

# AM03

## Notice of administrator's proposals



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### 1 Company details

Company number 0 2 4 5 4 8 3 0

Company name in full Windward Prospects Limited

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Please complete in typescript or in  
bold black capitals.

### 2 Administrator's name

Full forename(s) Finbarr Thomas

Surname O'Connell

### 3 Administrator's address

Building name/number Smith and Williamson LLP

Street 25 Moorgate

Post town London

County/Region

Postcode E C 2 R 6 A Y

Country United Kingdom

### 4 Administrator's name ①

Full forename(s) Colin

Surname Hardman

① Other administrator  
Use this section to tell us about  
another administrator.

### 5 Administrator's address ①

Building name/number Smith and Williamson LLP

Street 25 Moorgate

Post town London

County/Region

Postcode E C 2 R 6 A Y

Country United Kingdom

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## Notice of Administrator's Proposals

### 6 Statement of proposals



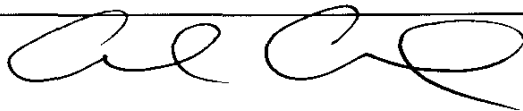
I attach a copy of the statement of proposals

### 7 Sign and date

Administrator's  
Signature

Signature

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Signature date

<sup>d</sup>2

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# AM03

## Notice of Administrator's Proposals



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Contact name Cameron Dalrymple-Rockett

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# Windward Prospects Limited (in administration)

Joint administrators' Report and Statement of Proposals pursuant to Paragraph 49 of Schedule B1 Insolvency Act 1986

21 December 2018



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# 1. Glossary

Abbreviation	Description
the Company/Windward	Windward Prospects Limited
the administrators/joint administrators	Finbarr Thomas O'Connell and Colin Hardman
SIP	Statement of Insolvency Practice (England & Wales)
IA86	Insolvency Act 1986 If preceded by S this denotes a section number
Sch B1	Schedule B1 to the Insolvency Act 1986 If preceded by P this denotes a paragraph number
IR16	Insolvency (England and Wales) Rules 2016 If preceded by R this denotes a rule number
SOA	Statement of Affairs
ETR	Estimated to realise
CVA	Company Voluntary Arrangement
CVL	Creditors' Voluntary Liquidation
HMRC	HM Revenue & Customs
QFCH	Qualifying Floating Charge Holder - a secured creditor who has the power to appoint an administrator
RPS	Redundancy Payments Service
S&WFS	Smith & Williamson Financial Services Limited
S&WCFL	Smith & Williamson Corporate Finance Limited
FCA	Financial Conduct Authority
The Directors	Christopher Gower, Brian Tauscher and Gerard Barron
BAT	British American Tobacco Inc
BTI	BTI 2014 LLC, a subsidiary of BAT
Sequana	Sequana S.A. - the holder of one preferential share in the Company and the former 100% shareholder of the Company, prior to its acquisition by TMW Investments
TMW Investments	TMW Investments (Luxembourg) Sarl - the former 80% shareholder of the Company

## 2. Introduction

We, Finbarr Thomas O'Connell and Colin Hardman, of Smith & Williamson LLP, 25 Moorgate, London, EC2R 6AY and licensed insolvency practitioners, were appointed administrators of the Company on 26 October 2018

This report sets out our proposals in respect of the administration of the Company. Appendix I contains information in respect of the Company and the joint administrators that is required under the IR16.

We will deliver these proposals to the creditors on 24 December 2018.

## 3. Key points

- We were appointed joint administrators of the Company on 26 October 2018 by the directors.
- The objective of the administration is as in P3(1)(b) Sch B1, namely 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).
- This objective is being pursued on the basis that the assets of the Company, being primarily shares in private companies, have a very uncertain value and it was considered the appointment of administrators in an out of court process would immediately provide a custodian of those shares/investments for the benefit of the creditors as a whole of the Company and that there would be no hiatus as regards control of those investments.
- The directors resolved to appoint the joint administrators having received a demand against the Company from BAT for the payment of c.US\$7.3million in relation to an amount claimed by BAT in relation to a litigation funding agreement entered into in 2014. The Company was unable to meet this demand and there was a strong prospect of a winding-up petition ultimately being issued by BAT in relation to this demand.
- The directors' SOA sets out that the Company's assets include:
  - investments in a number of private companies, with a book value of c.£12million and an unknown estimated realisable value (please see section 7.1 for further details);
  - a contingent receivable with a book value and directors' estimated realisable value of c.£8.3million, albeit a right of set off regarding BTI's c.US\$7.3million claim (plus its claim against Windward for future liabilities) may apply to any funds received in this regard (please see section 7.2 for further details);
  - office equipment with a book value of £600 and an estimated realisable value of £500 (please see section 7.3 for further details);
  - a motor vehicle subject to finance with a book value of c.£24k and an estimated realisable of £0 (please see section 7.4 for further details).
- In addition to the items listed on the directors' SOA, we have identified further potential asset recoveries including:
  - cash at bank of c.£3k (please see section 7.5 for further details);
  - a small quantity of investment wine of an unknown value (please see section 7.6 for further details); and
  - shares held in a Bermuda-domiciled subsidiary of an unknown value (please see section 7.7 for further details).
- None of the Company's known assets are subject to any charges or security arrangements.
- As at the date of the administrators' appointment, the Company had one employee, who was also a director, whose employment was terminated as at the date of appointment.
- The Company ceased to trade upon the administrators' appointment.
- Based upon the Director's SOA, the dividend prospects for preferential and unsecured creditors will be highly dependent upon the extent to which value can be realised from the Company's investments in private companies and the contingent receivable. Due to the nature of the investments, the prospects of



any such recoveries are highly uncertain. Furthermore, any recoveries in relation to the contingent receivable are also anticipated to be highly uncertain.

- A creditors' decision procedure has been called to seek approval of our proposals as joint administrators and notice to this effect is found at appendix IX.
- Creditors with partly or wholly unsecured claims will be invited to form a Creditors' Committee which, if formed, will need to comprise three to five members.
- If a Creditors' Committee has not been formed, we will also be seeking approval of the basis of our remuneration and disbursements as set out at section 14, for payment of pre-appointment costs and expenses as set out at section 13, and for our discharge from liability upon our ceasing to act as joint administrators.
- Creditors who meet certain thresholds prescribed by the IA86, namely 10% in value of creditors, 10% in number of creditors or 10 creditors, may request a physical meeting to be held to consider the Proposed Decisions (incorporating the approval of our fees). However, such a request must be made in writing to the Convener within 5 business days from 21 December 2018.

## 4. Background to the administration

We set out below a summary of the history of the Company, which has been provided by the directors for the purposes of this report. The joint administrators are at an early stage in respect of their investigations into the business affairs and activities of the Company prior to their appointment and the detailed summary as set out below is intended, and should be understood, to provide creditors with a recent history of the Company. This summary has been prepared by the directors for the purposes of this report. We have amended the summary where we believe appropriate.

### 4.1 Background & Lower Fox River litigation

The Company was incorporated on 21 December 1989 as Peakgilt Public Limited Company and changed its name to Wiggins Teape Appleton PLC on 15 February 1990 and then to Arjo Wiggins Appleton Limited on 1 June 2001.

In 2001, the Company's outstanding publicly-traded stock was acquired by its largest shareholders, Worms et Cie, now known as Sequana SA. In 2001, Windward indirectly owned a US-based subsidiary, then known as Appleton Papers Inc. ("API"), and now known as Appvion, Inc.. Since the mid-1990s, the US Government had considered API to be a "potentially responsible party" ("PRP") for polychlorinated biphenyl ("PCB") contamination of the Lower Fox River in Wisconsin.

Windward was approached to see if API's employees could acquire the company via their employee stock ownership plan ("ESOP"). A deal was reached in July 2001 and finalised in November 2001. Because API was a Fox River PRP, the ESOP trustee demanded as part of the deal that Windward agree to indemnify API for its Fox River liability, which was then unknown in size or duration. The Trustee also demanded that Windward back up its promise of indemnity with bankruptcy remote security that would guarantee the indemnity, up to an agreed amount. Windward agreed with both requests.

Both API and Windward created Bermuda subsidiaries that would, in turn, create a jointly owned further subsidiary. Windward's subsidiary was called Arjo Wiggins (Bermuda) Holdings Ltd ("AWBH"). It in turn owned 80% of the shares of Arjo Wiggins Appleton (Bermuda) Ltd ("AWAB"). API's subsidiary/affiliate owned the other 20%. AWAB was incorporated to hold the security on Windward's promise of indemnity to API. That security took the form of a manuscripted insurance product, known as the MARIS policy, which was issued by an AIG-related insurer. The MARIS policyholder was AWAB. MARIS provided \$250 million in stepped, cumulative limits. It was designed to pay all the anticipated costs related to the defence of API's Fox River liability, including remediation costs, attorney fees, etc. In return for Windward's promise of indemnity, API granted Windward the right of full control over API's defence, a security interest in whatever historical insurance proceeds or other recoveries API might be entitled to for its Fox River liability, and the right to control API's prosecution of any rights it had to such recoveries and proceeds.

In 1978, API was an indirectly held, non-trading subsidiary of BAT. On 30 June 1978, it acquired the assets of the Appleton Papers Division from NCR. NCR, BAT, and API were parties to the purchase and sale agreement,

which contained various promises to indemnify among the parties. On 10 May 1990, BAT demerged Windward and its subsidiaries, including API. The demerger agreement contains various promises of indemnity between and among its parties. In 1994, the US government named NCR a PRP for PCB contamination of the Fox River. NCR asserted that BAT and API had to indemnify it under the 1978 purchase and sale agreement. NCR ultimately sued API and BAT in the US federal court in 1995 on this issue. The matter was settled in 1998 pursuant to a document known as the Confidential Settlement Agreement ("1998 CSA").

At this time, no real funds had been spent remediating or even investigating the Fox River. Nonetheless, the parties agreed that for the first \$75million in "Damages," API and BAT jointly and severally would pay 55% of what either of them or NCR were assessed for the Fox River and Future Sites ("Future Sites" being defined in the settlement agreement); NCR would pay 45% of those same Damages. The CSA parties agreed to a subsequent arbitration for the share each would bear after US\$75million.

Liability for contamination of the Lower Fox arises under a federal statute known as CERCLA or Superfund. CERCLA allows the government to name PRPs by simply sending a letter to them. A PRP cannot sue to show it is not liable under CERCLA until the government sues it. If a PRP refuses to respond to its PRP letter and actively engages in remediation efforts, it can face crushing daily fines or even triple damages.

Although a PRP is barred from suing to determine its liability under CERCLA, a PRP may sue other PRPs or parties for contribution. There are also steps involved in remediating a site, including an investigation and feasibility study (the "RI/FS"), then a remedy must be selected (the "ROD"), then the selected remedy must be designed ("Design"), then the designed remedy must be implemented ("construction" and/or "active remediation"). When Windward became actively involved in November 2001, the RI/FS had not yet been completed. Seven PRPs, including API and NCR, had been named, but the Fox River was far from being remediated.

