

## The Insolvency Act 1986

**Administrator's progress report****2.24B**

Name of Company HHT Limited	Company number 01439213
In the High Court of Justice Chancery Division Companies Court (full name of court)	<i>For court use only</i> 3923 of 2005

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

I/We (a) Jason James Godefroy and Andrew Gordon Stoneman of Menzies Corporate Restructuring, 43-45 Portman Square, London, W1H 6LY,

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

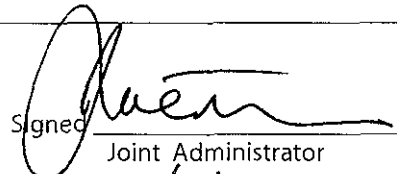
From

To

(b) Insert date

(b) 14 December 2005

(b) 13 June 2006

Signed   
Joint Administrator

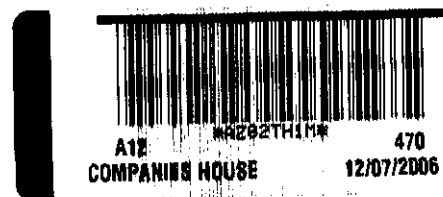
Dated 11/7/6

**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 searches of the public record

Menzies Corporate Restructuring  
43-45 Portman Square  
London  
W1H 6LY

Tel: 020 7487 7240



When you have completed and signed this form please send it to the Registrar of Companies at:

**HHT Limited  
(In Administration)**

**Progress Report to Creditors  
pursuant to Rule 2.47(1) of the  
Insolvency Rules 1986 as amended**

**11 July 2006**

**Names of Joint Administrators:** Jason James Godefroy  
Andrew Gordon Stoneman

**Date of appointment:** 14 June 2005

**Date of report:** 11 July 2006

**Appointed by:** Close Invoice Finance Limited  
Southbrook House  
25 Bartholomew Street  
Newbury  
Berkshire  
RG14 5LL

**Court reference:** High Court of Justice, Chancery Division, Companies  
Court

**Court Number:** 3923 of 2005

**Menzies Corporate Restructuring**  
43-45 Portman Square  
London  
W1H 6LY

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## **1. INTRODUCTION**

- 1.1 Jason James Godefroy and Andrew Gordon Stoneman of Menzies Corporate Restructuring were appointed Joint Administrators of HHT Limited ("HHT" and "the Company") on 14 June 2005 by Close Invoice Finance Limited, the holder of a qualifying floating charge under paragraph 14 of Schedule B1 to the Insolvency Act 1986.
- 1.2 In accordance with Paragraph 100(2) of Schedule B1 of the Insolvency Act 1986 the functions of the Joint Administrators are being exercised jointly and severally.
- 1.3 The purpose of this report is to provide an update of the administration and to confirm that the Joint Administrators have obtained an extension of the administration for the period of six months in order to allow for sufficient time for the remaining book debts to be collected and for the Administrators to then finalise all outstanding matters.
- 1.4 This report should be read in conjunction with the Administrators' earlier reports to creditors dated 2 August 2005, 13 January 2006 and 22 May 2006.

## **2. BACKGROUND**

- 2.1 HHT was incorporated on 23 July 1979. Statutory information on the Company and a summary of its financial position is included within Appendix 1.
- 2.2 The Company operated as a provider of heat treatment services for metals specialising in a number of different processes.
- 2.3 HHT traded from freehold premises situated at Heath Road, Darlaston, West Midlands, WS10 8LU.
- 2.4 Prior to the appointment of Joint Administrators, it is believed that the Company's trade suffered as a result of increased utility costs. It is further understood that the Company had insufficient working capital to fund trading operations.
- 2.5 In the period immediately leading up to the appointment of Joint Administrators, the Company was on stop or cash on delivery terms with a number of suppliers and was finding it difficult to operate the business in an orderly manner.
- 2.6 In view of the level of creditor pressure and despite attempts to turn the business around, the financial position of the Company became untenable. The Joint Administrators understand that the directors sought professional advice with regard to restructuring the Company's business and affairs.
- 2.7 Following this advice, and in view of the deteriorating financial position, in early June 2005 CIF formally demanded repayment of its indebtedness. The Company was unable to repay CIF and Jason James Godefroy and Andrew Gordon Stoneman of Menzies Corporate Restructuring were subsequently appointed Joint Administrators to the Company on 14 June 2005.

