

AM10 (Scot)

Notice of administrator's progress report



Companies House

TUESDAY



SCT 15/09/2020 #61
COMPANIES HOUSE

1 Company details

Company number **S C 1 7 2 2 5 6**

Company name in full **PHOENIX TERTIUM LIMITED - IN ADMINISTRATION**

→ Filling in this form
Please complete in typescript or in
bold black capitals.

2 Administrator's name

Full forename(s) **GEOFFREY ISAAC**

Surname **JACOBS**

3 Administrator's address

Building name/number **KPMG LLP**

Street **319 ST. VINCENT STREET**

Post town **GLASGOW**

County/Region **SCOTLAND**

Postcode **G 2 5 A S**

Country

4 Administrator's name ①

Full forename(s) **BLAIR CARNEGIE**

Surname **NIMMO**

① Other administrator
Use this section to tell us about
another administrator.

5 Administrator's address ②

Building name/number **KPMG LLP**

Street **319 ST. VINCENT STREET**

Post town **GLASGOW**

County/Region **SCOTLAND**

Postcode **G 2 5 A S**

Country

② Other administrator
Use this section to tell us about
another administrator.

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6 Period of progress report

From date	d	6	m	2	y	2	0
To date	d	5	m	8	y	2	0

7 Progress report

☒ I attach a copy of the progress report

8 Sign and date

Administrator's
signature

Signature

X

Scott Jacobs

X

Signature date

d	1	d	5	m	9	y	2	0	2	0
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AM10 (Scot)

Notice of administrator's progress report



Presenter information

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

Contact name DOMINIQUE TAYLOR

Company name KPMG LLP

Address 319 ST. VINCENT STREET

Post town GLASGOW

County/Region

Postcode G 2 5 A S

Country

DX

Telephone 0141 300 5658



Checklist

We may return forms completed incorrectly or with information missing.

Please make sure you have remembered the following:

- ☐ The company name and number match the information held on the public Register.
- ☐ You have attached the required documents.
- ☐ You have signed the form.



Important information

All information on this form will appear on the public record.



Where to send

You may return this form to any Companies House address, however for expediency we advise you to return it to the address below:

The Registrar of Companies, Companies House,
Fourth floor, Edinburgh Quay 2,
139 Fountainbridge, Edinburgh, Scotland, EH3 9FF.
DX ED235 Edinburgh.



Further information

For further information please see the guidance notes on the website at www.gov.uk/companieshouse or email enquiries@companieshouse.gov.uk

This form is available in an alternative format. Please visit the forms page on the website at www.gov.uk/companieshouse



Joint
Administrators'
progress
report for the
period 6
February 2020
to 5 August
2020

Phoenix Tertiary Limited - in
Administration

15 September 2020

Notice to creditors

This progress report provides an update on the administration of the Company.

We have included (Appendix 2) an account of all amounts received and payments made since the date of our appointment.

We have also explained our future strategy for the administration and how likely it is that we will be able to pay each class of creditor.

You will find other important information in this progress report such as the costs which we have incurred to date.

A glossary of the abbreviations used throughout this document is attached (Appendix 4).

Finally, we have provided answers to frequently asked questions and a glossary of insolvency terms on the following website, <http://www.insolvency-kpmg.co.uk/case+KPMG+PJ205E2053.html>. We hope this is helpful to you.

Please also note that an important legal notice about this progress report is attached (Appendix 5).

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1 Executive summary

- This progress report covers the period from 6 February 2020 to 5 August 2020.
- The asset realisation process has now, largely, come to an end. Our efforts are presently focussed upon finalising remaining statutory and administrative matters (Section 2 - Progress to date).
- Based on current estimates, we anticipate a small ordinary dividend will become available to unsecured creditors via a subsequent Creditors' Voluntary Liquidation ("CVL"). We intend to convert the administration to a CVL at the earliest feasible opportunity in order to facilitate the anticipated small dividend distribution (Section 3 - Dividend prospects).
- The administration is currently due to end on 5 February 2021.
- Please note: you should read this progress report in conjunction with our previous progress reports and proposals which were issued to the Company's creditors and can be found at <http://www.insolvency-kpmg.co.uk/case+KPMG+PJ205E2053.html>. Unless stated otherwise, all amounts in this progress report and appendices are stated net of VAT.



Geoffrey Jacobs
Joint Administrator

2 Progress to date

This section updates you on our strategy for the administration and on our progress to date. It follows the information provided in our previous progress report.

2.1 Strategy and progress to date

Strategy

Prior to our appointment, the majority of the Company's assets were sold by the directors to Arnold Clark Automobiles Limited ("Arnold Clark"). Accordingly, our strategy has focussed upon realising the Company's remaining assets.