Windward and the other PRPs, along with the government, spent the next six years exploring numerous ways to resolve the Fox River liability globally, during which time the RI/FS was completed, the ROD was issued and then amended, and the Design was that arbitration was held in 2005, and assessed a 60% share to API/BAT and 40% to NCR. However, in November 2007, the US government issued what is known as a 106 Order, a document ordering the then-eight named PRPs to begin in-river remediation in accordance with the amended ROD by April 2009.

When Windward assumed control of API's defence, the insurance law in Wisconsin was such that API's historical liability insurance was unlikely to be triggered. In 2003, this changed when the Supreme Court of Wisconsin decided on a case called Johnson Controls. Windward realised fairly early on that most PRPs were covered by the same historical insurers. When the judgment in Johnson Controls was handed down, these insurers became exposed for large portions of the Fox River liability. Windward attempted to bring these insurers to the negotiating table during global settlement discussions. The insurers resisted and in January 2005 sued API and Windward in Brown County Circuit Court for a declaratory judgment that their policies did not cover API's Fox River liability. The coverage litigation went to trial in winter 2008 and a jury verdict was reached in favour of coverage on 17 March 2008. The trial did not resolve how much any particular insurer owed but resolved definitively the question of whether the insurers' policies responded to API's liability and whether any of their numerous defences would defeat coverage. Initially there were 21 insurer groups in the litigation. By the time the jury handed down its verdict, many of these had either paid limits or settled, generating indemnity recoveries of \$76.7 million and defence cost recoveries of \$33.1 million.

Windward was a principal driver in the global settlement efforts and, once the 106 Order issued, became a lead player in getting the remediation underway. Windward, through AWAB, fronted funds to build the facility in Green Bay where river sediments would be dewatered, desanded, and compressed into "filter cake" before being landfilled. Windward and NCR took the lead in putting the remediation out to bid, choosing a remediation contractor ("TetraTech" or "TTECI"), and negotiating the remediation contract.

In April 2009, Windward and NCR set up a special purpose entity called Lower Fox River Remediation LLC ("the LLC") to act as counterparty to TetraTech and other remediation subcontractors. Three days later the facility started, and remediation began.

## 4.2 TMW Investments' acquisition of Windward

Windward's sole shareholder, Sequana, by that time had transformed Windward as a company. Windward's old operating businesses, formerly held as subsidiaries, were distributed to Sequana, leaving intercompany debt owed by Sequana to Windward. In December 2008, Windward declared a substantial dividend in favour of Sequana which had the effect of wiping out much of this intercompany debt. In the spring of 2009, Christopher

Gower (then an independent contractor retained by Windward) and Brian Tauscher (also an independently contracted legal advisor to Windward) offered to buy Windward from Sequana through a Luxembourg company they had set up for that purpose, TMW Investments.

On 4 May 2009, the US Supreme Court handed down a decision known as Burlington Northern which Windward's board believed would impact dramatically the funds necessary to cover API's liability on the Fox River. On 18 May 2009, Windward's previous board of directors approved the sale of Windward to TMW Investments, while also a) declaring a further dividend to extinguish virtually all of the remaining Sequana intercompany debt; and b) adopting new articles of incorporation, which i) created for Sequana a redeemable preferred share (the "Golden Share"), which entitled Sequana to a preferred dividend if a regular dividend were declared; and ii) imposed restrictions on transactions Windward could enter into with Christopher Gower, Brian Tauscher, or TMW Investments to "consultancy or other service contracts" that could pay no more than a specified, inflation-indexed amount.

Furthermore, on 18 May 2009, TMW completed the purchase of Windward from Sequana. Post-sale, Windward held the remaining value of MARIS and approximately \$120million in potential settlements with API's legal liability insurance carriers. By this time, insurance settlements for indemnity had grown to \$86.7million, bringing the total insurance recoveries through 18 May 2009 to \$119.8million.

Once TMW Investments acquired Windward, Christopher Gower became CEO and Brian Tauscher became general counsel. At this time, there were three principal activities underway. First, active remediation on the Fox River liability had just begun. Second, final judgment had just been entered in January 2009 in API's coverage litigation, and appeal was pending. Lastly, the first phase of allocation litigation among the Fox River PRPs was nearing the end of discovery. Given the numbers shared among PRPs during the many global settlement negotiations, Windward was confident that the remaining funds in MARIS would cover whatever ultimate liability API had on the Fox River, via the 1998 CSA or otherwise. NCR and API were spending most of the funds to remediate the Fox River, with a small contribution from Georgia Pacific (another PRP), but they believed the allocation litigation, known as the Whiting litigation, would force other PRPs to contribute to the ongoing costs. During the many global settlement discussions over the prior six years, Windward believed NCR/API would end up with no greater than a 60% share of the total cost, of which API would bear only 60%, i.e., 36% of the total. The 60% combined share was comprised of 40% of the volumetric discharge (i.e., the facilities for which API and NCR were being held liable contributed no more than 40% of the total volume of PCBs to the river), plus an extra share for so-called "arranger" liability. The government and other parties had pegged this at 20%, for a total NCR/API combined share of 60%.

While Windward believed API had significant defences to liability in general, it also believed the 40% volumetric share was likely high and that the 20% arranger share was legally unsupported. When Burlington Northern was decided, it confirmed that making a case against NCR/API for arranger liability on the Fox would be very difficult. As Windward saw it, this reduced the exposure API could have on the Fox. Burlington Northern also significantly increased the likelihood that API could successfully mount a so-called "divisibility defense," by which it could show the harm to be divisible and therefore it could not be held jointly and severally liable for the harm. Coupled with Windward's belief that the NCR/API volumetric share was too large, Burlington Northern's ruling on divisibility meant further downward pressure on API's maximum liability.

Despite these positive developments, other PRPs did not come forward to fund the ongoing remediation. The Whiting litigation progressed. Summary judgment was briefed and argued in the late summer/early autumn of 2009, and the remediation season concluded in November 2009 with API and NCR bearing the principal amount of that season's c.US\$75 million liability. On 16 December 2009, the judge in the Whiting litigation ruled that NCR and API could not seek contribution from other PRPs because they knew of the dangers of PCBs while other PRPs did not.

While this decision was ultimately overturned on appeal almost five years later, it had an almost immediate effect on Windward. As a practical matter, it guaranteed that for some time to come, only NCR and API (via Windward) would be funding ongoing remediation efforts on the Fox. It also meant that the legal costs Windward was expending to defend API would rise significantly. These concerns magnified when, in October 2010, the US government sued the PRPs, including NCR and API (the Enforcement Action) and, in March 2011, the judge in Whiting ruled that API and NCR were 100% liable for remediating the Fox.

The 2010 remediation season had cost NCR and API (via Windward) approximately US\$110 million. Proceeding at that pace was unsustainable from Windward's point of view; its resources would not be sufficient to cover remediation and litigation costs while it awaited favourable outcomes on appeal. The MARIS policy was nearing exhaustion, and was exhausted by July 2011. Further, Windward had reached settlements with all but one of

API's historical insurers, bringing the total recoveries up to October 2010 to US\$240.3 million. Windward advised API and NCR that the pace of remediation was unsustainable.

At this point, the LLC had only 3 members: API (45%), NCR (40%), and AWAB (15%). AWAB had API's proxy and, pursuant to the 2001 arrangements, acted in API's name. Using its indirect but majority power, Windward caused the LLC to propose a greatly reduced workplan for the 2011 remediation season. NCR objected to this and US Government subsequently sought an injunction to force NCR, API and the LLC to perform a much more substantial remediation season, at a much higher cost. The injunction provided Windward with the ability to argue the divisibility defence and to assert API's non-liability under CERCLA. The injunction failed, with the court ruling that the government was not likely to prevail on its theory that API was liable under CERCLA.

Notwithstanding this development, NCR proposed that the LLC perform more work than Windward wished, while Windward, via API, AWAB, and the LLC, proposed that these Windward-controlled parties step aside and let NCR proceed as it saw fit. NCR objected and API filed briefs with the court seeking to have its non-liability under CERCLA reduced to a judgment.

#### 4.3 BAT and s423 IA86 claim against Sequana

Prior to this time, Windward met with BAT on a number of occasions to keep BAT informed of developments (the first meeting coinciding with Windward's claim against the historic insurers on API's behalf) and, at this point, Windward met with BAT to discuss the dispute with NCR and to ask BAT to assist Windward in the dispute with NCR with the objective of reducing or eliminating the BAT/API share of cleanup costs.

However, BAT had begun to prepare a claim against Windward under s423 IA86 (transactions defrauding creditors) seeking to recover the two Sequana dividends declared in December 2008 and May 2009 with an aim of putting Windward back in funds sufficient to cover any liability API might face on the Fox River clean up, or NCR might demand. BAT assumed it had an indemnity from Windward under the 1990 Demerger, although Windward had not accepted this position. In November 2011, BAT wrote to Windward, its directors, TMW, and Appvion demanding that Windward bring proceedings against Sequana to return the dividends to Windward.

Windward did not consider that such an action had merit and responded to BAT accordingly. In February 2012 BAT filed a lawsuit in London but did not serve it until June. Certain without prejudice discussions ensued, culminating in October 2012 with a Memorandum of Understanding among BAT, API and Windward concerning the path forward vis-à-vis NCR and Sequana. During these discussions and thereafter, BAT agreed that Windward did not need to file its defence. In the meantime, the 2012 remediation season was approaching. The issue of API's non-liability was still open (various decisions and motions for reconsideration had been filed), but a decision had to be reached on how much remediation the LLC could perform, and Windward still indirectly controlled the LLC.

In March 2012 the US Government filed a second motion for injunction, but on 10 April 2012, the court finally ruled that API had no liability under CERCLA and ordered that all claims against API be dismissed.

On 16 April 2012, API and AWAB notified the LLC that they were withdrawing from the LLC. From the creation of the LLC until this point, API (and indirectly Windward) had three largely overlapping but distinct liabilities for the Fox River: 1) direct liability to the US Government under CERCLA; 2) direct liability to NCR under the 1998 CSA; and 3) direct liability to the LLC under its foundational documents.

Once the court ruled in API's favour, the direct liability to the US was extinguished, which in turn allowed API and AWAB to withdraw from the LLC, extinguishing that liability. The only liability that remained was liability to NCR under the 1998 CSA, which was a joint and several liability with BAT, who until then had paid nothing toward the Fox River liability. Further, liability under the 1998 CSA involved a series of steps and procedures before payment was due. API via Windward was liable only to reimburse NCR in arrears, and only after costs were approved by the authorisation administrator. If a dispute arose, it had to be resolved by a multipart dispute resolution procedure, ending in binding arbitration. Notwithstanding these circumstances, NCR submitted further demands to API as if it were still in the LLC. API's authorisation administrator refused to pay these unsupported demands and in July 2012 formally invoked the dispute procedures. Windward invited and then sought to require BAT to participate in this dispute resolution procedure - BAT refused. The NCR dispute was afoot during the period that Windward and BAT were having without prejudice discussions, but had not been resolved by the time the Memorandum of Understanding ("MOU") was reached in October 2012.

#### 4.4 MOU and Funding Agreement

After the MOU was agreed, the parties met to work out a final agreement and these discussions became protracted. By July 2013, Windward filed its defence. The without prejudice drafting sessions failed shortly thereafter when BAT filed an application with the court to have a receiver appointed over Windward's s423 IA86 (transaction defrauding creditors) claims against Sequana unless Windward undertook to preserve these claims in some manner.

