

The Insolvency Act 1986

Statement of administrator's proposals**2.17B**

Name of Company

HLC (Neath Port Talbot) Limited

Company number

03528745

In the

High Court of Justice, Chancery Division,

Leeds District Registry

[full name of court]

Court case number

991 of 2005

(a) Insert full name(s)
and address(es) of
administrator(s)We (a) T M Burton, C P Dempster and A J DavisonErnst & Young LLP, Ernst & Young LLP, 50 George Square, Glasgow, G2 1RR

*Delete as applicable

attach a copy of our proposals in respect of the administration of the above company.

A copy of these proposals was sent to all known creditors on

(b) Insert date

(b) 10 November 2005

Signed



T M Burton

Joint Administrator

Dated 10 November 2005

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

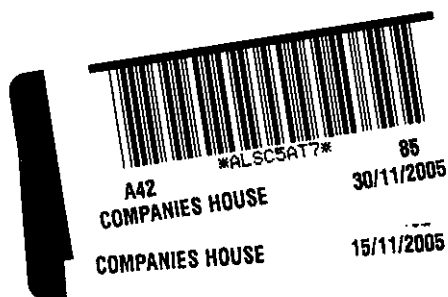
Donna Smith

Ernst & Young LLP, Ernst & Young LLP, 50 George Square, Glasgow, G2 1RR

Tel: 0141 626 5538

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**

HLC (Neath Port Talbot) Limited (In Administration)

Name of Court: High Court of Justice, Chancery Division, Leeds District Registry

Court Case Number: 991 of 2005

**Administrators' Statement of Proposals
Under Paragraph 49 of Schedule B1 to the Insolvency Act 1986**

10 November 2005

Preliminary

Section	Page
Preliminary	
1 Company Information, Details of the Administrators' appointment and of the Company Officers	1
2 Background and circumstances giving rise to the Appointment	3
3 Statement of Affairs	5
4 Administrators' Remuneration	6
5 Prescribed Part	7
6 Purpose, Conduct and End of the Administration	8
7 Other Matters	11
8 Summary of Administrators' Proposals	12

Appendices

1 Administrators' Receipts and Payments for the Period from 19 September 2005 to 4 November 2005	14
2 Administration Notice of Claim	15
3 Statement of Administrators' Remuneration pursuant to Statement of Insolvency Practice No. 9	16
4 A Creditors' Guide to Administrators' Fees	18
5 Creditors Details	23
6 Summary of the Directors' Statement of Affairs	24

Preliminary

Abbreviations

The following abbreviations are used in this report:

the Company	HLC (Neath Port Talbot) Limited
the Council	Neath Port Talbot County Borough Council
the Bank	The Bank of Scotland
the Administrators	C P Dempster, T M Burton and A J Davison
WMS	HLC (Waste Management Services) Limited
HLC	HLC Environmental Holdings Limited

Company Information, Details of the Administrators' Appointment and of the Company's Officers

Section 1

This document and its appendices include matters required to be disclosed by Paragraph 49 of Schedule B1 to the Insolvency Act 1986 and Rule 2.33 of the Insolvency Rules 1986 and constitute the Joint Administrators' Statement of Proposals to creditors.

Company Information

Company:	HLC (Neath Port Talbot) Limited
Registered Office Address:	5 th Floor, Northwest Wing, Bush House, Aldwych, London, WC2B 4EZ
Registered Number:	03528745
Trading Name:	HLC (Neath Port Talbot) Limited

Details of the Administrators and of their Appointment

Administrators:	C P Dempster, T M Burton and A J Davison
Date of Appointment:	19 September 2005
By Whom Appointed:	The appointment was made by the Governor and Company of the Bank of Scotland

The functions of the Administrators and any act required or authorised under any enactment to be done by an Administrator may be done by any or all of the Joint Administrators jointly or severally or by any persons for the time being holding that office.

Statement Concerning the EC Regulation

The EC Council Regulation on Insolvency Proceedings applies to this Administration and the proceedings are main proceedings. This means that this Administration is conducted according to UK insolvency legislation and is not governed by the insolvency law of any other European Union Member State.

