



**Drumbow Contracts Limited (in Administration)
Court of Session
Case No. P95 of 2012**

Joint Administrators' proposals for achieving the purpose of Administration

19 March 2012

Contact details for queries

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1. Purpose of this document

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1. Purpose of this document

I wrote to all creditors on 9 February 2012 to explain that Drumbow Contracts Limited (“the Company”) had entered into Administration and that J B Cartwright and I had been appointed as Joint Administrators (“the Administrators”) on 6 February 2012.

We were appointed as Administrators to manage the affairs, business and property of the Company. We will act until such time as our proposals for achieving the purpose of administration have been agreed by creditors and implemented, following which the Administration will be ended.

The purpose of administration is to achieve one of the following objectives:

- (a) primarily, rescuing the Company as a going concern, or failing that;
- (b) achieving a better result for the Company’s creditors as a whole than would be likely if the Company were wound up (without first being in Administration); or finally
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

For the reasons detailed in this document objective (b), failing which, objective (c) is being pursued as it was not reasonably practical to rescue the Company as a going concern.

This document and its appendices form the Administrators’ statement of proposals for achieving the purpose of administration as required by Paragraph 49 Schedule B1 of the Insolvency Act 1986 (“Sch.B1 IA86”).

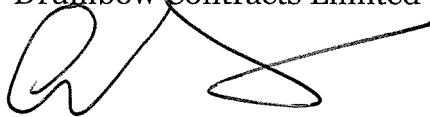
As detailed in Section 2, we have formed the view that the Company has insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of the prescribed part as provided for by Section 176A IA86.

Accordingly, by virtue of Paragraph 52(1) Sch.B1 IA86, a meeting of creditors is not being convened at this time. In accordance with Rule 2.25(3) of the Insolvency (Scotland) Rules 1986 (“ISR86”) our proposals will be deemed to have been approved by creditors unless a meeting of creditors is requisitioned in the prescribed manner by at least 10% in value of creditors. If you wish a meeting to be held you must inform the Administrators in writing such that the request is received on or before 1 April 2012.

1. Purpose of this document

If you have any concerns or questions regarding the background to this case or what is being proposed, please do not hesitate to contact my colleague, Nick McLaren, on 0131 260 4402. The address for correspondence is Drumbow Contracts Limited (in Administration), c/o PricewaterhouseCoopers LLP, 141 Bothwell Street, Glasgow, G2 7EQ.

For and on behalf of
Drumbow Contracts Limited



Alan A Brown
Joint Administrator

A A Brown and J B Cartwright have been appointed as Joint Administrators of Drumbow Contracts Limited to manage its affairs, business and property as its agents, without personal liability. A A Brown and J B Cartwright are licensed in the United Kingdom to act as insolvency practitioners by the Institute of Chartered Accountants of Scotland.

2. The Administrators' statement of proposals

a. Brief history of the Company and summary of the Administrators' actions to date

Background

The Company commenced trading in 2005, providing civil engineering and ground works services for house builders in central Scotland. At the date of the Administrator's appointment, there were 8 live contracts with outstanding debts due to the Company and 14 completed contracts with outstanding retention balances. The Company had minimal tangible assets and employed 78 staff at the date of the Administrators' appointment.

The Royal Bank of Scotland plc ("the Bank") provided a term loan, Enterprise Finance Guarantee loan and overdraft to the Company, all of which were secured by a bond and floating charge.

The circumstances giving rise to the Administrators' appointment

The Company initially provided services to a related company, Drumbow Homes Limited. However, on 2 June 2010, Drumbow Homes Limited went into receivership. As a result, the Company had to write off a significant debt due from Drumbow Homes Limited, but thereafter, secured new third party customers and traded profitably.

In mid 2011, one of the Company's main customers withheld payment of the agreed valuations, due to an ongoing contractual dispute. Shortly thereafter, in early 2012, another significant customer was unwilling to pay the agreed debts as they fell due to the uncertainty surrounding the Company's ability to complete the contracted works. The impact on the cash flow from these two customers withholding payments put pressure on the Company's working capital which resulted in breaching its agreed banking facilities.

After a series of discussion with the Company's directors, the Bank concluded that it was unwilling to continue to support the Company and as a result, the shareholders of the Company resolved to appoint Joint Administrators.

