

The Insolvency Act 1986

# **Notice of move from administration to creditors' voluntary liquidation**

**2.34B**

THORNS GROUP PLC

Company number  
02990964In the  
HIGH COURT OF JUSTICE CHANCERY DIVISIONCourt case number  
1821 OF 2005(a) Insert name(s) and  
address(es) of  
administrator(s)

We, Andrew John Tate and John David Ariel of Baker Tilly 12 Gleneagles Court, Brighton Road, Crawley  
West Sussex, RH10 6AD

(b) Insert name and address  
of registered office of  
company

having been appointed administrators of Thorns Group plc  
12 Gleneagles Court, Brighton Road, Crawley

(c) Insert date of  
appointment

On 31 March 2005 by the directors

(d) Insert name of applicant /  
appointor

hereby give notice that:

the provisions of paragraph 83(1) of Schedule B1 to the Insolvency Act 1986 apply,

(e) Insert name(s) and  
address(es) of liquidator(s)

and it is proposed that Andrew John Tate and John David Ariel will be the liquidators of the company.

IP Numbers 008960 and 007838

We attach a copy of the final progress report.

Signed

Joint Administrators

Dated

30 March 2006

\* OF 12 GLENEAGLES COURT  
BRIGHTON ROAD  
CRAWLEY  
WEST SUSSEX  
RH10 6AD.

## **Contact Details:**

You do not have to give any contact information in the box opposite but if you do, it will help Companies House to contact you if there is a query on the form. The contact information that you give will be visible to searchers of the public record

Baker Tilly, 12 Gleneagles Court, Brighton Road, Crawley, West Sussex RH10 6AD

Tel 01293 565 165

DX Number

DX Exchange



When you have completed and signed this form please send it to the Registrar of Companies at:

Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
LONDON COMPANIES COURT

No. 1821 of 2005

IN THE MATTER OF

THORNS GROUP PLC  
(IN ADMINISTRATION)

AND

IN THE MATTER OF THE INSOLVENCY ACT 1986 (AS AMENDED)

JOINT ADMINISTRATORS' FINAL PROGRESS REPORT TO CREDITORS  
DATED 27 MARCH 2006  
PURSUANT TO RULES 2.47 AND 2.110 INSOLVENCY RULES 1986  
(AS AMENDMENT)

John David Ariel & Andrew John Tate  
JOINT ADMINISTRATORS OF  
THORNS GROUP PLC

Baker Tilly  
12 Gleneagles Court  
Brighton Road  
Crawley  
RH10 6AD

**1. PURPOSE OF REPORT**

This report is prepared pursuant to Rules 2.47 and 2.110 of the Insolvency Rules 1986 (as amended) and is the final report to be issued by the Joint Administrators. The report provides creditors with information relating to the progress of the administration in the final period from 21 October 2005 to 27 March 2006.

**2. JOINT ADMINISTRATORS' APPOINTMENT**

John David Ariel and Andrew John Tate of Baker Tilly, 12 Gleneagles Court, Brighton Road, Crawley, West Sussex RH10 6AD were appointed Joint Administrators ("the Joint Administrators") of Thorns Group Plc ("the Company") on 31 March 2005 by the directors.

The notice of appointment was filed in the Chancery Division of the High Court of Justice, London Companies Court under reference number 1821 of 2005.

The Joint Administrators' appointment specified that they would have power to act jointly and severally. The Joint Administrators have exercised and will continue to exercise all of their functions jointly and severally as stated in the notice of appointment.

**3. COMPANY DETAILS**

The registered number of the Company is 02990964.

The Registered Office of the Company is Baker Tilly, 12 Gleneagles Court, Brighton Road, Crawley, West Sussex RH10 6AD.

**4. RECEIPTS AND PAYMENTS SUMMARY**

We attach Appendix 1 our final receipts and payments account for the period of the administration of 31 March 2005 to 27 March 2006.

**Prescribed Part**

The amount to be passed to the Joint Liquidators for distribution to the unsecured creditors in relation to the Prescribed Part; Section 176A of the Insolvency Act 1986 (as amended), is approximately £110,000. However, the exact sum available to the unsecured creditors under the Prescribed Part will not be known until the final costs of the administration have been settled.

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## 5. CONDUCT OF THE ADMINISTRATION

The principal objective of the administration was to achieve a better result for the Company's creditors as a whole than would be likely if the Company were wound up.

This was achieved through the sale of the business and assets of the Company to Castle Stanton Limited on 1 April 2005.