Company Information, Details of the Administrators' Appointment and of the Company's Officers

Directors and Secretary

Name	Director or Secretary	Date Appointed	Date Resigned
Horacio Luis De Brito Carvalho	Director	21 May 1998	
Mario Cristina De Sousa	Director	28 September 2001	
Stephen William Evans	Director	7 November 2000	
Derek Pattle	Director	24 August 2004	24 August 2005
Robert Goldie Ellis	Director	26 February 2004	24 August 2005
Paul Michael Lawrence	Secretary	1 March 2004	

Presentation of proposals and initial creditors meeting.

In terms of Paragraph 49(5)(b) of Schedule B1 to the Insolvency Act 1986, the Joint Administrators are required to circulate their proposals before the end of eight weeks beginning with the day on which the company enters into administration.

In terms of section 52(1) (b) of Schedule B1 to the Insolvency Act 1986, we have decided not to call a meeting of creditors as the Company has insufficient property to enable a dividend to be made to the ordinary unsecured creditors. Under paragraph 52(2) of Schedule B1 to the Insolvency Act 1986, an administrator shall summon an initial creditors' meeting if he is requested to do so by creditors whose debts amount to at least 10% of the total debts of the Company within 12 days of the date on which the attached proposals are sent out (in accordance with Rule 2.37 of the Insolvency Rules 1986).

Background and Circumstances Giving Rise to the Appointments

Background

The Company (previously known as E.R.I. (Neath Port Talbot) Limited until 29 April 1999) was incorporated on 17 March 1998.

The Company arranged the construction and operation of a waste recycling facility near Swansea (the Materials Recycling and Energy Centre) ("MREC") which was built 4 years ago to service the needs of the Council and Bridgend Borough Council in recycling domestic waste and diverting waste away from landfill. The MREC includes facilities for separation of materials for recovery, composting and energy generation. WMS operates the facility on behalf of the Company. The Company and WMS are ultimately owned by HLC. The Council through Neath Port Talbot Waste Management Company Limited own a 19.9% stake in the holding company of the Company and in WMS. Messrs Carvalho, De Sousa and Evans are HLC nominated directors.

Circumstances Giving Rise to the Appointment of the Administrators

The financial results of the Companies since incorporation can be summarised as follows:-

Year/Period End	Type	Turnover £,000	Net Profit / (Loss) after Tax £,000	Net Assets / (Liabilities) £,000
31 December 2002	Audited	177	(1,838)	(2,780)
31 December 2003	Audited	1,504	(4,733)	(7,513)
31 December 2004	Management	2,235	(2,121)	(3,241)
19 September 2005	Management	3,043	(3,448)	(6,689)

The MREC project is governed by a detailed set of contracts between the Company, the Council, WMS, the Bank and HLC. The main contract is called the Principal Agreement which was signed on 5 September 2000.

The MREC has been constructed on land owned by the Council and leased to the Company. The MREC has experienced operational difficulties from the outset, including equipment failures and a serious fire which resulted in operations ceasing for 18 months. The MREC has failed to meet the landfill waste diversion target set by the Council. As at the time of our appointment the facility was making a loss of approximately £250k per month.

The Bank funded the project and its debt (including unpaid interest) is currently c£39m. Over recent months, there have been protracted negotiations between the Council, the Company, HLC, WMS and the Bank over the future of the project. These discussions have covered the nature of the waste being sent to the Company, the performance of the facility and possible remedial works to improve this, the level of payment required from the Council to allow the MREC to become viable and the level and future servicing of the Bank's debt. These discussions failed to reach a satisfactory outcome. On 19 August 2005 the Council served purported termination notices on the Company in terms of both the Principal Agreement and the ground lease. Immediately following the serving of the notice Messrs Pattle and Ellis resigned as directors of the Company. Under the terms of the contractual relationship between the Council and the Company, on expiry of validly served purported termination notices, the Council is entitled to acquire the facility for a price which is to be determined by the 'estimated fair value' as defined in the various agreements between the parties.

Background and Circumstances Giving Rise to the Appointments

Section 2

Since 19 August, we understand that the remaining directors and HLC attempted to raise funding to acquire the Bank's debt but were unable to do so in the time available. The purported termination notices were due to expire on 21 September 2005. In order to give the Company the benefit of the statutory moratorium available to companies subject to Administration proceedings, the Bank called upon its debt in the Company and Administrators were appointed to the Company on 19 September 2005. The appointment of Administrators caused the Bank's security to crystallise on the assets of the Company at that date.