In late autumn 2013, Windward gave the court the undertaking it requested and began formulating the claims against Sequana. In the meantime, the dispute resolution process with NCR unfolded, and binding arbitration was set for the late winter and early spring of 2014. The 1998 CSA required that this take place in New York under New York law. The arbitrators asked for post arbitration briefing while they considered their decision. While the parties awaited the decision, NCR approached API, Windward, and BAT about a possible mediation. That mediation, with Robert Mnookin acting as mediator, took place in July 2014, but ended with a term sheet unacceptable to Windward. Although the Mnookin mediation ended in failure, the broad brush strokes of an agreement appeared to have emerged. The parties spent the next two months negotiating what is now known as the Funding Agreement, dated 30 September 2014.

Also in September 2014, the Seventh Circuit Court of Appeals issued its decision reversing the trial court's rulings in Whiting and remanding the matter for further proceedings. API, as a non-liaible party on whose behalf hundreds of millions of dollars had been spent, was permitted to bring claims under CERCLA § 107 ("the 107 Claims") against other liable parties and pressed these claims vigorously. The other PRPs argued that the real party in interest was Windward and attempted to bring Windward into the proceedings. The trial court rejected this effort, finding that Windward was not the real party in interest. The other PRPs also sought discovery from Windward by attempting to bring an ancillary proceeding against it. It was to respond to this ancillary proceeding that Windward hired the New York law firm, Olshan Frome Wolosky LLP ("Olshan"). In this ancillary proceeding, the court ruled that Windward was not susceptible to personal jurisdiction in the United States.

NCR continued to try to settle its own liability under CERCLA and, by autumn 2016, NCR believed it had a viable settlement with the US Government. The Funding Agreement parties met in New York in December 2016 to discuss the proposed settlement, which would involve API signing a consent decree and extinguishing its 107 Claims. After some discussion, the parties agreed.

By this point, however, Windward's cash position had deteriorated. While it had substantial assets, these assets took the form of investments in various illiquid ventures. Windward owed the advisors it had hired for the 107 Claims, along with Olshan, approximately US\$2 million and did not have the cash to pay these advisors. It also had not paid its directors (all of whom had service contracts with it) at all since July 2016 or in full since January 2016.

NCR agreed that in return for Windward's acquiescence on the proposed Consent Decree, it would pay US\$1.5million toward these outstanding advisor invoices. After a discussion with Olshan, all advisors but Olshan were paid in full. Olshan assented to waiting to allow Windward time to realise a return on its investments.

#### 4.5 BAT's Demand and the appointment of the joint administrators

Section 6 of the Funding Agreement obligates Windward to make an annual "interest" payment to BAT in respect of Fox River remediation costs which have been financed by BAT. In 2015, BAT made its first Section 6 demand. At that point Windward had spent a large sum paying advisors to gather all the documents that were required to pursue the s423 IA86 claims against Sequana. Windward responded to BAT's demand by explaining these costs and demanding an offset. The parties agreed to discuss, but the discussions did not reach any resolution. In August 2016 BAT made its second interest payment demand. Windward responded explaining that, due to its financial position, it was unable to make a payment in relation to the sums demanded. These events were repeated in August 2017.

In August 2018, BAT issued a further demand and sought that Windward explain how it would make payment of the outstanding amounts in full. In September 2018, a further letter was issued to Windward seeking payment of c.US\$7.3million by 8 October 2018, failing which BAT would issue a statutory demand under s123(1)(a) IA86.

On 5 October 2018, Windward formally engaged S&W to provide advice and assistance in relation to the Company's financial positions and also its available restructuring, recovery and insolvency options.

On 8 October 2018, Windward issued its response to BAT setting out, amongst other things, its view that BAT had allowed the Section 6 payments to accrue with the expectation that it would be paid out of the proceeds due to Windward from BAT from the recoveries from Sequana in relation to the s423 IA86 claims.

On 23 October 2018, BAT issued a further letter to Windward, disputing Windward's position and issuing a further demand for payment of c.US\$7.3million by a new deadline of 29 October 2018.

On 26 October 2018, having formed the view that the Company had no prospect of meeting BAT's demands and that, in the event that BAT issued a statutory demand and the Company would enter into a compulsory winding up process thereafter, which would risk further deterioration of the Company's asset position, the directors resolved to appoint administrators over the Company and Windward formally engaged S&W to assist with placing the Company into administration.

Finbarr Thomas O'Connell and Colin Hardman are both qualified insolvency practitioners and licensed by the Institute of Chartered Accountants in England & Wales. As proposed joint administrators, statements and consents to act were provided by both on 26 October 2018.

The joint administrators were appointed by the directors on 26 October 2018 and, in the absence of any qualified floating charge holder, there was no requirement to serve notice of their intention on the Company.

## 5. Purpose of administration and strategy

The joint administrators must perform their functions 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.

In this case, the second objective above is being pursued.

The second objective, 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), is being pursued on the basis that the value in the assets of Windward, being primarily shares in private companies, would be better preserved in an administration than in a liquidation scenario given:

- the appointment of administrators in an out of court process provided for an immediate custodian of the shares and investments for the benefit of the creditors as a whole of Windward without any hiatus period where there would be a lack of control;
- a CVA was deemed to be not viable at the time of the BAT demand as the assets of Windward, being primarily shares in private companies, are illiquid and Windward had no cash available, or immediate prospects of capital injection, in order to finance a CVA process. However, it is conceivable that, once progress has been made in determining the realisable value of Windward's investments, it may be appropriate to propose a CVA to Windward's creditors and for the Company to be rescued as a going concern, out of administration. The directors have indicated that they are motivated to achieve such an outcome, if at all possible.
- a CVL was deemed to be not appropriate as the share value in these private investments was fragile and an administration process, being perceived as a more positive process than liquidation, and more akin to Chapter 11 under the US Bankruptcy Code, will enable us to deal with a sale of the investments as, it is intended, part of a restructuring process regarding the Company. This point was especially important due to the international nature of a number of the investments.

Our role, prior to appointment as joint administrators, was to advise the Company, not the directors or any party. Once appointed, administrators are obliged to perform their functions in the interests of the Company's creditors as a whole.

Section 7 provides details of the actions taken to date in pursuit of our strategy for the administration and section 10 details our proposals to achieve the purpose of the administration and to bring it to a conclusion in due course.

## 6. Joint administrators' receipts and payments

A summary of our receipts and payments for the administration period from the date of our appointment to 21 December 2018 is attached at Appendix III. This shows funds in hand of £4,241.68.

## 7. Conduct of the administration

### 7.1 Investments

According to the directors' SOA, the Company holds investments with a book value of £12,028,100, however, the estimated realisable value of these investments is "unknown".

The Company's investments are held in a number of private companies, as set out below.

The joint administrators are taking advice from S&WCFL, specialist corporate finance advisors within S&W, in relation to the Company's investments in order to formulate and execute a strategy to realise as much value as is possible on behalf of creditors. Creditors will appreciate that shareholdings in private companies are illiquid by their nature and at this stage the prospect of any recoveries to creditors from these investments is therefore uncertain.

We set out a summary of our current understanding of these investments in the table below and further details in respect of each investment are set out thereafter.

Investment	Invested Sum		
	Debt US\$	Equity US\$	Shareholding %
Direct Nickel Ltd & Direct Nickel Projects Pty Ltd	915,000	5,173,958	13 & 55
DeepGreen Metals Inc	Nil	7,885,113	5.4
idio Limited	Nil	624,609	TBC
Aftermath Collections Limited	218,677	1,236,133	45
Kannuu Pty Ltd	3,716,700	Nil	TBC
Superfolk Limited	Nil	162,232	33.30
High 50 Holdings Limited	1,649,964	422,145	50
<b>Total</b>	<b>6,500,896</b>	<b>15,504,190</b>	

#### 7.1.1 Direct Nickel Limited ("DNI")

DNI, through its subsidiaries, produces nickel laterite deposits in Papua New Guinea and Indonesia. It is engaged in the research and development, and commercialisation of a patented technology that uses recycled acids in processing nickel laterites in the Oceania region. The company was incorporated in Australia in 1986 and is based in Sydney, Australia.

According to the information provided by the directors, the Company owns shareholdings in a number of UK and Australian companies within the DNi group. Christopher Gower is the Executive Deputy Chairman of DNi.

The joint administrators are informed that Windward had been a principal financier of DNi's capital requirements.

According to the information available to the joint administrators, Windward has invested c.US\$6.1million in DNi, comprising a loan of c.US\$915k and an equity investment of c.US\$5.1million.

The joint administrators are currently corresponding with DNi to advance their investigations into this asset and to determine and execute a strategy to recover as much value as is possible on behalf of creditors.

#### 7.1.2 DeepGreen Metals Inc ("DeepGreen")

DeepGreen mines base and strategic metals from high-grade seafloor polymetallic nodule deposits containing manganese, nickel, copper, cobalt, and molybdenum. It serves major miners, metal traders, and steelmakers. DeepGreen Metals Inc was formerly known as DeepGreen Resources Inc. and changed its name to DeepGreen Metals Inc in January 2015. The company was incorporated in Canada in 2011 and is based in Vancouver, Canada.

According to the information available to the joint administrators, Windward has made a c.US\$7.9million total equity investment in DeepGreen and currently holds a minority interest of the issued share capital of DeepGreen.

The joint administrators are currently corresponding with DeepGreen to advance their investigations into this asset and to determine and execute a strategy to recover as much value as is possible on behalf of creditors.

It is understood that, in August 2017 and August 2018, the Company transferred a proportion of its shareholding in DeepGreen to its directors in lieu of unpaid amounts owed to the directors by the Company. The joint administrators are currently investigating the nature of these transactions.

#### 7.1.3 idio Limited ("idio")

idio provides a content intelligence software solution that identifies patterns in different client's content consumption to understand their interests, and inserts real-time content into communications across digital and sales advisor channels to personalise the experience. The company was incorporated in the UK in 2006 and is based in London.

According to the information available to the joint administrators, Windward has made a c.US\$624k total equity investment in idio and currently holds both ordinary and preference minority share interests.

The joint administrators are currently corresponding with idio to advance their investigations into this asset and to determine and execute a strategy to recover as much value as is possible on behalf of creditors.

#### 7.1.4 Aftermath Collections Limited ("Aftermath")

Aftermath is a debt collection company, based in Hertfordshire, UK, which is in the process of pursuing recoveries across four loan books which have been acquired primarily from Barclays Bank.

According to the information available to the joint administrators, Windward has made a c.US\$1.8million total investment in Aftermath, comprising a loan of c.US\$627k (which has an outstanding balance of c.US\$218k and provides for payments to Windward of c.US\$2k per month, which are anticipated to continue during to the administration period, subject to the sale of the Company's interest) and equity of c.US\$1.2million pursuant to which it currently holds 45% of the issued share capital in the company.

The joint administrators have met with a director of Aftermath and a potential sale of the Company's interest in Aftermath is currently being explored.