### **3. PROGRESS OF ADMINISTRATION TO DATE**

- 3.1 The manner in which the affairs and business of the Company have been managed since the appointment of Joint Administrators and will continue to be managed and financed are set out below.

#### **Trading**

- 3.2 As previously reported, the Joint Administrators made the decision immediately following the appointment to continue to trade the business whilst a strategy was devised to attempt to sell the business as a going concern.
- 3.3 It was believed that if a sale as a going concern could be achieved, asset realisations would be maximised and the employment of the workforce protected.
- 3.4 As a result of the decision to trade the business, the Joint Administrators successfully achieved a sale of the business as a going concern and realised a majority of book debts. Further details are set out below.
- 3.5 Invoices totalling £643,509 including VAT were raised during the Administration trading period. To date, £497,487 excluding VAT has been collected. The outstanding balance is being collected with the assistance of Active Receivables Management ("Active"), debt recovery specialists, an associated business of MCR.
- 3.6 It is expected that the Administration trading period will break even, subject to the collection of the remaining Administration book debts.
- 3.7 It is understood that all Administration trading liabilities have now been paid.
- 3.8 During the trading period considerable resources were required from MCR. This included an on-site presence at the Darlaston site to supervise trading operations.

#### **Sale of Business and Assets**

- 3.9 As previously advised, upon appointment, the Joint Administrators instructed Bache Treharne LLP, independent valuers and agents, to carry out an immediate inventory and valuation of the Company's assets. This was carried out in order that any offers submitted could be properly evaluated and considered.
- 3.10 As you are aware, the business and assets of the Company were advertised for sale in the Financial Times on 17 June 2005. The advertisement and marketing process attracted interest from over 16 parties.
- 3.11 The Joint Administrators received a number of formal offers for the purchase of the business and assets (excluding book debts) as a going concern.
- 3.12 The Joint Administrators successfully negotiated a going concern sale of the business and assets of the Company to HHT (Midlands) Limited ("HHT Midlands"). The sale was completed with effect from midnight on 14 August 2005.
- 3.13 HHT Midlands was a newly incorporated entity set up by Mo Pabla, the Company's former operations manager.

3.14 The consideration paid for the sale of the business and assets of the Company was:

	<b>Sale Price</b>	<b>VAT</b>	<b>TOTAL</b>
	<b>£</b>	<b>£</b>	<b>£</b>
Premises	1,550,000	271,250	1,821,250
Goodwill/IPR	20,000	-	20,000
Equipment	249,000	-	249,000
Equipment/Vehicles	5,000	-	5,000
Sellers Records	1,000	-	1,000
Stock/WIP	5,000	-	5,000
	<u>1,830,000</u>	<u>271,250</u>	<u>2,101,250</u>

3.15 The sale consideration has now been repaid in full by HHT Midlands.

3.16 The successful sale of the business and assets as a going concern has resulted in improved book debt realisations and reduced creditor claims following the transfer of all employees to HHT Midlands.

#### **Book debts**

3.17 The book debts are subject to an invoice discounting agreement with CIF, which at the time of the appointment were disclosed in the Company's accounts as having a value of £993,883.

3.18 The principal amount owing to CIF at the date of our appointment was £881,720 subject to accruing interest and charges.

3.19 As at 30 June 2006, £914,174 of book debt collections have been received by CIF.

3.20 The book debts are continuing to be collected by CIF with the assistance of Active and the Joint Administrators.

#### **Other Realisations**

3.21 At the date of appointment the Company had cash at bank totalling £709. This has been received into the Administration estate account.

3.22 Bank interest of £19,595.82 has accrued during the Administration to date.

3.23 Dividend income of £64 has been recovered to date.

- 3.24 There are no further assets left to realise for the benefit of the creditors other than a potential recovery from the directors. Our investigations into this matter are still ongoing. For further details refer to Section 4.

#### **Receipts and Payments**

- 3.25 Attached at Appendix 2 is the Joint Administrators' receipts and payments account for the period 14 June 2005 to 11 July 2006.