Statement of Affairs

The directors have submitted their statement of affairs as at 19 September 2005, a summary of which is attached at Appendix 6. The estimated to realise values have been estimated by the Directors and may differ from actual realisations. Additionally, the values are shown before applicable costs of realisations.

The directors have put nil realisable values against both the Company's assets at the MREC and the claim for defective work (see section 6) on the basis that both are the subject of legal dispute.

Furthermore, we would advise that this statement of affairs has not been subject to independent review or statutory audit.

Secured Creditor

The Bank holds both fixed and floating charges over the assets of the Company.

Preferential Creditors

We are unaware of any debts that would be treated as preferential in terms of Schedule 6 of the Insolvency Act 1986.

Non-preferential Creditors

We have provided at Appendix 5, the latest creditor balances from the Company's books and records.

As will be seen from the summaries at Appendix 6, the directors estimate that there will be no funds available for the ordinary unsecured creditors of the Company. Although the directors' statement assumes nil recovery for the MREC assets we agree that whatever the outcome of the legal disputes there is unlikely to be a dividend to unsecured creditors.

Administrators' Remuneration

The statutory provisions relating to remuneration are set out in Rule 2.106 of the Insolvency Rules 1986. Further information is given in the Association of Business Recovery Professionals' publication *A Creditors Guide to Administrators' Remuneration England & Wales*, a copy of which is enclosed as Appendix 4 to this statement of proposals.

The Joint Administrators propose that their remuneration be fixed on the basis of time properly given by them and their staff in dealing with matters arising in the Administration. Attached as Appendix 3 is a detailed analysis of time spent, and charge out rates, for each grade of staff for the various areas of work carried out to 4 November 2005, as required by the Association of Business Recovery Professionals' *Statement of Insolvency Practice No. 9*.

Following a review of the statement of affairs, the Administrators believe that there will be no funds available to ordinary unsecured creditors in the Company. Accordingly, in terms of Rule 2.106(9)(a) of the Insolvency Rules 1986 the Administrators' remuneration shall be agreed by the secured creditor.

Prescribed Part

The Company's secured lenders have validly registered a debenture and chattel mortgage. The debenture was executed prior to 15 September 2003. Consequently:

- (a) section 176(A) of the Insolvency Act 1986, as amended, regarding the Prescribed Part does not apply in this Administration; and
- (b) the valuation of the Company's net property does not apply.

Purpose, Conduct and End of the Administration

Purpose of the Administration

Following our appointment, we immediately took control of the business and assets of the Company with a view to considering the prioritised objectives of the Administration process, being:

- (a) Rescue of the Company as a going concern; or
- (b) Achieving a better result for the company's creditors as a whole than would be likely if the Company was wound up (without first being in Administration); or
- (c) Realising property in order to make a distribution to one or more secured or preferential creditors.

In relation to the Company, objective (a) is unlikely to be achieved for the reasons outlined below. The focus of the Administration has now moved to objectives (b) and (c).

Conduct of the Administration

Trading

Although the Company owns the plant making up the MREC, and is the lessee of the site, the operations are carried out by WMS which is not under the Administrators control. In addition deliveries of waste into the MREC are controlled by the Council. It was therefore necessary for us to attempt to enter into acceptable ongoing arrangements with both the Council and WMS.

We met with representatives of the Council on 20 September 2005 at which they stated their view that, following the impending expiry of the purported termination notice the following day, neither the Company nor the Administrators had any right to occupy the site. The Bank informed us that it believed our appointment had crystallised their security over the MREC and as Administrators we were therefore in practical possession of the plant.

We tried to negotiate an interim arrangement whereby waste was delivered to the MREC for a period of 30 days on a without prejudice basis whilst the legal position was clarified. Ultimately the Council rejected our offer as it believed its interpretation of the legal position was unchallengeable.

The Council continued to supply waste until 10am Wednesday 21 September 2005, at which point they stopped as they claimed the Principal Agreement between the Council and the Company had been validly terminated.

