

## The Insolvency Act 1986

## Administrator's progress report

Name of Company Heath West LLP	Company number OC313378
In the High Court of Justice Chancery Division Companies Court [full name of court]	Court case number 4082 of 2011

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

We (a) Sarah Megan Rayment and Shay Bannon of BDO LLP, 55 Baker Street, London, W1U 7EU

administrator(s) of the above company attach a progress report for the period

(b) Insert date	From (b) 17 November 2011	to (b) 16 May 2012
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Signed

*S. Rayment*

Joint Administrator

Dated

6 June 2012

## 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.

BDO LLP, 55 Baker Street, London W1U 7EU	
Our Ref MJC/BJM/00171877	Tel 020 7893 2409
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



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COMPANIES HOUSE

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Our Ref MJC/BJM/00171877

Please ask for  
Claudia Ruygrok  
020 7893 2409

## TO ALL CREDITORS

Dear Sirs

### Heath West LLP - In Administration ("the Partnership")

It is now 12 months since my appointment in respect of the Partnership. In accordance with Rule 2.47 of the Insolvency Rules 1986 I am now reporting the progress made in implementing the approved proposals and achieving the statutory purpose of the Administration

#### 1 Statutory Information

1.1 The Joint Administrators are Sarah Megan Rayment and Shay Bannon of BDO LLP, 55 Baker Street, London, W1U 7EU and they were appointed in respect of the above Partnership on 17 May 2011. Under the provisions of paragraph 100(2) of Schedule B1 of the Insolvency Act 1986 the Administrators carry out their functions jointly and severally and neither Administrator has exclusive power to exercise any function

1.2 Following ongoing cash flow difficulties an application to the Court for the appointment of Joint Administrators was made by the Bank of Ireland ("the Bank") being the holder of a Qualifying Floating Charge, on 17 May 2011, pursuant to Paragraph 14 of Schedule B1 of the Insolvency Act 1986. The Administration proceedings are dealt with in the High Court of Justice, Chancery Division and the court case number is 4082 of 2011.

1.3 The Partnership's registered office is situated at 55 Baker Street, London, W1U 7EU and the registered number is OC313378

1.4 I enclose, for your information, a summary of my receipts and payments to date showing a balance in hand of £94,076, together with a copy of my abstract account covering the last six month period, and report as follows:

#### 2 Receipts and Payments

2.1 The receipts and payments shown are largely self-explanatory, although I would comment specifically as follows:

2.2 The majority of income is from the sales of 2 properties (discussed further below) owned by the Partnership. The other income is predominantly rent received from the other property owned by the Partnership which is tenanted.

Furthermore, secured creditor monies were provided by the Bank to fund part of the costs of the Administration. Payments are primarily costs associated with the general maintenance of the development and the properties, and professional fees in respect of the sale of the properties and administration matters.

- 2 3 I additionally provide a summary of the fees and expenses which have been paid in the last period of this Administration and the costs which have accrued and not yet been paid.

### 3 Trading / Realisation of Assets

- 3.1 The Partnership was incorporated on the 23 May 2005.

- 3 2 The Partnership was set up for property investment/development and at our appointment owned 3 luxury properties in West Heath Road, North-West London ("the Properties"). Two of the properties were vacant and one of the properties tenanted on an agreement until early 2013

- 3.3 The Partnership was part of a group ("the Group") of four entities that were provided finance by the Bank. At our appointment, the Bank held a fixed and floating charge over the assets of the Partnership under a debenture created on 30 September 2005 and registered at Companies House on 13 October 2005.

- 3.4 Upon our appointment as Joint Administrators we undertook an immediate review of the Partnership's affairs with particular regard to its financial and resource requirements. The Joint Administrators have ensured that all insurance and necessary services will continue to be provided to the properties

- 3 5 The Joint Administrator and representatives met with the member, Mr Jonathan Stein, and his advisors to discuss the Partnership's ongoing business commitments and the anticipated cash flows

- 3 6 Ongoing discussions were held with Mr Stein regarding the re-finance of the Partnership's debts. Unfortunately, it was not possible for the Partnership to obtain sufficient finance to fully repay its liabilities.