#### 7.1.5 Kannuu Pty Ltd ("Kannuu")

Kannuu produces software for searching and displaying video media on various devices. The company was incorporated in Australia in 2006 and operates in Australia and the United States.

According to the information available to the joint administrators, Windward has made a c.US\$3.7million total investment in Kannuu.



We understand that Kannuu is currently formulating a substantial litigation suit in relation to intellectual property infringement, which may ultimately lead to recoveries on behalf of the Company and therefore its creditors.

The joint administrators are currently corresponding with Kannuu to advance their investigations into this asset and to determine and execute a strategy to recover as much value as is possible on behalf of creditors.

#### 7.1.6 Superfolk Limited ("Superfolk")

Superfolk is an independent documentary and film production company based in London.

According to the information available to the joint administrators, Windward has made a c.US\$162k total investment in Superfolk and currently holds 33% of the issued share capital.

We are aware that Christopher Gower was appointed as a director of Superfolk on 3 July 2014.

The joint administrators are currently corresponding with Superfolk to advance their investigations into this asset and to determine and execute a strategy to recover any value, if possible, on behalf of creditors.

#### 7.1.7 High 50 Holdings Limited ("High 50")

High 50 is a media company based in London which produces content targeted at people aged over 50 years.

According to the information available to the joint administrators, Windward has made a c.US\$2.1 million total investment in High 50, comprising a loan of c.US\$1.6million and equity investment of c.US\$422k pursuant to which it holds 50% of High 50's share capital, with an option to convert its loan into 95% of the company's share capital.

We are aware that Gerard Barron was appointed as a director of High 50 on 16 May 2014.

The joint administrators are currently corresponding with High 50 to advance their investigations into this asset and to determine and execute a strategy to recover as much value as is possible on behalf of creditors.

Creditors should also be aware that one of the joint administrators, Finbarr O'Connell, is a former joint administrator and current joint liquidator of both High 50 Limited and Campbell Gardner Beta Limited, both of which are 100% owned subsidiaries of High 50 Holdings Limited.

## 7.2 Contingent receivable

The directors' SOA lists a contingent receivable with a book value and estimated realisable value of £8.33million. The joint administrators understand that the Company will be due a payment in this amount from BAT in the event that BAT is successful in recovering funds from Sequana in relation to the s423 IA86 claims (transaction defrauding creditors) as detailed in section 4.3 above. The claim related to two dividends, of €443million and €135million, which the Company distributed to Sequana in the months prior to its May 2009 acquisition by TMW Investments. As mentioned previously, these dividends relate to debts which had been due to the Company by Sequana. As mentioned at section 4.3, BAT's claim against the Company with regard to the Sequana dividends was made under s423 IA86. Smith & Williamson LLP advised the Company on the insolvency related effects of this claim at the time as part of its periodic insolvency monitoring work for the Company.

We understand that, as part of the settlement negotiations, BAT dropped its claim in relation to the €443m dividend and, pursuant to two judgements dated 11 July 2016 and 10 February 2017, the High Court ordered Sequana to pay at least €130million, subject to a maximum of €135m plus interest, to BAT. The High Court granted Sequana a stay of execution of the 10 February 2017 decision pending a decision by the Court of Appeal, which it is understood will be issued shortly. Furthermore, we are aware that Sequana has been in a *Procédure de Sauvegarde* (which we understand to be French insolvency process, which is similar to a CVA) since February 2017.

Pursuant to the Funding Agreement, Windward will be entitled to receive a maximum of US\$10million from amounts, above a certain level, that are successfully recovered from Sequana by BAT, however, any such sums will be subject to a right of set-off in respect of amounts owed by Windward to BAT.

Following our appointment, we have met with BAT's lawyers and asked to be kept apprised of any developments in respect of this matter. Their current briefing to us is that it is highly unlikely that this matter will lead to any net recovery to the Company for the benefit of its creditors. We will continue to monitor this situation.

### 7.3 Office equipment

The directors' SOA lists office equipment with a book value of £600 and an estimated realisable value of £500. The joint administrators understand that these items principally comprise a small amount of IT equipment, which will be retained by the joint administrators as part of the Company's books and records and are therefore not anticipated to hold any realisable value for creditors.

### 7.4 Motor vehicle

The directors' SOA lists a motor vehicle subject to finance with a book value of £24,758 and a £0 estimated realisable value. The joint administrators have determined that this vehicle is a company car of one of the directors and, in accordance with advice received from Wyles Hardy, an independent asset valuation and sale agent, the vehicle had no equity value for the Company.

### 7.5 Cash at bank

The joint administrators understand that approximately £3,000 will be recoverable from the Company's bank accounts and are pursuing receipt of these funds.

### 7.6 Wine

The joint administrators are aware that the Company previously made significant investments into a fine wine portfolio which was subsequently sold at a c.£1.5million loss. One bottle of wine is retained in this portfolio and the joint administrators have instructed the portfolio manager to place the bottle into auction for sale. The administrators are awaiting a valuation of this item.

### 7.7 Arjo Wiggins (Bermuda) Holdings Ltd

Windward owns 100% of the Class A shares of its Bermuda subsidiary, Arjo Wiggins (Bermuda) Holdings Ltd, as referred to at section 4.1 above. It is unclear whether there is any value in this company for the creditors of Windward. The joint administrators have made contact with the Bermuda company agent in order to progress enquiries in this regard.

### 7.8 Other steps taken since appointment

We summarise below the other key matters that we have dealt with since our appointment.

- Working with S&W's specialist pension advisors, S&WFS, conducted investigations into the status of the Company's liability to meet monthly contributions towards an unapproved unfunded retirement benefit scheme.
- Working with S&W's specialist forensic technology advisors, conducted investigations into the Company's electronic books and records and formulated and executed a strategy to obtain all such data.
- Corresponded with the Brown County Circuit Court in Green Bay, US, in respect of a notice of motion for entry of judgment and final order against the Company in the sum of c.US\$2.4million which was received on 9 November 2018 and dealt with.
- Isolated and recovered the physical books and records of the Company as required for the purposes of the administration.
- Corresponded with the RPS in relation to the preferential claims which may be made against the Company.
- Organised the production and dispatch of a P45 to the former employee and relevant returns to HMRC.
- Conducted initial investigations into the directors' /director's conduct, as required by statute
- Conducted initial investigations into asset disposals within the relevant pre-appointment period.

## 8. Financial position at the date of administration

### 8.1 Director's SOA

Attached at Appendix IV is a copy of the director's SOA as at the date of our appointment as joint administrators on 26 October 2018. We received the SOA on 13 December 2018 and it has since been filed with the Registrar of Companies.

We have the following observations to make:

- the directors anticipate that the preferential creditors will be paid in full, which will ultimately depend on asset realisations and the costs of the administration;
- the directors anticipate that the unsecured creditors may receive a dividend. The administrators also consider there to be a prospect of a dividend to unsecured creditors, however, the quantum and timing of this will be largely dependent upon recoveries achieved from both the Company's investments and also its contingent receivable, both of which, due to the nature of such assets, are not certain;
- as noted at sections 7.8 and 8.5, we have responded to a notice of motion for entry of judgment and final order against the Company in the sum of c.US\$2.4million. The Company's liability is strongly disputed by the directors on the basis of a prior order of the Brown County Circuit Court. This sum is not represented in the directors' SOA and the joint administrators await to receive any further correspondence in respect of this matter in order to consider further any such claim in the estate;
- furthermore, we understand that Windward will also be liable to BAT and/or BTI for future Section 6 payments for the next two years (approximately) in relation to the Fox River remediation costs that are anticipated to be incurred by BAT and/or BTI, which we estimate to result in a material increase of BAT's claim. This sum is not represented in the directors' SOA and the joint administrators await to receive any further correspondence in respect of this matter in order to consider any such claims in the estate; and
- in addition, we understand that Windward is also liable to BAT Industries plc ("Industries") for both (i) the costs spent to date and further costs which will be incurred by Industries in respect of the remediation of the Fox River (Wisconsin, US) and (ii) the costs which may be incurred by Industries in respect of the remediation of the Kalamazoo River (Michigan, US). These sums are not represented in the directors' SOA and the joint administrators await to receive any further correspondence in respect of this matter in order to consider any such claims in the estate.

### 8.2 Charges and secured creditors

There are no charges registered against the Company's assets at Companies House and the joint administrators are not aware of any secured creditor claims.

### 8.3 Prescribed Part

There will be no Prescribed Part to set aside for unsecured creditors because there is no relevant qualifying floating charge over the Company's assets.

### 8.4 Preferential creditors

The Company's preferential creditors are estimated to be a maximum of £35,237, comprising arrears of wages of £800 and all accrued but untaken holiday at that date. All employee claims will be subject to review and processing by the RPS which will make any payments accordingly and then finalise its own subrogated claim in the administration.

### 8.5 Unsecured creditors

Unsecured creditors are estimated to be £3,481,422 in the directors' SOA.

The joint administrators are aware that the Company has a contractual obligation to meet ongoing contributions towards an unapproved unfunded benefit scheme which is estimated to amount to £3,441,762 in the directors' SOA. It is understood that the Company's liability has always been met by Sequana pursuant to the terms of sale of the Company to TMW Investments in May 2009. The joint administrators are working with pension specialists within S&W in respect of this matter.

We have also received a notice of motion for entry of judgment and final order against the Company in the Brown County Circuit Court (Green Bay, US) in the sum of c.US\$2.4million which was received on 9 November 2018. On 16 November 2018, we issued correspondence to the Brown County Circuit Court giving notice of the Company entering into administration and of the consequences of the resultant moratorium. We are also aware that the directors strongly dispute the Company's liability in respect of this sum on the basis of a prior order which we understand had the effect of meaning that the Company was no longer to be regarded as a defendant in the proceedings. We understand that, on receipt of our correspondence, the Brown County Circuit Court declined to enter the proposed order.

Creditors should also note the points raised at Section 8.1, above, in relation to the potential additional, substantial claims in relation to BAT, Industries and/or BTI.

All unsecured creditor claims will be adjudicated in due course, at the stage at which a dividend (if any) is declared and paid by the administrators.

## 9. Estimated outcome for creditors

Our current assessment of the likely outcome for creditors is as follows:

- Preferential creditors' position - it is anticipated that the Company will be in a position to make a distribution to the preferential creditors, however, at this early stage of the administration, the quantum and timing of any such distribution is to be confirmed.
- Unsecured creditors' position - similarly, it is anticipated that the Company will be in a position to make a distribution to the unsecured creditors, however, at this early stage of the administration, the quantum and timing of any such distribution is yet to be confirmed.

At this stage, the joint administrators anticipate that the quantum and timing of any distributions to creditors will be dependent upon the recoveries made in relation to the Company's investment assets and the contingent receivable.

As the joint administrators pursue further investigations and enquiries in relation to the Company's affairs and asset position, it is possible that further potential asset recoveries may be identified and made on behalf of creditors in addition to those detailed in this report.

## 10. Proposals for achieving the purpose of administration

Our proposals for achieving the purpose of administration for the Company are as follows:

- i. The administrators will continue to manage the affairs of the Company in order to achieve the purpose of the administration, namely with the objective of 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) and, the objective of realising property in order to make a distribution to preferential creditors.
- ii. If, having considered the value of the assets of the Company and the amount due to its creditors, the administrators consider that it would be appropriate to propose a CVA to the creditors of the Company, they will put together appropriate proposals and make these proposals to the unsecured creditors.