The Council's view is that with the Principal Agreement terminated it is entitled to effectively step into the shoes of the Company and take control of the MREC and assume the Company's responsibilities under the Operation and Maintenance Agreement (which governs how the plant is run). Neither the Bank nor the Administrators have conceded that the Principal Agreement has been validly terminated.

On Tuesday 27th September the Council together with WMS took control of the site and excluded the Administrators. The Council restarted waste deliveries immediately and we understand that WMS have since been operating the MREC. We also understand that the Council is paying WMS directly for processing waste. The Council have given notice that they intend to facilitate the setting up of a replacement operating company from 1 December 2005 and they have intimated that they have long-term plans to have the MREC continue under new ownership.

Purpose, Conduct and End of the Administration

Under the Council's interpretation of the legal position the Company (and the Administrators) have no further interest in the MREC other than the "estimated fair value" compensation payment referred to above in section 2.

The Bank's view is that its security rights over the MREC assets prevail over the contractual rights in the documentation.

There has been a significant level of correspondence between the respective legal representatives of the Bank, the Council and WMS. Proceedings have been issued by the Bank (detailed below) and we believe it is likely that litigation will be required to resolve the fundamental differences of opinion amongst the various parties.

Objective of the Administration

In the meantime we have concluded that the events which have occurred since our appointment mean that there appears to be no prospect of rescuing the Company as a going concern. We are therefore now focusing on objectives (b) & (c) set out above.

If at any time we believe that the interest of creditors would be better served by being in liquidation, we propose to take steps to do that with T M Burton, C P Dempster and A J Davison acting as Liquidators.

Realisation of Assets

In early October the Bank served notice of its intention to repossess the equipment at the MREC covered by its fixed charges by commencing recovery action. Following legal advice we have given our consent to this course of action. There appears to be no prospect of rescuing the business as a going concern and no realistic prospect of a dividend to ordinary creditors and therefore the interests of the secured creditor in attempting to maximise the value of the assets covered by its security should be paramount.

The Council has notified us that it is contesting the Bank's action as it believes the Council's contractual rights defeat the Bank's security rights over the assets.

This repossession action is part of the pending litigation surrounding the Company and its assets.

Since our appointment we have collected £202,751 which represents almost all of the book debts due to the Company at our appointment.

Claim for Defective Works

The directors' statement of affairs at Appendix 6 shows a figure of £23m due in respect of a claim against HLC Engenharia e Gestao de Projectos SA as contractor responsible for construction of the facility. We are awaiting the outcome of the litigation between the Bank and the Council before deciding whether to pursue this case.

Future Conduct of the Administrations & Dividend Prospects

If the Administrators' proposals are approved, it is proposed that the Administrators will continue to manage the affairs, business and property of the Company in the manner outlined above in order to achieve the purposes of the administration.

Purpose, Conduct and End of the Administration

A review of the statement of affairs indicates a significant deficiency and therefore we must point out that taking into consideration the significant amounts owing to the secured creditor, **we do not believe that there will be any funds available to the ordinary unsecured creditors.**

End of the Administration

Although we believe it unlikely, if there are sufficient asset recoveries to enable a dividend to be paid to unsecured creditors, then we propose to take steps to place the Company into Creditors Voluntary Liquidation. This will enable us to bring the Administration to a close and to make a distribution to unsecured creditors via an appropriate insolvency process. If this were to occur, the Company will move into Creditors' Voluntary Liquidation upon the filing in court by the Joint Administrators of a notice pursuant to Paragraph 83 of Schedule B1 to the Insolvency Act 1986.

In that event, it is proposed that the Liquidators will be T M Burton, C P Dempster and A J Davison of Ernst & Young LLP. In accordance with Paragraph 83(7) of Schedule B1 to the Insolvency Act 1986, and Rule 2.117(3) of the Insolvency Rules 1986, creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of these proposals and before the proposals are approved. It should be noted in this regard that a person must be authorised to act as an insolvency practitioner in order to be appointed as a liquidator.

Should it become clear that there are insufficient asset recoveries to enable a distribution to unsecured creditors, we would exit the Administration via a notice to the Registrar of Companies, the Court, the directors and to all creditors together with a final progress report. The Administration would cease at that time with the Company deemed to be dissolved within three months of that date.