#### **4. INVESTIGATION**

- 4.1 The Joint Administrators have complied with their obligations under the Company Directors Disqualification Act 1986. The directors conduct report was submitted to the Insolvency Practitioners Compliance Unit on 6 December 2005.
- 4.2 The Joint Administrators investigations into the affairs of the Company are currently ongoing. In particular, we are reviewing a number of transactions that occurred prior to our appointment as Administrators that may be challengeable under various sections of the Insolvency Act 1986.
- 4.3 The Joint Administrators have written to various parties concerning these transactions.
- 4.4 At this time, it would not be appropriate to comment on the prospects of recoveries for the benefit of creditors as it may prejudice any actions that the Joint Administrators may wish to undertake in the future.

#### **5. DIVIDEND PROSPECTS / PRESCRIBED PART**

##### **Secured Creditors**

##### Close Invoice Finance Limited ("CIF")

- 5.1 In consideration for the monies advanced under the book debt factoring agreement the Company granted CIF a debenture, dated 26 May 2004, which confers fixed and floating charges over all of the assets of HHT.
- 5.2 At the date of the Administrators appointment, the Company's indebtedness to CIF was £881,720 subject to accruing interest and charges.
- 5.3 On the basis of our work to date, the Joint Administrators are uncertain whether there will be sufficient book debt realisations to repay CIF in full. As at 30 June 2006, CIF were still owed approximately £26,276 subject to accruing interest and charges.

##### Halifax Bank of Scotland plc ("HBOS")

- 5.4 In consideration of a loan advance, the Company granted HBOS a first ranking mortgage debenture dated 21 May 2004, which confers fixed and floating charges over all of the assets of HHT.



- 5.5 As at the date of the Joint Administrators appointment, the Company's indebtedness to HBOS was approximately £1.35m subject to accruing interest and charges.
- 5.6 Following the sale of the business and assets, which included a sale of the freehold property (see 3.9 to 3.16), a distribution has now been made to HBOS totalling £1,412,388 under their fixed charge and as a result HBOS have now recovered their indebtedness in full.

Barclays Mercantile Business Finance Limited ("Barclays")

- 5.7 In consideration of a loan advance to purchase certain items of machinery and equipment, the Company granted Barclays a chattel mortgage dated 21 August 2000, which was limited to £250,000 over specific furnaces used by HHT. In addition, the Company entered into a HP agreement with Barclays Asset Finance in respect of a motor vehicle.
- 5.8 The loan to Barclays had been repaid in full prior to the appointment of Administrators. However, there was still outstanding finance owing on the HP agreement with Barclays Asset Finance. In accordance with the terms of Barclays' security, the Joint Administrators have paid the settlement figure on this finance lease totalling £5,626 to Barclays Asset Finance.

**Prescribed Part**

- 5.9 Pursuant to section 176A of the Insolvency Act 1986 where a floating charge is created after 15 September 2003 a prescribed part of the Company's net property shall be made available to unsecured creditors before being available to the floating charge holder.
- 5.10 At this stage, the Joint Administrators are still uncertain as to the value of the prescribed part or the value of the Company's net property.
- 5.11 The position with respect to the applicability of the prescribed part will not be known until the conclusion of the Joint Administrators' investigations, until the book debt realisations have been finalised and until the full costs of the Administration become known.

**Preferential Creditors**

- 5.12 Outstanding pre-appointment wages totalling £28,363 were paid by the Joint Administrators during the Administration trading period.
- 5.13 As previously advised, the Joint Administrators were successful in finalising a sale of the business as a going concern. As a result of the sale of the business and assets, all existing employees of the Company transferred to the purchaser with effect from the completion of the sale and as such there are unlikely to be any preferential creditor claims.

