

# 2.23B

The Insolvency Act 1986

## Notice of result of meeting of Creditors

Name of Company  DJ Cavalier Investments Limited (Formerly PNC Telecom Services Ltd)	Company number  03998766
In the High Court of Justice  (full name of court)	Court case number  7605 of 2007

(a) Insert full name(s)  
and address(es) of the  
administrator(s)

I/We (a)  
Mark Grahame Tailby  
CBA  
39 Castle Street  
Leicester  
LE1 5WN

Neil Charles Money  
CBA  
39 Castle Street  
Leicester  
LE1 5WN

hereby report that a meeting of the creditors of the above company was held at

(b) Insert place of  
meeting

(b) 39 Castle Street, Leicester LE1 5WN

(c) Insert date of meeting

on (c) 17th December 2007 at which

\*Delete as applicable

~~\*1 Proposals/revised proposals were approved~~

~~\*2 Proposals/revised proposals were modified and approved~~

~~The modifications made to the proposals are as follows—~~

(d) Give details of the  
modifications (if any)

~~(d)~~

~~\*3 The proposals were rejected~~

(e) Insert time and date of  
adjourned meeting

~~\*4 The meeting was adjourned to (e)~~

(f) Details of other  
resolutions passed

~~\*5 Other resolutions (f)~~

SATURDAY



A33 \*A8V0SVPP\* 418  
22/12/2007  
COMPANIES HOUSE

The revised date for automatic end to administration is

A creditors' committee was not formed

Signed

Joint / Administrator(s)

Dated

\*Delete as applicable

A copy of the \*original proposals / modified proposals / revised proposals is attached for those who did not receive such documents prior to the meeting

### 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

Mark Grahame Tailby  
CBA  
39 Castle Street  
Leicester  
LE1 5WN

DX Number

0116 262 6804  
DX Exchange

Companies House receipt date barcode

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**

---

**DJ CAVALIER INVESTMENTS LIMITED (FORMERLY PNC  
TELECOM SERVICES LTD) (IN ADMINISTRATION)**

---

**STATEMENT OF JOINT ADMINISTRATORS' PROPOSALS  
PURSUANT TO PARAGRAPH 49 OF SCHEDULE B1 TO THE  
INSOLVENCY ACT 1986**

**AND**

**UNDER RULE 2.33 OF THE INSOLVENCY (AMENDMENT)  
RULES 2003**

---

**TABLE OF CONTENTS**

- 1 Appointment and Achievement of the Objective of Administration
- 2 Statutory Information and Officers of the Company
- 3 Background and Nature of the Business
- 4 Circumstances giving rise to the Appointment of the Joint Administrator
- 5 Management by the Joint Administrators of the Affairs and Business of the Company since appointment
- 6 Future Management
- 7 Financial Information and Estimated Outcome
- 8 Joint Administrators' Proposals

**APPENDICES**

Appendix 1 – Statutory Information

Appendix 2 – Statement of Affairs as at 12 November 2007

Appendix 3 – Joint Administrators' Receipts and Payments Account

Appendix 4 – Information for Creditors Regarding Joint Administrators Remuneration

The Joint Administrators of DJ Cavalier Investments Limited (Formerly PNC Telecom Services Ltd) ('the Company') make the following statement in discharge of the obligations upon them contained in Paragraph 49 of Schedule B1 ('the Schedule') to the Insolvency Act 1986 ('the Act') and Rule 2.33 of the Insolvency (Amendment) Rules 2003 ('the Rules')