The manner in which the Company's affairs and business have been managed and financed

The Company ceased trading immediately on my appointment, as there was insufficient funding available to cover the costs of completing the live contracts.

2. The Administrators' statement of proposals

Following my appointment, I tendered for the provision of debt collection services and, having assessed the tenders and the options available for realising the book debts, engaged Leslie Keats & Co Limited ("Keats") to undertake a valuation exercise, assess the possibility of novating the live contracts and to manage the process of realising the debts.

Keats initially sought to novate the live contracts in order to preserve the value in the Company's book debts. When this process proved unsuccessful, interested parties were asked to submit offers to complete the contracts. Offers were received for 6 of the 8 live contracts from 2 parties, and have been provided to the relevant customers.

It is most likely that the customers will make their own arrangements regarding the completion of the contracts, but their ability to deduct any additional costs incurred from the amounts they owe the Company, will be mitigated by the offers detailed above.

It is too early to give an accurate indication of the level of realisations expected from the live contract debts and retentions.

One retention receipt in the sum of £20,000 and a pre appointment VAT refund of c.£70,000 have been received since my appointment. As a result, no external funding of the Administration has been sought, or is expected to be required.

Objective of the Administration

The purpose of administration is to achieve one of the following objectives:

- (a) primarily, rescuing the company as a going concern, or failing that;
- (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in Administration); or finally
- (c) realising property in order to make a distribution to one or more secured or preferential creditors.

Due to the level of debt in the Company at the date of the Administrators' appointment, it was not practical to rescue the Company as a going concern. Objective (b) is being pursued as the moratorium afforded by administration will assist in the protection of any value in the contracts, and therefore the book debts, failing which, objective (c) will be pursued.

2. The Administrators' statement of proposals

b. Dividend prospects

Preferential creditors

The only preferential creditors of the Company relate to employee wage arrears and accrued holiday pay at the date of my appointment.

It is currently anticipated that the preferential creditors will be paid in full.

Secured creditors

The Bank holds a bond and floating charge over the Company's assets. I understand that the Bank is owed approximately £1.3m and, based upon my estimate of the total net realisations, it is anticipated that it will suffer a shortfall.

Unsecured creditors

As there is likely to be a shortfall to the secured creditor, the Administrators have formed the opinion that the Company is unlikely to have sufficient property to enable a distribution to be made to unsecured creditors other than by virtue of the Prescribed Part, as provided by Section 176A IA86.

The Prescribed Part (Section 176A IA86 and the IA86 (Prescribed Part) Order 2003 (SI 2003/2097)) applies where there are floating charge realisations, net of costs, to be set aside for unsecured creditors. This equates to:

- 50% of Net Property up to £10,000; and
- 20% of Net Property in excess of £10,000 and subject to a maximum amount of £600,000.

The Prescribed Part applies to the Company as the Bank's bond and floating charge was created and registered at Companies House following the Prescribed Part Order coming into force on 15 September 2003. The amount of the Prescribed Part will be subject to allowable costs. Due to the uncertainties surrounding the level of the realisations from the debtor book I am unable to currently estimate the value of the Prescribed Part.

2. The Administrators' statement of proposals

Ending the Administration

If there are funds available for the unsecured creditors, the Administrators will either place the Company into creditors' voluntary liquidation or apply to the Court for consent to distribute the Prescribed Part, following which the Company will be dissolved. If there are no funds available for the unsecured creditors, the Administrators will file notice under Paragraph 84(1) Sch.B1 IA86 with the Registrar of Companies, following registration of which the Company will be dissolved three months later.

2. The Administrators' statement of proposals

c. Proposals for achieving the purpose of the Administration

The Administrators make the following proposals for achieving the purpose of the Administration.