- iii. If, having realised the assets of the Company, and if a CVA is not proposed, and if the joint administrators think that a distribution will be made to unsecured creditors, they propose filing a notice with the Registrar of Companies which will have the effect of bringing the appointment of the joint administrators to an end and will move the Company automatically into CVL in order that the distribution can be made.
- iv. Following on from proposal (iii) above, if the administrators consider it appropriate and cost effective to do so, they may make an application to court for permission to make any distribution to the unsecured creditors instead of moving the Company to CVL and then making a distribution. (Note: If permission is granted, subject to the need for further investigations as detailed in the next section, the Company will exit into dissolution once the distribution has been made and the administration concluded).
- v. If the joint administrators think that the Company has no property which might permit a distribution to its creditors, they will file a notice with the court and the Registrar of Companies for the dissolution of the Company.
- vi. The joint administrators shall do all such other things and generally exercise all of their powers as contained in Schedule 1 IA86, as they consider desirable or expedient to achieve the purpose of the administration.
- vii. The administrators propose asking creditors to consider establishing a creditors' committee. If such a committee is formed, the creditors who become members of the committee will be responsible for sanctioning the basis of the joint administrators' remuneration and disbursements, any unpaid pre-administration costs and certain proposed acts on the part of the joint administrators. The committee will be able to make these decisions without the need to report back to a further meeting of creditors generally.

## 11. Exit route from administration

It is proposed that, at the appropriate time, the joint administrators will use their discretion to exit the administration by way of one of the following means:

- i. If a CVA is approved by the unsecured creditors, the Company will exit administration and return into the control of the Directors. In these circumstances it is proposed that the joint administrators will become the joint nominees and the joint supervisors of the CVA. The acts of the joint nominees and the joint supervisors may be undertaken by either or both of them.
- ii. With regard to a CVA exit route, creditors have the right to nominate alternative nominees and supervisors of their choice. To do this, creditors must make their nomination in writing to the joint administrators prior to these proposals being approved. Where this occurs, the joint administrators will advise creditors and provide the opportunity to vote. In the absence of a nomination, the joint administrators will automatically become the joint nominees and supervisors, in the subsequent CVA.
- iii. If, having realised the assets of the Company, the joint administrators think that a distribution will be made to the unsecured creditors other than by virtue of the Prescribed Part, they may file a notice with the Registrar of Companies which will have the effect of bringing the appointment of the joint administrators to an end and will move the Company automatically into CVL in order that the distribution can be made, but only if they consider that the associated incremental costs of a CVL are justified. In these circumstances, it is proposed that the joint administrators will become the joint liquidators of the CVL. The acts of the joint liquidators may be undertaken by either or both of them.
- iv. With regard to a CVL exit route, creditors have the right to nominate alternative liquidators of their choice. To do this, creditors must make their nomination in writing to the joint administrators prior to these proposals being approved. Where this occurs, the joint administrators will advise creditors and provide the opportunity to vote. In the absence of a nomination, the joint administrators will automatically become the joint liquidators of the Company in the subsequent CVL.
- v. If the joint administrators have, with the permission of the court, made a distribution to unsecured creditors, or they think that the Company otherwise has no property which might permit a distribution

to its unsecured creditors, subject to there being a need for further investigations as described below, they will file a notice, together with their final progress report, at court and with the Registrar of Companies for the dissolution of the Company. The joint administrators will send copies of these documents to the Company and its creditors. The joint administrators' appointment will end following the registration of the notice by the Registrar of Companies.

- vi. Administrators have the power to bring claims against former officers of the Company in respect of transactions that may have caused or exacerbated a Company's insolvency. Claims with a good prospect of success may be pursued by administrators but there may be cases where it would be more appropriate if a liquidator brought the claim or where the timeframe would not be long enough, given the maximum extension period available to administrators. The proposed exit route would, in these cases, be liquidation.

If a creditors' committee is established, the joint administrators will consult with the members of that committee and agree the most appropriate exit route from administration.

## 12. Other matters relating to the conduct of the administration

The matters detailed below are not considered to be part of the proposals but are intended to provide creditors with information concerning the remaining statutory and other matters that must be dealt with in the administration.

The administrators are responsible for:

- Submitting a confidential return or report on the conduct of the Directors to the Department for Business, Energy & Industrial Strategy. This obligation arises under the Company Directors' Disqualification Act 1986. Creditors should note that the content of any submission is strictly confidential and under no circumstances will discussions be entered into regarding this;
- Agreeing and making payment of preferential and unsecured claims, subject to availability of funds;
- Filing corporation tax returns and obtaining tax clearance in respect of the administration period;
- Paying all costs and expenses of the administration once any required approval has been obtained; and
- Further statutory reporting as required by IA86 and IR16.

## 13. Pre-administration costs and expenses

### 13.1 Pre-administration costs

Pre-administration costs are defined as fees charged and expenses incurred by the joint administrators or another person qualified to act as an insolvency practitioner before the Company entered administration (but with a view to its doing so), and "unpaid pre-administration costs" are pre-administration costs which had not been paid when the Company entered administration.

The basis of our pre-administration costs was set out in our engagement letters with the Company dated 15 October and 26 October 2018. Our costs were to be charged on a time cost basis.

Our engagement was to:

- (a) provide advice and assistance in relation to the Company's financial positions and also its available restructuring, recovery and insolvency options;

- ii) advising on the financial control of the Company up to the date that the Company enters administration which will include advising on the protection of the Company's business and assets and/or the sale of its assets or business as appropriate;
- iii) preparing, in consultation with the Company, and solicitors instructed by the Company or us, all necessary documentation for placing the Company into administration;
- iv) opening a designated account, if appropriate, and receiving into such account any sums payable to the Company, and making payments, subject to the Company's instructions, of any necessary costs and expenses, such as payments to employees and suppliers, that are required to protect the creditors' and members' interests and to implement the administration; and
- v) in consultation with the Company and solicitors instructed by the Company or us, assisting with making the appointment of administrators.

Our total time costs in assisting the Company prior to our appointment as joint administrators are £14,620.25 (excluding VAT), a breakdown of which is given in Appendix V.

Pre-appointment fees charged and expenses incurred by us are detailed below:

Charged by/service(s) provided	Total amount charged £	Amount paid £	Who made payment	Amount unpaid £
Smith & Williamson LLP	14,620.25	0.00	N/A	14,620.25
KaurMaxwell Limited (legal advice and assistance)	2,265.00	0.00	N/A	2,265.00

All amounts shown are exclusive of VAT. As at the date of this report none of these costs have been paid.

The payment of the unpaid pre-administration costs set out above as an expense of the administration is subject to the approval of creditors, separately from the approval of the joint administrators' proposals. This approval will be the responsibility of the creditors' committee if one is appointed or alternatively by resolution of a virtual meeting of creditors, electronic or postal voting where there is no committee.

## 14. Joint administrators' remuneration

Insolvency Practitioners are required to provide stakeholders with details of the work they propose to do and the expenses that are likely to be incurred. Prior to drawing any fees, these details must be provided to creditors and approval given. Alternatively, creditors may form a committee and, if so, it is up to the majority of committee members to give consent.

Where it is proposed that fees are drawn from the insolvent estate on a time costs basis, a fees estimate will also need to be provided. Where it is unrealistic to estimate the work to be done at the outset, an estimate may be provided for a designated period or up to a particular milestone.

Creditors should be aware that the fees estimate is based on information available at present and may change due to unforeseen circumstances arising. If any original fees estimate is exceeded, a revised estimate will need to be provided and approval given before any fees may be drawn.

Some of the work required by Insolvency Practitioners is required by law and may not necessarily result in any financial benefit for creditors (or members). Examples of this work would include dealing with former employee claims through the Redundancy Payments Service.

On some occasions, third parties may be instructed to provide expert advice on tax, legal or property matters to produce a financial benefit to creditors.

Each aspect of the work undertaken will require different levels of expertise and, therefore, cost. To make it clear, we have given the rates for each grade of staff with estimates of the total hours to be spent on each aspect in the table provided.

The basis of the joint administrators' remuneration may be fixed on one or more of the following bases and different bases may be fixed in respect of different things done by them:

- as a percentage of the value of the assets they have to deal with; or
- by reference to time properly spent by the joint administrators and their staff in attending to matters arising in the administration; or
- as a set amount.

In this case, the joint administrators are seeking approval for the basis of their remuneration as follows:

- by reference to the time properly spent by the joint administrators and their staff in attending to matters arising in the administration estimated to total £300,000 for the period of the administration. As we will be seeking approval to draw fees on this basis, a fees and costs estimate is attached at Appendix VII. This details the estimated fees according to the grade of staff, expected number of hours to perform specific tasks, some of which are mandatory, irrespective of the company, and some of which are specific to this case, and the average hourly rate. (The estimated expenses of the administration, including legal fees, total £72,999 and are scheduled at the bottom of the fees and costs estimated schedule at Appendix VII).

Where no creditors' committee is appointed, approval of the joint administrators' remuneration shall be fixed using the decision making process either at a virtual creditors' meeting or by electronic and/or postal voting. Where the joint administrators have concluded that the company has insufficient property to enable a distribution to be made to the unsecured creditors, approval will be sought from the preferential creditors in accordance with R18.18 IR16.

Included in the total estimate given in Appendix VII are the accrued, joint administrators' time costs which cover the period from the date of the administration to 30 November 2018 and total £48,307.75 (excluding VAT). A breakdown is given in Appendix VI. This represents 106.05 hours at an average rate of £455.52 per hour.

A copy of "A Creditor's Guide to Administrator's Fees", as produced by the ICAEW, is available free on request or can be downloaded from their website as follows:

<http://www.icaew.com/-/media/corporate/files/technical/insolvency/creditors-guides/2017/administration-creditor-fee-guide-6-april-2017.ashx?la=en>

Details of Smith & Williamson LLP's charge out rates and policies in relation to the use of staff are provided at Appendix VIII.

## 14.1 S&WFS

S&WFS, a company associated with Smith & Williamson LLP, has been assisting the joint administrators in relation to the Company's pension affairs. Payments to parties in which joint administrators or their firm have an interest must be disclosed to, and approved by, creditors in a similar way as approval of the joint administrators' remuneration.

In this case, the joint administrators are seeking approval for the basis of S&WFS as follows:

By reference to the time properly spent by the S&WFS staff and their staff in attending to matters arising in the administration. As we will be seeking approval to draw fees on this basis, a fees and costs estimate is attached at Appendix VII. This details the estimated fees according to the grade of staff, expected number of hours to perform specific tasks, some of which are mandatory, irrespective of the company, and some of which are specific to this case, and the average hourly rate. Details of S&WFS' charge out rates are included at Appendix VIII.

## 14.2 S&WCFL

S&WCFL, a company associated with Smith & Williamson LLP, has been assisting the joint administrators in relation to the Company's investment assets. Payments to parties in which joint administrators or their firm



have an interest must be disclosed to, and approved by, creditors in a similar way as approval of the joint administrators' remuneration.