## **1. Appointment and Achievement of the Objective of the Administration**

### **Appointment**

- 1.1 On 16 October 2007 Woodbind Commercial Limited, a qualifying floating charge holder of the Company, pursuant to Paragraph 14 of the Schedule to the Act, completed a Notice of Intention to Appoint an Administrator ('the Notice')
- 1.2 Pursuant to Paragraph 15 of the Schedule to the Act, the Notice was then served on The Governor and Company of the Bank of Scotland ('the Chargeholders'), being Qualifying Floating Charge Holders and therefore entitled to receive at least two business days prior notice. No other parties were entitled to receive notice.
- 1.3 The Notice was concurrently filed at the High Court of Justice under reference 7605 of 2007 and accepted by the Court at 1.48pm on 16 October 2007. At this time the Interim Moratorium afforded by Paragraph 44 of the Schedule to the Act took effect.
- 1.4 Subsequently Mark Grahame Tailby and Neil Charles Money consented to the appointment and confirmed that in their opinion the purpose of the administration was reasonably likely to be achieved. The Notice of Appointment was filed in Court and the appointment of the Joint Administrators took effect from 3.29pm on 26 October 2007.
- 1.5 Pursuant to Paragraph 100(2) of the Schedule to the Act, I confirm that the Joint Administrators are jointly and severally responsible for each and all the roles imposed in administering the affairs of the Company during their term of office.

### **Objective**

- 1.6 The objective of the Administration, as specified by Paragraph 3(1) of the Schedule to the Act, is -
  - (a) rescuing 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 were 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
- 1.7 The Joint Administrators have performed their functions with a view to achieving objective (c), realising property in order to make a distribution to one or more secured or preferential creditors.

- 1 8 It is not considered that objective (a) is achievable due to the company's financial position being such that the company will not survive as a going concern. Furthermore, there are insufficient assets available to allow any distribution to any class of creditors other than secured creditors. Objective (b) is therefore not considered to be achievable.

### **Application of EC Regulation**

- 1 9 These administration proceedings are subject to the EC Regulation on Insolvency Proceedings and are main proceedings (as defined by Article 3(1) of the Regulation) as both the Company's registered office is located in and its trade carried on in England and Wales.

## **2 Statutory Information and Officers of the Company**

- 2 1 The statutory information relating to the Company can be found at Appendix 1.
- 2 2 The Director and Company Secretary of the Company at 26 October 2007, the date the Administration took effect, were

Name	Nicholas Wiley	Office	Director
------	----------------	--------	----------

Name	Barry Kermode	Office	Company Secretary
------	---------------	--------	-------------------

- 2 3 Details of the Directors' and Secretary's shareholdings are detailed at Appendix 1.

## **3. Background and Nature of the Business**

### **Sources of Information**

- 3 1 The information divulged in this section of the report has been obtained principally from information provided by Nicholas Wiley, the Company Director. Publicly available records and management accounts have also been utilised.

### **Incorporation**

- 3 2 The Company was incorporated on 22 May 2000 as Restbliss Limited. On 27 September 2000 the Company changed its name to PNC Telecom Services Limited. A written resolution was passed on 2 October 2007 to change the Company name to its current style.

### **Premises and Employees**

- 3 3 The company traded from the leasehold premises at Cavallino House, Corsley Heath, Warminster, BA12 7PL.
- 3 4 All the employees were transferred to Invomo Limited, as per the sale agreement, prior to our appointment.

