

The Insolvency Act 1986

**Administrator's progress report**

Name of Company South Beach (Tenby) Limited	Company number 06372816
In the High Court of Justice High Court of Justice, Chancery Division [full name of court]	Court case number 4349 of 2013

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

We (a) Trevor John Binyon and Timothy John Edward Dolder both of Opus Restructuring LLP,  
One Euston Square, 40 Melton Street, London, NW1 2FD

Administrators of the above Company attach a progress report for the period

from

to

(b) 19 December 2013

(b) 20 May 2014

(b) Insert dates

Signed

Joint Administrators

Dated 21 May 2014

**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.

Opus Restructuring LLP, One Euston Square, 40 Melton Street, London, NW1 2FD	
Paul Hennelly	
	Tel 020 7268 3336
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



SATURDAY

# **SOUTH BEACH (TENBY) LIMITED** **("the Company")**

Progress Report of Creditors  
(Rule 2.112(2) Insolvency Rules 1986)

**20 May 2014**

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Private & Confidential

This Report is for use by the Members and Creditors of the Company only and must not be published or provided to any other party without the written permission of Opus Restructuring LLP ("the firm")

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Opus Restructuring LLP  
One Euston Square  
40 Melton Street  
London  
NW1 2FD

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**SOUTH BEACH (TENBY) LIMITED  
(IN ADMINISTRATION)  
SIX MONTH PROGRESS REPORT TO CREDITORS**

**A) COURT DETAILS**

High Court of Justice, Chancery Division No 4349 of 2013

**B) STATUTORY INFORMATION**

Company name	South Beach (Tenby) Limited (In Administration), ("the Company")											
Previous name	Mandaco 538 Limited											
Other trading names	South Beach (Tenby) Limited											
Current reg office	One Euston Square, 40 Melton Street, London, NW1 2FD											
Former reg office	54 East Moors Road, Cardiff, CF24 5NN											
Registered Number	06372816											
Date of incorporation	17/09/2007											
Principal trading activity	Construction											
Date of Appointment	19/06/2013											
Joint Administrators	Trevor John Binyon is authorised to act as an Insolvency Practitioner in the UK by the Association of Chartered Certified Accountants  Timothy John Edward Dolder is authorised to act as an Insolvency Practitioner in the UK by the Insolvency Practitioners Association											
Functions	The functions of the Joint Administrators are being exercised by either or both of them in accordance with Paragraph 100(2) of Schedule B1 to the Insolvency Act 1986 (as amended)											
EC Regulations	EC Regulations apply in this instance and these proceedings will be Main Proceedings as defined in Article 3 of the EC Regulations											
Company Directors	<table><tr><th>Name</th><th>Appointed</th><th>Resigned</th></tr><tr><td>Nicholas Joseph Kelly</td><td>10/10/2007</td><td>n/a</td></tr><tr><td>M AND A Secretaries Limited</td><td>17/09/2007</td><td>10/10/2007</td></tr></table>			Name	Appointed	Resigned	Nicholas Joseph Kelly	10/10/2007	n/a	M AND A Secretaries Limited	17/09/2007	10/10/2007
Name	Appointed	Resigned										
Nicholas Joseph Kelly	10/10/2007	n/a										
M AND A Secretaries Limited	17/09/2007	10/10/2007										
Company Secretary	<table><tr><th>Name</th><th>Appointed</th><th>Resigned</th></tr><tr><td>M AND A Secretaries Limited</td><td>17/09/2007</td><td>21/09/2011</td></tr></table>			Name	Appointed	Resigned	M AND A Secretaries Limited	17/09/2007	21/09/2011			
Name	Appointed	Resigned										
M AND A Secretaries Limited	17/09/2007	21/09/2011										
Shareholding	<table><tr><th>Name</th><th>Shareholding</th></tr><tr><td>Nicholas Joseph Kelly</td><td>100%</td></tr><tr><td>Authorised Share Capital</td><td>1 ordinary share of £1</td></tr><tr><td>Allotted, Called Up and Fully Paid</td><td>1 ordinary share of £1</td></tr></table>			Name	Shareholding	Nicholas Joseph Kelly	100%	Authorised Share Capital	1 ordinary share of £1	Allotted, Called Up and Fully Paid	1 ordinary share of £1	
Name	Shareholding											
Nicholas Joseph Kelly	100%											
Authorised Share Capital	1 ordinary share of £1											
Allotted, Called Up and Fully Paid	1 ordinary share of £1											

**C) ADMINISTRATION APPOINTMENT DETAILS**

Trevor John Binyon and Timothy John Edward Dolder were appointed Joint Administrators of South Beach (Tenby) Limited on the 19 June 2013 by the director of the Company

The functions of the Joint Administrators are being exercised by either or both of the administrators acting jointly or alone

**D) DETAILS OF ANY EXTENSIONS**

No extensions have been sought prior to this report. However, the secured creditor and unsecured creditors are requested to consider the resolution to extend the administration by a further six months until 18 December 2014. This resolution will be considered at a meeting by correspondence, responses for which should be received by 12 noon on Tuesday, 10 June 2014.

**E) DETAILS OF PROGRESS OF THE ADMINISTRATION**

This report details our acts and dealings covering the period from 19 December 2013 to 20 May 2014.

By way of a reminder, the development consisted of two phases. Construction of phase one was completed prior to our appointment and consisted of nine residential apartments, four of which were unsold. Two apartments were sold during this period leaving two apartments remaining unsold, yet under offer. Contracts have been issued to both purchasers and it is hoped that exchange and completion occurs imminently.