- i) The Administrators will continue to manage and finance the Company's business, affairs and property from asset realisations in such manner as they consider expedient with a view to achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in Administration).
- ii) The Administrators may investigate and, if appropriate, pursue any claims that the Company may have under the Companies Act 1985 or IA86 or otherwise. In addition, the Administrators shall do all such other things and generally exercise all their powers as Administrators as they in their discretion consider desirable in order to achieve the purpose of the Administration or to protect and preserve the assets of the Company or to maximise their realisations or for any other purpose incidental to these proposals.
- iii) If funds are available and if the Administrators do not intend to give notice pursuant to Paragraph 83 Sch.B1 IA86 to move from administration to creditors' voluntary liquidation, the Administrators may make a distribution to the secured or preferential creditors in terms of Rule 2.41(4) of ISR86
- iv) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion establish in principle the claims of unsecured creditors for adjudication by a subsequent liquidator or supervisor of a company voluntary arrangement or scheme of arrangement and that the costs of so doing be met as a cost of the Administration as part of the Administrators' remuneration (where the Administrators think there will be sufficient funds for a distribution to unsecured creditors other than by virtue of the prescribed part) or out of the prescribed part as costs associated with the prescribed part (where the Administrators think that funds will become available to the unsecured creditors by virtue of the prescribed part but not otherwise).
- v) If the Administrators think that funds will become available for unsecured creditors, the Administrators may at their discretion make an application to court for permission to make distributions to unsecured creditors under Paragraph 65(3) Sch.B1 IA86.
- vi) In the event that creditors requisition a meeting in the prescribed manner by at least 10% in value of creditors, within 8 business days of the date on which these proposals are circulated, then at that meeting of creditors, a Creditors' Committee will be established if sufficient creditors are willing to act on it. Where the Administrators consider it appropriate, they will seek sanction from the committee to a proposed action rather than convening a meeting of all creditors.

2. The Administrators' statement of proposals

- vii) If one is formed, the Administrators will consult the Creditors' Committee, prior to making an application to the court under section 176A(5) IA86 for an order not to distribute the prescribed part to unsecured creditors if the Administrators conclude that the cost of making a distribution would be disproportionate to the benefits.
- viii) If one is formed, the Administrators will consult with the Creditors' Committee concerning the necessary steps to extend the Administration beyond the statutory duration of one year if an extension is considered advantageous. The Administrators shall either apply to the court or seek consent from the appropriate classes of creditors for an extension.
- ix) The Administrators may use any or a combination of "exit route" strategies in order to bring the Administration to an end, but in this particular instance the Administrators are likely to wish to pursue the following options as being the most cost effective and practical in the present circumstances:
 - (a) If it transpires that there are sufficient funds with which to make a distribution to unsecured non-preferential creditors (including by virtue of the prescribed part), once asset realisations are complete, the Administrators will place the Company into creditors' voluntary liquidation. In these circumstances, it is proposed that Alan A Brown and J Bruce Cartwright be appointed as Joint Liquidators and any act required or authorised to be done by the Joint Liquidators may be done by either or both of them. In accordance with Paragraph 83(7) Sch.B1 IA86 and Rule 2.47(3) ISR86, creditors may nominate alternative liquidators, provided that the nomination is made after the receipt of these proposals and before they are approved; or
 - (b) If it transpires that there are sufficient funds with which to make a distribution to unsecured non-preferential creditors (including by virtue of the prescribed part), once asset realisations are complete, the Administrators will apply to the Court to allow the Administrators to distribute surplus funds, if any, to unsecured non-preferential creditors. If such permission is given, the Administration will be brought to an end by notice to the Registrar of Companies under Paragraph 84 Sch.B1 IA86, following registration of which the Company will be dissolved three months later; or
 - (c) If it transpires that there are insufficient funds with which to make a distribution to unsecured non-preferential creditors, once all of the assets have been realised and the Administrators have concluded all work within the Administration, the Administrators will file a notice under Paragraph 84(1) Sch.B1 IA86 with the Registrar of Companies, following registration of which the Company will be dissolved three months later.

2. The Administrators' statement of proposals

- x) The Administrators shall be discharged from liability pursuant to Paragraph 98(1) Sch.B1 IA86 in respect of any action of theirs as Administrators at a time resolved by the secured creditor, or if a distribution has been or may be made to the preferential creditors, at a time resolved by the secured and preferential creditors or in any case at a time determined by the court.
- xi) It is proposed that the Administrators' fees be fixed under Rule 2.39 of I(S)R86.
- xii) Category 2 disbursements (as defined by Statement of Insolvency Practice 9 (Scotland)) be charged in accordance with their firm's policy.