### **Background**

- 3 5 PNC Telecom Services Limited started life as The Personal Number Company in 1995 operating as a switch-less reseller. Originally formed with support from Vodafone, the business offered only Vodafone products starting with the 07000 Personal Number range. Subsequently, other Vodafone services were supplied including other PNS ranges (07002 and 07074) as well as more corporate-oriented products such as 0870 and 0321 (later to become the 0808 freephone range) taking the Company into the SME market-place. In 1996 the Company achieved an AIM listing and later a full listing.
- 3 6 In 1998, a loan was provided by Martin Dawes Telecommunications (now evolved into Opal Telecom), that helped to fund a number of acquisitions. Through these came a wider spread of suppliers. Although the success of Vodafone Personal Numbering continued, products were now offered from networks including Opal, AT&T, Cable and Wireless, Redstone and BT. The loan was repaid in cash and shares two years later. Following consolidation of the acquired businesses, Vodafone and Opal became the two dominant suppliers, outside of BT.
- 3 7 In 2000 the Company established a presence as Network Operator in its own right. Additionally, several new number ranges were allocated by Ofcom to supplement those already held giving availability of Freephone, Local-Rate, National-Rate and Premium Rate services. Traffic volumes represent around 18% of the current total.
- 3 8 PNC was acquired in May 2003 by Vanguard Group Holdings Limited along with KJC Mobiles as part of an acquisition from PNC plc. The group intended to expand aggressively and invest in both fixed and mobile telephony activities. However, cash flow difficulties following the acquisition coupled with a failure to integrate the businesses led to the sale of PNC Telecom Services by VGH to Paragon Holdings in February 2005. This was to be an interim step with the subsequent sale to Curby Holdings in November 2005.
- 3 9 Curby Holdings intention was initially to grow the business aggressively through a combination of organic growth and acquisition, and to focus upon growth in the Media sector, leading to an early flotation and progressive exit for the shareholders. The then Managing Director, Darren Jones who had recommended the strategy, embarked on significant overhead growth and a set of expensive initiatives to deliver rapid growth, leading to trading losses and several significant liabilities. He was replaced in March 2006 with trading losses running at some £400k per month, and circa £3-4m in investment consumed. The company was pursuing him for repayment of a director's Loan account until October 2007. The business was supported through a substantial debenture with Woodbind Commercial.
- 3 10 During this period Telecom1 was acquired in February 2006. Established in 1997, T1 was one of the longest established telecoms companies in the UK and in this time have been involved in the provision of every kind of UK or European number. They were pioneers in generating new revenue streams from premium SMS and boast an advanced telecoms infrastructure supporting a large portfolio of digital content and interactive TV services. One of the key

attractions of Telecom 1 was the substantial technical infrastructure established at the City Road site in London

- 3 11 Whilst progress was made in addressing the trading issues inherited and the underlying losses, though aggressive cost reduction and a change in focus and effective new business development, the business continued to suffer from cash flow issues and the impact of the ineffective investment activities. Unfortunately several initiatives that were hangovers from the historic plans had to be exited and consumed further resources and cash – these included closing down a dating business, a brief foray into selling Mobile phones, trading mobiles and the start up of an adult TV channel all of which were management distractions, consumed cash, and made losses rather than a margin contribution and also led to input tax issues
- 3 12 Whilst the debenture holders were initially supportive, they became increasingly frustrated that the business could not support the interest costs, nor repay the debenture and during to the summer of 2007 applied increasing pressure for it to be repaid. Without their continued support the company was insolvent, and professional advice was sought and taken
- 3 13 During this process an option to sell the assets and customer base was identified as the most appropriate route to move forwards, in the best interests of all stakeholders, and the business was restructured accordingly, through the acquisition by Invomo Limited
- 3 14 Invomo Limited paid a consideration of £4.1m to purchase all the assets of the company including customer lists and book debts. The sale was completed on 1 October 2007

#### **4 Circumstances giving rise to the Appointment of the Joint Administrators**

- 4 1 Woodbind Commercial Limited became concerned of the financial position of the company and consequently, enforced its security to appoint the joint administrators

#### **5 Management by the Joint Administrators of the Affairs and Business of the Company**

- 5 1 At the date of our appointment, the only assets of the Company comprised book debts with a book value totalling £70,000. Following our review of the asset sale agreement between the Company and Invomo Limited, it was apparent that Invomo acquired all the book debts of the Company. The Joint Administrators were therefore unable to pursue these debts any further. Consequently, there appear to be no realisable assets available at this stage
- 5 2 The Joint Administrators received £602,975.69 from the Bank of Scotland in relation to the debt factoring agreement. However, it was apparent that the money was due to Invomo Limited under the asset sale agreement and consequently, the funds were paid to Invomo Limited immediately