Other Matters

Administrators' Receipts and Payments

A summary of the Administrators' receipts and payments for the period from the date of our appointment to 4 November 2005 is attached at Appendix 1.

Creditors Claims

Attached at Appendix 5 are names and addresses of creditors and details of the debts owed to them according to the Company's records.

Directors Conduct

In terms of the Company Directors Disqualification Act 1986, Administrators are required to prepare a report on those individuals who have been directors or shadow directors of the Company in the three year period prior to our appointment. If any creditors are aware of any matter which they believe should be brought to our attention, then they should write to us giving appropriate details.

Summary of Administrators' Proposals

For the convenience of creditors, we have summarised below the proposals put forward by the Administrators in this report:

1. that the Administrators, if necessary, investigate whether the Council has complied with its contractual obligations with the Company and subsequently to take such action as may be appropriate;
2. that the Administrators, if necessary, investigate whether the purported termination of the Company's lease of the MREC was valid and to take such action as may be appropriate following such investigations;
3. that the Administrators remain in office to effect any compromise or agree or dispute any compensation payment which may be payable by the Council under the contractual arrangement with the Company following the purported termination by the Council.
4. that the Administrators sell the property and assets of the Company either as a whole or by constituent parts for the best price obtainable (taking into account the costs and likelihood of achieving a sale) whether by private sale, public auction or by any other means whatsoever all on such terms and conditions as the Administrators may in their sole discretion determine;
5. that the Administrators reach commercial compromises and/or settlements with creditors claiming security (including but not limited to liens and retention of title claims);
6. that the Administrators be authorised and empowered to do any act or acts which in their sole discretion they may consider to be desirable or expedient for the purposes of carrying these proposals into effect or which may be incidental thereto and, without prejudice to the foregoing generality, the Administrators be authorised to exercise any of the powers containing in Schedule 1 of the Insolvency Act 1986 at any time;
7. that the Administrators investigate and if appropriate pursue any claims that the Company may have against any person, company or corporation whomsoever and in particular relating to the Company's claim against HLC Engenharia e Gestao de Projectos SA as contractor arising from construction problems and the ability of the site to handle certain types of waste. Further that the Administrators may bring, raise or defend any such Court action or proceedings;
8. as we believe that there will be no funds available for ordinary unsecured creditors, the Administrators propose that their remuneration be approved by the secured creditor;
9. that the Administrators –
 - a. when they have fulfilled the objectives of the Administration, serve appropriate notices to bring the Administration to an end with the Company being deemed to be dissolved three months thereafter; or

Summary of Administrators' Proposals

- b. should it become clear that a distribution to unsecured creditors will be possible, place the Company into Creditors Voluntary Liquidation with T M Burton, C P Dempster and A J Davison to act as Liquidators; or
- c. if, at any time, believe the interests of creditors are better served by the Company being in liquidation, take steps so to do, with T M Burton, C P Dempster and A J Davison to act as Liquidators.

Administrator's Receipts and Payments for the Period from 19 September 2005 to 4 November 2005

Appendix 1

Income	Total £
Pre Appointment Debtors	202,751.93
VAT refund	38,331.62
Bank Interest	568.65
Cash on Appointment	45.58
	<u>241,697.78</u>
Expenditure	
Security Expenses	360.00
Stationery and Printing	22.40
Public Notices	129.15
Specific Bond	36.00
	<u>547.55</u>
Balance	<u>£241,150.23</u>
Made up as follows:	
Floating – VAT Receivable	85.61
Interest Bearing Current Account	241,064.62
	<u>£241,150.23</u>

Date of Administration: 19 September 2005

Name of Creditor

Address

Amount claimed (see over)

Payments received in settlement or part settlement of the debt

Amount of any outstanding
uncapitalised interest included in claim

Amount of any VAT included in claim

Is the claim preferential or secured?

If secured, value of security

If you made a retention of title claim against the Company please attach details

Particulars of how and when the debt was incurred.

