



A LIQUIDATOR'S RICE BOWL - A WONDERFUL CASTLE DISCUSSION

**BY JUSTIN WEE KIM FANG
MESSRS JUSTIN WEE**





LAW ON REMUNERATION OF A LIQUIDATOR

GOVERNING LAWS:

a) S. 479 of the CA

b) R. 142 of the CWUR



S. 479 (2) of the CA

PRIVATE LIQUIDATOR

SALARY OR REMUNERATION BY WAY OF PERCENTAGE OR OTHERWISE AS IS DETERMINED BY

a.

**Agreement between
liquidator & committee of
inspection (“COI”)**

b.

**If no agreement / COI,
resolution passed at
creditors’ meeting by a
majority of not less than
3/4 in value & one-half in
the number of creditors
voting at the meeting**

c.

**If (a) or (b) fails,
the court**



R. 142 (1) of the CWUR

GENERAL RULE

**LIQUIDATOR'S REMUNERATION
SHALL BE FIXED BY COI**

a.

COMMISSION

b.

PERCENTAGE



DON'T COUNT YOUR CHICKENS BEFORE THEY HATCH

COURT MAY CONFIRM / VARY REMUNERATION

S. 479 (3) CA

If salary determined by
liquidator & COI:

**Member representing
NOT LESS than 10%
issued capital may
challenge**

S. 479 (4) CA

If salary determined at
a creditors' meeting:

**Liquidator or a member
defined in sub-section
(3) may challenge**

R. 142 (2) CWUR

**Official Receiver may
challenge
remuneration by
applying to the Court
if it thinks it is
unnecessarily large.**

FAIR & REASONABLE



**Emiprima Sdn Bhd v. Wonderful Castle
Sdn Bhd (in liquidation)**



SALIENT FACTS

- On 14 August 2015, Wonderful Castle Sdn Bhd (“**the Company**”) was wound up and a Liquidator was appointed.
- Emiprima Sdn Bhd was one of the 11 contributories of the Company at the time of the winding up.



SALIENT FACTS (CONTD.)

- A COI meeting was to be held on 15 January 2021 but on **13 January 2021**, the Liquidator issued a notice that the COI meeting was postponed due to the MCO.
- However on **18 January 2021**, an e-mail was sent by the Liquidator to the COI members informing them that a COI meeting would be carried out on the **same day** via WhatsApp meeting chatgroup messages.



SALIENT FACTS (CONTD.)

- Liquidator sought a resolution to approve his claim for remuneration in the amount of **RM9,296,304**.
- The explanatory note attached to the notice of the meeting stated that it was **computed based on Table C, 2nd Schedule of the CWUR, considering the total amount of realized assets in the Company.**



SALIENT FACTS (CONTD.)

- COI members were given till 5pm on the same day (18 January 2021) to vote on the resolution.
- **All COI members, except Emiprima Sdn Bhd, voted in favour of the resolution.**
- Dissatisfied with the vote, Emiprima Sdn Bhd applied under s. 479 of the CA for the High Court to assess and vary the Liquidator's remuneration.



HIGH COURT AGREED WITH LIQUIDATOR'S REMUNERATION

**LIQUIDATOR'S REMUNERATION OF RM9,296,304
CONSIDERED "FAIR & REASONABLE"**

a.

**Remuneration is for
work done since date
of appointment until
the present**

b.

**Liquidator relied on
Table C, 2nd Schedule of
the CWUR to compute
the remuneration**

c.

**Majority of the COI
had agreed and voted
in favour of the
liquidator**



COURT OF APPEAL DISAGREED

- 1. Approach by the HC was “too simplistic”.**
- 2. The Winding-up court is not a rubber-stamp in confirming remuneration.**
- 3. Even if remuneration claimed is unchallenged or predetermined by COI, Winding-up court has a duty to scrutinise carefully each and every claim.**