## **6 Future Management**

- 6.1 The Joint Administrators will continue to investigate the availability of any assets for the benefit of the creditors

## **7 Financial Information and Estimated Outcome**

### **Directors' Statement of Affairs of the Company**

- 7.1 A copy of the Directors sworn Statement of Affairs as at 26 October 2007 is attached
- 7.2 Since the charges held by Woodbind Commercial Limited and The Governor and Company of Bank of Scotland were created after September 2003, the prescribed part provisions do apply. However, based on current information, there is unlikely to be sufficient realisations to activate the prescribed part provisions
- 7.3 I can confirm that pursuant to Rule 2.30 of the Rules, no application has been made by the Joint Administrators to limit the disclosure of the Statement of Affairs
- 7.4 The HM Revenue and Customs ("HMRC") liability relates to the VAT liability net of the refund totalling £967,757.44, which is currently being denied by the HMRC. The company was in the process of appealing the grounds on which HMRC withheld the refund. However, due to the limited resources available to the Joint Administrators, they are not in a position to support the appeal and consequently, HMRC's claim is likely to rise by £967,757.44

### **Joint Administrators Receipts and Payments Account**

- 7.4 A copy of the Joint Administrators Receipts and Payments Account to date is attached at Appendix 3

## **8 Joint Administrators Proposals**

- 8.1 The Joint Administrators propose that
- 8.1.1 they continue to manage the business, affairs and property of the Company in order to achieve the objective specified by Paragraph 3(1)(c) of the Schedule to the Act, namely realising property in order to make a distribution to one or more secured or preferential creditors, and that they continue to do so until such time as they form the view that purpose of administration is achieved and the administration should come to an end
- 8.1.2 they take any action they consider necessary with a view to achieving the purpose of the administration, and in particular that
- i) they do all such things they may consider appropriate with a view to enhancing the value of the Company's assets prior to realisation, and



- ii) they dispose of the Company's ownership of its business or any other assets at such time(s) and on such terms as they consider expedient, and
  - iii) they investigate, and if appropriate, pursue any claims that the Company may have against any person, firm or company whether in contract or otherwise
- 8 1 3 they make distributions if they consider it expedient to any secured and preferential creditor in accordance with their general powers to do so
- 8 1 4 the creditors should consider establishing and if thought fit establish a Creditors' Committee to exercise the functions conferred on it by or under the Act
- 8 1 5 the Joint Administrators consult with the Creditors' Committee, if formed, at appropriate intervals concerning the conduct of the Administration and the implementation and development of these proposals and where they consider it necessary obtain the sanction of that Committee on behalf of the creditors of the Company (and without further reference to them) to any proposed action on the part of the Joint Administrators
- 8 1 6 that in the absence of any Committee being formed, the remuneration of the Joint Administrators be fixed by reference to time properly given by them and their staff in attending to matters arising from the administration to be charged at the rates normally charged by their firm, CB Associates Limited trading as CBA, for such work and that the Joint Administrators be entitled to draw their remuneration on account
- 8 1 7 In addition, they do all such other things and generally exercise all their powers as Joint Administrators as they in their discretion consider desirable or expedient in performing their functions or to protect and preserve the assets of the Company or maximise realisations of those assets, or for any other purpose incidental to these proposals
- 8 1 8 that any unpaid costs of this Administration be given priority over the costs of any future insolvency procedure
- 8 1 9 that should the Joint Administrators form an opinion that there are or will be sufficient funds to enable a distribution to be made to unsecured creditors then the Company shall, at the appropriate time, be placed into creditors' voluntary liquidation in accordance with paragraph 83 of Schedule B1 of the Insolvency Act 1986
- 8 1 10 that should the Company enter into creditors' voluntary liquidation then the Joint Administrators be authorised to be appointed joint liquidators provided the appropriate prior notice is given to creditors
- 8 1 11 that if a creditors' voluntary liquidation is proposed, in accordance with paragraph 83(7) and Rule 2 117(3) of the Insolvency Act 1986, creditors may nominate a different person as the proposed liquidator, provided

that the nomination is made after the receipt of the proposals and before the proposals are approved