## 6. SALE OF THE BUSINESS AND REALISATION OF ASSETS

The sale of the business and realisation of the Company's assets were detailed in our proposals and report to creditors dated 23 May 2005 and 21 October 2005 respectively and we would refer you to those reports for full details of the transactions.

### **Fixed Charge Realisations**

#### *Leasehold Premises & Improvements*

A value of £1 was ascribed to the leases within the sale to Castle Stanton Limited ("Castle Stanton").

#### *Goodwill*

Castle Stanton paid consideration of £99,999 for the goodwill of the Company, of which £54,999 was paid to the Administrators on completion and the balance of £45,000 payable on a deferred consideration basis.

To date, we have received £32,500 of the deferred consideration. Castle Stanton has agreed to pay the remaining £12,500 in 3 equal monthly instalments starting in April 2006.

The disposal of the goodwill is a chargeable gain for tax purposes and thus gives rise to a corporation tax liability on the disposal. We estimate the liability arising on this disposal to be in the region of £16,000 however finalisation of this liability is subject to HM Revenue & Customs approval. The balance of these funds after the settlement of the liability will be distributed to the secured creditor under its fixed charge in due course.

### **Floating Charge Realisations**

#### *Equipment Hire Stocks*

Consideration of £500,000 has been received for the Company's hire stock equipment.

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*Book Debts*

Consideration of £100,000 has been received from Castle Stanton in respect of the Company's books debts under the sale agreement, with £50,000 received on completion and the balance of £50,000 in August 2005.

*Miscellaneous Refunds*

We have received two refunds from the Vehicle and Operator Services Agency and Coca Cola for £87 and £53.95 respectively.

*Deposits & Prepayments*

We have not been provided with sufficient supporting information from Castle Stanton regarding the deposits and prepayments of the Company totalling £154,211 to establish whether the purchaser benefited from these assets. The matter is ongoing and will continue while in liquidation.

**7. ASSETS REMAINING TO BE REALISED**

We shall continue to collect the remaining £12,500 of goodwill due under the sale contract. These monies will be available to the secured creditor under its fixed charge.

Our enquiries into the deposits and prepayments that the company had at the time it entered into administration are ongoing.

**8. CREDITOR CLAIMS AND DISTRIBUTIONS**

**Secured Creditors**

Barclays Bank Plc ("the Bank")

The Bank holds a valid fixed charge over the all interests in property, goodwill and intellectual property and floating charge over all other assets of the Company. The Bank's debenture was created on 23 August 2004 and therefore the "Prescribed Part" provisions of s176A the Insolvency Act 1986 apply.

There have been two distributions to the Bank totalling £370,240 they are summarised as follows:

	£
Fixed charge distribution	20,100
Floating charge distribution	<u>350,140</u>
	370,240

Further distributions will be made to the Bank under both the fixed and floating charges once the residual administration liabilities are finalised.

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### **Preferential Creditors**

We have received two preferential creditors claims totalling £4,853.06 and paid a distribution of 100 pence in the pound.

### **Unsecured Creditors**

As detailed in our last report, Section 176A of The Insolvency Act 1986, as amended; known as the "Prescribed Part provisions", applies in this administration. We have given an approximation of the assets available to unsecured creditors under the Prescribed Part in section 4 of this report.

We have received, but as yet not adjudicated, 107 unsecured creditor claims totalling £1,121,297.61. It is the duty of the Liquidators to adjudicate these claims and distribute assets available to the unsecured creditors. The unsecured creditors will be given a final chance to prove their debts before a distribution is made once the company is in liquidation.

## **9. ADMINISTRATORS' PROPOSALS**

The Joint Administrators' proposals were approved by creditors at a meeting held on 23 May 2005. The proposals are summarised below:

### **Proposals**

1. The Joint Administrators should continue to realise the assets of the Company upon the terms they consider to be the most beneficial to creditors of the Company.
  2. The Joint Administrators should arrange to distribute available funds from the realised assets to those creditors entitled to them in a timely manner.
  3. The Joint Administrators be authorised to make such application to Court for directions as they consider appropriate with a view to achieving the objectives set out in Section 5.
  4. In the event that a Creditors' Committee is not established, that the Joint Administrators' remuneration be taken on a time cost basis according to the complexity of the work undertaken at Baker Tilly's standard hourly rates and that such fees may be drawn on account.
  5. The Joint Administrators be authorised to draw their pre appointment fee of £18,974 plus VAT and disbursements for the work undertaken prior to the appointment.
  6. The Joint Administrators propose that the Administration be brought to an end when all the property and assets have been realised and relevant distributions made to secured creditors.
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7. The Joint Administrators propose to end the Administration pursuant to Paragraph 83 or Paragraph 80 of Schedule B1 to The Insolvency Act 1986, as amended.
8. Andrew John Tate and John David Ariel of Baker Tilly to be appointed as Liquidators of the Company in the event that the exit route from Administration is CVL
9. The Joint Administrators of the Company be discharged from liability, pursuant to paragraph 98 of schedule B1 to the Insolvency Act 1986, in respect of any action of each or both of them as administrators 14 days after the cessation of their appointment as Administrators.