**Non Preferential Creditors**

- 5.14 According to the directors' statement of affairs, the quantum of the non-preferential creditor claims is £886,484.
- 5.15 Following a review of the Company's financial records, the Joint Administrators believe non-preferential creditor claims to be in the region of £5.85m broadly allocated as follows:

	<b>£'000</b>
Trade & Expense Creditors	746
Customs & Excise	86
Inland Revenue	89
Pension fund	4,929
<b>Total</b>	<b><u>5,850</u></b>

- 5.16 The major difference between the two figures is that the directors have not included in their calculation of non-preferential claims the deficit owing in respect of the Company's pension scheme. The Joint Administrators have, however, received a claim of £4.93m from the pension scheme trustees based upon the latest actuarial valuation.
- 5.17 It is considered unlikely that there will be sufficient realisations to enable a distribution to the non-preferential creditors of the Company. However, dividend prospects will ultimately depend upon the outcome of the Joint Administrators' investigations, future book debt collections and the costs of the Administration. Should this position change, creditors will be notified accordingly.

## **6. JOINT ADMINISTRATORS' REMUNERATION**

- 6.1 At the meeting of creditors held on 18 August 2005, the Administrators' proposals were approved. The Administrators' therefore have approval to draw fees in respect of time properly spent by them and their staff in attending to matters arising in the administration and to draw such remuneration as and when funds permit.
- 6.2 The time costs of the Administrators' to date total £316,551.67 and are analysed at Appendix 3.
- 6.3 Remuneration of £250,000 has been paid to date.
- 6.4 CIF has also provided its authority for the Joint Administrators' remuneration that has been drawn to date.

## **7. EXTENSION OF THE ADMINISTRATION**

- 7.1 In accordance with paragraph 76(2)(b) of Schedule B1 to the Insolvency Act 1986, the Joint Administrators sought the consent of the secured and unsecured creditors to allow the term of the administration to be extended by a period of six months. Consent was received and the extension has been obtained to allow sufficient time for the remaining book debts to be collected and for the Administrators to then finalise all other outstanding matters.

## **8. CONCLUSION**

- 8.1 In accordance with the Joint Administrators' proposals, on completion of all outstanding matters, necessary steps will be taken to give notice to the Registrar of Companies to the effect that the Company has no further property which might permit further distributions to creditors, at which time the Administration will cease. Notice will be served on all creditors at that time.

**9. OTHER MATTERS**

- 9.1 Should any creditor have any information concerning the affairs of the Company that they would like to bring to the Joint Administrators attention, then the Joint Administrators' would be pleased to hear from them.
- 9.2 The Joint Administrators shall be continuing the administration of this case and will report to you further, in due course.
- 9.3 If you require further information or assistance, please do not hesitate to contact James Firman of this office.

  
Jason Godefroy  
Joint Administrator

**APPENDIX 1**  
**Statutory information**

**STATUTORY INFORMATION**

<b>Date of incorporation</b>	23 July 1979	
<b>Registered number</b>	01439213	
<b>Company director</b>	Hadenbury Limited Corroban Limited Bestbray Limited	
<b>Company secretary</b>	Hadenbury Limited	
<b>Shareholders</b>	Croftacre Holdings Limited	
<b>Head office</b>	Heath Road Darlaston West Midlands WS10 8LU	
<b>Registered Office</b>	Current:	Formerly:
	43-45 Portman Square London W1H 6LY	Heath Road Darlaston West Midlands WS10 8LU

**Financial Information**

	Period Ended 30 April 2005 (Mgt. Accounts) £	Period Ended 31 May 2004 (Mgt Accounts) £	Year Ended 30 September 03 (Draft) £	Year Ended 30 September 02 (Audited) £
Turnover	3,755,174	2,883,056	5,024,956	3,850,838
Gross Profit	1,090,013	926,211	2,306,319	1,175,499
Dividends	Nil	Nil	Nil	147,268
Retained profit/(loss) for the year	(465,469)	(262,566)	23,803	250,016

**APPENDIX 2**

**Joint administrators' receipts and payments account**

**HHT Limited (In Administration)****Joint Administrators' Abstract Receipts and Payments****For the period 14 June 2005 to 11 July 2006**