2. The Administrators' statement of proposals

d. Statement of affairs

A statement of affairs of the Company was delivered to the Administrators on 1 March 2012. The statement was signed by Alexander Clarkson, a director of the Company. On 29 February 2012, the statement of affairs was sent by Mr Clarkson to the other three directors, Anthony Mackle, Mark McConville and John McDonald Clarkson Jnr for the purposes of obtaining their statements of concurrence. To date, their statements of concurrence have not yet been received.

The Administrators make the following comments on the statement of affairs:

- In accordance with the standard format of the statement of affairs, no provision has been made for the costs of realising the Company's assets or the costs of the Administration;
- The Administrators have not carried out anything in the nature of an audit on the information;
- Given the commercial sensitivity, it is inappropriate for the Administrators to comment on the potential realisable values attributed by the directors to the Company's assets;
- The director has stated that the Bank's debt is c.£0.9m, however, I understand from the Bank that the actual quantum of the debt due to it by the Company is c.£1.3m;
- The director has incorrectly included the one leased asset as a specifically secured creditor; and
- The HMRC creditor of c.£0.36m has been included as a preferential creditor instead of as an unsecured creditor.

The statement of affairs is copied at Appendix A. Please see the separate password protected document for details of the names, addresses and debts of creditors (including details of any security held).

2. The Administrators' statement of proposals

e. Statutory and other information

Court details for the Administration:	Court of Session P95 of 2012
Full name:	Drumbow Contracts Limited
Trading name:	Drumbow Contracts Limited
Registered number:	SC286369
Registered address:	141 Bothwell Street, Glasgow, G2 7EQ (formerly 3 Inchcorse Place, Whitehill Industrial Estate, Bathgate, EH48 2EE)
Company directors:	Alexander Clarkson, Anthony Mackle, Mark McConville and John McDonald Clarkson Jnr
Company secretary:	Marion White Clarkson
Shareholdings held by the directors and secretary:	Mark McConville – 12% Drumbow Holdings Limited – 88% (of which Alexander Clarkson is a director)
Date of the Administration appointment:	6 February 2012
Administrators' names and addresses:	Alan Alexander Brown of PricewaterhouseCoopers LLP, 141 Bothwell Street Glasgow, G2 7EQ; and John Bruce Cartwright of PricewaterhouseCoopers LLP, Erskine House, 68-73 Queen Street, Edinburgh, EH2 4NH
Appointor's name and address:	Mark McConville - 35 Dalrymple Drive, Coatbridge, North Lanarkshire, ML5 4FG Drumbow Holdings Limited - 3 Inchcorse Place, Whitehill Industrial Estate, Bathgate, EH48 2EE

2. The Administrators' statement of proposals

Objective being pursued by the Administrators:	(b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in Administration); failing which (c) realising property in order to make a distribution to one or more secured or preferential creditors
Division of the Administrators' responsibilities:	The Company, being the appointer of the Joint Administrators, hereby declares pursuant to paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 that all and/or any of the powers which are conferred on the Joint Administrators by the Insolvency Act 1986 may be done by all and/or any of the Joint Administrators acting jointly or alone
Proposed end of the Administration:	Dissolution or creditors' voluntary liquidation
Estimated dividend for unsecured creditors:	Unknown at present
Estimated values of the prescribed part and the Company's net property:	Unknown at present
Whether and why the Administrators intend to apply to court under Section 176A(5) IA86:	The Administrators may make an application to Court under Section 176A(5) of IA86 to disapply the Prescribed Part if the economic benefits to the body of creditors are outweighed by the costs of adjudication
The European Regulation on Insolvency Proceedings (Council Regulation (EC) No. 1346/2000 of 29 May 2000):	The European Regulation on Insolvency Proceedings applies to this Administration and the proceedings are main proceedings
Any other information which the Administrators think necessary to enable creditors to decide whether or not to vote for adoption of the proposals:	None

3. Receipts and payments account

A receipts and payments account for the period 6 February 2012 to 19 March 2012 is included overleaf.