The Joint Administrators have given notice to the Registrar of Companies pursuant to Paragraph 83 of Schedule B1 to The Insolvency Act 1986, as amended, to move the administration into Creditors Voluntary Liquidation, in line with their Proposals dated 23 May 2005.

#### **10. EXTENSION OF THE ADMINISTRATION**

There have been no extensions of the administration

#### **11. ADMINISTRATORS' REMUNERATION AND DISBURSEMENTS**

##### **Time costs and fees drawn to date**

The creditors agreed at the creditors meeting held on 23 May 2005 that the Joint Administrators should be remunerated on a time cost basis as set out in Statement of Insolvency Practice (SIP) 9, a copy of which is enclosed for your attention.

Further, where applicable, the Joint Administrators' remuneration is also subject to the direct agreement of the secured charge holder, in accordance with their security rights.

Since the appointment of the Joint Administrators a total of 364.5 hours has been spent at a cost of £49,193 in the administration, at an average hourly rate of £134.96. The Joint Administrators have drawn fees of £17,026 in respect of their time costs; £14,000 in relation to fixed charge assets and £3,026 in relation to floating charge assets. The Joint Administrators' fees have been approved by the secured charge holder, Barclays Bank Plc.

The Joint Administrators' outstanding time costs will be paid from the floating charge realisations subject to the approval of the Bank.

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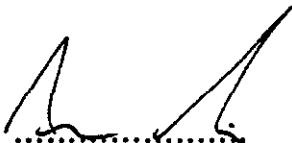
The following information in relation to the Joint Administrators' fees is attached to this report:

- Appendix 2 - SIP 9 time and charge out summary
- Appendix 3 - Time charging policy and disbursement policy
- Appendix 4 - Payments to office holders and associated parties.
- Appendix 5 - Charge out rate summary.
- Appendix 6 - Creditors Guide to Administrators Fees

## 12. CLOSURE OF THE ADMINISTRATION

The Joint Administrators have filed the required notice at companies house pursuant to Paragraph 83 of Schedule B1 to The Insolvency Act 1986 (as amended) to move the Company in liquidation and bring the administration to an end. On registration of the notice by the Registrar, the appointment of the Joint Administrators in respect of the Company shall cease to have effect and the Company shall be wound up.

Should you have any queries please do not hesitate to contact Mr Raymond Cox of this office.



.....  
**Andrew John Tate**



.....  
**John David Ariel**

**Joint Administrators**

27 March 2006

**John Ariel is licensed to act as an insolvency practitioner by the Institute of Chartered Accountants in England & Wales under licence number 7838.**

**Andrew Tate is licensed to act as insolvency practitioner by the Association of Chartered Certified Accountants.**

**The affairs, business and property of the company are being managed by the Joint Administrators who act as agent for the company without personal liability.**

**THORNS GROUP PLC (IN ADMINISTRATION)**  
**JOINT ADMINISTRATORS' ABSTRACT OF RECEIPTS & PAYMENTS**  
**TO 27 MARCH 2006**