Phase two was at the initial stages of construction with steel frames only erected. However, planning has been granted for the development of ten residential apartments. The Company granted Principality Building Society ("PBS") legal charges over the development and property created on 29 October 2007 and 15 September 2010 respectively in exchange for funding the development. Additionally, OPCO Limited ("OPCO"), an associated Company, funded the land purchase and construction of the steel frames in respect of phase two. The Company was unable to complete the construction of phase two as it had insufficient funds available to do so.

The entire development is subject to a S106 agreement. The S106 agreement requires the construction of five affordable houses. Our agents, Messrs GVA Grimley, made an appeal on behalf of the Joint Administrators to alter the conditions of the S106 agreement. A meeting was held on 19 February 2014 with the Pembrokeshire Coast National Park Authority ("PCNPA") planning committee in this regard. The committee members debated the merits of the modification request and resolved to refuse the request in accordance with the Officers' recommendation. Overall, however, members agreed with Officers that a marketing exercise would need to be undertaken to demonstrate that there is no interest from prospective purchasers. It was also suggested, as per the Officers' report, that the Authority may consider widening the search area for finding a site to satisfy the provision of affordable housing provision to outside Tenby.

The purpose of this exercise was to deliver a development plot free of encumbrance, thereby ultimately attracting a wider market, creating competitive tension and increasing the likely realisable value. Given that PCNPA's decision has been rather robust, consultations have taken place with representatives of the Company's major creditor in light of this. It was agreed that once the remaining two apartments in phase one are sold, a full marketing campaign will be undertaken in order to sell phase two to willing and suitably qualified developers.

## **Asset Realisations**

### **Apartments**

Below are details of progress to date,

Description	Status as at 20/05/2014	Value (Gross)
Apartment 2	Subject to Contract	£316,500
Apartment 3	Subject to Contract	£350,000
Apartment 4	Completed	£375,000
Apartment 8	Completed	£370,000

During the period of this report, we had received and accepted an offer for apartment 3 for £355,000. The purchasers were at advanced due diligence stages of the conveyance, unfortunately to have repeated issues regarding mortgage funding. It was considered necessary to withdraw contracts in March 2014 and place the property back on the market. A new offer of £350,000 has been accepted and the purchaser, who is familiar with the restrictions of a sale in administration, remains interested. The purchaser is conducting his own due diligence. Whilst a date for exchange and completion has not yet been set, we anticipate that once minor snagging issues are resolved, exchange and completion will follow shortly thereafter.

The purchaser of apartment 2 is in the final stages of obtaining funding. Our selling agents have confirmed that as soon as the purchaser obtains acceptance of the mortgage offer, we will be in a position to complete.

Apartments 4 & 8 were sold during this reporting period.

### **Non-Refundable Deposits**

A final payment of £43,750 was received from Acuity Legal Limited, who acted on behalf of the Company prior to administration. These funds were being held in Acuity Legal Limited's client account. In total, £133,750 was received in respect of non-refundable deposits. No further funds are anticipated.

### **Rates Refund**

As previously reported, a rates refund of £9,977 was received from Pembrokeshire County Council. It is anticipated that there will be no further income from this source.

### **Receipts & Payments account**

Attached at **Appendix 1** is a copy of our receipts & payments account for the period 19 December 2013 to 20 May 2014, together with a cumulative total since the commencement of the administration. The balance in hand, subject to a VAT reclaim is £26,773.

We have commented above on the realisations. Payments are detailed below.

### **Creditors' Claims**

#### **Secured creditors – PBS**

The Company granted PBS legal charges over the development and property, created on 29 October 2007 and 15 September 2010 respectively. The Company did not grant a debenture therefore the prescribed part provisions will not apply in this instance.

A distribution of £721,555 has been declared to PBS in respect of the two apartment sales.

We anticipate that PBS's indebtedness will be repaid in full following the sale of the remaining two apartments.

#### **Preferential creditors**

There are no employees in this case and therefore no preferential creditor claims are anticipated

#### **Unsecured creditors**

The Director's Statement of Affairs estimated unsecured creditor claims to be £2,396,355. However, unsecured creditor claims of £4,636,177 have been received, but not yet adjudicated. OPCO Limited (in administration) is the major unsecured creditor. The Company's Administrators, KPMG LLP, have submitted a claim of £3,213,122.

HM Revenue & Customs' combined claim is £35,659.

Please be advised that we are still receiving proof of debts and therefore are unable to agree the total value of unsecured claims at present.

#### **Dividend Prospects**

The Company has not granted a floating charge to any creditor after the 15 September 2003 and consequently there will be no prescribed part in this administration.

PBS is expected to be repaid in full under the terms of its security. It is anticipated that there will be sufficient funds to declare a distribution to unsecured creditors, the quantum and timing of which is yet to be finalised and shall be dependent largely on realisations from phase two of the development. We are in consultation with the major creditor, OPCO Limited (in administration) via KPMG LLP regarding the realisation strategy of phase two. It should be noted that returns to unsecured creditors are likely to be lower on account of the current S106 restrictions, hence why we have looked to modify these conditions.

#### **Costs and Expenses**

##### **Pre-Administration Costs**

No approval has been sought for pre-administration costs. Time costs in this regard amounted to £862.50, which shall be considered as irrecoverable.

All other professional instructions were made following appointment; therefore no such sanction has been sought from creditors.