As outlined within our previous progress reports, we have now realised all of the Company's moveable assets and concluded the trade debtor recovery process.

We anticipate a small ordinary dividend will become available to unsecured creditors. Under the terms of the applicable insolvency legislation, an ordinary dividend distribution would require to be facilitated via a subsequent Creditor's Voluntary Liquidation ("CVL").

We intend to convert the administration to a CVL at the earliest feasible opportunity. We will advise creditors when this has occurred by way of a final progress report in the administration.

2.2 Asset realisations

Realisations during the period are set out in the attached receipts and payments account (Appendix 2).

As noted above, we have now realised all of the Company's moveable assets and concluded the trade debtor recovery process.

The Company's remaining potentially realisable asset is an intercompany balance due from The Phoenix Car Company Limited – in Administration ("Car Company"). We are acting in the administration of Car Company and intend to convert that administration to a CVL shortly in order to facilitate a small distribution to unsecured creditors, including the Company.

Investigations

We have complied with the relevant statutory requirements by submitting the online director conduct assessment to the Insolvency Service. The contents of our submission are confidential.

2.3 Costs

Payments made in this period are set out in the attached receipts and payments account (Appendix 2).

Summaries of the most significant payments made during the period are provided below.

Agents' fees

Following a reconciliation exercise, we paid £942.84 to Car Company for agents' fees which it met as part of the trade debtor recovery process and in respect of balances secured for the benefit of the administration estate.

Storage costs

Storage costs for uplifting and storing the Company's books and records totalled £76.67.

3 Dividend prospects

3.1 Secured creditors

At the date of appointment, the Company had one secured creditor, HSBC Bank plc ("the Bank").

The Bank is not owed any sums by the Company.

3.2 Preferential creditors

We are not aware of any preferential creditor claims against the Company.

3.3 Unsecured creditors

Based upon the information on hand, we anticipate sufficient funds may become available to enable a small ordinary dividend to unsecured creditors.

Under the terms of the applicable insolvency legislation, an ordinary dividend distribution would require to be facilitated via a CVL.

We are preparing to convert the case from an Administration to a CVL at the earliest feasible opportunity. We will advise creditors when this is being done by way of a final progress report in the Administration.

The adjudication of unsecured creditor claims has been commenced. If and when further information is required from creditors, they will be contacted under separate cover.

Unsecured creditors will be advised of the timing and quantum of the anticipated small ordinary dividend distribution in due course.

4 Joint Administrators' remuneration, outlays and disbursements

We wrote to the unsecured creditors on 14 August 2020 seeking approval for our remuneration for the period and they have provided approval as follows:

- that remuneration comprising an interim floating charge fee of £16,874.00 plus VAT be drawn in respect of the period from 6 February 2020 to 5 August 2020; and
- disbursements for services provided by KPMG (defined as Category 2 disbursements in Statement of Insolvency Practice 9) to be charged in accordance with KPMG's policy as set out in Appendix 3.

Time costs

From 6 February 2020 to 5 August 2020, we have incurred time costs of £16,874. These represent 50.13 hours at an average rate of £336.60 per hour.

A detailed analysis of the time spent is provided at Appendix 3.

Remuneration and outlays

During the period, we have drawn the remuneration and outlays approved for the last accounting period. This comprised remuneration of £15,689.55 plus VAT, and outlays of £52.88 plus VAT.

Disbursements

During the period, we have incurred disbursements of £36.32. None of these have yet been paid.

Additional information

We have attached (Appendix 3) an analysis of the time spent, the charge-out rates for each grade of staff and the expenses paid directly by KPMG for the period from 6 February 2020 to 5 August 2020. We have also attached our charging and disbursements policy.

5 Future strategy

5.1 Future conduct of the administration

We will continue to manage the affairs, the business and the property of the Company in order to achieve the purpose of the administration. This will include but not be limited to:

- adjudicating upon unsecured creditor claims in anticipation of an ordinary dividend distribution (via a subsequent CVL);
- liaising with customers regarding potential unsecured claims as a consequence of certain service plans not being honoured following the pre-appointment sale;
- attending to all statutory matters required to convert the administration to a CVL; and
- obtaining tax clearance from HM Revenue & Customs.

5.2 Extension of the administration

The duration of an administration is restricted to 12 months from the date of commencement unless it is extended with the permission of creditors or the Court.

The duration of the administration was extended by a further 12 months via a decision of creditors by correspondence on 5 September 2019.

The administration is currently due to end on 5 February 2021.

We intend to convert the administration to a CVL prior to the current administration expiry date. This being the case, we do not anticipate a further extension being required from the Court.