- 3 7 Accordingly, the Administration will continue for the purposes of achieving the most beneficial realisation of assets for creditors

- 3 8 The vacant properties continued to be marketed post-appointment by local agents. These two properties were both sold in December 2011 for £7.25m and £6.55m.

- 3.9 The remaining property owned by the Partnership is subject to a tenancy agreement and the Joint Administrators have continued to collect the rent from the tenant. As detailed in our recent letter to creditors, dated 11 May 2012, we have sought the advice of our agents, Savills and Glentree, as to when the remaining property should be marketed. They have both advised that the property should realise a better return if it is sold with vacant possession but as noted above this is not available until 2013. Therefore the property has not been openly marketed to date. Our agents have advised that realisations could be in the region of £5.95m with vacant possession. A sale at this level would allow the secured creditor to be repaid in full and enable the payment of a dividend to unsecured creditors.

- 3 9 1 Whilst we may obtain a higher realisation selling the property in late 2012/early 2013 with vacant possession we are concerned that, given the current economic climate, the current vacant possession guide price is only a guide and may not be achievable in late 2012/early 2013. We therefore believe that it would be in the best interests of all creditors if the property was fully marketed, subject to the tenancy, over the coming months and a sale achieved. We are therefore in the process of instructing Savills and Glentree to formally commence marketing the property.

#### **4 Pre Appointment Costs**

Under Rule 2.67A of the Insolvency Rules 1986 certain costs incurred in preparation and planning for the Administration may, with the approval of the creditors, be approved for payment from the Administration estate, as an expense of the Administration. Although time costs were incurred by our firm in planning during the pre-Administration period, approval of these costs is not being sought from the general body of creditors.

#### **5 Future of the Administration**

- 5.1 I would refer creditors to my report dated 7 July 2011, which outlined the three statutory purposes of the Administration
- 5.2 Unfortunately, it was not possible for the first statutory purpose (rescuing the Partnership as a going concern) to be achieved. However, the Joint Administrators' approved proposals included provisions in the event that the Partnership was unable to be rescued.
- 5.3 The second statutory purpose is to achieve a better result for the Partnership's creditors as a whole than would be likely if the Partnership were wound up (without first being in Administration)
- 5.4 The third statutory purpose is to realise the assets of the Partnership in order to make a distribution to one or more secured or preferential creditors.
- 5.5 Given that the first objective will not be achieved, the Joint Administrators propose that the Administration continues in line with the second and third statutory purposes, subject to the level of realisations.

#### **6 Extension of Administration**

- 6.1 In order to facilitate the sale of the final property owned by the Partnership, the Joint Administrators sought approval from the secured creditor, pursuant to Paragraph 78 of Schedule B1 of the Insolvency Act 1986, for the Company's Administration to be extended for a further period of six months. This approval was given and the Administration was extended to 16 November 2012. A Form 2.31B is attached for your information.
- 6.2 A further administration extension will be required if the sale of the final property and other final closure administration matters have not been concluded by 16 November 2012.

## **7 Prospect for Creditors**

- 7.1** Under Section 176A of the Insolvency Act 1986 the Joint Administrators must state the amount of funds available to unsecured creditors in respect of the Prescribed Part. This provision only applies where a borrower has granted a floating charge to a creditor after 15 September 2003, as has happened in this case

Based on the information presently available, it is unlikely that there will be any realisations under the floating charge. Therefore, it is not anticipated that there will be any funds available for distribution to unsecured creditors out of the Prescribed Part.

### **7.1.1 Secured Creditor**

Under the debenture created on 30 September 2005, the Bank, at our appointment, had a fixed and floating charge over the assets of the Partnership. At the date of appointment, the principal indebtedness to the Bank was £18,017,190, however, the Partnership was part of the Group that was jointly and severally liable for the total indebtedness to the Bank of £36,781,786. This figure was subject to accruing costs and charges

Following the sale of two of the properties owned by the Partnership (referred to in section 3) part of the Partnership's principal indebtedness to the Bank was repaid. In January 2012, the remaining indebtedness to the Bank of Partnership was repaid by other members of the Group (as guarantors under the Bank's cross-guarantee dated 28 September 2007). These entities have rights of subrogation to claim as secured creditors of the Partnership to the extent of any repayments made to the Bank on the Partnership's behalf; this totalled £5,438,745 at the date the Bank was repaid in full. This figure is subject to accruing costs and charges, in line with the Bank's previous charge.