##### **Joint Administrators' Remuneration**

A resolution was passed at a meeting by correspondence on 27 August 2013 that the Joint Administrators' Remuneration be based on the time properly incurred in the conduct of the administration and that they be empowered to draw and pay such remuneration in respect of these costs on account.

The Joint Administrators' post-appointment time-costs for the period from 19 June 2013 to 16 May 2014 are £130,295 and this amounts to 475 hours and an average charge-out rate of £274 per hour.

"A Creditor's Guide to Administrator's Fees" and our charge-out rates policy, may be found at **Appendix 2b) and Appendix 2c)** respectively. The Association of Business Recovery Professionals' Statement of Insolvency Practice 9 requires the Administrators to provide a full detailed analysis of time spent, and charge out rates for each grade of staff for the various areas of work undertaken.

A description of the routine work undertaken in the administration to date is as follows

#### Administration and Planning

- Preparing the documentation and dealing with the formalities of appointment
- Statutory notifications and advertising
- Preparing documentation required
- Dealing with all routine correspondence
- Maintaining physical case files and electronic case details on Insolv case management software
- Review and storage
- Case bordereau
- Case planning and administration
- Preparing reports to members and creditors
- Convening and holding meetings of members and creditors

#### Cashiering

- Maintaining and managing the Administrators' cashbook and bank account
- Ensuring statutory lodgements and tax lodgement obligations are met

#### Creditors

- Dealing with creditor correspondence and telephone conversations
- Preparing reports to creditors
- Maintaining creditor information on Insolv case management software
- Reviewing, and adjudicating on if necessary, proofs of debt received from creditors

#### Investigations

- Review and storage of books and records
- Prepare a return pursuant to the Company Directors Disqualification Act 1986
- Conduct investigations into suspicious transactions
- Review books and records to identify any transactions or actions an administrator may take against a third party in order to recover funds for the benefit of creditors

#### Realisation of Assets

- Liaising with the company's bank regarding the closure of the account
- Marketing and selling two phases of development
- Liaising with multiple interested parties
- Negotiations regarding S106 obligations

#### Joint Administrators' Disbursements

The Joint Administrators' category 1 and category 2 disbursements for the period are £822 20 and £406 55 respectively. Total Category 1 disbursements of £822 20 have been drawn to date. Total Category 2 disbursements of £387 28 have been drawn to date, leaving a balance of £19 27 outstanding.

The time costs, category 1 and category 2 disbursements are summarised at **Appendix 2a)**. Where disbursements are recovered in respect of precise sums expended to third parties there is no necessity for these costs to be authorised. These are known as Category 1 disbursements. Category 2 disbursements are where our firm incurs overheads in relation to postage, stationery, photocopying, storage and room hire and these are specifically detailed on **Appendix 2a)**.



### **Legal fees**

As previously advised, Lewis, Lewis & Company Limited ("LL") and Geoffrey Leaver Solicitors ("GL") were instructed to provide legal advice on all aspects of the administration. LL is instructed to deal with the sale of phase one, whilst GL are providing ad hoc advice to the Administrators in respect of matters arising in the administration. In total, legal fees of £5,551 plus VAT were paid to date. Legal fees are being regularly reviewed as part of the strategic review of the case.

### **Agents fees**

You may recall that agents have been instructed to realise the assets of the Company and provide marketing advice in the administration. GVA Grimley has received £10,081 plus VAT for assisting with phase two of the development, to include the re-negotiation of the S106 agreement. Further costs have been incurred details of which will follow in due course.

Savills & FBM estate agents have been instructed on a joint selling agency agreement at a combined commission of 2% of sales.

Insurance brokers, Insolvency Risk Services ("IRS") were instructed to place the development on open cover insurance with effect from the date of appointment. Total payments of £13,900 have been made in respect of insurance related matters.

### **Latent Defects Cover**

The Oval Group, insurance brokers, have been instructed to assist with obtaining latent defects cover for the apartments in phase one. The Oval Group has been paid £2,467 plus VAT and measures are being taken to ensure that full latent defects cover is available. The cost of such insurance is estimated to be c£33,000. This has not yet been paid.

### **Remedial Works**

Miscellaneous costs were incurred and paid in order to rectify essential snagging issues. Further costs will be incurred in this regard, the quantum of which cannot be determined due to their very nature.

### **Further Information**

An unsecured creditor may, with the permission of the Court or with the concurrence of 5% in value of the unsecured creditors (including the creditor in question) request further details of the Administrator's Remuneration and expenses, within 21 days of receipt of this report. Any secured creditor may request the same details in the same time limit.

An unsecured creditor may, with the permission of the Court or with the concurrence of 10% in value of the unsecured creditors (including the creditor in question), apply to Court to challenge the amount and/or basis of the Joint Administrators' Remuneration and the amount of any proposed expenses or expenses already incurred, within 8 weeks of receipt of this report. Any secured creditor may make a similar application to Court within the same time limit.

F) ANY OTHER RELEVANT INFORMATION

Completion of the Administration

Creditors agreed that the Joint Administrators will be permitted to conclude the administration pursuant to Paragraph 83(1) of Schedule B1 of the Insolvency Act 1986 (as amended), moving from administration to creditors' voluntary liquidation in order to make a distribution to the unsecured creditors. Creditors have agreed that Trevor John Binyon and Timothy John Edward Dolder be appointed Joint Liquidators.

However, it is necessary for the administration to be extended and the secured creditor and unsecured creditors are respectfully requested to consider the resolution to extend the administration by a further six months until 18 December 2014. The reason for this request is to enable us to conclude the sale of property assets of the Company in order to achieve the purpose of the administration in accordance with Paragraph 3 of Schedule B1 of the Insolvency Act 1986 (as amended). This resolution will be considered at a meeting by correspondence, details of which are attached as **Appendix 3** to this report.