5.3 Discharge from liability

Unsecured creditors have granted approval that we be discharged from liability in respect of any actions as Joint Administrators, upon the filing of our final receipts and payments account with the Registrar of Companies.

Discharge does not prevent the exercise of the Court's power in relation to any misfeasance action against us.

5.4 Future reporting

We will provide a final progress report to creditors upon conversion of the administration to a CVL and prior to 5 February 2021.

Appendix 1 Statutory information

Company information

Company name	Phoenix Tertium Limited
Date of incorporation	12 February 1997
Company registration number	SC172256
Present registered office	KPMG LLP, 319 St. Vincent Street, Glasgow, G2 5AS

Administration information

Administration appointment	The administration appointment granted in Court of Session, P116 of 19
Appointor	Directors
Date of appointment	6 February 2019
Joint Administrators' details	Geoff Jacobs and Blair Nimmo
Functions	The functions of the Joint Administrators are being exercised by them individually or together in accordance with Paragraph 100(2)
Current administration expiry date	5 February 2021

Appendix 2 Joint Administrators' receipts and payments account

Phoenix Tertium Limited - in Administration			
Abstract of receipts & payments			
Statement of affairs (£)		From 06/02/2020 To 05/08/2020 (£)	From 06/02/2019 To 05/08/2020 (£)
ASSET REALISATIONS			
225.00	Plant, machinery & motor vehicles	NIL	200.00
24,009.00	Book debts	325.50	31,753.52
48,288.00	Manufacturer bonuses	NIL	48,743.38
103,375.00	Intercompany debts	NIL	NIL
4,382.00	Cash at bank	NIL	4,381.84
25.00	Petty cash	NIL	NIL
		325.50	85,078.74
OTHER REALISATIONS			
	Bank interest, gross INCLUDING FINAL	70.46	302.68
	Sundry refunds	NIL	706.23
		70.46	1,008.91
COST OF REALISATIONS			
	Administrators' fees	(15,689.55)	(37,766.77)
	Administrators' expenses	(52.88)	(52.88)
	Agents'/Valuers' fees	(942.84)	(5,868.38)
	Legal fees	NIL	(650.00)
	Storage costs	(76.67)	(76.67)
	Statutory advertising	NIL	(88.00)
	Bank charges	(6.14)	(31.60)
		(16,768.08)	(44,534.30)
UNSECURED CREDITORS			
(27,448.00)	Trade creditors	NIL	NIL
(144,713.00)	Connected companies	NIL	NIL
(71,940.00)	HM Revenue & Customs	NIL	NIL
		NIL	NIL
DISTRIBUTIONS			
(111.00)	Ordinary shareholders	NIL	NIL
		NIL	NIL
(63,908.00)		(16,372.12)	41,553.35
REPRESENTED BY			
	Floating ch. VAT rec'able		7,718.53
	Floating charge current		38,404.86

Phoenix Tertium Limited - in Administration

Abstract of receipts & payments

Statement of affairs (£)	From 06/02/2020	From 06/02/2019
	To 05/08/2020 (£)	To 05/08/2020 (£)

Floating ch. VAT control

(4,570.04)

41,553.35

Appendix 3 Joint Administrators' charging and disbursements policy

Joint Administrators' charging policy

The time charged to the administration is by reference to the time properly given by us and our staff in attending to matters arising in the administration. This includes work undertaken in respect of tax, VAT, employee and pensions (up to 1 March 2020) from KPMG in-house specialists.

Our policy is to delegate tasks in the administration to appropriate members of staff considering their level of experience and requisite specialist knowledge, supervised accordingly, so as to maximise the cost effectiveness of the work performed. Matters of particular complexity or significance requiring more exceptional responsibility are dealt with by senior staff or us.

A copy of "A Creditors' Guide to Administrators' Remuneration Scotland" from Statement of Insolvency Practice 9 ('SIP 9') produced by the Association of Business Recovery Professionals is available at:

<https://www.r3.org.uk/technical-library/scotland/technical-guidance/fees/more/29160/page/1/creditors-guide-to-administrators-remuneration-scotland/>

If you are unable to access this guide and would like a copy, please contact Dominique Taylor on 0141 300 5658.

Hourly rates

Set out below are the relevant hourly charge-out rates for the grades of our staff actually or likely to be involved on this administration. Time is charged by reference to actual work carried out on the administration, using a minimum time unit of six minutes.

All staff who have worked on the administration, including cashiers and secretarial staff, have charged time directly to the administration and are included in the analysis of time spent. The cost of staff employed in central administration functions is not charged directly to the administration but is reflected in the general level of charge-out rates.