	To Date £	Estimated Future Movements £	Projected Outcome £
<b>ASSETS SUBJECT TO FIXED CHARGE</b>			
Leasehold Premises and Improvements	1	-	1
Goodwill	87,499	12,500	99,999
Bank Interest Gross	777	-	777
	<u>88,277</u>	<u>12,500</u>	<u>100,777</u>
<b>COSTS OF REALISATION</b>			
Office Holders Fees	( 14,000)	-	( 14,000)
Legal Fees	( 493)	( 1,000)	( 1,493)
Agents/Valuers Fees	( 450)	-	( 450)
Capital Gains Tax	-	( 16,000)	( 16,000)
	<u>( 14,943)</u>	<u>( 17,000)</u>	<u>( 31,943)</u>
Available for Fixed Chargeholder	73,334	( 4,500)	68,834
Less Distributions to Barclays Bank Plc	<u>( 20,100)</u>	<u>( 48,734)</u>	<u>( 68,834)</u>
<b>FIXED CHARGE FUNDS ON HAND</b>	<u><b>53,234</b></u>	<u><b>( 53,234)</b></u>	<u><b>-</b></u>
<b>ASSETS SUBJECT TO FLOATING CHARGE</b>			
Equipment Hire Stocks	500,000	-	500,000
Book Debts	100,000	-	100,000
Miscellaneous Refunds	141	-	141
Bank Interest Gross	4,916	-	4,916
	<u>605,057</u>	<u>-</u>	<u>605,057</u>
<b>COSTS OF REALISATION</b>			
Pre Appointment Office Holders Fees	( 18,974)	-	( 18,974)
Office Holders Fees	( 3,026)	( 32,167)	( 35,193)
Agents/Valuers Fees	( 2,700)	-	( 2,700)
Legal Fees	( 2,957)	( 6,000)	( 8,957)
Interest Deducted at Source	( 6)	-	( 6)
Statutory Advertising	( 381)	-	( 381)
Insurance of Assets	( 1,575)	-	( 1,575)
Bank Charges	( 48)	-	( 48)
	<u>( 29,667)</u>	<u>( 38,167)</u>	<u>( 67,834)</u>
Assets available to Preferential Creditors	575,390	( 38,167)	537,223
Preferential Claims			
Pension Schemes	( 1,400)	-	( 1,400)
National Insurance Fund	( 3,453)	-	( 3,453)
	<u>( 4,853)</u>	<u>-</u>	<u>( 4,853)</u>
Net Floating Charge Realisations	570,537	( 38,167)	532,370
<b>PRESCRIBED PART</b>			
50% x £10,000	( 5,000)	-	( 5,000)
20% on balance to £600,000	<u>( 112,107)</u>	<u>7,633</u>	<u>( 104,474)</u>
<b>ESTIMATED PRESCRIBED PART</b>	<u><b>( 117,107)</b></u>	<u><b>7,633</b></u>	<u><b>( 109,474)</b></u>
Assets Available to Floating Chargeholder	453,430	( 30,534)	422,896
Less Distributions to Barclays Bank Plc	<u>( 350,140)</u>	<u>( 72,756)</u>	<u>( 422,896)</u>
<b>FLOATING CHARGE FUNDS ON HAND</b>	<u><b>103,290</b></u>	<u><b>( 103,290)</b></u>	<u><b>-</b></u>
<b>REPRESENTED BY:</b>			
Fixed Charge Current Account	53,234	( 53,234)	-
Prescribed Part Deposit Account	117,107	( 7,633)	109,474
Floating Charge Current Account	103,290	( 103,290)	-
	<u><b>273,631</b></u>	<u><b>( 164,157)</b></u>	<u><b>109,474</b></u>

## APPENDIX 2

### THORNS GROUP PLC (IN ADMINISTRATION) SIP 9 TIME AND CHARGE OUT SUMMARY AS AT 23 MARCH 2006

#### POST APPOINTMENT TIME COSTS 1 APRIL 2005 TO 23 MARCH 2006

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Administration and Planning	18.90	34.20	66.80	30.50	150.40	19,772.50	131.47
Investigations	1.00	1.40	22.50	-	24.90	3,307.50	132.83
Realisation of Assets	4.60	13.50	4.90	-	23.00	4,248.50	184.72
Creditors	4.20	35.60	123.60	-	163.40	21,247.50	130.03
Case Specific Matters	1.40	1.40	-	-	2.80	617.00	220.36
<b>TOTAL HOURS (Post 1 April 2005)</b>	<b>30.10</b>	<b>86.10</b>	<b>217.80</b>	<b>30.50</b>	<b>364.50</b>	<b>49,193.00</b>	<b>134.96</b>
<b>TOTAL TIME COST (Post 1 April 2005)</b>	<b>8,722.50</b>	<b>14,325.00</b>	<b>24,222.50</b>	<b>1,923.00</b>	<b>49,193.00</b>		