You should note that the Joint Administrators will be discharged from liability pursuant to Paragraph 98 of Schedule B1 of the Insolvency Act 1986 (as amended) immediately upon the Joint Administrators filing their final report to creditors.

Creditors Committee

No creditor committee was formed although creditors were offered the opportunity to do so.

Investigations

An investigation into the Company's affairs has been undertaken to establish whether there were any potential asset recoveries or conduct matters that justified further investigation, taking account of the public interest, potential recoveries, the funds likely to be available to fund an investigation, and the costs involved. A report was issued to the Department of Business, Innovations & Skills. We are not obliged to comment on the content of this report.

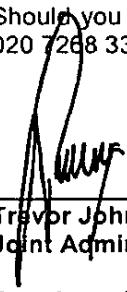
G) MEETING OF CREDITORS BY CORRESPONDENCE (FORM 2.25B)

We are holding a meeting of creditors by correspondence in accordance with Rule 2.48 of the Insolvency Rules 1986 (as amended) to enable secured and unsecured creditors to consider and vote on the following resolution:

- 1) *The Joint Administrators' term of office may be extended for a period of six months to 18 December 2014 in accordance with Paragraph 76(2) of Schedule B1 of the Insolvency Act 1986 (as amended) by consent of creditors.*

We also enclose as **Appendix 3, Form 2.25B** "notice of conduct of business by correspondence" and a claim form (**Proof of Debt**) for you to complete. Please complete and return Form 2.25B, together with your proof of debt form by **12 noon on Tuesday, 10 June 2014**.

Should you have any queries, please do not hesitate to contact Paul Hennelly of this office  
020 7268 3336



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Trevor John Binyon  
Joint Administrator

Dated. 22 May 2014

Authorised to act as an Insolvency Practitioner in the UK 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 agents for the Company without personal liability*

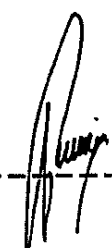
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## **APPENDIX 1**

### **RECEIPTS & PAYMENTS ACCOUNT 19 DECEMBER 2013 TO 20 MAY 2014, INCORPORATING CUMULATIVES TO DATE**

**South Beach (Tenby) Limited - In Administration**  
**Joint Administrators' Abstract of Receipts & Payments**

**From 19 December 2013 To 20 May 2014**

	Statement of Affairs	From 19/12/13 To 20/05/14	Cumulative
<b>ASSET REALISATIONS</b>			
Cash at Bank	44,214 00	-	-
Freehold Land & Property	1,540,000 00	745,000 00	745,000 00
Rates Refund		-	9,976 98
Deposits on Aborted Sales	133,500 00	43,750 00	133,750 00
	<u>1,673,500 00</u>	<u>788,750 00</u>	<u>888,726 98</u>
<b>COSTS OF REALISATION</b>			
Joint Agency Commission on Sale	( 14,900 00)	( 14,900 00)	( 14,900 00)
Legal Fees & Disbursements	( 4,551 00)	( 4,551 00)	( 4,551 00)
Legal Fees and Disbursements	( 101 59)	( 101 59)	( 101 59)
Management Company		-	( 695 40)
Retention for window repair - apartment 4	( 1,000 00)	( 1,000 00)	( 1,000 00)
Architect's Fee	( 225 00)	( 225 00)	( 225 00)
Specific Bond		-	( 330 00)
Statement of Affairs Fee		-	( 1,500 00)
Insurance of Assets	( 7,839 68)	( 7,839 68)	( 13,899 49)
Bank Charges	( 1 00)	( 1 00)	( 1 00)
Travel		-	( 722 30)
Plumbing Works	( 170 00)	( 170 00)	( 170 00)
Remedial Works - Apartment 1		-	( 402 00)
Health & Safety Remedial Works	( 365 00)	( 365 00)	( 1,910 00)
Latent Defects Warranty Cover	( 467 00)	( 467 00)	( 2,467 00)
GVA Grimley Chartered Surveyors		-	( 10,080 59)
Advertising Costs		-	( 169 20)
Land Registry Fees		-	( 85 00)
IT Costs		-	( 185 00)
Photocopying		-	( 60 82)
Administrators' Remuneration	( 50,000 00)	( 50,000 00)	( 85,000 00)
Administrators' Disbursements	( 69 45)	( 69 45)	( 69 45)
<b>Subtotal</b>		<u>709,060 28</u>	<u>748,328 14</u>
<b>SECURED CREDITORS</b>			
Principality Building Society	( 1,254,074 00)	( 721,555 00)	( 721,555 00)
<b>Balance</b>		<u>( 12,494,72)</u>	<u>26,773 14</u>
<b>REPRESENTED BY</b>			
Bank Account			26,700 14
VAT Receivable			73 00
			<u>26,773 14</u>
			
		Trevor John Binyon	
		Joint Administrator	

## **APPENDIX 2**

### **ADMINISTRATORS' REMUNERATION**

- a) POST-APPOINTMENT TIME-COSTS 19 JUNE 2013 TO 16 MAY 2014
- b) A CREDITOR'S GUIDE TO ADMINISTRATOR'S FEES
- c) OPUS RESTRUCTURING LLP CHARGE OUT POLICY

Joint Administrators' Remuneration Schedule  
South Beach (Tenby) Limited (in administration)  
Between 19 June 2013 and 16 May 2014

Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
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<b>Administration &amp; Planning</b>							
Appointment Notification	-	1 50	-	-	1 50	375 00	250 00
Case Planning	7 00	8 80	-	-	15 80	4,577 50	289 72
Case Reviews including MR1s/MR2s	-	2 20	-	-	2 20	550 00	250 00
Cash Accounting and Time Records	-	0 50	-	1 20	1 70	245 00	144 12
Cashiering	0 20	3 70	-	7 40	11 30	1,862 50	164 82
Internal Documentation and IT	-	-	-	0 30	0 30	30 00	100 00
Maintenance of Records	-	2 40	-	7 00	9 40	1,300 00	138 30
Meeting, Travel & Waiting Time	-	8 00	-	-	8 00	2,000 00	250 00
Meeting/Correspondence/Telephone with Debtor	3 00	16 00	-	-	19 00	4,975 00	261 84
Post appointment VAT	-	0 50	-	-	0 50	125 00	250 00
Statutory forms	0 80	0 70	-	1 00	2 50	535 00	214 00
Statutory Reporting and Compliance	2 50	20 40	-	-	22 90	5,737 50	250 55
	13 50	64 70	-	16 90	95 10	22,312 50	234 62

<b>Case Specific Matters</b>							
General Property Issues	3 20	-	-	-	3 20	955 00	298 44
	3 20	-	-	-	3 20	955 00	298 44

<b>Creditors</b>							
Adjudication on claims	-	1 40	-	-	1 40	350 00	250 00
Communication with creditors	-	11 20	-	0 50	11 70	2,850 00	243 59
Correspondence and telephone calls	2 00	1 00	-	-	3 00	900 00	300 00
Internal Documentation	1 10	-	-	-	1 10	357 50	325 00
Ordinary creditors	2 00	0 30	-	-	2 30	725 00	315 22
Secured Creditors	5 00	18 40	-	-	23 40	6,225 00	266 03
	10 10	32 30	-	0 50	42 90	11,407 50	265 91

APPENDIX 2a)

Joint Administrators' Remuneration Schedule  
South Beach (Tenby) Limited (in administration)  
Between 19 June 2013 and 16 May 2014

Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
<b>Investigations</b>							
Analysis of financial records	-	1 00	-	-	1 00	250 00	250 00
D Reports	-	3 50	-	-	3 50	875 00	250 00
Internal Documentation	-	0 50	-	-	0 50	125 00	250 00
Legal Correspondence	-	0 50	-	-	0 50	125 00	250 00
	-	5 50	-	-	5 50	1,375 00	250 00
<b>Realisation of Assets</b>							
Correspondence with Agent	-	1 90	-	-	1 90	475 00	250 00
Identifying, securing, insuring assets	-	3 50	-	-	3 50	875 00	250 00
Initial Actions and Valuations	-	2 00	-	-	2 00	500 00	250 00
Insurance	-	5 70	-	-	5 70	1,425 00	250 00
Legal Matters	-	22 00	-	-	22 00	5,500 00	250 00
Other assets	-	3 05	-	-	3 05	762 50	250 00
Property, business and asset sales - floating chge	3 00	-	-	-	3 00	975 00	325 00
Property, business and asset sales - general	4 90	2 45	-	-	7 35	2,205 00	300 00
Property, business and asset sales - secured	136 80	118 40	-	0 50	255 70	74,110 00	289 83
Sale of Assets	19 40	4 45	-	-	23 85	7,417 50	311 01
	164 10	163 45	-	0 50	328 05	94,245 00	287 29
<b>Totals</b>							
Total hours	190 90	265 95	-	17 90	474 75		
Time costs	61,832 50	66,540 00	-	1,922 50	130,295 00		
Average hourly rate	323 90	250 20	-	107 40	274 45		
<b>Summary of Fees</b>							
Time spent in administering the Assignment					Hours		474 75
Total value of time spent to 16 May 2014						£	130,295 00
Total Joint Administrators' fees charged to 16 May 2014						£	(85,000 00)
Unbilled Work in Progress						£	45,295 00



APPENDIX 2a)

Joint Administrators' Remuneration Schedule  
South Beach (Tenby) Limited (in administration)  
Between 19 June 2013 and 16 May 2014

Classification of work function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost	Average Hourly Rate
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Disbursements (Category 1)		
Description	Total Incurred £	Total Recovered £
CAT 1 Advertising	169 20	169 20
CAT 1 INSOLV fee	185 00	185 00
CAT 1 Bonding	330 00	330 00
CAT 1 Company House Fee	19 00	19 00
CAT 1 Land Registry	119 00	119 00
Totals	822 20	822 20

Disbursements (Category 2)		
Description	Total Incurred £	Total Recovered £
CAT 2 Travel	310 01	310 01
CAT 2 Postage	96 54	77 27
Totals	406 55	387 28

## 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, explains the basis on which fees are fixed and how creditors can seek information about expenses incurred by the administrator and challenge those they consider to be excessive.

#### **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 remuneration**

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

Any combination of these bases may be used to fix the remuneration, and different bases may be used for different things done by the administrator. Where the remuneration is fixed as a percentage, different percentages may be used for different things done by the administrator.

It is for the creditors' committee (if there is one) to determine on which of these bases, or combination of bases, the remuneration is to be fixed. Where it is fixed as a percentage, it is for the committee to determine the percentage or percentages to be applied, and where it is a set amount, to determine that amount. 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 (and provided the circumstances described in paragraph 4.3 do not apply), the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard to the same matters as apply in the case of the committee. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator, but the administrator may not make such an application unless he has first tried to get his remuneration fixed by the committee or creditors as described above, and in any case not later than 18 months after his appointment.