Administration
of Drumbow Contracts Limited

TRADING ACCOUNT

Statement of
Affairs

	£	Period From: 06/02/2012 To: 19/03/2012	£	Cumulative From: 06/02/2012 To: 19/03/2012	£
Trading Overheads		(2,399.12)		(2,399.12)	
Gross wages & salaries	nil	(111.78)		(111.78)	
Employers NIC	nil	(2,510.90)		(2,510.90)	
Surplus/(Deficit)		(2,510.90)		(2,510.90)	

Administration
of Drumbow Contracts Limited

REALISATION ACCOUNT

Statement of
Affairs

£

	Period	Cumulative
	From:	From:
	06/02/2012	06/02/2012
	To: 19/03/2012	To: 19/03/2012
	£	£

RELATING TO FLOATING CHARGE/UNSECURED ASSETS

Realisations

Surplus/Deficit from Trading	(2,510.90)	(2,510.90)
Book debts	20,000.00	20,000.00
Pre-appointment VAT refund	70,543.22	70,543.22
	<u>88,032.32</u>	<u>88,032.32</u>

Costs of realisation

Cleaning and site clearance costs	(442.50)	(442.50)
	<u>(442.50)</u>	<u>(442.50)</u>

Administration and appointment-related costs

Motor & travel expenses	(20.83)	(20.83)
Postage & Stationery & Printing	(54.45)	(54.45)
Consultancy Fees	(450.00)	(450.00)
Statutory advertising	(64.45)	(64.45)
	<u>(589.73)</u>	<u>(589.73)</u>

Balance	<u>87,000.09</u>	<u>87,000.09</u>
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REPRESENTED BY:

General sterling - current IB bank account
Input VAT - General

	86,983.22
	16.87
	<u>87,000.09</u>

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Alan Brown
Administrator

Appendix A Copy of Statement of Affairs

The following 8 pages contain a copy of the director's statement of affairs.

Statement of Affairs

Pursuant to paragraph 47 of Schedule B1 to the Insolvency Act 1986 and Rule 2.21(1) of the Insolvency (Scotland) Rules 1986

Insert name of the company

Statement as to the affairs of Drumbow Contracts Limited (in Administration)

as at the 6 February 2012, the date that the company entered administration.

Statutory Declaration

I solemnly and sincerely declare that the information provided in this statement and the lists A to G annexed and signed as relative hereto is, to the best of my knowledge and belief, true and complete.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835.

Declared at FALKIRK

Signed _____

This 29th day of FEBRUARY 2012

Before me KENNETH MARSHALL

A Notary Public or Justice of the Peace or Solicitor

Statement of affairs of the Company on 6th February 2012

	Estimated Realisable Values £
ASSETS	
Assets not specifically secured (as per List 'A')	1,600,686
Assets specifically secured (as per List 'B')	£
Estimated Realisable value	nil
Less: Amount due to secured creditors	nil
Estimated Surplus	nil
Estimated Total Assets available for preferential creditors, holders of floating charges and unsecured creditors	1,600,686
LIABILITIES	
Preferential creditors (as per List 'C')	415,985
Estimated balance of assets available for holders of floating floating charges and unsecured creditors	1,184,701
Estimated prescribed part of net property where applicable (to carry forward)	nil
Holders of floating charges (as per List 'D')	932,791
Estimated surplus/deficiency as regards holders of floating charges	251,910
Estimated prescribed part of net property where applicable (brought down)	nil
Unsecured Creditors	£
Trade Accounts (as per List 'E')	1,124,365
Bills payable (as per List 'F')	nil
Contingent or other liabilities (as per List 'G')	432,000
Total unsecured creditors (excluding any shortfall to floating charge holders)	1,556,365
Estimated Surplus/Deficiency as regards creditors unsecured creditors (excluding any shortfall to floating charge holders)	-1,304,455
Estimated Deficiency after floating charge where applicable	0
Estimated Surplus/Deficiency as regards creditors	-1,304,455
Issued and Called-Up Capital	100
Estimated Surplus/Deficiency as regards members	-1,304,355