It is not clear whether sufficient funds will be generated from this Administration to repay the secured claim, this is dependent on the net sale proceeds from the final property owned by the Partnership.

### **7.1.2 Preferential Creditors**

The Partnership did not have any employees. Therefore, based on current information there are no claims to be lodged by preferential creditors.

### **7.1.3 Unsecured Creditors**

Total creditors' claims per the statement of affairs are £59,759. The creditors' claims notified to the Joint Administrators to date total approximately £2.45m. On the basis of current information, it is not possible to state whether there will be sufficient funds to enable the payment of a dividend to unsecured creditors, this is dependent on the net sale proceeds from the final property owned by the Partnership.

## **8. Joint Administrators' Remuneration**

- 8.1** Under the terms of the Insolvency Rules 1986 the Joint Administrators are obliged to fix their remuneration in accordance with Rule 2.106(2) of the Insolvency Rules 1986. This permits remuneration to be fixed either as a percentage of the value of the property with which the Joint Administrators have to deal or alternatively by

reference to the time the Joint Administrators and their staff have spent in attending to matters in this Administration or, a fixed amount

- 8 2 Based upon the existing approved proposals, remuneration is to be based upon the time costs incurred by the Administrators. Should there be insufficient property to enable a distribution to be made to unsecured creditors, our remuneration will be subject to the approval of the secured creditor pursuant to Rule 2.106(5A) of the Insolvency Rules 1986. In the event that funds can be returned to the unsecured creditors by way of dividend, our remuneration will be subject to the approval of the creditors
- 8 4 To date, costs of £84,120 have accrued and £16,238 has been drawn in respect of remuneration. I attach a schedule which summarises the time costs accrued to date and indicates the work undertaken in that respect
- 8 5 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. No category 1 disbursements have been recovered in this matter to date.

Yours faithfully  
For and on behalf of  
Heath West LLP



Sarah Megan Rayment  
Joint Administrator  
Authorised by the Insolvency Practitioners Association

Enc:

**Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Administrators' fees and expenses:-**

**Rule 2 48A Creditors' request for further information**

**(1) If—**

- (a)** within 21 days of receipt of a progress report under Rule 2 47—
  - (i)** a secured creditor, or
  - (ii)** an unsecured creditor with the concurrence of at least 5% in value of the unsecured creditors (including the creditor in question), or
- (b)** with the permission of the court upon an application made within that period of 21 days, any unsecured creditor, makes a request in writing to the administrator for further information about remuneration or expenses (other than pre-administration costs) set out in a statement required by Rule 2 47(1)(db) or (dc), the administrator must, within 14 days of receipt of the request, comply with paragraph (2)

**(2) The administrator complies with this paragraph by either—**

- (a)** providing all of the information asked for, or
- (b)** so far as the administrator considers that—
  - (i)** the time or cost of preparation of the information would be excessive, or
  - (ii)** disclosure of the information would be prejudicial to the conduct of the administration or might reasonably be expected to lead to violence against any person, or
  - (iii)** the administrator is subject to an obligation of confidentiality in respect of the information, giving reasons for not providing all of the information

**(3) Any creditor, who need not be the same as the creditor who requested further information under paragraph (1), may apply to the court within 21 days of—**

- (a)** the giving by the administrator of reasons for not providing all of the information asked for, or
- (b)** the expiry of the 14 days provided for in paragraph (1),  
and the court may make such order as it thinks just.

**(4) Without prejudice to the generality of paragraph (3), the order of the court under that paragraph may extend the period of 8 weeks provided for in Rule 2 109(1B) by such further period as the court thinks just**

**Rule 2.109 Creditors' claim that remuneration is or other expenses are excessive**

**(1) Any secured creditor, or any unsecured creditor with either the concurrence of at least 10% in value of the unsecured creditors (including that creditor) or the permission of the court, may apply to the court for one or more of the orders in paragraph (4)**

**(1A) Application may be made on the grounds that—**

- (a)** the remuneration charged by the administrator,
- (b)** the basis fixed for the administrator's remuneration under Rule 2 106, or
- (c)** expenses incurred by the administrator,  
is or are, in all the circumstances, excessive or, in the case of an application under sub-paragraph (b), inappropriate