In this case, the joint administrators are seeking approval for the basis of S&CFL as follows:

By reference to the time properly spent by the S&WCFL staff and their staff in attending to matters arising in the administration. As we will be seeking approval to draw fees on this basis, a fees and costs estimate is attached at Appendix VII. This details the estimated fees according to the grade of staff, expected number of hours to perform specific tasks, some of which are mandatory, irrespective of the company, and some of which are specific to this case, and the average hourly rate. Details of S&WFS' charge out rates are included at Appendix VIII.

## 15. Administration expenses

### 15.1 Subcontractors

We have utilised the services of the following subcontractors. The nature of the work provided and the basis upon which fees were agreed is also set out below. The arrangement with each subcontractor is subject to regular review.

Provider/service(s)	Basis of fee arrangement	Costs incurred in current period £	Costs paid in current period £
ERA Solutions - issue P45 to employee	Rate per employee claim	75	Nil

### 15.2 Professional advisors

We have used the professional advisers listed below. We have also indicated alongside the basis of our fee arrangement with them, which is subject to review on a regular basis.

Professional adviser/service	Basis of fee arrangement	Costs incurred £	Costs paid £
KaurMaxwell Limited (legal advice and assistance)	Hourly rate and disbursements	1,225.00	Nil
Total		1,225.00	Nil

### 15.3 Administrators' disbursements

We have paid and/or incurred the following disbursements in the current period:

Description	Incurred in current period £	Paid in current period £	Total costs outstanding at period end £
Court fee	280.00	Nil	280.00

Description	Incurred in current period £	Paid in current period £	Total costs outstanding at period end £
Statutory advertising	81.45	Nil	81.45
Total			

Note: Total costs outstanding may include costs incurred in prior periods, but not yet paid.

#### 15.4 Category 2 disbursements (see appendix VII)

Other than the fees of S&WFS and S&WCFL fees, referred to in section 14.1 and section 14.2, since our appointment we have incurred no other Category 2 disbursements.

In accordance with SIP 9, Remuneration of Insolvency Office Holders, the joint administrators will be seeking approval to draw Category 2 disbursements as and when funds are available, in accordance with Smith & Williamson's disbursement recovery policy.

#### 15.5 Policies regarding use of third parties and disbursement recovery

Details of Smith & Williamson's policies regarding the use of subcontractors and professional advisors and the recovery of disbursements are set out at Appendix VIII.

## 16. Creditors decisions

An initial creditors' decision procedure is being convened and notice to this effect is found at appendix XI. Creditors will be invited to form a Committee, failing which, the creditors will be asked to approve the joint administrators' proposals, remuneration and disbursements and payment of unpaid pre-appointment costs and expenses. Creditors will also be asked to approve the joint administrators' discharge from liability. Subject to approval being granted, the joint administrators will be discharged from liability under P98 SchB1 as soon as their appointment ceases to have effect.

The Decision Date is 4 January 2019 and further information on the decision procedure is contained in the letter accompanying this report.

Creditors who meet certain thresholds prescribed by the Insolvency Act 1986, namely 10% in value of creditors, 10% in number of creditors or 10 creditors, may request a physical meeting to be held to consider the Proposed Decisions (incorporating the approval of our fees). However, such a request must be made in writing to the Convener within 5 business days from 24 December 2018.

## 17. Privacy and data protection

As part of our role as joint administrators, I would advise you that we may need to access and use data relating to individuals. In doing so, we must abide by data protection requirements. Information about the way that we will use and store personal data in relation to insolvency appointments can be found at <https://smithandwilliamson.com/rrsgdpr>

If you are unable to download this, please contact my office and a hard copy will be provided free of charge.

To the extent that you hold any personal data of the Company's data subjects provided to you by the Company or obtained otherwise, you must process such data in accordance with data protection legislation. Please contact us if you believe this applies.

## 18. Next report and creditors' rights

The joint administrators are required to provide a progress report within one month of the end of the first six months of the administration or earlier if the administration has been finalised.

From receipt of the first progress report, creditors have rights under IR16 to request further information and to challenge the joint administrators' remuneration and/or expenses incurred. In summary:

- Within 21 days of the receipt of a progress report, a secured creditor, or an unsecured creditor (with the concurrence of at least 5% in value of the unsecured creditors or otherwise with the court's permission) may request in writing that the joint administrators provide further information about their remuneration or expenses which have been itemised in the report.
- Any secured creditor, or an unsecured creditor (with the concurrence of at least 10% in value of the unsecured creditors or otherwise with the court's permission) may within 8 weeks of receipt of a progress report make an application to court on the grounds that, in all the circumstances, the basis fixed for the joint administrators' remuneration is inappropriate and/or the remuneration charged or the expenses incurred (including any paid) by the joint administrators, as set out in the report, are excessive.

The above rights apply only to matters which have not been disclosed in previous reports.

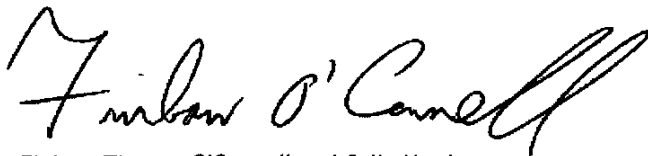
On a general note, if you have any comments or concerns in connection with our conduct, please contact Finbarr Thomas O'Connell or Colin Hardman in the first instance. If the matter is not resolved to your satisfaction, you may contact our Head of Legal by writing to 25 Moorgate, London EC2R 6AY or by telephone on 020 7131 4000.

Thereafter, if you wish to take the matter further you may contact the Insolvency Services directly via Insolvency Complaints Gateway. They can be contacted by email, telephone or letter as follows:

i) Email: [insolvency.enquiryline@insolvency.gsi.gov.uk](mailto:insolvency.enquiryline@insolvency.gsi.gov.uk)

ii) Telephone number: +44 300 678 0015

iii) Postal address: The Insolvency Service, IP Complaints, 3rd Floor, 1 City Walk, Leeds LS11 9DA.



Finbarr Thomas O'Connell and Colin Hardman

Joint Administrators

Date: 21 December 2018

# I Statutory information

Relevant Court	High Court of Justice
Court Reference	9110 of 2018
Trading Name(s)	Windward Prospects Limited
Trading Addresses	n/a
Former Name(s)	Peakgilt Public Limited Company, Wiggins Teape Appleton PLC, Arjo Wiggins Appleton Limited
Registered Office	25 Moorgate, London, EC2r 6AY (Formerly, Cannon Place, 78 Cannon Street, London, EC4N 6AF)
Registered Number	02454830
Joint Administrators	Finbarr Thomas O'Connell and Colin Hardman both of 25 Moorgate, London, EC2R 6AY (IP No(s) 7931 and 16774) In accordance with P100 (2) Sch B1 1A 86 a statement has been made authorising the Joint Administrators to act jointly and severally.
Date of Appointment	26 October 2018
EU Regulations	The EU Regulation on Insolvency Proceedings 2015 applies to the administration. The proceedings are main proceedings as defined by Article 3 of the Regulation. The Company is based in the United Kingdom.

## II Prior professional relationship

### Statement of prior professional relationship of Finbarr Thomas O'Connell and Colin Hardman in respect of the appointment of joint administrators

We have a prior professional relationship with Windward Prospects Limited to the extent set out below:

Smith and Williamson LLP was instructed by the Company on 13 September 2013 to provide services connected with its solvency and specifically to review and comment on a claim launched against the Company by British American Tobacco ("BAT") with regard to dividends that the Company had previously paid to its parent company, Sequana SA, a number of years earlier. This claim by BAT gave rise to solvency concerns for the Company and its directors. In September 2014, Smith & Williamson's work concluded with regard to this review when the Company settled its dispute with BAT by way of an agreement which included the assignment of any right the Company had to claim against Sequana to BAT. There are no outstanding fees in respect of this work. Smith & Williamson was paid £101,504.50 by the Company with regard to this assignment.

Furthermore, Finbarr O'Connell, is a former joint administrator and current joint liquidator of both High 50 Limited and Campbell Gardner Beta Limited, both of which are 100% owned subsidiaries of High 50 Holdings Limited, which is itself 50% owned by the Company and also a debtor to the Company in respect of a US\$1,649,964 loan.

The Company had periodically availed itself of the restructuring services of Smith & Williamson in order to assess various restructuring related issues as they arose and to deal with the insolvency of some of its investments.

We confirm that we have fully considered the relevant guide to professional conduct and ethics issued by our professional body and are satisfied that the existence of this prior relationship does not create any conflict of interest or threat to independence for us as office holders.

# III Receipts and payments account

Receipts and payments account to 21 December 2018

**Windward Prospects Limited  
(In Administration)**

**Joint Administrators' Summary of Receipts and Payments  
From 26 October 2018 to 21 December 2018**

<b>RECEIPTS</b>	<b>Total (£)</b>
Cash at bank	1,940.87
Aftermath Collections Limited	2,300.81
<b>PAYMENTS</b>	Nil
Net Receipts/(Payments)	<u>4,241.68</u>
<b>MADE UP AS FOLLOWS</b>	
Balance in hand	<u>4,241.68</u>

## Notes and further information required by SIP 7

- The joint administrators' remuneration has not yet been approved.
- We have not yet sought approval of or drawn any other costs that would require the same approval as our remuneration.
- No payments have been made to us from outside the estate.
- Details of significant expenses paid are provided in the body of our report.
- Information concerning our remuneration and disbursements incurred is provided in the body of the report.
- Information concerning the ability to challenge remuneration and expenses of the administration is provided in our report.
- All bank accounts are interest bearing.
- There are no foreign currency holdings.
- All amounts in the receipts and payments account are shown exclusive of any attributable VAT. Where VAT is not recoverable it is shown as irrecoverable VAT.

## IV Directors' Statement of Affairs as at 26 October 2018

R3.30 IR 2016

## Statement of affairs

Name of Company  
Windward Prospects Limited

Company number  
02454830

In the High Court of Justice Business and Property Courts of  
England and Wales

Court case number  
CR-2018-009110

(a) Insert name and address of  
registered office of the company

Statement as to the affairs of (a)

Windward prospects Limited of Cannon Place, 78 Cannon Street, London, EC4N 6AF

(b) Insert date

on the (b) 26 October 2018, the date that the company entered administration.

---

### Statement of Truth

I believe that the facts stated in this statement of affairs are a full, true and complete statement of the affairs of the above-named company as at (b) 26 October 2018 the date that the company entered administration.