8 1 12 that the joint liquidators' remuneration be fixed on the basis of time costs and that they be authorised to draw remuneration on account

8 1 13 that if there are insufficient funds to enable a payment of a dividend to unsecured creditors, it is proposed that the Joint Administrators will exit the Administration by way of dissolution of the company pursuant to Rule 2 118 of The Insolvency Rules 1986

### **Joint Administrators Remuneration**

8 2 As stated above the Joint Administrators propose that they be remunerated on a time cost basis, and details of CBA's current charge out rates are attached at Appendix 4 As required by Statement of Insolvency Practice an analysis of the time spent to date and the disbursements recovered is also attached, together with a creditors guide to administrators' fees

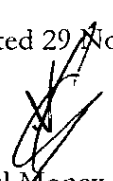
### **Meeting of Creditors**

8 3 A meeting of creditors has been convened for 17 December 2007, pursuant to Paragraph 51 of the Schedule to the Act

### **General**

If any creditor should have any queries regarding the above please do not hesitate to contact Taz Rashid on 0116 214 0575

Dated 29 November 2007

  
Neil Money  
Joint Administrator

Mark Grahame Tailby is licensed to act as an Insolvency Practitioner by the Association of Chartered Certified Accountants and Neil Charles Money is licensed to act as an Insolvency Practitioner by the Insolvency Practitioners Association

In accordance with Paragraph 45 of Schedule B1 to the Act notice is hereby given that the affairs, business and property of the Company (in administration) are being managed by the Joint Administrators, Mark Grahame Tailby and Neil Charles Money, and in accordance with Paragraph 69 of Schedule B1 to the Act, the Administrators act as agents of the Company and without personal liability

## STATUTORY INFORMATION

Company Name DJ Cavalier Investments Limited (Formerly PNC Telecom Services Ltd)

Other Trading Names

Registered Company Number 03998766

Date of Incorporation 22 May 2000

Nature of Business Telecommunications

Previous Names PNC Telecom Services Limited  
Restbliss Limited

Registered Office	Was	Now
	Cavallino House	c/o CBA
	Corsley Heath	CBA
	Warminster	39 Castle Street
	BA12 7PL	Leicester LE1 5WN

Directors	<i>Name</i>	<i>Appointed</i>	<i>Resigned</i>
(in last three years)	Nicholas Wiley	29/03/2006	
	Ian Heritage	07/07/2004	24/02/2005
	Darren Leslie Jones	24/02/2005	29/03/2006
	Abdul Rakib Rashid	24/02/2005	06/01/2006
	Jawad Sharif	28/02/2007	20/06/2007

Secretary Barry Kermode 04/10/2005

Authorised Number of Shares 1,000,000 £1 Ordinary Shares

Shareholders and Issued Shares	<i>Name</i>	<i>Number and class of share</i>
a) Directors and Secretaries	None	None
b) Others	Curby Holdings Limited	1,000,000

Annual Returns	<i>Due</i>	<i>Filed</i>	<i>Period ending</i>
(in last three years)	19/06/2007	04/07/2007	22/05/2007
	19/06/2006	12/06/2006	22/05/2006
	19/06/2005	27/07/2005	22/05/2005

<i>Accounts</i>	<i>Due</i>	<i>Filed</i>	<i>Period ending</i>
(in last three years)	31/03/2007	28/07/2007	31/05/2006
	31/03/2006	29/01/2007	31/05/2005
	31/03/2005	26/07/2005	31/05/2004

**APPENDIX 2**

**STATEMENT OF AFFAIRS AS AT  
26 OCTOBER 2007**

Insolvency Act 1986

DJ Cavalier Investments Limited (Formerly PNC Telecom Services Ltd)  
Estimated Statement Of Affairs as at 26 October 2007

