

# 2.17B

The Insolvency Act 1986

## Statement of administrator's proposals

Name of Company National Hotlines Limited	Company number 02704423
In the Doncaster County Court (full name of court)	Court case number 0004 of 2015

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

I/We (a)  
Ian Michael Rose  
Silke & Co Limited  
1st Floor  
Consort House  
Waterdale  
Doncaster  
DN1 3HR

\*Delete as applicable

attach a copy of \*my/our proposals in respect of the administration of the above company

A copy of these proposals was sent to all known creditors on

(b) 14 April 2015

Signed

*UWR*  
Joint Administrator(s)

Dated

14/4/2015

### 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

Ian Michael Rose  
Silke & Co Limited  
1st Floor  
Consort House  
Waterdale  
Doncaster  
DN1 3HR

01302 342875  
DX Exchange

DX Number

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**



\*A4DVA5FV\*

A14 15/08/2015 #482  
COMPANIES HOUSE

\*A4A8DX81\*

A17 24/06/2015 #255  
COMPANIES HOUSE

\*A45CM58G\*

A26 15/04/2015 #233  
COMPANIES HOUSE

Th  
Wi  
pl

SATURDAY

WED

WEDNESDAY

# SILKE & CO LTD

1<sup>st</sup> Floor – Consort House – Waterdale – Doncaster – DN1 3HR

Tel 01302 342875 - Fax 01302 342986

Email [admin@silkeandco.co.uk](mailto:admin@silkeandco.co.uk) - Web [www.silkeandco.co.uk](http://www.silkeandco.co.uk)

**TO ALL MEMBERS & CREDITORS**

Our Ref N1VJ/IMR/CLB/AH

Date 14 April 2015

When telephoning please ask for Andrew Hunt

Email [andrew.hunt@silkeandco.co.uk](mailto:andrew.hunt@silkeandco.co.uk)

Dear Sir/Madam

## **NATIONAL HOTLINES LIMITED – IN ADMINISTRATION**

### **Administrator's Statement of Proposals and meetings of creditors and members to consider the Administrator's proposals for a Company Voluntary Arrangement**

As Administrator I am required to convene meetings of creditors under paragraph 51 of Schedule B1 in order to consider the Administrators proposals, a notice is enclosed in respect of this I have also enclosed a form of proxy, should you wish to vote on this matter. If so, please complete the form and return to this office.

The basis of my proposal as Administrator in this case is that the Company will enter into a Company Voluntary Arrangement ("CVA") with its creditors, rather than continuing in administration and then entering into liquidation or any other procedure which would bring the Company to an end.

As I have formed the view that a CVA is the best way in which to proceed, I am required to prepare a proposal which sets out how the CVA will work in practice so that the Company's creditors and members can consider whether to approve this route forward. Consideration of the proposal for a CVA is dependent upon creditors approving my proposals as Administrator. In light of this, there will be a two-stage process:

- 1 Firstly, creditors will consider the Administrator's proposals for achieving the purpose of the administration, and
- 2 Secondly, if the Administrators proposals are approved, then the Company's creditors and members will be asked to consider and approve the CVA proposal.

I am required to hold two separate meetings of creditors and one meeting of members to deal with the above. Both of the creditors' meetings will be held at the Offices of Silke & Co Limited, 1<sup>st</sup> Floor Consort House, Waterdale, Doncaster, DN1 3HR on Tuesday 5 May 2015 at 2.00pm in respect of the Administrator's proposals and 2.30pm in respect of the CVA proposal. Subsequently the members' meeting to approve the CVA proposal will be held after the creditors' meeting at 3.00pm to approve the same. Please note that if the Administrator's proposals are not approved then the meetings to approve the CVA will not take place.