There is no unpaid capital to be called up

Signed  Date **29/2/12**

**Statement of affairs LIST 'A'
Assets not specifically secured**

Particulars of assets	Book value £	Estimated to produce £
Balance at bank.....	Nil	Nil
Cash in hand.....	Nil	Nil
Marketable securities (as per Schedule I).....	Nil	Nil
Bills receivable (as per Schedule II).....	Nil	Nil
Trade debtors (as per Schedule III).....	80,706.40	70,543.22
Loans and advances (as per Schedule IV).....	Nil	Nil
Unpaid calls (as per Schedule V).....	Nil	Nil
Stock in trade	Nil	Nil
Work in progress	1,530,143.00	1,530,143.00
Heritable property.....	Nil	Nil
Leasehold property.....	Nil	Nil
Plant, machinery and vehicles.....	Nil	Nil
Furniture and fittings, etc.....	Nil	Nil
Patents, trade marks, etc.....	Nil	Nil
Investments other than marketable securities.....	Nil	Nil
Other property.....	Nil	Nil
Total	1,610,849.40	1,600,686.22

Signed



Date

29/2/12

SCHEDULE 1 TO LIST 'A'
Statement of affairs
Marketable Securities

NO	Name of organisation in which securities are held	Detail of Securities held	Book Value £	Estimated to produce £
	none	none	nil	nil

Signed

Date

SCHEDULE II TO LIST 'A'
Statement of affairs
Bills of Exchange, promissory notes, etc. available on assets

NO	Name and address of acceptor of bill or note	Amount of bill or note £	Date when due	Estimated to produce £	Particulars of any property held as security for payment of bill or note
	none	none	none	nil	nil

Signed _____

Date _____

SCHEDULE III TO LIST 'A'
Statement of affairs
Trade Debtors

NO	Name and address of debtor	Particulars of any securities held for debt	Book Value £	Estimated to produce £
1	Doojin Plant Ltd New Road CAMBUSLANG G72 7PU	none	3,686.40	nil
2	Harte Construction 1 Hamilton Road BOTHWELL G71 8AT	none	1,320.00	nil
3	NWH Construction Services Ltd Unit 4 Mayfield Ind. Estate DALKEITH EH22 4AD	none	1,200.00	nil
4	HMRC - VAT	none	70,543.22	70,543.22

Signed



Date

29/2/12

SCHEDULE IV TO LIST 'A'
Statement of affairs
Loans and Advances

NO	Name and address of debtor	Particulars of any securities held for debt	Book Value £	Estimated to produce £
	none	none	nil	nil

Signed _____

Date _____

LIST 'B' (consisting of 1 Page)
 Statement of affairs
 Assets specifically secured and creditors fully or partly
 secured (not including debenture holders
 secured by a floating charge)

NO	Particulars of assets specifically secured and nature of security	Date when security granted	Name of creditor	Address and occupation
1	VW Passat 4DR 2.0 TDI 110 CR Highline 10 Reg : SB59 TGO	Dec-09	VW Financial Services (UK) Ltd	Brunswick Court Yeomans Drive Blakelands MILTON KEYNES MK14 5LR

Signed



Date

29/2/12

Appendix B Common Questions & Answers

How is the Administrators' remuneration fixed?

The following information about the Administrators' fees is from Statement of Insolvency Practice 9 (Scotland) ("SIP9") issued by the Association of Business Recovery Professionals, Appendix B: Administrators' guidance, as amended by The Insolvency (Scotland) Amendment Rules 2006.

A copy of SIP9 has been included over the following three pages.

Appendix B Common Questions & Answers

1 Introduction

- 1.1 When a company goes into administration the costs of the proceedings are paid out of the company's assets in priority to creditors' claims. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's remuneration. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor remuneration and outlays and explain the basis on which remuneration and outlays are fixed.

2 The Nature of Administration

- 2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the objective of:
- rescuing the company as a going concern, or
 - achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
 - realising property in order to make a distribution to one or more secured or preferential creditors

Administration may be followed by a company voluntary arrangement or liquidation.

3 The Creditors' Committee

- 3.1 Where a meeting is held by the Administrator the creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is established at the meeting of creditors which the administrator is required to hold within 10 weeks of the administration order (or longer with the consent of the court) to consider his proposals. The administrator must call the first meeting of the committee within 3 months of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide such information as it may require.

4 Fixing the Administrator's Fees

- 4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.39 of the Insolvency (Scotland) Rules 1986 which states that it may be a commission calculated by reference to the value of the company's property with which he has to deal.