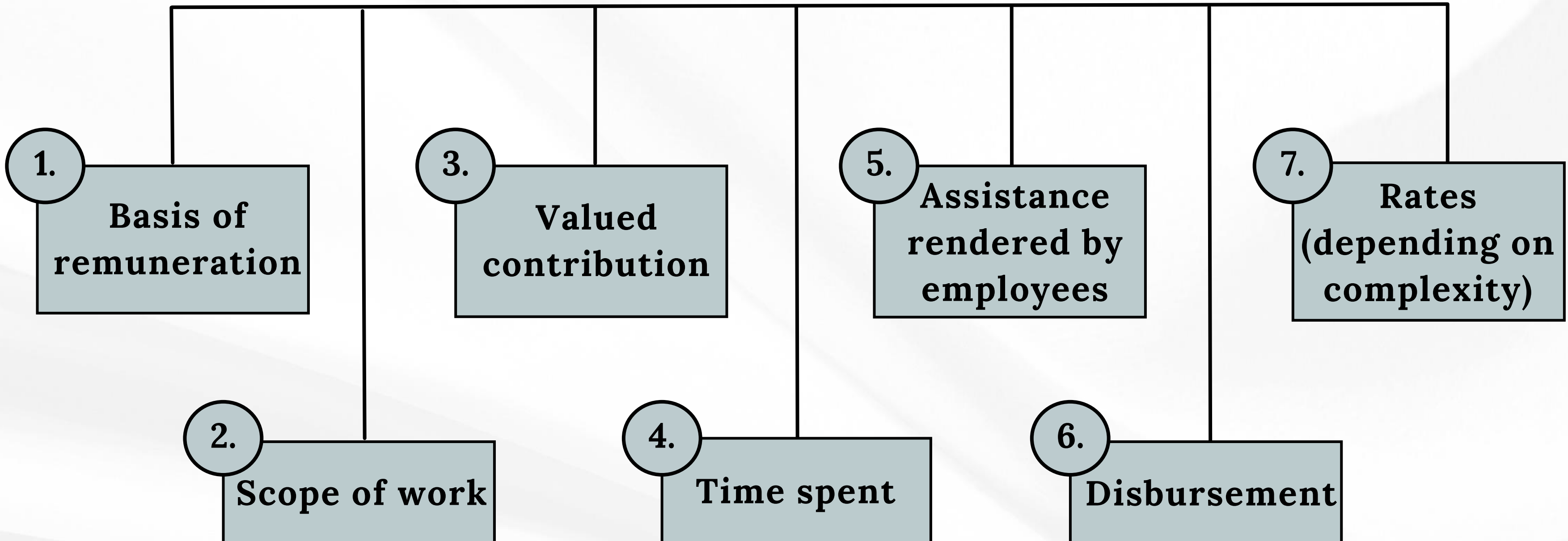


DISPROPORTIONATE & UNWARRANTED

1. CA found liquidator's claim of RM9,296,304 as remuneration was completely **disproportionate and unwarranted.**
2. Because:
 - a) **Table C of the CWUR 1972 cannot be used as of right by a liquidator to calculate remuneration.**
 - b) **Liquidator had failed to provide any justifications to the claim amount.**



GUIDING PRINCIPLES





WHAT NOW?

“REALISATION BASIS” IS NOT PREFERRED?

- 1. Even if the remuneration claimed is approved by COI, a liquidator should provide justification for remuneration, especially if a large figure is sought.**
- 2. Seems that the Court is not in favour of the “realisation basis” to calculate remuneration.**
- 3. How should “works” be justified if the “realisation basis” is used?**



WHAT NOW?

“TIME BASIS”

- 1. Court: a common practice in Malaysia for private liquidators to be remunerated on a “time cost basis”. (Perumahan NCK Sdn Bhd)**
- 2. “Work done by administrative & support staff” – Not allowed to be computed on a “time basis” (Liquidators of Dovechem Holdings Pte Ltd)**
- 3. Must show enough evidence for the court to determine who did the works and how long it took for each category to be performed.**



WHAT NOW?

OBSTACLES IN “TIME BASIS”

1. No standard ‘recommended rate’ is available. Time basis may be up to dispute
2. Liquidators may be required to “substantiate their rates by showing how the same were made up or at least explaining the policy behind the fixing of the rates.”
(Liquidators of Dovechem Holdings Pte Ltd)



WHAT NOW?

OBSTACLES IN “TIME BASIS”

3. **Re Trustees Executors & Agency Co Ltd - Court considered the hourly rates recommended by the Insolvency Practitioners Association of Australia.**
4. **Perhaps, IPAM should consider issuing recommended hourly rates too?**



THANK YOU

Feel free to contact us in the event of an enquiry



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