Yours faithfully,



Ian Michael Rose  
Administrator

## Rule 2.35

## Notice of a meeting of Creditors

Name of Company

National Hotlines Limited

Company number

02704423

In the  
Doncaster County Court

(full name of court)

Court case number  
0004 of 2015(a) Insert full name(s)  
and address(es) of  
administrator(s)

Notice is hereby given by (a)

Ian Michael Rose  
Silke & Co Limited  
1st Floor  
Consort House  
Waterdale  
Doncaster  
DN1 3HR(b) Insert full name and  
address of registered  
office of the company

that a meeting of creditors of (b)

National Hotlines Limited  
Unit 2 Brentford Business Centre  
Commerce Road  
Brentford  
Middlesex  
TW8 8LG(c) Insert details of place  
of meeting

is to be held at (c)

(c) The Offices of Silke &amp; Co Limited, 1st Floor, Consort House, Waterdale, Doncaster, DN1 3HR

(d) Insert date and time  
of meeting

on (d) Tuesday 5 May 2015

at 2 00pm

The meeting is

\*Delete as applicable

\*(1) an initial creditors' meeting under paragraph 51 of Schedule B1 to the Insolvency Act 1986 ('the schedule')

~~\*(2) an initial creditors' meeting requested under paragraph 52(2) of the Schedule~~

~~\*(3) to consider revisions to my proposals under paragraph 54(2) of the Schedule~~

~~\*(4) a further creditors' meeting under paragraph 56 of the Schedule~~

~~\*(5) a creditors' meeting under paragraph 62 of the Schedule~~

I invite you to attend the above meeting

A proxy form is enclosed which should be completed and returned to me by the date of the meeting if you cannot attend and wish to be represented

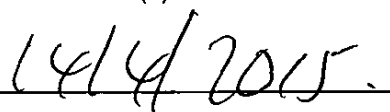
In order to be entitled to vote under Rule 2 38 at the meeting you must give to me, not later than 12 00 hours on the business day before the day fixed for the meeting, details in writing of your claim

Signed



Joint Administrator(s)

Dated



\*Delete as applicable

A copy of the ~~\*proposals/ revised proposals~~ is attached

## Proxy (Administration)

## National Hotlines Limited

Name of Creditor \_\_\_\_\_

Address \_\_\_\_\_

Name of Proxy Holder

Please insert name of person (who must be 18 or over) or the Chairman of the Meeting. If you wish to provide for alternative proxy holders in the circumstances that your first choice is unable to attend please state the name(s) of the alternatives as well

1 \_\_\_\_\_

2 \_\_\_\_\_

3 \_\_\_\_\_

Please delete words in brackets if the proxy holder is only to vote as directed i.e. he has no discretion

I appoint the above person to be my/the creditor's proxy holder at the meeting of creditors to be held on Tuesday 5 May 2015 at 2 00pm, or at any adjournment of that meeting. The proxy holder is to propose or vote as instructed below (and in respect of any resolution for which no specific instruction is given, may vote or abstain at his/her discretion)

## Voting Instructions for resolutions

\*Please delete as appropriate

1 For the acceptance/rejection\* of the administrator's proposals/revised proposals\* as circulated

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2 For the appointment of

\_\_\_\_\_  
 of

representing \_\_\_\_\_

as a member of the creditors' committee

This form must be signed

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name in CAPITAL LETTERS \_\_\_\_\_

Only to be completed if the creditor has not signed in person

Position with creditor or relationship to creditor or other authority for signature

\_\_\_\_\_  
 \_\_\_\_\_

Remember there may be resolutions on the other side of this form

**IN THE MATTER OF  
NATIONAL HOTLINES LIMITED  
AND  
IN THE MATTER OF THE INSOLVENCY ACT 1986**

NOTICE is hereby given pursuant to Section 3(2) of the Insolvency Act 1986 that a meeting of the creditors of the above Company will be held at the Offices of Silke & Co Limited, 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR on Tuesday 5 May 2015 at 2 30pm for the purposes mentioned in Section 4 of the said Act

A copy of the Administrator's proposal and statement of affairs is enclosed

A form of proxy is enclosed and creditors wishing to vote at the meeting must lodge their proxies (unless they are individual creditors voting in person) at Silke & Co Ltd, 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR by no later than 12 00 noon on Friday 1 May 2015. In order to qualify for voting rights, creditors must lodge a written statement of claim and it is requested that creditors send them with their proxies. Unless they surrender their security, secured creditors must give particulars of their security and of its value if they wish to vote at the meeting