**(1B) The application must, subject to any order of the court under Rule 2 48A(4), be made no later than 8 weeks after receipt by the applicant of the progress report which first reports the charging of the remuneration or the incurring of the expenses in question ("the relevant report").**

**(2) The court may, if it thinks that no sufficient cause is shown for a reduction, dismiss it without a hearing but it shall not do so without giving the applicant at least 5 business days' notice, upon receipt of which the applicant may require the court to list the application for a without notice hearing. If the application is not dismissed, the court shall fix a venue for it to be heard, and give notice to the applicant accordingly**

**Statement from the Insolvency Rules 1986 (as amended) regarding the rights of creditors in respect of the Joint Administrators' fees and expenses (continued):-**

**Rule 2.109 (continued)**

(3) The applicant shall, at least 14 days before the hearing, send to the administrator a notice stating the venue and accompanied by a copy of the application, and of any evidence which the applicant intends to adduce in support of it.

(4) If the court considers the application to be well-founded, it must make one or more of the following orders—

(a) an order reducing the amount of remuneration which the administrator was entitled to charge;

(b) an order fixing the basis of remuneration at a reduced rate or amount,

(c) an order changing the basis of remuneration,

(d) an order that some or all of the remuneration or expenses in question be treated as not being expenses of the administration;

(e) an order that the administrator or the administrator's personal representative pay to the company the amount of the excess of remuneration or expenses or such part of the excess as the court may specify,

and may make any other order that it thinks just, but an order under sub-paragraph (b) or (c) may be made only in respect of periods after the period covered by the relevant report.

(5) Unless the court orders otherwise, the costs of the application shall be paid by the applicant, and are not payable as an expense of the administration



Heath West LLP - In Administration

Summary of the Joint Administrators' receipts and payments for the period from 17 May 2011 (date of appointment) to 16 May 2012

Receipts	Notes	Estimated to Realise as per Statement of Affairs £	17 November 2011 16 May 2011 £	Total £
3 properties on Heath West Road, London		18,000,000		
70 Heath West Road			7,250,000	7,250,000
72 Heath West Road			6,550,000	6,550,000
74 Heath West Road				
Rent			123,428	185,178
Service Charge			21,000	34,193
Secured Creditor Loan				15,980
Interest Gross			219	291
Output VAT				
		<u>18,000,000</u>	<u>13,944,647</u>	<u>14,035,643</u>
<b>Payments</b>				
Security			36,720	67,250
Telephone			347	912
Property/Development Maintenance			16,295	32,819
Insurance			1,758	17,016
Input VAT				2,697
Professional Fees				5,298
Rates			3,235	3,235
Joint Administrators' Fees			16,238	16,238
Managing Agent's Fees			17,136	17,136
Secured Creditor - Bank of Ireland			13,440,894	13,440,894
Secured Creditor - Central Securities and other members			53,898	53,898
Sundry Expenses			607	607
Legal Fees			41,816	41,816
Sale Agent's Fees			241,500	241,500
Electricity			186	186
Gas			64	64
			<u>13,870,695</u>	<u>13,941,567</u>
Balance in Hand			73,952	94,076
			<u>13,944,647</u>	<u>14,035,643</u>

BDO LLP  
55 Baker Street  
London, W1U 7EU

06 June 2012  
S Rayment & S Bannon  
Joint Administrators

Heath West LLP - In Administration

Statement of fees and expenses paid and accrued in the period 17 November 2011 - 16 May 2012

Account	Paid In Period	Accrued In Period	Total In Period
Legal fees and disbursements	41,816.00	25,000	66,816
Joint Administrators' fees	16,238.00	27,181	43,419
Joint Administrators' disbursements	-	55	55
	<u>58,054.00</u>	<u>52,236</u>	<u>110,290</u>

BDO LLP  
55 Baker Street  
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S Rayment & Shay Bannon  
Joint Administrators  
6 June 2012

### Summary of Time Charged and Rates Applicable for the Period From 17/05/2011 to 18/05/2012

Net Total	294.95	84,120.03
Other Disbursements		467.92
Billed		16,238.00
Grand Total		68,349.97