Full name Christopher Peter John Gower

Signed 

Dated 13 December 2018



## Assets

None

None

## Investments

Contingent receivable

**Estimated total assets available for preferential creditors**

Book Value £	Estimated to Realise £
12,028,100	Unknown
600	500
8,330,000	8,330,000
24,758	0
20,383,458	8,330,500

**Signature**

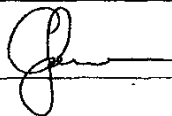
Date \_\_\_\_\_

13/12/18

## A1 – Summary of Liabilities

		Estimated to realise £
<b>Estimated total assets available for preferential creditors (carried from page A)</b>	£	8,330,500
<b>Liabilities</b>		
Preferential creditors:-	£ 35,237	
<b>Estimated deficiency/surplus as regards preferential creditors</b>	£	8,295,263
Estimated prescribed part of net property where applicable (to carry forward)	£	
<b>Estimated total assets available for floating charge holders</b>	£	
Debts secured by floating charges	£	
<b>Estimated deficiency/surplus of assets after floating charges</b>	£	
Estimated prescribed part of net property where applicable (brought down)	£	
<b>Total assets available to unsecured creditors</b>	£	8,295,263
Unsecured non-preferential claims (excluding any shortfall to floating charge holders)	£	
a. Unsecured non-preferential company creditor claims	£ 9,725,868	
b. Unsecured non-preferential former employee & director claims ( 3 claims)	£ 2,050,817	
c. Unsecured non-preferential consumer claims ( 0 claims)		
<b>Estimated deficiency/surplus as regards non-preferential creditors (excluding any shortfall to floating charge holders)</b>	£	(3,481,422)
Shortfall to floating charge holders (brought down)	£	
<b>Estimated deficiency/surplus as regards creditors</b>	£	(3,481,422)
Issued and called up capital	£ 902,156	
<b>Estimated total deficiency/surplus as regards members</b>	£	(4,383,578)

Signature



Date

13/12/18

## B - COMPANY CREDITORS

**Note:** You must include all creditors and identify all creditors under hire-purchase, chattel leasing or conditional sale agreements *and* customers claiming amounts paid in advance of the supply of goods or services *and* creditors claiming retention of title over property in the company's possession. Please note that consumer creditors and employee / director details must be provided on separate schedules.

Name of creditor or Claimant	Address (with postcode)	Amount of debt £	Details of any security held by creditor	Date security given	Value of security £
Ben Austin	1	83,571			
BTI 2014 LLC	103 Foulk Road, Suite 241, Wilmington, Delaware 19803, USA	5,776,928			
Carpenter Box	Amelia House, Crescent Road, Worthing BN11 1QR	12,000			
Stuart Champion		13,975			
Iron Mountain	Whitelaw House, Alderstone House Business Park Macmillan Road, Livingston EH54 7DF	480			
Kardos Scanlon	Level 5, 151 Castlereagh Street, Sydney NSW 2000 Australia	11,647			
James Proudlock		20,000			
Olshan Frome Wolosky LLP	1325 Avenue of the Americas, New York NY 10019 USA	345,308			
CGDS Luxembourg Invest Sarl	c/o IF Group, 45 rue des Scillas, L-2529 Howald, Luxembourg	19,797			
HMRC	Chillingham House, Benton Park View Newcastle Upon Tyne NE98 1ZZ	400			
Pensioners - contingent		3,441,762			

Signature \_\_\_\_\_

Date 13 / 12 / 18

## B1 - COMPANY CREDITORS – EMPLOYEES & DIRECTORS

[illegible]

**Signature**

Date 13/12/18Date 13/12/18

## B2 - COMPANY CREDITORS – CONSUMER CREDITORS

[illegible]

**Signature**

Date 13/12/18

Date 13/12/18

COMPANY SHAREHOLDERS

Name of Shareholder	Address (with postcode)	No. of shares held	Nominal Value	Details of Shares held
Gerrard Barron		199,944	€199,944	Ordinary
CGDS Luxembourg Invest Sarl c/o IF Group,	45 rue des Scillas, L-2529 Howald, Luxembourg	399,888	€399,888	Ordinary
Brian Tauscher		399,889	€399,889	Ordinary
	TOTALS	999,721	€999,721	

Signature \_\_\_\_\_ Date 13/12/18

## From 5 October 2018 to 26 October 2018

### Explanation of major work activities undertaken

This section of the analysis encompasses the cost of pre-appointment work in respect of the administration. This work includes the following:

- ## AML / Compliance

- Companies and background searches; and
- Dealing with queries raised by our compliance department

# VI Time analysis for the period

From 26 October 2018 to 30 November 2018

Classification of work function	Hours				Total hours	Time cost	Average hourly rate
	Partner / Director	Manager/ Assistant Manager	Other professional staff	Assistants & support staff			
Administration and planning	10.00	10.00	10.00	10.00	40.00	£4,000.00	£100.00
Investigations	10.00	10.00	10.00	10.00	40.00	£4,000.00	£100.00
Realisation of assets	10.00	10.00	10.00	10.00	40.00	£4,000.00	£100.00
Creditors	10.00	10.00	10.00	10.00	40.00	£4,000.00	£100.00
Forensics	10.00	10.00	10.00	10.00	40.00	£4,000.00	£100.00
<b>Total</b>	<b>44.25</b>	<b>45.85</b>	<b>15.75</b>	<b>0.20</b>	<b>106.05</b>	<b>£48,307.75</b>	<b>£455.52</b>

## Explanation of major work activities undertaken

### Administration and Planning

This section shows the total hours and cost incurred carrying out administration and planning in respect of the appointment for the period following the appointment of the joint administrators. This work included the following:

- Setting up the matter in the internal case systems;
- Notifying the Company's creditors of our appointment;
- Organising for the Company's bank account to be frozen and requesting information, such as bank statements, from the Company's bank;
- Drafting and sending initial notices to HMRC and Companies House;
- Organising for the appointment to be advertised in the London Gazette;
- Dealing with routine correspondence;
- Calculating the bonding requirement;
- Maintaining physical case files and electronics case details on IPS (case management software);
- Working with S&W's forensic technology specialists to secure and obtain the Company's electronic records from various sources;



- Securing and uplifting the Company's physical records from various sources;
- Consulting with S&W's tax specialists regarding the Company's tax position;
- Receiving and reviewing Company insurance information;
- Preparing the administrators' proposals and other statutory filings
- Dealing with and instructing agents and other professional advisers to assist with the case

#### Investigations

This section relates to our statutory obligations to investigate the actions of the directors of the Companies and to review the Companies' records with a view to making to asset recoveries. This work includes the following:

- Complying with our statutory duties in accordance with the Directors' Disqualification Act 1986;
- Investigation the actions of various parties in the lead up to the administration of the Company;
- Corresponding with the directors regarding our directors' questionnaire.

#### Realisation of Assets

This section is in relation to the realisation of the Company's assets. The work includes the following:

- Working with S&W's corporate finance specialists to review and assess the Company's investment portfolio and development of a strategy towards recovering value on behalf of creditors;
- Reviewing the debts owed to the Company;
- Liaising with agents in respect of the Company's IT equipment and motor vehicle;
- Liaising with the bank in relation to the cash at bank;
- Reviewing the position in relation to the contingent receivable.

#### Creditors

- Requesting creditor information from the Directors, reviewing and uploading creditor listing into internal systems;
- Drafting initial creditor notification of the appointment;
- Working with S&W's pension specialists to review and assess the Company's unfunded unapproved pension liability;
- Dealing with creditor proof of debt forms and entering to the case management system; and
- Receiving calls and correspondence from creditors and dealing with the same.

#### Cashiering and Compliance

- Opening an administration bank account;
- Internal system set up;
- Completing bank reconciliations;
- Compliance with insurance requirements; and
- Compliance with anti-money laundering requirements including requesting further identification documents from the Directors, preparing internal checks and forms to enable the Company and its officers to be identified.

## VII Fees and costs estimate

Windward Prospects Limited (in Administration) Fees estimate according to number of hours, grade of staff and expected work to be undertaken for the period 26 October 2018 to 25 October 2019							
Anticipated case duration	1	Year					
	Partner/ Director	Manager	Administrator	Assistants & support staff			
Hourly rate (£)	625	455	285	250			
	Hours				Total hours	Total estimated time costs (£)	Average hourly rate
Classification of work function							
<b>Administration and planning</b>							
	10.00	25.00	15.00	2.00	52.00	22,400.00	430.77
	1.00	3.00	5.00	2.00	11.00	3,915.00	355.91
	1.00	2.00	5.00	10.00	18.00	5,460.00	303.33
	15.00	25.00	25.00		65.00	27,875.00	428.85
	-	1.00	2.00	-	3.00	1,025.00	341.67
	-	0.50	2.00	-	2.50	797.50	319.00
	2.00	2.00	1.50	-	5.50	2,587.50	470.45
	2.00	2.00	-	-	4.00	2,160.00	540.00
<b>Investigations</b>							
	1.00	5.00	5.00	-	11.00	4,325.00	393.18
	5.00	25.00	25.00	-	55.00	21,625.00	393.18
	1.00	5.00	5.00	-	11.00	4,325.00	393.18
	35.00	50.00	25.00	-	110.00	51,750.00	470.45
	5.00	10.00	10.00	-	25.00	10,525.00	421.00
	2.00	5.00	2.00	-	9.00	4,095.00	455.00
<b>Realisation of assets</b>							
	1.00	10.00	5.00	-	16.00	6,600.00	412.50
	0.50	2.00	1.00	-	3.50	1,507.50	430.71
	35.00	50.00	15.00	-	100.00	48,900.00	489.00
	10.00	15.00	10.00	-	35.00	15,925.00	
	10.00	15.00	5.00	-	30.00	14,500.00	483.33
<b>Creditors</b>							
	2.00	3.00	5.00	-	10.00	4,040.00	404.00
	5.00	8.00	6.00	-	19.00	8,475.00	446.05
	19.46	30.00	15.00	-	64.46	30,087.50	466.76
<b>Forensics</b>							
	5.00	10.00	5.00	-	20.00	7,100.00	355.00
<b>Total</b>	<b>162.96</b>	<b>293.50</b>	<b>189.50</b>	<b>14.00</b>	<b>659.96</b>	<b>300,000.00</b>	<b>454.57</b>

Windward Prospects Limited (In Administration)		
Estimated expenses in accordance with Categories 1 & 2 (SIP 9) and payable to third parties *		
Estimated expenses applicable to all cases		Total
Accountancy fees		140.00
Statutory accounting fees		159.00
Case specific costs - where applicable		
Agent's fees		2,500.00
Company's fees		50,000.00
Company's costs		200.00
Staff costs		10,000.00
Staff costs		10,000.00
<b>Total</b>		<b>72,999.00</b>

Category 1 expenses, in accordance with Statement of Insolvency Practice 9 are specific costs payable to an independent third party and relate directly to the case in question. Category 2 expenses are payable to the office holder's firm and are shared or allocated costs, most notably business mileage.