Dated 14 April 2014



Ian Michael Rose  
Administrator

Note

The attention of creditors is drawn to the effect of Rule 1 16A (1), (3) and (4) regarding requisite majorities, a copy of which is attached to this Notice

## **THE INSOLVENCY RULES 1986**

### **EXTRACT OF RULE 1.19 (1), (3) and (4)**

#### **REQUISITE MAJORITIES**

#### **FOR VOTING PURPOSES AT THE CREDITORS' MEETING**

- 1 19 - (1) Subject as follows, at the creditors' meeting for any resolution to pass approving any proposal or modification there must be a majority in excess of three quarters in value of the creditors present in person or by proxy and voting on the resolution
- 1 19 - (3) In the following cases there is to be left out of the account a creditor's vote in respect of any claim or part of a claim
- (a) where written notice of the claim was not given, either at the meeting or before it, to the Chairman or the convenor of the meeting,
  - (b) where the claim or part is secured,
  - (c) where the claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing
    - (i) to treat the liability on him on the bill or note of every person who is liable on it antecedently to the Company, and against whom a bankruptcy order has not been made (or, in the case of a company which has gone into Liquidation), as a security in his hands, and
    - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the arrangement to deduct it from his claim
- 1 19 - (4) Any resolution is invalid if those voting against it include more than half in value of the creditors, counting in these latter only those
- (a) to whom notice of the meeting was sent,
  - (b) whose votes are not to be left out of account under paragraph (3), and
  - (c) who are not, to the best of the Chairman's belief, persons connected with the Company

**IN THE MATTER OF  
NATIONAL HOTLINES LIMITED  
AND  
IN THE MATTER OF THE INSOLVENCY ACT 1986**

NOTICE is hereby given pursuant to Section 3(1) of the Insolvency Act 1986 that a Meeting of the Members of the above Company will be held at the Offices of Silke & Co Limited, 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR on Tuesday 5 May 2015 at 3 00pm for the purposes mentioned in Section 4 of the said Act

A copy of the Administrator's proposal and statement of affairs is enclosed

A form of proxy is enclosed and Members wishing to vote at the meeting must lodge their proxy (unless they are individual members voting in person) at Silke & Co Ltd, 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR by no later than 12 00 noon on Friday 1 May 2015

Dated 14 April 2015



Ian Michael Rose  
Administrator

**EXTRACT OF RULE 1 20 (1) and (3)**

**REQUISITE MAJORITIES**

**FOR VOTING PURPOSES AT THE MEMBERS' MEETING**

1 20 - (1) Subject as follows, and to any express provision made in the articles, at a company meeting any resolution is to be regarded as passed if voted for by more than one half in value of the members present in person or by proxy and voting on the resolution

The value of members is determined by reference to the number of votes conferred on each member by the company's articles

1 20 - (3) If the Chairman uses a proxy contrary to Rule 1 15, his vote with that proxy does not count towards any majority under this Rule

**Rule 8.1** Insolvency Act 1986  
Proxy (Company or Individual Voluntary Arrangements)

**NATIONAL HOTLINES LIMITED**

Please give full name and address for communication

Name of creditor/member

Address

Please insert name of person (who must be 18 or over) or the "chairman of the meeting" (see note below) If you wish to provide for alternative proxy-holders in the circumstances that your first choice is unable to attend please state the name(s) of the alternatives as well

Name of proxy-holder 1

2

3

Please delete words in brackets if the proxy-holder is only to vote as directed i.e. he has no discretion

I appoint the above person to be my/the creditor's/member's proxy-holder at the meeting of creditors/members to be held on Tuesday 5 May 2015, or at any adjournment of that meeting The proxy-holder is to propose or vote as instructed below [and in respect of any resolution for which no specific instruction is given, may vote or abstain at his/her discretion]