Signed

Name

Address

Authority to sign on behalf of creditor

Date _____

Notes To Administration Proof Of Debt Form:

1. Please attach a detailed statement of your account as at the date on which the company entered Administration.
2. If your claim is preferential (e.g. for wages, holiday pay or certain pension arrears) or secured please give details and attach supporting documentation.
3. VAT bad debt relief may usually be claimed six months after the date of supply

Statement of Administrator's Remuneration Pursuant to Appendix 3 Statement of Insolvency Practice No 9

Charging and Disbursement Policy

Office Holders' Charging Policy for Fees

The Administrators have engaged more senior members of staff in this Administration due to the complex legal issues involved. The work required is delegated to the most appropriate level of staff taking account of the nature of the work and the individual's experience. Additional assistance is provided by cashiers dealing with the company's bank accounts, statutory compliance diaries and other support services and filing clerks. Work carried out by all staff is subject to the overall supervision of the Administrators.

All time spent by staff working directly on case-related matters is charged to a time code established for the case. Each member of staff has a specific hourly rate, which is subject to change over time. The average hourly rate for each category of staff over the period to 4 November 2005 is shown below, as are the average hourly rates used.

Classification of Work Function	Partner Hours	Manager Hours	Other Senior Professionals Hours	Assistants Hours	Total Hours	Time Cost (£)
Accounting, Admin & Planning	39.0	30.8	0.5	27.0	97.3	24,414
Immediate Tasks	4.0	22.5	34.0	15.0	75.5	13,645
Legal Issues	98.4	70.2	1.5	0.5	170.6	56,780
Assets	-	0.1	7.5	0	7.6	1,298
Trading	-	5.2	2.5	1.5	9.2	1,726
Bank and Statutory	5.0	14.1	20.0	55.4	94.5	12,571
Debtors	-	0.5	10.0	0.5	11.0	1,850
Creditors	-	0.3	2.0	2.5	4.8	584
Total Hours	146.4	143.7	78.0	102.4	470.5	
Total Fees Claimed (£)	£59,394	£33,051	£13,260	£7,163		£112,868
Average Hourly Rate (£)	£405	£ 230	£ 170	£ 70		£ 240

Statement of Administrator's Remuneration Pursuant to Appendix 3 Statement of Insolvency Practice No 9

Office Holders' Charging Policy for Disbursements

The revised SIP9 divides disbursements into two Categories.

Category 1 disbursements comprise payments made by the office holders' firm, which comprise specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party. These disbursements can be paid from the insolvent's assets without approval from the Committee. In line with SIP9, it is our policy to disclose such disbursements drawn but not to seek approval for their payment. We are prepared to provide such additional information as the Committee require to support the disbursements drawn.

Category 2 disbursements are charges made by the office holder's firm that include elements of shared or overhead costs. *Statement of Insolvency Practice No. 9* provides that such disbursements are subject to approval as if they were remuneration. It is our policy, in line with the *Statement*, to seek approval for Category 2 disbursements before they are drawn

Category 1 Disbursements

	£
Travel and accommodation	5,061.66
Parking	76.55
Mileage	150.40
Car Hire	279.55
Subsistence	256.16
Total Disbursements	<u>£5,824.32</u>

Category 2 Disbursements £nil

A Creditors' Guide to Administrators' Fees

A CREDITORS' GUIDE TO ADMINISTRATORS' FEES England and Wales

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

A Creditors' Guide to Administrators' Fees

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.

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 a resolution of the creditors shall be taken as passed if, and only if, passed with 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.

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.

A Creditors' Guide to Administrators' Fees

- 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:

- 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 sub-contractors, 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.

A Creditors' Guide to Administrators' Fees

- 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.

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

8 Other matters relating to fees

A Creditors' Guide to Administrators' 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.