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. Review of remuneration**

5.1 Where there has been a material and substantial change in circumstances since the basis of the administrator's remuneration was fixed, the administrator may request

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that it be changed. The request must be made to the same body as initially approved the remuneration, and the same rules apply as to the original approval.

## **6 Approval of pre-administration costs**

**6.1** Sometimes the administrator may need to seek approval for the payment of costs in connection with preparatory work incurred before the company went into administration but which remain unpaid. Such costs may relate to work done either by the administrator or by another insolvency practitioner. Disclosure of such costs must be included in the administrator's proposals and should follow the principles and standards set out in section 7.

**6.2** Where there is a creditors' committee, it is for the committee to determine whether, and to what extent, such costs should be approved for payment. If there is no committee or the committee does not make the necessary determination, or if it does but the administrator, or other insolvency practitioner who has incurred pre-administration costs, considers the amount agreed to be insufficient, approval may be given by a meeting of creditors. Where the circumstances described in paragraph 4.3 apply, the determination may be made by the same creditors as approve the administrator's remuneration.

**6.3** The administrator must convene a meeting of the committee or the creditors for the purposes of approving the payment of pre-administration costs if requested to do so by another insolvency practitioner who has incurred such costs. If there is no determination under these provisions, or if there is but the administrator or other insolvency practitioner considers the amount agreed to be insufficient, the administrator may apply to the court for a determination.

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

### **7.1 When fixing bases of remuneration**

**7.1.1** When seeking agreement for the basis or bases of remuneration, the administrator should provide sufficient supporting information to enable the committee or the creditors to make an informed judgement as to whether the basis sought is appropriate having regard to all the circumstances of the case. The nature and extent of the information provided will depend on the stage during the conduct of the case at which approval is being sought. The appendix to this guide sets out a suggested format for the provision of information.

**7.1.2** If any part of the remuneration is sought on a time costs basis, the administrator should provide details of the minimum time units used and current charge-out rates, split by grades of staff, of those people who have been or who are likely to be involved in the time costs aspects of the case.

**7.1.3** The administrator should also provide details and the cost of any work that has been or is intended to be sub-contracted out that could otherwise be carried out by the administrator or his or her staff.

**7.1.4** If work has already been carried out, the administrator should state the proposed charge for the period to date and provide an explanation of what has been achieved in the period and how it was achieved, sufficient to enable the progress of the case to be assessed and whether the proposed charge is reasonable in the circumstances of the case. Where the proposed charge is calculated on a time costs basis, the administrator should disclose the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. The administrator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the administrator or his or her staff.

## **7.2 After the bases of remuneration have been fixed**

The administrator is required to send progress reports to creditors at specified intervals (see paragraph 8.1 below). When reporting periodically to creditors, in addition to the matters specified in paragraph 8.1, the administrator should provide an explanation of what has been achieved in the period under review and how it was achieved, sufficient to enable the progress of the case to be assessed. Creditors should be able to understand whether the remuneration charged is reasonable in the circumstances of the case (whilst recognising that the administrator must fulfil certain statutory obligations and regulatory requirements that might be perceived as bringing no added value for the estate). Where any remuneration is on a time costs basis, the administrator should disclose the charge in respect of the period, the time spent and the average charge-out rates, in larger cases split by grades of staff and analysed by appropriate activity. If there have been any changes to the charge-out rates during the period under review, rates should be disclosed by grades of staff, split by the periods applicable. The administrator should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the administrator or his or her staff.

## **7.3 Disbursements and other expenses**

**7.3.1** Costs met by and reimbursed to the administrator in connection with the administration should be appropriate and reasonable. Such costs will fall into two categories:

- **Category 1 disbursements.** These are costs where there is specific expenditure directly referable both to the administration and a payment to an independent third party. These may include, for example, advertising, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the administrator or his or her staff.
- **Category 2 disbursements.** These are costs that are directly referable to the administration but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the administration on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the administrator should be prepared to disclose information about them in the same way as any other expenses. Category 2 disbursements may be drawn if they have been approved in the same manner as the administrator's remuneration. When seeking approval, the administrator should explain, for each category of expense, the basis on which the charge is being made.

**7.3.2** The following are not permissible:

- a charge calculated as a percentage of remuneration,
- an administration fee or charge additional to the administrator's remuneration,
- recovery of basic overhead costs such as office and equipment rental, depreciation and finance charges.

## **8 Progress reports and requests for further information**

**8.1** The administrator is required to send a progress report to creditors at 6-monthly intervals. The report must include:

- details of the basis fixed for the remuneration of the administrator (or if not fixed at the date of the report, the steps taken during the period of the report to fix it),

- if the basis has been fixed, the remuneration charged during the period of the report, irrespective of whether it was actually paid during that period (except where it is fixed as a set amount, in which case it may be shown as that amount without any apportionment for the period of the report),
- if the report is the first to be made after the basis has been fixed, the remuneration charged during the periods covered by the previous reports, together with a description of the work done during those periods, irrespective of whether payment was actually made during the period of the report,
- a statement of the expenses incurred by the administrator during the period of the report, irrespective of whether payment was actually made during that period,
- the date of approval of any pre-administration costs and the amount approved,
- a statement of the creditors' rights to request further information, as explained in paragraph 8.2, and their right to challenge the administrator's remuneration and expenses

8.2 Within 21 days of receipt of a progress report a creditor may request the administrator to provide further information about the remuneration and expenses (other than pre-administration costs) set out in the report. A request must be in writing, and may be made either by a secured creditor, or by an unsecured creditor with the concurrence of at least 5% in value of unsecured creditors (including himself) or the permission of the court.