**Voting instructions for resolutions**

\*Please delete as appropriate

1 For the acceptance/rejection\* of the proposed voluntary arrangement [with the following modifications -]

Any other resolutions which the proxy-holder is to propose or vote in favour of or against should be set out in numbered paragraphs in the space provided below paragraph 1 If more room is required please use the other side of this form

**This form must be signed**

Signature

Date

Name in CAPITAL LETTERS

Only to be completed if the creditor/ member has not signed in person

**Position with creditor/member or relationship to creditor/member or other authority for signature**

Remember there may be resolutions on the other side of this form



# **NATIONAL HOTLINES LIMITED**

## **(In Administration)**

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### **Report and Proposals of the Joint administrators pursuant to Paragraph 49 of Schedule B1 to the Insolvency Act 1986**

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Ian Michael Rose was appointed Administrator on 9 March 2015

The affairs, business and property of the Company are being managed by the administrator, who acts as the Company's agent without personal liability

This report has been prepared for the sole purpose of updating creditors pursuant to the Insolvency Act 1986. The report is private and confidential and may not be relied upon, referred to, reproduced or quoted from, in whole or in part, by creditors for any other purpose, or by any other person for any purpose whatsoever

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- 9 Conclusion

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- V Administrators time costs and expenses
- VI Company Voluntary Arrangement proposals

## 1. INTERPRETATION

<u>Expression</u>	<u>Meaning</u>
"the Company"	National Hotlines Limited (In Administration)
"the administration"	The appointment of administrator under Schedule B1 of the Insolvency Act 1986 on 9 March 2015
"the administrator"	Ian Michael Rose of Silke & Co Limited, 1 <sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR
"the Act"	The Insolvency Act 1986, as amended
"Secured creditor"	Secured creditor, in relation to a Company, means a creditor of the Company, who holds in respect of his debt a security over property of the Company
"Security"	In relation to England and Wales, means any mortgage, charge, lien or other security
"the Rules"	The Insolvency Rules 1986, as amended
"the creditors"	All preferential creditors and all unsecured creditors
"preferential creditor"	Any creditor of the Company whose claim is preferential within Section 386 of the Insolvency Act 1986 as at 9 March 2015 being the date the Company entered administration
"unsecured creditor"	Any person (other than a preferential creditor) who has, or claims to have, any claim against the Company (whether the claim be present, future or contingent or prospective and whether liquidated or for damages and whether arising in contract or tort or otherwise) in connection with or arising from any matter occurring prior to 9 March 2015
"CVA"	Company Voluntary Arrangement

## 2. STATUTORY INFORMATION

Date of Incorporation	7 April 1992
Company registered number	02704423
Registered office	Unit 2 Brentford Business Centre, Commerce Road, Brentford, Middlesex, TW8 8LG
Trading address	Unit 2 Brentford Business Centre, Commerce Road, Brentford, Middlesex, TW8 8LG
Principal business activities	Telecommunications
Trading names	National Hotlines Limited
Director	Michael Tegerdine
Company Secretary	None
Share capital	£74,074 divided into 74,074 Ordinary Class A Shares of £1 each £18,519 divided into 18,519 Ordinary Class B Shares of £1 each
Shareholders	Michael Tegerdine 58,370 Ordinary A Shares Alan O'Brien 15,704 Ordinary A Shares Jeremy Agace 1,402 Ordinary B Shares Paul Locke 2,805 Ordinary B Shares Dramla Consulting 1,317 Ordinary B Shares Hockley Investments Limited 1,984 Ordinary B Shares JM Agale 1973 Discretionary Trust 1,403 Ordinary B Shares BNY OCS Nominees Limited 2,244 Ordinary B Shares Alan Wheatley 3,898 Ordinary B Shares Barry Baldwin 3466 Ordinary B Shares

## 3. DETAILS OF APPOINTMENT OF ADMINISTRATOR

Name of administrator	Ian Michael Rose, Licensed Insolvency Practitioner of Silke & Co Limited, 1 <sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR
Date of administrators appointment	9 March 2015