	Book Value £	Estimated to Realise £	£
<b>ASSETS</b>			
Book Debts	70,000 00	30,000 00	30,000 00
<b>PREFERENTIAL CREDITORS -</b>			
		NIL	
		30,000 00	
Estimated prescribed part of net property where applicable (to carry forward)		9,000 00	
		21,000 00	
<b>DEBTS SECURED BY FLOATING CHARGE</b>			
Woodbind Commercial Limited	971,362 00	971,362 00	
		(950,362 00)	
Estimated prescribed part of net property where applicable (brought down)		9,000 00	
		9,000 00	
<b>Unsecured non-preferential claims (excluding any shortfall to floating charge holders)</b>			
Trade & Expense Creditors	910,928 35		
Inland Revenue NIC Office	505,117 54		
H M Customs & Excise	62,323 00		
		1,478,368 89	
Estimated deficiency/surplus as regards non-preferential creditors (excluding any shortfall to floating charge holders)		(1,469,368 89)	
Shortfall to floating charge holders (brought down)		950,362 00	
		(2,419,730 89)	
<b>Issued and called up capital</b>			
Ordinary Shareholders	1,000,000 00	1,000,000 00	
<b>TOTAL SURPLUS/(DEFICIENCY)</b>		(3,419,730 89)	

## **APPENDIX 3**

### **JOINT ADMINISTRATORS' RECEIPTS AND PAYMENTS ACCOUNT**

## **APPENDIX 4**

### **INFORMATION FOR CREDITORS REGARDING JOINT ADMINISTRATORS REMUNERATION**



# DJ CAVALIER INVESTMENTS LIMITED (FORMERLY PNC TELECOM SERVICES LTD)

Date of Appointment 26 October 2007 Court Number 7605 of 2007

Joint Administrators Mark Grahame Tailby  
Neil Charles Money

CBA  
39 Castle Street  
Leicester  
LE1 5WN

## Officeholders charging and disbursement policy

All staff, including support staff, are charged directly to cases for time spent on that case. Time is charged in 10 minute units. Rates are reviewed periodically, as is the categorisation of the staff. The only other payments to CBA will relate to the recovery of actual costs incurred, where there were initially insufficient funds to make the payment from the case or, on closure, final disbursements taken in accordance with the Insolvency Fees Order 1986 (as amended). On closure, any funds over £1 are paid to the Insolvency Services Account. Lesser amounts are treated as bank charges.

Summary of Hours Worked							Time Cost £	Average Hourly Rate £/Hr
Classification of Work Function	Insolvency Practitioner	Senior Manager	Manager	Administrator	Support Staff	Total Hours		
Case progression	5 00	1 00	0 00	9 83	0 00	15 83	3,600 00	227 42
Statutory	0 00	0 17	0 00	2 50	0 83	3 50	567 50	162 14
Realisation of assets	0 00	0 00	0 00	0 50	0 00	0 50	90 00	180 00
Leases/HP/Retention	0 00	0 00	0 00	0 50	0 00	0 50	90 00	180 00
Creditors	0 00	0 00	0 00	5 33	0 00	5 33	960 00	180 11
Investigations	0 00	0 00	0 00	0 83	0 00	0 83	150 00	180 72
Total hours	5 00	1 17	0 00	19 49	0 83	26 49	5,457 50	206 02

Total fees drawn to date £Nil

Outlays reimbursed to CBA	
Description	£
	Nil
Total	Nil

ASSOCIATES LIMITED - T/A CBA

Current Charge Out Rates  
(Revised 1 April 2007)

Grade of Staff	Charge Out Rate per Hour £
Licensed Insolvency Practitioner	315 00
Senior Manager	255 00
Manager	210 00
Senior Administrator	180 00
Administrator	150 00
Support Staff	90 00

The above information is required by Statement of Insolvency Practice No 9

## 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 in order to achieve one or more of 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 earned 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 the 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.

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:

- 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.

## **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.