8.3 The administrator must provide the requested information within 14 days, unless he considers that

- the time and cost involved in preparing the information would be excessive, or
- disclosure would be prejudicial to the conduct of the administration or might be expected to lead to violence against any person, or
- the administrator is subject to an obligation of confidentiality in relation to the information requested,

in which case he must give the reasons for not providing the information.

Any creditor may apply to the court within 21 days of the administrator's refusal to provide the requested information, or the expiry of the 14 days time limit for the provision of the information.

## 9 Provision of information – additional requirements

The administrator 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.

**10 What if a creditor is dissatisfied?**

- 101 If a creditor believes that the administrator's remuneration is too high, the basis is inappropriate, or the expenses incurred by the administrator are in all the circumstances excessive he may, provided certain conditions are met, apply to the court
- 10 2 Application may be made to the court by any secured creditor, or by any unsecured creditor provided at least 10 per cent in value of unsecured creditors (including himself) agree, or he has the permission of the court. Any such application must be made within 8 weeks of the applicant receiving the administrator's progress report in which the charging of the remuneration or incurring of the expenses in question is first reported (see paragraph 8 1 above). 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.
- 10 3 If the court considers the application well founded, it may order that the remuneration be reduced, the basis be changed, or the expenses be disallowed or repaid. Unless the court orders otherwise, the costs of the application must be paid by the applicant and not as an expense of the administration.

**11 What if the administrator is dissatisfied?**

- 11 1 If the administrator considers that the remuneration fixed by the creditors' committee is insufficient or that the basis used to fix it is inappropriate he may request that the amount or rate be increased, or the basis changed, by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient or that the basis used to fix it is inappropriate, he may apply to the court for the amount or rate to be increased or the basis changed. 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.

**12 Other matters relating to remuneration**

- 12 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.
- 12 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.
- 12 3 If a new administrator is appointed in place of another, any determination, resolution or court order which was in effect immediately before the replacement continues to have effect in relation to the remuneration of the new administrator until a further determination, resolution or court order is made.
- 12 4 Where the basis of the remuneration is a set amount, and the administrator ceases to act before the time has elapsed or the work has been completed for which the amount was set, application may be made for a determination of the amount that should be paid to the outgoing administrator. The application must be made to the same body as approved the remuneration. Where the outgoing administrator and the incoming administrator are from the same firm, they will usually agree the apportionment between them.

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### **13      Effective date**

This guide applies where a company enters administration on or after 1 November 2011



## **Appendix**

### **Suggested format for the provision of information**

Professional guidance issued to insolvency practitioners sets out the following suggested format for the provision of information when seeking approval of remuneration. However, the level of disclosure suggested below may not be appropriate in all cases, and will be subject to considerations of proportionality. In larger or more complex cases the circumstances of each case may dictate the information provided and its format.

#### **Narrative overview of the case**

In all cases, reports on remuneration should provide a narrative overview of the case. Matters relevant to an overview are:

- the complexity of the case,
- any exceptional responsibility falling on the administrator,
- the administrator's effectiveness,
- the value and nature of the property in question.

The information provided will depend upon the basis or bases being sought or reported upon, and the stage at which it is being provided. An overview might include:

- an explanation of the nature, and the administrator's own initial assessment, of the assignment (including the anticipated return to creditors) and the outcome (if known),
- initial views on how the assignment was to be handled, including decisions on staffing or subcontracting and the appointment of advisers,
- any significant aspects of the case, particularly those that affect the remuneration and cost expended,
- the reasons for subsequent changes in strategy,
- the steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, and fee drawing,
- any existing agreement about remuneration,
- 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,
- in a larger case, particularly if it involved trading, considerations about staffing and managing the assignment and how strategy was set and reviewed,
- details of work undertaken during the period,
- any additional value brought to the estate during the period, for which the administrator wishes to claim increased remuneration.

#### **Time cost basis**

Where any part of the remuneration is or is proposed to be calculated on a time costs basis, requests for and reports on remuneration should provide:

- An explanation of the administrator's time charging policy, clearly stating the units of time that have been used, the grades of staff and rates that have been charged to the assignment, and the policy for recovering the cost of support staff. There is an expectation that time will be recorded in units of not greater than 6 minutes.
- A description of work carried out, which might include:
  - details of work undertaken during the period, related to the table of time spent for the period,
  - an explanation of the grades of staff used to undertake the different tasks carried out and the reasons why it was appropriate for those grades to be used,
  - any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- Time spent and charge-out summaries, in an appropriate format.

