

## Insolvency & Restructuring - Ireland

### Funding arrangements with liquidators

Contributed by [WhitneyMoore](#)

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The High Court has set down its position in relation to funding arrangements with court-appointed liquidators.

Arrangements to fund a liquidator generally arise in circumstances of lack of assets or readily available assets where creditors want something pursued or liquidation remedies invoked.

The case in question<sup>(1)</sup> concerned a proposed funding arrangement where a secured creditor owed in excess of the value of the secured property. The creditor, which relied on its security and not proving as a creditor in the winding-up, indicated that it would consider the possibility of the liquidator's discharging costs and remuneration relating to sale if the liquidator could sell the secured property and pay it the net proceeds in exchange for a release of its charge.

With reference to the Companies Act, the court held that a court-appointed liquidator is to receive such remuneration as directed by the court,<sup>(2)</sup> but that the court has inherent jurisdiction to modify the provisions of the rules of court.<sup>(3)</sup>

The following principles concerning court appointed liquidators appear to have arisen from the court decision:

- Prior approval of the court is required for any funding arrangement with a liquidator by any creditor or other person connected with the company, to ensure disclosure and avoid potential conflicts of interest.
- If a funding arrangement is not pre-approved by the court, then:
  - gross proceeds of sale must be lodged in court and court duty paid thereon; and
  - the liquidator is not entitled to be paid without court approval.
- If prior court approval of a funding arrangement is obtained, then:
  - proceeds of sale may be paid directly to a chargeholder which provides funding without incurring court duty thereon; and
  - the liquidator may deduct and retain agreed costs and remuneration.
- In any arrangements, the liquidator will have to distinguish between proceeds from assets subject to fixed charges and proceeds from assets subject to floating charges.
- Where a liquidator agrees to carry out work exclusively for the benefit of a secured creditor, he or she should not be paid for that work-out of assets benefiting other creditors, such as preferential and unsecured creditors.
- Where a liquidator does work in part for the benefit of a secured creditor, the position is more complex (and apportionments may arise).

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### Endnotes

(1) *In the matter of DR Developments (Youghal) Limited (In Liquidation) and the Companies Act*, July 25 2011 IEHC – Irish High Court, Finlay-Geoghegan J.

(2) Section 228(d) Companies Act 1963.

(3) Rules of the Superior Courts SI 15/1986 Order 74 – especially Rule 38, which provides that the official liquidator shall not accept from any person connected with the company any remuneration or benefit in addition to or apart from such remuneration as

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he or she may properly be entitled to under the Companies Act or allowed by the court.

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