Charge-out rates (£) for: Phoenix Tertium Limited – in Administration	
Grade	From 01 Jan 2020 £/hr
Partner	690
Director	620
Senior Manager	560
Manager	467
Senior Administrator	325
Administrator	236
Support	147

The charge-out rates used by us might periodically rise (for example to cover annual inflationary cost increases) over the period of the administration. In our next statutory report, we will inform creditors of any material amendments to these rates.

Policy for the recovery of disbursements

Where funds permit the officeholders will seek to recover both Category 1 and Category 2 disbursements from the estate. For the avoidance of doubt, such expenses are defined within SIP 9 as follows:

Category 1 disbursements: These are costs where there is specific expenditure directly referable to both the appointment in question 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 officeholder or his or her staff.

Category 2 disbursements: These are costs that are directly referable to the appointment in question but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the appointment on a proper and reasonable basis, for example, business mileage.

Category 2 disbursements charged by KPMG Restructuring include mileage. This is calculated as follows:

Mileage claims fall into three categories:

- Use of privately-owned vehicle or car cash alternative – 45p per mile.
- Use of company car – 60p per mile.
- Use of partner's car – 60p per mile.

For all of the above car types, when carrying KPMG passengers an additional 5p per mile per passenger will also be charged where appropriate.

We have incurred the following disbursements (excluding VAT) during the period 6 February 2020 to 5 August 2020.

SIP 9 - Disbursements					
Disbursements	Category 1		Category 2		Totals (£)
	Paid (£)	Unpaid (£)	Paid (£)	Unpaid (£)	
External printing	NIL	6.38	NIL	NIL	6.38
Postage	NIL	29.94	NIL	NIL	29.94
Total	NIL	36.32	NIL	NIL	36.32

We have the authority to pay Category 1 disbursements without the need for any prior approval from the creditors of the Company.

Creditors' right to challenge our remuneration and outlays

If you wish to challenge the basis of our remuneration, you must do so by making an application to Court by no later than 30 September 2020.

Applications by any creditor must be made with concurrence of at least 25% in value of unsecured creditors (including the creditor making the challenge).

The full text of the relevant rules can be provided on request by writing to Dominique Taylor at KPMG LLP, 319 St Vincent Street, Glasgow G2 5AS, United Kingdom.

Narrative of work carried out for the period 6 February 2020 to 5 August 2020

The key areas of work have been:

Statutory and compliance	<ul style="list-style-type: none"> ■ collating information to enable us to carry out our statutory duties, including creditor information and details of assets; ■ preparing statutory receipts and payments accounts; ■ issuing a second Progress Report to creditors and filing this with the Court and Companies House; ■ ensuring compliance with all statutory obligations within the relevant timescales.
Strategy documents, Checklist and reviews	<ul style="list-style-type: none"> ■ monitoring and reviewing the administration strategy; ■ briefing of our staff on the administration strategy and matters in relation to various work-streams; ■ regular case management and reviewing of progress, including regular team update meetings and calls; ■ reviewing and authorising junior staff correspondence and other work; ■ dealing with queries arising during the appointment; ■ reviewing matters affecting the outcome of the administration and updating our estimated outcome statement; ■ allocating and managing staff/case resourcing and budgeting exercises and reviews; ■ complying with internal filing and information recording practices, including documenting strategy decisions.
Cashiering	<ul style="list-style-type: none"> ■ preparing and processing vouchers for the payment of post-appointment invoices; ■ creating remittances and sending payments to settle post-appointment invoices; ■ reconciling post-appointment bank accounts to internal systems; ■ ensuring compliance with appropriate risk management procedures in respect of receipts and payments.
Tax	<ul style="list-style-type: none"> ■ dealing with post appointment tax compliance; ■ preparing to seek tax clearance from HMRC.
Shareholders	<ul style="list-style-type: none"> ■ providing copies of statutory reports to the shareholders.
General	<ul style="list-style-type: none"> ■ reviewing time costs data and producing analysis of time incurred which is compliant with Statement of Insolvency Practice 9; ■ drawing remuneration in accordance with the basis and amount which has been approved together with outlays including disbursements as determined by the unsecured creditors; ■ dealing with the ongoing storage of the Company's books and records.
Asset realisations	<ul style="list-style-type: none"> ■ reviewing the inter-company debtor position between the Company and other Group companies.
Creditors and claims	<ul style="list-style-type: none"> ■ updating the list of unsecured creditors; ■ responding to enquiries from creditors regarding the administration and submission of claims; ■ reviewing completed forms submitted by creditors, recording claim amounts and maintaining claim records; ■ adjudicating upon unsecured creditor claims; ■ drafting and circulating our second Progress Report; ■ drafting our third progress report.
Investigations	<ul style="list-style-type: none"> ■ dealing with the Company's re-directed mail.