#### Administration and Planning

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Appointment	-	4.90	4.50	-	9.40	1,263.00	134.36
Background information	6.80	0.30	-	-	7.10	1,983.00	279.30
Firm's administration	8.80	4.10	3.80	24.60	41.30	5,250.00	127.12
Pension	-	-	7.00	-	7.00	595.00	85.00
Post-appointment administration	-	6.30	17.00	3.00	26.30	3,229.50	122.79
Post-appointment taxation	0.50	1.00	3.60	-	5.10	627.00	122.94
Receipts and Payments	-	0.60	24.00	2.90	27.50	2,264.00	82.33
Shareholders/Director/Debtor/ Bkpt	2.80	3.50	6.40	-	12.70	2,203.50	173.50
Statement of Affairs	-	13.50	0.50	-	14.00	2,357.50	168.39
<b>Totals</b>	<b>18.90</b>	<b>34.20</b>	<b>66.80</b>	<b>30.50</b>	<b>150.40</b>	<b>19,772.50</b>	<b>131.47</b>

#### Investigations

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Investigations/CDDA	1.00	1.40	22.50	-	24.90	3,307.50	132.83
<b>Totals</b>	<b>1.00</b>	<b>1.40</b>	<b>22.50</b>	<b>-</b>	<b>24.90</b>	<b>3,307.50</b>	<b>132.83</b>

#### Realisation of Assets

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Book Debts	-	6.00	1.50	-	7.50	1,277.50	170.33
Sale of Business	4.60	7.50	3.40	-	15.50	2,971.00	191.68
<b>Totals</b>	<b>4.60</b>	<b>13.50</b>	<b>4.90</b>	<b>-</b>	<b>23.00</b>	<b>4,248.50</b>	<b>184.72</b>

#### Creditors

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Employees	-	1.50	32.30	-	33.80	2,918.00	86.33
Secured Creditors	3.70	6.00	30.30	-	40.00	5,882.00	147.05
Preferential Creditors	-	-	5.70	-	5.70	712.50	125.00
Unsecured Creditors	-	11.60	16.60	-	28.20	3,925.00	139.18
Statutory Meetings & Reports	0.50	16.50	38.70	-	55.70	7,810.00	140.22
<b>Totals</b>	<b>4.20</b>	<b>35.60</b>	<b>123.60</b>	<b>-</b>	<b>163.40</b>	<b>21,247.50</b>	<b>130.03</b>

#### Case Specific Matters

HOURS SPENT	Partners	Managers	Administrators	Assistants	Total Hours	Total Time Costs £	Avg Hrly Rate £
Legal Matters	1.40	1.40	-	-	2.80	617.00	220.36
<b>Totals</b>	<b>1.40</b>	<b>1.40</b>	<b>-</b>	<b>-</b>	<b>2.80</b>	<b>617.00</b>	<b>220.36</b>

## **APPENDIX 3**

### **BAKER TILLY BUSINESS RECOVERY**

#### **CHARGING, EXPENSES AND DISBURSEMENTS POLICY STATEMENT**

##### **Charging policy**

- Partners, directors, managers, administrators, cashiers, secretarial and support staff are allocated an hourly charge out rate which is reviewed from time to time.
- Work undertaken by cashiers, secretarial and support staff will be or has been charged for separately and such work will not or has not also been charged for as part of the hourly rates charged by partners, directors, managers and administrators.
- Time spent by partners and all staff in relation to the insolvency estate is charged to the estate.
- Time is recorded in 6-minute units.
- Time billed is subject to Value Added Tax (VAT) at the applicable rate.

##### **Expenses and disbursements policy**

- Only expenses and disbursements properly incurred in relation to an insolvency estate are re-charged to the insolvency estate.
- Expenses and disbursements which comprise external supplies of incidental services specifically identifiable to the insolvency estate require disclosure to creditors, but do not require creditors' approval prior to being drawn from the insolvency estate. These are known as "Category 1" disbursements.
- Expenses and disbursements which are not capable of precise identification and calculation (for example any which include an element of shared or allocated costs) require the approval of creditors prior to being drawn from the insolvency estate. These are known as "Category 2" disbursements.
- General office overheads are not re-charged to the insolvency estate as a disbursement.
- Any payments to outside parties in which the office holder or his firm or any associate has an interest will only be made with the approval of creditors.
- Where applicable, expenses and disbursements re-charged to or incurred directly by an insolvency estate are subject to VAT at the applicable rate.

The category two disbursements include mileage costs at 39.75 pence per mile, postage is recharged at cost and photocopying at 10 pence per copy. All other expenses have been recharged at cost.