It is for the creditors' committee (if there is one) to fix the remuneration and Rule 2.39 says that in arriving at its decision the committee shall take into account:

- the work which, having regard to the value of the company's property, was reasonably undertaken by the administrator; and
- the extent of his responsibilities in administering the company's assets.

Although not specifically stated in the rules, the normal basis for determining the remuneration will be that of the time costs properly incurred by the administrator and his staff.

- 4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration will be fixed by the creditors.
- 4.3 Where no meeting is held, the administrator's remuneration is approved by each secured creditor of the company or where a distribution to the preferential creditors is proposed by each secured creditor and 50% in value of the preferential creditors disregarding those who do not respond or withhold approval

5 What Information should be Provided by the Administrator?

- 5.1 Claims by the administrator for the outlays reasonably incurred by him and for his remuneration shall be made in accordance with Rule 2.39 of the Insolvency (Scotland) Rules 1986 which provides that within two weeks after the end of an accounting period, the administrator shall submit to the creditors' committee or if there is no creditors' committee, to a meeting of creditors.:

- his accounts of intromissions for audit;
- a claim for the outlays reasonably incurred by him and for his remuneration, broken down into category 1 disbursements, being those costs where there is specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party, and category 2 disbursements, which are costs which include elements of shared or allocated costs, and are supplied internally by the administrator's own firm and

- 5.2 The administrator may at any time before the end of an accounting period submit to the creditors' committee or a meeting of creditors an interim claim for category 1 and 2 disbursements reasonably incurred by him and for his remuneration.

Appendix B Common Questions & Answers

5.3 When seeking agreement to his fees and disbursements, the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee and disbursements are reasonable having regard to all circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

5.4 Where, at any creditors' committee meeting or meeting of creditors, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

5.5 Where the administrator seeks agreement to his remuneration during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed remuneration is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading
- Creditors
- Any other case specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, or the drawing, or agreement of remuneration.
- Any existing agreement about remuneration.
- In cases where there are distributable funds available to unsecured creditors by means of the creditors' prescribed part, how the administrator has allocated remuneration and costs with regard to dealing with the administration of and agreeing of unsecured creditors' claims. Remuneration in respect of time spent dealing with issues specific to the funds for ordinary creditors will be applied against the creditors prescribed part, prior to the funds being distributed, and will not be applied against the total funds available to all creditors, including those available to the floating charge holder.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will be relevant, whilst further analysis may be necessary in larger cases.

5.6 Where the remuneration is charged as a commission based on the value of the company's property with which the administrator has had to deal, the administrator should provide details of any work which has been or is intended to be contracted out which would normally be undertaken directly by the administrator or his staff.

5.7 As noted in 5.1, any claim for outlays must be approved in the same way as remuneration. Professional guidance issued to Insolvency Practitioners requires that where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements may include an element of shared or allocated costs (such as room hire, document storage or communication facilities) they must be approved as if they were remuneration. Such disbursements must be directly incurred on the case and subject to a reasonable method of calculation and allocation. A charge for disbursements calculated as a percentage of the amount charged for remuneration is not allowed.

5.8 Payments to outside parties in which the office holder or his firm or any associate has an interest should be disclosed to the body approving remuneration and should be treated in the same way as payments to himself. They therefore require specific approval as remuneration prior to being paid.

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6 What If a Creditor is Dissatisfied?

- 6.1 If the administrator's remuneration has been fixed by the creditors' committee or by the creditors, by virtue of Rule 2.39A of the Insolvency (Scotland) Rules 1986, any creditor or creditors of the company representing in value at least 25 percent of the creditors may apply to the court not later than eight weeks after the end of an accounting period for an order that the administrator's remuneration be reduced, on the grounds that it is, in all the circumstances excessive.
- 6.2 Notwithstanding the fact that the statutory time limit for appealing expires eight weeks from the end of the accounting period concerned, it is normal practice to advise the creditors that they may appeal within 14 days of being notified of the determination in cases where this extends beyond the statutory appeal period.

7 What if the Administrator is Dissatisfied?

- 7.1 If the administrator considers that the remuneration fixed by the creditors' committee or by resolution of the creditors is insufficient he may apply to the court for an order increasing its amount or rate. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration.

8 Other Matters Relating to Fees

- 8.1 Where there are joint administrators it is for them to agree between themselves how remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.