Creditors Details

Trade Creditors	Address	Balance per company records
Douglas-Jones Mercer	147 St Helen's Road, Swansea SA1 4DB	24
HLC Engenharia e Gestao do Projectos SA	4 th Floor, 15 Berkeley Street, London W1J 8DY	24,607
HLC Environmental Projects Ltd	2 Churchill Court, 58 Station Road, North Harrow, Middlesex HA2 7SA	367,230
HLC Waste Management Services Ltd	Materials Recovery and Energy Centre, Crymlyn Burrows, Swansea, SA1 8PZ	121,520
Neath Port Talbot Waste Management Co Ltd	Giants Grave Road, Briton Ferry, Neath, South Wales SA11 2LN	80,241
PriceWaterhouseCoopers LLP	Princess House, Princess Way, Swansea SA1 5LH	22,250
Shareholders of HLC (NPT) Limited		765
Sinclair Knight Merz	Prism House, Rankine Avenue, Scottish Enterprise Technology Park, East Kilbride, G75 0QF	82,944
Ultimate Security Limited	Ashgrove House, 75 Colin Crescent, Colindale, London, WC2E 7AU	5,300
Winward Fearon	35 Bow Street, London, WC2E 7AU	44,001
WRG Waste Services Limited	PO Box 729, Doncaster, South Yorkshire, DN4 5XZ	567,248
		<hr/> 1,316,130
Retention Creditors		
HLC Engenharia e Gestao do Projectos SA	4 th Floor, 15 Berkeley Street, London, W1J 8DY	718,537
		<hr/> 2,034,667
Shareholder Loans		
Neath Port Talbot Waste Management Co Ltd	Giants Grave Road, Briton Ferry, Neath, South Wales SA11 2LN	32,835
HLC Environmental Projects Ltd	2 Churchill Court, 58 Station Road, North Harrow, Middlesex HA2 7SA	84,315
Grupo CGD – Caixa Investments	Caixa-Banco de Investimentos SA, Rua Barata Saleuero, 1269-057 Lisbon	47,850
HLC (Neath Port Talbot) Holdings Limited	4 th Floor, 15 Berkeley Street, London W1J 8DY	1,874,179
Total		<hr/> £4,073,846

Note: Although the Bank of Scotland's debt is secured over the assets of the Company should the realisable value of those assets be less than the debt due to the Bank (c£38.5m at the date of our appointment) then the Bank would rank as an unsecured creditor for the balance of its debt.

Summary of Directors' Statement of Affairs as at 19 September 2005

Appendix 6

	Notes	Book Value 19 September 2005 £	Estimated to realise £
Assets specifically secured			
Buildings, plant and machinery	1	33,131,154	-
Estimated realisable value			
Less: amount due to fixed charge holder		(33,131,154)	
		<hr/>	<hr/>
		-	
Assets not specifically secured			
Trade debtors		234,887	214,861
Prepayments		233,606	-
VAT recoverable		55,069	55,069
Cash at bank		10,740	10,740
Claim for defective works and liquidated damages	1	23,000,000	-
		<hr/>	<hr/>
		23,534,302	280,670
Preferential Creditors			
		<hr/>	<hr/>
		-	-
Estimated balance of assets available for holders of Floating charges and unsecured creditors			
		<hr/>	<hr/>
		23,534,302	280,670
Floating Charge Holders			
Bank of Scotland	2	(5,189,419)	(38,320,573)
		<hr/>	<hr/>
Estimated surplus/(deficiency) as regards holders of floating charges		18,344,883	(38,039,903)
Ordinary Creditors			
Trade and other creditors		(1,627,367)	(1,627,367)
Inter company		(2,446,479)	(2,446,479)
		<hr/>	<hr/>
		(4,073,846)	(4,073,846)
Surplus / (deficiency) as regards ordinary unsecured creditors		14,271,037	(42,113,749)
Share Capital			
Issued & called-up share capital		(1,875,179)	(1,875,179)
		<hr/>	<hr/>
Surplus / (deficiency) as regards members		£12,395,858	£(43,988,928)
		<hr/>	<hr/>

Notes

1. Both subject to litigation.
2. Interest continues to accrue until the debt has been repaid in full. The Bank's floating charge debt is shown net of recoveries under its fixed charges.
3. Recoveries shown are prior to costs of realisation and administration.



Companies House
— for the record —



Please quote our reference and registered number of company when replying

TM Burton
Ernst & Young LLP
50 George Square
Glasgow
G2 1RR

mmc

DS

23/11/2005

Crown Way Cardiff CF14 3UZ

Telephone 029 2038 0658

Fax 029 2038 0515

DX 33050 Cardiff

www.companieshouse.gov.uk

Your Ref

Our Ref LIQ/HC/3528745

Date 23 November 2005

Dear Sir

HLC (NEATH PORT TALBOT) LIMITED

The enclosed statement of proposals which you recently submitted, is returned for the following reason:

There is no Form 2.17B attached.

Please return the document as soon as possible with any amendments initialled.

Yours faithfully

Helen Czeka