Receipts	Statement of Affairs £	Actual £
Administration Sales	-	497,486.62
Freehold Land & Property	1,500,000.00	1,550,000.00
Plant & Machinery	100,000.00	149,400.00
Goodwill and IPR	-	20,000.00
Book Debts	993,833.00	914,174.31
Bank interest	-	5,863.69
Plant & Machinery	-	99,600.00
Motor Vehicles	57,200.00	5,000.00
Stock and WIP	-	5,000.00
Sellers Records	-	1,000.00
Insurance Refund	-	6,921.01
Cash at Bank	-	709.47
Dividend Income	-	64.11
Bank Interest Gross	-	680.63
Bank Interest Net of Tax	-	13,051.50
Shares and Investments	1,200.00	
	<u>2,652,283.00</u>	<u>3,268,951.14</u>

**Payments**

Purchases (1)	1,151.36
Sub Contractors	1,631.53
Weekly wages	107,699.89
Monthly salaries	33,615.30
Gas	67,581.98
Water Rates	7,008.02
Electricity	52,276.04
Travel	306.38
Telephone	1,355.30
Transport	42,028.52
Insurance	8,607.37
Staff Welfare	470.67
Hire of Equipment	14,387.55
Repairs & Maintenance	50,427.38
Sundry Expenses	1,624.63
Factory Consumables	19,985.77
Vehicle Running Costs	3,282.44
Stationery	817.25
Pension and other payroll costs	3,430.81
PAYE / NIC	44,464.35
Joint administrators' remuneration	172,500.00
Joint administrators' disbursements	6,845.11
Legal fees - fixed	33,482.50
Legal fees - Recharged disbursements	3,598.24
Property Agents fees	4,000.00

## HHT Limited (In Administration)

### Joint Administrators' Abstract Receipts and Payments

For the period 14 June 2005 to 11 July 2006

<b>Payments</b>	<b>Actual £</b>
Debt collection costs : Active	44,294.79
Statutory Advertising	2,415.42
Distribution : Close Invoice Finance	910,723.01
Distribution : Bank of Scotland	1,412,387.82
HP Settlement : Barclays Asset Finance	5,626.44
Joint administrators' remuneration	77,500.00
Joint administrators' disbursements	2,936.25
Menzies re consultancy	350.00
Professional Fees	200.00
Chattel Agents fees	2,500.00
Legal fees - floating	800.00
Corporation Tax	268.80
Debt Collection Fees : Active	10,000.00
Stationery & Postage	936.17
Statutory Advertising	109.71
ID Charges : CIF	23,959.30
Wages & Salaries : Pre-appointment	28,362.83
Bank Charges	602.88
	<hr/> <b>3,206,551.81</b> <hr/>
<b>Balance</b>	<hr/> <b>62,399.33</b> <hr/>
<b>Represented by:</b>	
VAT Receivable	2,626.71
Fixed bank account	54,608.39
Floating/main current account	282.82
Close Invoice Finance Current Account	(2,080.17)
Fixed charge VAT receivable	3,500.00
General VAT control account	791.30
Fixed charge VAT control account	2,670.28
	<hr/> <b>62,399.33</b> <hr/>



**APPENDIX 3**  
**Analysis of time costs**

HHT LIMITED - HHT001

Analysis of Joint Administrators' time costs for the period 14 June 2005 to 11 July 2006