It is useful to provide time spent and charge-out value information in a tabular form for each of the time periods reported upon, with work classified (and sub-divided) in a way relevant to the circumstances of the case

The following areas of activity are suggested 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 level of disclosure suggested above will not be appropriate in all cases, and considerations of proportionality will apply

- where cumulative time costs are, and are expected to be, less than £10,000 the administrator should, as a minimum, state the number of hours and average rate per hour and explain any unusual features of the case,
- where cumulative time costs are, or are expected to be, between £10,000 and £50,000, a time and charge-out summary similar to that shown above will usually provide the appropriate level of detail (subject to the explanation of any unusual features),
- where cumulative time costs exceed, or are expected to exceed, £50,000, further and more detailed analysis or explanation will be warranted

**Opus Restructuring LLP****Information relating to the Joint Administrators' Fees and Expenses****Explanation of Joint Administrators' charging and disbursement recovery policies****Time recording**

Work undertaken on cases is recorded in 6 minute units in an electronic time recording system. Time properly incurred on cases is charged at the hourly rate of the grade of staff undertaking the work that applies at the time the work is done. The current hourly charge-out rates are

	Rate since 9 1 2013
Partner	325
Senior Manager/Director	275
Assistant Manager / Manager	200 - 250
Junior Administrator / Administrator / Senior Administrator	100 - 175
Cashier	125
Support Staff	75

**Disbursement recovery**

Disbursements are categorised as either Category 1 or 2. Category 2

Category 1 disbursements will generally comprise of external supplies of incidental services specifically identifiable to the case. Where these have initially been paid by Opus Restructuring LLP and then recharged to the case, approval from creditors is not required. The amount recharged is the exact amount incurred.

Examples of Category 1 disbursements include postage, case advertising, specific bond insurance, company search fees, invoiced travel and properly reimbursed expenses incurred by personnel in connection with the case, (including business mileage up to the HMRC approved rate for cases commenced before 1 November 2011). Also included will be services specific to the case where these cannot practically be provided internally such as printing, room hire and document storage.

Category 2 disbursements include elements of shared or allocated costs incurred by Opus Restructuring LLP and are recharged to the estate; they are not attributed to the estate by a third party invoice and/or they may include a profit element. These disbursements are recoverable in full, subject to the basis of the disbursement charge being approved by creditors in advance. Examples of Category 2 disbursements are photocopying, all business mileage (for cases commencing on or after 1 November 2011), internal room hire and internal storage.

The current levels of Category 2 disbursements recovered by Opus Restructuring LLP are as follows:

	£
Room Hire (for internal room hire outside of London and London)	100 / 150
Case Software setup charge	185
Photocopying/scanning/faxes (internal)	10p per side
Postage (per small/large letter)	44p / 66p
Business mileage per mile	45p
Smartsearch	4
File set-up cost (per file)	6
Red Flag Company Searches (downloading and printing documents from Red Flag)	10
DocuSoft software	25

The costs recharged are based upon the actual cost of the materials used or the costs which would have been incurred if that service had been sourced externally.

## **APPENDIX 3**

### **FORM 2.25B – NOTICE OF CONDUCT OF BUSINESS BY CORRESPONDENCE & PROOF OF DEBT**

## Rule 2.48

# Notice of conduct of business by correspondence

Name of Company <b>SOUTH BEACH (TENBY) LIMITED</b>	Company number <b>06372816</b>
In the High Court of Justice, Chancery Division (full name of court)	Court case number <b>4349 of 2013</b>

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

Notice is hereby given by (a) Trevor John Binyon and Timothy John Edward Dolder both of Opus Restructuring LLP, One Euston Square, 40 Melton Street, London, NW1 2FD

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

To the creditors of (b) South Beach (Tenby) Limited of One Euston Square, 40 Melton Street, London, NW1 2FD

(c) Insert number of  
resolutions enclosed

That, pursuant to Paragraph 58 of Schedule B1 to the Insolvency Act 1986, enclosed is 1 resolution for your consideration. Please indicate below whether you are in favour or against this resolution

(d) Insert address to  
which form is to be  
delivered

This form must be received at (d) Opus Restructuring LLP, One Euston Square, 40 Melton Street, London, NW1 2FD

(e) Insert closing date

By **12 00 noon** on (e) **Tuesday, 10 June 2014** in order to be counted. It must be accompanied by details in writing of your claim. Failure to do so will lead to your vote(s) being disregarded

Repeat as necessary  
for the number of  
resolutions attached

## Resolution

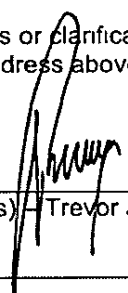
- 1) *The Joint Administrators' term of office may be extended for a period of six months to 18 December 2014 in accordance with Paragraph 76(2) of Schedule B1 of the Insolvency Act 1986 (as amended) by consent of creditors*

**I am \*in Favour/Against**

If you require any further details or clarification prior to returning your votes, please contact me/us at the address above

**\*delete as appropriate**

Signed

Joint/Administrator(s)  Trevor John Binyon

Dated

**22/5/14**

## Proof of Debt – General Form

<b>South Beach (Tenby) Limited - In Administration</b>	
Date of administration 19 June 2013	
1	Name of creditor (If a company please also give company registration number)
2	Address of creditor for correspondence
3	Total amount of claim, including any Value Added Tax and outstanding uncapitalised interest as at the date the company went into administration
4	Details of any documents by reference to which the debt can be substantiated (Note There is no need to attach them now but the administrator may call for any document or evidence to substantiate the claim at his discretion as may the chairman or convenor of any meeting)
5	If amount in 3 above includes outstanding uncapitalised interest please state amount <span style="float: right;">£</span>
6	Particulars of how and when debt incurred (If you need more space append a continuation sheet to this form)
7	Particulars of any security held, the value of the security, and the date it was given
8	Particulars of any reservation of title claimed in respect of goods supplied to which the claim relates
9	Signature of creditor or person authorised to act on his behalf _____
	Name in BLOCK LETTERS _____
	Position with or in relation to creditor _____ Address of person signing (if different from 2 above) _____
<b>For Administrators' Use only</b>	
Admitted to vote for	Admitted for dividend for
£	£
Date	Date
Administrator	Administrator