## APPENDIX 4

### THORNS GROUP PLC – In Administration

#### SUMMARY OF PAYMENTS TO OFFICE HOLDER AND ASSOCIATED PARTIES

##### Amounts paid to the Office-Holders' Firm

	£
Pre Appointment Office Holders Fees	18,974.00
Office Holders Fees	17,026.00
<b>Total</b>	<b><u>36,000.00</u></b>

##### Amounts paid to Associated Parties of Office-Holders

	£
None	
<b>Total</b>	<b><u>Nil</u></b>

##### Amounts paid to the Office-Holders' Solicitors

	£
Matthews Arnold Baldwin – Legal advice in relation to the appointment of the Administrators and sale of the business	3,450.00
<b>Total</b>	<b><u>3,450.00</u></b>

##### Amounts paid to the Office-Holders' Agents

	£
ATIS Real Weatheralls – Valuation of chattels	1,500.00
Edward Symmons – Valuation of leases	1,650.00
<b>Total</b>	<b><u>3,150.00</u></b>

##### Amounts paid to Third Parties for expenses

	£
TMP Worldwide Limited – Statutory Advertising	380.84
Willis Limited – Insurance of Assets	1,575.00
<b>Total</b>	<b><u>1,955.84</u></b>

## APPENDIX 5

### THORNS GROUP PLC (IN ADMINISTRATION)

#### CHARGE OUT RATE SUMMARY

	Charge out band as at date of appointment (31 March 2005)	Charge out band as at date of current report (23 March 2006)
Partner	£285	£295
Manager	£130 - £215	£150 - £220
Administrators	£60 - £125	£75 - £125
Assistants & Support Staff	£50 - £65	£50 - £65

## **APPENDIX 6      A CREDITORS' GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES**

**Where Petition Presented or Appointment Made On or After 15 September 2003**

### **1      Introduction**

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

### **2      The nature of administration**

- 2.1      Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective:

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration,

or, if the administrator thinks neither of these objectives is reasonably practicable

- realising property in order to make a distribution to secured or preferential creditors.

### **3      The creditors' committee**

- 3.1      The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator must call the first meeting of the committee within 6 weeks of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

### **4      Fixing the administrator's fees**

- 4.1      The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed either:

- as a percentage of the value of the property which the administrator has to deal with, or
- by reference to the time properly given by the administrator and his staff in attending to matters arising in the administration.

*It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is fixed as a percentage fix the percentage to be applied. Rule 2.106 says that in arriving at its decision the committee shall have regard to the following matters:*

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the administrator;
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the property which the administrator has to deal with.

## **APPENDIX 6      A CREDITORS' GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES**

### **Where Petition Presented or Appointment Made On or After 15 September 2003**

- 4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.
- 4.3 There are special rules about creditors' resolutions in cases where the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund which may have to be set aside out of floating charge assets.

In this case, if there is no creditors' committee, or the committee does not make the requisite determination, the remuneration may be fixed by the approval of –

- each secured creditor of the company; or
- if the administrator has made or intends to make a distribution to preferential creditors –
  - each secured creditor of the company; and
  - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval,

having regard to the same matters as the committee would.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

- 4.4 A resolution of creditors may be obtained by correspondence.

#### **5 What information should be provided by the administrator?**

##### **5.1 When seeking fee approval**

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

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

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

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

## APPENDIX 6 A CREDITORS' GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES

Where Petition Presented or Appointment Made On or After 15 September 2003

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

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

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

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

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

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

- 5.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

### 5.2 After fee approval

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 5.1.4 above regarding work which has been sub-contracted out.

### 5.3 Expenses and disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## **APPENDIX 6      A CREDITORS' GUIDE TO ADMINISTRATORS' FEES ENGLAND AND WALES**

**Where Petition Presented or Appointment Made On or After 15 September 2003**

### **6      What if a creditor is dissatisfied?**

- 6.1      If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

### **7      What if the administrator is dissatisfied?**

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

### **8      Other matters relating to fees**

- 8.1      Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.
- 8.2      If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.

### **9.      Provision of information – additional requirements**

In any case where the administrator is appointed on or after 1 April 2005 he must provide certain information about time spent on a case, free of charge, upon request by any creditor, director or shareholder of the company. The information which must be provided is –

- the total number of hours spent on the case by the administrator or staff assigned to the case;
- for each grade of staff, the average hourly rate at which they are charged out;
- the number of hours spent by each grade of staff in the relevant period.

The period for which the information must be provided is the period from appointment to the end of the most recent period of six months reckoned from the date of the administrator's appointment, or where he has vacated office, the date that he vacated office.

The information must be provided within 28 days of receipt of the request by the administrator, and requests must be made within two years from vacation of office.

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