Classification of Work Function	Hours					Total Hours	Time Cost	Average Hourly Rate
	Partner	Manager	Senior	Assistants	Support			
Trading - operations	16.83	188.57	128.73	138.43		472.57	£ 86,754.50	£ 203.96
Sale of business	25.43	115.40	4.50	5.30		150.63	37,544.33	172.21
Strategy planning & control	56.03	50.33	26.30	4.40		137.07	37,068.67	210.81
General admin		2.70	70.03	110.33	7.83	190.90	20,288.83	200.00
Investigations (inc. antecedant transactions)	13.00	30.30	30.60	4.40		78.30	17,996.00	160.55
Statutory meetings & reports	5.90	51.40	10.70	16.10		84.10	17,893.50	130.14
General correspondence	4.70	20.57	26.90	36.00	18.00	106.17	15,472.83	203.33
Cashiering & accounting	1.30	7.90	46.67	17.43	0.30	73.60	12,675.00	222.50
Trading - accounting	8.13	20.40	6.10	58.20		92.83	12,475.33	106.28
Unsecured creditors	0.60	20.40	19.57	22.93		63.50	10,303.83	145.74
Book debts	1.20	27.73	11.70	7.40		48.03	9,796.67	229.83
Meetings	15.50	8.10	3.00	3.00		29.60	8,109.00	66.87
Reporting to appointor	16.87	5.73		1.30		23.90	7,254.33	273.95
Employee matters	0.50	5.83	13.50	12.97		32.80	5,266.17	20.00
CDDA reports	2.70	1.50	16.70	0.20		21.10	4,448.00	149.23
Financial review	2.27		10.80	16.00		29.07	3,782.67	303.53
Retention of title		1.80	13.50			15.30	2,979.00	194.71
Secured Creditors		7.50	3.00	4.80		15.30	2,688.00	249.24
Statement of affairs		1.40	8.50			9.90	1,952.00	175.69
IPS set up & maintenance			0.50	9.10		9.60	642.00	197.17
Preferential creditors		0.50	1.00	1.10		2.60	388.00	212.76
Closings			1.90			1.90	380.00	270.44
Fixed charge assets		0.30	0.60			0.90	183.00	134.38
Floating charge assets		0.60	0.20			0.80	178.00	183.58
No Milestone					1.60	1.60	32.00	162.27
<b>Total Hours</b>	<b>170.97</b>	<b>568.97</b>	<b>455.00</b>	<b>469.40</b>	<b>27.73</b>	<b>1,692.07</b>	<b>316,551.67</b>	<b>187.08</b>
<b>Total Fees Claimed (£)</b>	<b>58,192.67</b>	<b>138,020.17</b>	<b>84,470.50</b>	<b>35,301.67</b>	<b>566.67</b>		<b>316,551.67</b>	

**APPENDIX 4**

**A Creditors' Guide to Administrators' Fees**

# A CREDITORS' GUIDE TO ADMINISTRATORS' FEES

## ENGLAND AND WALES

### 1 Introduction

- 1.1 When a company goes into administration the costs of the proceedings are paid out of its assets. The creditors, who hope eventually to recover some of their debts out of the assets, therefore have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as administrator. The insolvency legislation recognises this interest by providing mechanisms for creditors to determine the basis of the administrator's fees. This guide is intended to help creditors be aware of their rights under the legislation to approve and monitor fees and explains the basis on which fees are fixed.

### 2 The nature of administration

- 2.1 Administration is a procedure which places a company under the control of an insolvency practitioner and the protection of the court with the following objective:

- rescuing the company as a going concern, or
- achieving a better result for the creditors as a whole than would be likely if the company were wound up without first being in administration,

or, if the administrator thinks neither of these objectives is reasonably practicable

- realising property in order to make a distribution to secured or preferential creditors.

### 3 The creditors' committee

- 3.1 The creditors have the right to appoint a committee with a minimum of 3 and a maximum of 5 members. One of the functions of the committee is to determine the basis of the administrator's remuneration. The committee is normally established at the meeting of creditors which the administrator is required to hold within a maximum of 10 weeks from the beginning of the administration to consider his proposals. The administrator must call the first meeting of the committee within 6 weeks of its establishment, and subsequent meetings must be held either at specified dates agreed by the committee, or when a member of the committee asks for one, or when the administrator decides he needs to hold one. The committee has power to summon the administrator to attend before it and provide information about the exercise of his functions.

### 4 Fixing the administrator's fees

- 4.1 The basis for fixing the administrator's remuneration is set out in Rule 2.106 of the Insolvency Rules 1986, which states that it shall be fixed either:

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

It is for the creditors' committee (if there is one) to determine on which of these bases the remuneration is to be fixed and, if it is fixed as a percentage fix the percentage to be applied. Rule 2.106 says that in arriving at its decision the committee shall have regard to the following matters:

- the complexity (or otherwise) of the case;
- any responsibility of an exceptional kind or degree which falls on the administrator;
- the effectiveness with which the administrator appears to be carrying out, or to have carried out, his duties;
- the value and nature of the property which the administrator has to deal with.

- 4.2 If there is no creditors' committee, or the committee does not make the requisite determination, the administrator's remuneration may be fixed by a resolution of a meeting of creditors having regard

to the same matters as the committee would. If the remuneration is not fixed in any of these ways, it will be fixed by the court on application by the administrator.