Time costs

SIP 9 – Time costs analysis (06/02/2020 to 05/08/2020)

	Hours				Total	Time Cost (£)	Average Hourly Rate (£)
	Partner / Director	Manager	Administrator	Support			
Administration & planning							
Cashiering							
General (Cashiering)	0.38		1.20		1.58	631.20	399.49
Reconciliations (& IPS accounting reviews)			0.80		0.80	260.00	325.00
General							
Books and records		0.10	0.40		0.50	150.40	300.80
Fees and WIP	0.40	1.00	5.55		6.95	2,117.80	304.72
Statutory and compliance							
Budgets & Estimated outcome statements		0.50	0.80		1.30	468.80	360.62
Checklist & reviews		0.30	0.90		1.20	380.40	317.00
Strategy documents		0.40			0.40	224.00	560.00
Tax							
Post appointment corporation tax		1.50	0.50		2.00	958.00	479.00
Post appointment VAT		0.10	1.00		1.10	292.00	265.45
Creditors							
Creditors and claims							
Agreement of claims			0.10		0.10	23.60	236.00
Agreement of unsecured claims		3.60	10.70		14.30	4,510.20	315.40
General correspondence		0.60	2.20		2.80	855.20	305.43
Statutory reports	2.00	3.30	8.90		14.20	5,188.40	365.38
Investigation							
Investigations							
Mail redirection			1.20		1.20	283.20	236.00
Review of pre-appt transactions		0.10			0.10	56.00	560.00
Realisation of assets							
Asset Realisation							
Cash and investments			0.40		0.40	94.40	236.00
Debtors		0.30	0.90		1.20	380.40	317.00
Total in period	2.78	11.80	35.55	0.00	50.13	16,874.00	336.60

SIP 9 – Time costs analysis (06/02/2020 to 05/08/2020)

	Hours				Time Cost (£)	Average Hourly Rate (£)
	Partner / Director	Manager	Administrator	Support		
Brought forward time (appointment date to SIP 9 period start date)					117.19	37,775.55
SIP 9 period time (SIP 9 period start date to SIP 9 period end date)					50.13	16,874.00
Carry forward time (appointment date to SIP 9 period end date)					167.32	54,649.55

Appendix 4 Glossary

Company	Phoenix Tertium Limited - in Administration
CVL	Creditors' Voluntary Liquidation
Joint Administrators/we/our/us	Geoff Jacobs and Blair Nimmo
KPMG	KPMG LLP
Car Company	The Phoenix Car Company Limited

Any references in this progress report to sections, paragraphs or rules are to Sections, Paragraphs and Rules in the Insolvency Act 1986, Schedule B1 of the Insolvency Act 1986 and the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 respectively.

Appendix 5 Notice: About this report

This report has been prepared by Geoff Jacobs and Blair Nimmo, the Joint Administrators of Phoenix Tertium Limited – in Administration (the 'Company'), solely to comply with their statutory duty to report to creditors under the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 on the progress of the administration, and for no other purpose. It is not suitable to be relied upon by any other person, or for any other purpose, or in any other context.

This report has not been prepared in contemplation of it being used, and is not suitable to be used, to inform any investment decision in relation to the debt of or any financial interest in the Company or any other company in the Group.

Any estimated outcomes for creditors included in this report are illustrative only and cannot be relied upon as guidance as to the actual outcomes for creditors.

Any person that chooses to rely on this report for any purpose or in any context other than under the Insolvency (Scotland) (Company Voluntary Arrangements and Administration) Rules 2018 does so at its own risk. To the fullest extent permitted by law, the Joint Administrators do not assume any responsibility and will not accept any liability in respect of this report to any such person.

Geoffrey Isaac Jacobs and Blair Carnegie Nimmo are authorised to act as insolvency practitioners by the Institute of Chartered Accountants of Scotland.

We are bound by the Insolvency Code of Ethics.

The Officeholders are Data Controllers of personal data as defined by the Data Protection Act 2018. Personal data will be kept secure and processed only for matters relating to the appointment. For further information, please see our Privacy policy at – home.kpmg.com/uk/en/home/misc/privacy-policy-insolvency-court-appointments.html.

The Joint Administrators act as agents for the Company and contract without personal liability. The appointments of the Joint Administrators are personal to them and, to the fullest extent permitted by law, KPMG LLP does not assume any responsibility and will not accept any liability to any person in respect of this report or the conduct of the administration.

www.kpmg.com

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