europe Judicial Wing Sept 2012* at p.39.

39. The tariffs are the same for bankruptcy and liquidation. For the law on remuneration of trustees in bankruptcy see the South African Insolvency Act 1936, s.63 and in relation to liquidators see the South African Companies Act 1973, s.384. There have historically been problems of alleged corruption and claims of exorbitant fees being charged by IPs in South Africa which may have impacted on its relatively low ranking by the World Bank.

40. For a consideration of the court's approach to taxing the fees claimed by a liquidator see the Supreme Court case *Nel and Another v Master of the High Court Eastern Cape and Others (A9/03) [2004] ZASCA 26 (April 1, 2004)*.

41. See the South African Companies Act 2008, s.143 and the Companies Regulations 2011, reg.128.

42. Cork Committee at e.g. paras 914, 917 and 919.

43. As is suggested by the OFT at para.4.72 and Kempson at para.6.1.3.

44. Kempson at para.6.1.2.

45. Kempson at paras 6.1.2 and 6.1.4.

46. Section 176A appears to have been a rather damp squib. This seems mainly due to its introduction coinciding with the effective loss by the banks of the fixed charge on book debts. Although this would seem likely to encourage the application of s.176A, the reality is that banks frequently do not wish to rely upon a floating charge on book debts and instead require their customers to factor their book debts. The debts, which are often the main asset in the insolvency are eaten up by the debt factors' requirements for payment in full including sometimes significant penalty charges. They fall outside s.176A.

47. *Nel and Another v Master of the High Court Eastern Cape and Others (A9/03) [2004] ZASCA 26 (1 April 2004)*.

48. *Nel and Another v Master of the High Court Eastern Cape and Others (A9/03) [2004] ZASCA 26 (1 April 2004)* at 37.

49. *Nel and Another v Master of the High Court Eastern Cape and Others (A9/03) [2004] ZASCA 26 (1 April 2004)* at 30.

50. Cork Committee para.889.