**4.3** There are special rules about creditors' resolutions in cases where the administrator has stated in his proposals that the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the reserved fund which may have to be set aside out of floating charge assets. In this case a resolution of the creditors shall be taken as passed if, and only if, passed with the approval of–

- each secured creditor of the company; or
- if the administrator has made or intends to make a distribution to preferential creditors –
  - each secured creditor of the company; and
  - preferential creditors whose debts amount to more than 50% of the preferential debts of the company, disregarding debts of any creditor who does not respond to an invitation to give or withhold approval.

Note that there is no requirement to hold a creditors' meeting in such cases unless a meeting is requisitioned by creditors whose debts amount to at least 10 per cent of the total debts of the company.

**4.4** A resolution of creditors may be obtained by correspondence.

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

**5.1** When seeking fee approval

**5.1.1** When seeking agreement to his fees the administrator should provide sufficient supporting information to enable the committee or the creditors to form a judgement as to whether the proposed fee is reasonable having regard to all the circumstances of the case. The nature and extent of the supporting information which should be provided will depend on:

- the nature of the approval being sought;
- the stage during the administration of the case at which it is being sought; and
- the size and complexity of the case.

**5.1.2** Where, at any creditors' or committee meeting, the administrator seeks agreement to the terms on which he is to be remunerated, he should provide the meeting with details of the charge-out rates of all grades of staff, including principals, which are likely to be involved on the case.

**5.1.3** Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, but it will be helpful to be aware of the professional guidance which has been given to insolvency practitioners on this subject. The guidance suggests the following areas of activity as a basis for the analysis of time spent:

- Administration and planning
- Investigations
- Realisation of assets
- Trading

- Creditors
- Any other case-specific matters

The following categories are suggested as a basis for analysis by grade of staff:

- Partner
- Manager
- Other senior professionals
- Assistants and support staff

The explanation of what has been done can be expected to include an outline of the nature of the assignment and the administrator's own initial assessment, including the anticipated return to creditors. To the extent applicable it should also explain:

- Any significant aspects of the case, particularly those that affect the amount of time spent.
- The reasons for subsequent changes in strategy.
- Any comments on any figures in the summary of time spent accompanying the request the administrator wishes to make.
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement.
- Any existing agreement about fees.
- Details of how other professionals, including sub-contractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees.

It should be borne in mind that the degree of analysis and form of presentation should be proportionate to the size and complexity of the case. In smaller cases not all categories of activity will always be relevant, whilst further analysis may be necessary in larger cases.

- 5.1.4 Where the fee is charged on a percentage basis the administrator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by an administrator or his staff.

## **5.2 After fee approval**

Where a resolution fixing the basis of fees is passed at any creditors' meeting held before he has substantially completed his functions, the administrator should notify the creditors of the details of the resolution in his next report or circular to them. In all subsequent reports to creditors the administrator should specify the amount of remuneration he has drawn in accordance with the resolution. Where the fee is based on time costs he should also provide details of the time spent and charge-out value to date and any material changes in the rates charged for the various grades since the resolution was first passed. He should also provide such additional information as may be required in accordance with the principles set out in paragraph 5.1.3. Where the fee is charged on a percentage basis the administrator should provide the details set out in paragraph 5.1.4 above regarding work which has been sub-contracted out.

## **5.3 Expenses and disbursements**

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

## **6 What if a creditor is dissatisfied?**

- 6.1 If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting

evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

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

**7.1** If the administrator considers that the remuneration fixed by the creditors' committee is insufficient he may request that it be increased by resolution of the creditors. If he considers that the remuneration fixed by the committee or the creditors is insufficient, he may apply to the court for it to be increased. If he decides to apply to the court he must give at least 14 days' notice to the members of the creditors' committee and the committee may nominate one or more of its members to appear or be represented on the application. If there is no committee, the administrator's notice of his application must be sent to such of the company's creditors as the court may direct, and they may nominate one or more of their number to appear or be represented. The court may order the costs to be paid as an expense of the administration.

**8 Other matters relating to fees**

**8.1** Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.

**8.2** If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.