#### Explanation of the above categories

##### Administration and Planning

This section of the analysis encompasses the cost of the office holders and their staff in complying with their statutory obligations, internal compliance requirements and all tax matters. This work includes the following:

- Preparing the documentation and dealing with the formalities of appointment
- Statutory notifications and advertising
- Protection of company's assets and records (including electronic)
- Dealing with routine correspondence
- Dealing with agents on general appointment matters not relating to the sale of assets or correspondence with advisers on investigation matters
- Maintaining physical case files and electronics case details on IPS (case management software)
- Case reviews (including 6 month reviews)
- Case bordereau and reviews
- Case planning, administration and general case progression including adjustments in appointment strategy
- Preparing reports to stakeholders
- Maintaining and managing the appointment's cash book and bank accounts
- Ensuring statutory lodgements and tax lodgements obligations are met
- Submitting VAT returns and Corporation Tax returns (when due)
- Dealing client identification and internal Smith & Williamson LLP compliance requirements

##### Investigations

Investigations include work carried out as a consequence of the obligations placed upon us to investigate the Company's affairs. The work undertaken is that described in SIP2 and SIP4 which govern both the investigations of the Company's failure and also examine the conduct of the directors. This work includes the following:

- Investigating the reasons for the failure of the Company (including enquiries with the company's directors and possible interviews of key stakeholders)
- Review and investigation of stakeholders' complaints and responses into the failing of the business and actions of company's directors
- Review and storage of books and records
- Asset tracing (including land registry and company searches)
- Possible actions (including legal recourse) to restore assets of the company or compensate the company for the financial losses incurred
- Preparing a return/report pursuant to the Company Directors' Disqualification Act
- Discussions and correspondence with relevant personnel and agents

##### Realisation of assets

This section is in relation to the realisation of the Company's assets which is explained in detail through the contents of our report. A significant amount of time may be spent in relation to the sale of the assets of the Company. The work generally includes the following:

- Pursuing recoveries from the Company's investment portfolio
- Pursuing recoveries from the Company's contingent receivable
- Recovering cash at bank sums
- Miscellaneous asset realisation outlined in the contents of the report
- Liaising with agents and advisors in relation to ongoing asset recovery matters

##### Creditors

Work under this section includes correspondence and other contact with the creditors of the Company. The work includes the following:

- Dealing with creditor correspondence via email and telephone
- Preparing reports to chargeholders
- Dealing with creditors' committee correspondence via email and telephone. Meetings of the creditors' committee is also recorded within "Administration and Planning" section of company's notices and notices
- Maintaining creditors' information on our insolvency database
- Meetings and discussions with key creditors as appropriate
- Maintaining employee claims and liaising with Job Centre, Redundancy Payments Services etc
- Investigating and dealing with the Company's unapproved unfunded pension position
- Adjudicating of creditor claims including matters of ROT
- Distributions to various categories of creditors

##### Forensic

Work under this section includes securing and maintaining the Company's electronic records

# VIII Staffing, charging, sub-contractor and adviser policies and charge out rates

## Introduction

Detailed below are:

- Smith & Williamson LLP's policies in relation to:
  - Staff allocation and the use of subcontractors
  - Professional advisers including S&WFS and S&WCFL
  - Disbursement recovery
- Smith & Williamson LLP's, S&WFS' and S&WCFL's current charge out rates

## Staff allocation and the use of subcontractors

Our general approach to resourcing our assignments is to allocate staff with the skills and experience to meet the specific requirements of the case.

The constitution of the case team will usually consist of a partner and a partner or director or associate director as joint office holders, a manager, and an administrator or assistant. The exact constitution of the case team will depend on the anticipated size and complexity of the assignment and the experience requirements of the assignment. The charge out rate schedule below provides details of all grades of staff and their experience level.

We may use subcontractors to perform work which might ordinarily be carried out by us and our staff where it is cost effective to do so and/or where the specific expertise offered by the subcontractor is required.

Details of any subcontractors' services utilised in the period covered by this report are set out in the body of this report.

## Use of professional advisers

We select professional advisers such as agents and solicitors on the basis of balancing a number of factors including:

- The industry and/or practice area expertise required to perform the required work.
- The complexity and nature of the assignment.
- The availability of resources to meet the critical deadlines in the case.
- The charge out rates or fee structures that would be applicable to the assignment.
- The extent to which we believe that the advisers in question can add value to the assignment.

## S&WFS

S&WEBC is a pensions consultancy firm which specialises in providing advice to Insolvency Practitioners on their appointment in relation to all aspects of pensions. It is a division of S&WFS, a company associated with Smith & Williamson LLP.

S&WEBC may be engaged to deal with the Company's pension affairs. Payments to parties in which the joint administrators or their firm have an interest must be disclosed to, and approved by, creditors. Fees for their

services are accrued on a time costs basis. Consequently, details of the charge out rates for S&WEBC are provided to creditors.

## S&WCFL

S&WCFL is a corporate finance consultancy firm which specialises in providing advice to Insolvency Practitioners on their appointment in relation to all aspects of corporate finance. It is a division of S&WFS, a company associated with Smith & Williamson LLP.

S&WCFL may be engaged to deal with the Company's investment assets. Payments to parties in which the joint administrators or their firm have an interest must be disclosed to, and approved by, creditors. Fees for their services are accrued on a time costs basis. Consequently, details of the charge out rates for S&WCFL are provided to creditors.

## Disbursements

Category 1 disbursements do not require approval by creditors. The type of disbursements that may be charged as a Category 1 disbursement to a case generally comprise external supplies of incidental services specifically identifiable to the case, such as postage, case advertising, invoiced travel and external printing, room hire and document storage. Also chargeable will be any properly reimbursed expenses incurred by personnel in connection with the case.

Category 2 disbursements do require approval from creditors. These are costs which are directly referable to the appointment in question but are not payments which are made to an independent third party and may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis such as internal room hire, document storage or business mileage.

Since 7 July 2012 Smith & Williamson LLP's policy is to recover only one type of Category 2 disbursement, namely business mileage at HMRC's approved mileage rates at the relevant time. Current mileage rates are 45p per mile plus 5p per passenger per mile. Prior to 7 July 2012 approval may have been obtained to recover other types of Category 2 disbursements.

Details of any Category 2 disbursements incurred and/or recovered in the period covered by this report are set out in the body of this report.

## Charge out rates

The rates applicable to this appointment are set out below. There have been no changes to the charge out rates during the period of this report.

Smith & Williamson LLP Restructuring & Recovery Services Charge out rates as at 1 July 2018	London office £/hr	Regional offices £/hr
Partner / Director	565-625	434-465
Associate Director	520	366-391
Managers	325-455	236-384
Other professional staff	205-285	149-223
Support & secretarial staff	110-250	74-167

## Notes

1. Time is recorded in units representing 3 minutes or multiples thereof.
2. It may be necessary to utilise staff from both regional and London offices, subject to the requirements of individual cases.
3. The firm's cashiering function is centralised and London rates apply. The cashiering function time is incorporated within "Other professional staff" rates.

<b>S&amp;WFS Employee Benefits Consultancy</b>	<b>Per hour</b>
<b>Charge out rates from 1 July 2018</b>	<b>£</b>

Director	442.50
Manager	277.50

<b>S&amp;WCFL Corporate Finance</b>	<b>Per hour</b>
<b>Charge out rates from 1 July 2018</b>	<b>£</b>

Partner	465.00
Director	409.20

# IX Notice of a Decision being sought by a Decision Procedure

**Windward Prospects Limited - In Administration (the 'Company')**  
Registered Number - 02454830

This notice is given pursuant to Part 15 of the Insolvency (England and Wales) Rules 2016 (the Rules).

<b>Court details</b>	
<b>Court Name</b>	High Court of Justice
<b>Court Number</b>	9110 of 2018

<b>Office Holders' details</b>	
<b>Joint Administrators</b>	Finbarr Thomas O'Connell and Colin Hardman
<b>Administrators' Firm Name</b>	Smith & Williamson LLP
<b>Date of Appointment of Joint Administrators</b>	26 October 2018

## THE PROPOSED DECISIONS

The joint administrators (the **Convener**) are seeking that the following decisions be made by the Company's creditors by correspondence:

- 1 That the joint administrators' proposals for achieving the purpose of the Administration, as set out in the joint administrator's report and statement of proposals, be approved.
- 2 Under Rule 3.52 of the Insolvency (England and Wales) Rules 2016 and in the absence of a Creditors' Committee, the unpaid pre-administration costs as detailed in the Joint Administrators' Report and Statement of Proposals be approved.
- 3 Under Rule 18.16 of the Insolvency (England and Wales) Rules 2016 and in the absence of a Creditors' Committee, the remuneration of the Joint Administrators be fixed by reference to time properly given by them and their staff in attending to matters arising in the Administration and estimated to total £300,000 over the 12 month period of the administration. It was noted that further approval would be required in the event that the time costs exceed the estimate or once a milestone has been reached.

- 4 In accordance with Statement of Insolvency Practice No 9, issued by the Association of Business Recovery Professionals, the joint administrators be authorised to draw remuneration as and when funds are available.
- 5 In accordance with Statement of Insolvency Practice No 9, issued by the Association of Business Recovery Professionals, the Joint Administrators' be authorised to draw Category 2 disbursements, as explained in the administrators' proposals, in accordance with their firm's published tariff.
- 6 The Joint Administrators will be discharged from liability under Paragraph 98(2) of Schedule B1 to the Insolvency Act 1986 immediately upon their appointment as Joint Administrators ceasing to have effect.
- 7 Whether a creditors' committee should be established if sufficient creditors are willing to be members of a committee and if so, who the creditors' wish to nominate for membership of the committee.

### **ENSURING YOUR VOTES ON THE PROPOSED DECISIONS ARE COUNTED**

In order for votes on the Proposed Decisions to be counted, a creditor must have delivered the Voting Form accompanying this notice, together with a proof of debt in respect of their claim (unless a proof has already been submitted) to the Convener, whose contact details are below, on or before 4 January 2019 (**the Decision Date**), failing which their votes will be disregarded.

#### **Appeal of Convener's decision**

Pursuant to Rule 15.35 of the Rules, any creditor may apply to the court to appeal a decision of the Convener. However, an appeal must be made within 21 days of the Decision Date.

#### **Creditors' committee - nominations**

In relation to the proposed decision set out above concerning the formation of a committee, any nominations for membership of the committee must be received by the Convener by no later than the Decision Date and will only be accepted if the joint administrators are satisfied as to the nominee's eligibility to be a member of such committee under Rule 17.4 of the Rules. Please note that nominations for membership can be made on the Voting Form accompanying this notice.

#### **Creditors with a small debt**

Any creditor whose debt is treated as a small debt (less than £1,000 inclusive of VAT) must still deliver a proof of debt in respect of their claim by no later than the Decision Date if they wish to vote on the Proposed Decisions.

#### **Creditors who have opted out of receiving notices**

Any creditor who has opted out of receiving notices but still wishes to vote on the Proposed Decisions is entitled to do so. However, they must have delivered a completed Voting Form, together with a proof of debt in respect of their claim (unless a proof has already been submitted) to the Convener, whose contact details are below, by no later than the Decision Date, failing which their votes will be disregarded.

#### **Request for a physical meeting**

Creditors who meet certain thresholds prescribed by the Insolvency (England & Wales) Rules 2016, namely 10% in value of creditors, 10% in number of creditors or 10 creditors, may request a physical meeting to be held to consider the Proposed Decisions. However, such a request must be made in writing to the Convener within 5 business days from 24 December 2018 and be accompanied by a proof in respect of their claim (unless one has already been submitted).



#### Contact details

The Convener's postal address is at Smith & Williamson LLP, 25 Moorgate, London, EC2R 6AY. Any person who requires further information may contact the Convener by telephone on 020 7131 8904 or alternatively by e-mail at [Cameron.Dalrymple-Rockett@smithandwilliamson.com](mailto:Cameron.Dalrymple-Rockett@smithandwilliamson.com).

Dated: 21 December 2018



Signed: .....

Convener