Court	Doncaster County Court Number 0004 of 2015
Person making appointment application	Ian Michael Rose as Liquidator
Acts of the administrator	The administrator act as officer of the court and as agent of the Company without personal liability
EC Regulation on Insolvency	The EC Regulation on Insolvency Proceedings (Council Regulation (EC) No 1346/2000) applies to these proceedings which are 'main proceedings' within the meaning of Article 3 of the Regulation

#### **4. STATUTORY PURPOSE OF ADMINISTRATION**

Paragraph 3 of Schedule B1 to the Act provides as follows

- "3 (1) The administrator of a company must perform his functions with the objective of
- (a) rescuing the company as a going concern, or
  - (b) achieving a better result for the company's creditors as a whole than would be likely if the company was wound up (without first being in administration), or
  - (c) realising property in order to make a distribution to one or more secured or preferential creditors
- (2) Subject to subparagraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole
- (3) The administrator must perform his functions with the objective specified in subparagraph (1)(a) unless he thinks either
- (a) that it is not reasonably practicable to achieve that objective, or
  - (b) that the objective specified in subparagraph (1)(b) would achieve a better result for the company's creditors as a whole
- (4) The administrator may perform his functions with the objective specified in sub paragraph (1)(c) only if
- (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub paragraph (1)(a) and (b), and
  - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole "

#### **5. CIRCUMSTANCES GIVING RISE TO THE APPOINTMENT OF THE JOINT ADMINISTRATORS**

National Hotlines Limited was incorporated in the name of National Hotlines Plc in April 1994, and was re-registered in its current name on 29 November 2002 as a private company

From the outset the Company traded successfully supplying 0800 Freephone numbers to businesses across the UK, employing 30 staff members at its peak. The business immediately generated a healthy profit.

The business was based on a recurring monthly revenue model and generated a gross monthly income of approximately £13,500. There are currently 170 customers however, like many telecoms businesses, the Company experienced a high turnover within its customer base.

The Company's fortunes changed when, within a 12 month period, the business lost its 3 largest customers who collectively were responsible for generating 30% of the turnover. The directors had become over-reliant on the revenue from these 3 clients and their unexpected loss created a cash-flow void.

This over-reliance on just a few clients and subsequent loss of revenue, placed pressure on the business, which the directors were not quick enough to redress either through winning new business or cutting overhead costs quickly.

This resulted in the business getting behind with HM Revenue & Customs ("HMRC") liabilities. The Company also carried unprofitable and under-performing staff members out of long-term loyalty, together with an expensive full time accountant which placed a further drain on the business until there was no option but to shed all staff members (incurring redundancy costs) leaving only the director.

The Company had very few creditors, and at the time of liquidation just HMRC liabilities, as it is an extremely simple concept, holding no stock whatsoever. The Company was unable to pay its liabilities to HMRC who issued a winding up petition. The first hearing of the petition on 9 June 2010, the director represented the Company at the hearing and advised the court he was selling a property and asked for an adjournment to the 11th August to provide a 2 week safety net. However, the court granted an adjournment only until the 28th July and marked it "final".

On 28th July 2010, the petition came before the court again by which time Mr Tegerdine claims he had been approached by a number of insolvency specialists offering help and advice. Nervous at his own ability to secure the short adjournment required, he asked a third party to represent the Company and advised them to seek an adjournment as the funds were imminent.

The Court did not agree to the adjournment request and the Company was wound up on Wednesday 28th July 2010. The anticipated £200,000 funds arrived on Friday 30th July 2010.

Following the winding up the director sought to rescind the winding up order however this was not successful.

Ian Michael Rose of Silke & Co was appointed liquidator via Secretary Of State Appointment on 9 March 2011. Since that date Mr Rose has been attempting to resolve the Company's position in his capacity as liquidator to the benefit of creditors. During this time the director Mr Tegerdine and his live in partner Jane Morris continued to make maintenance payments to ensure continuation of the Company's phone line services via the use of personal funds. This was in an attempt to maintain any potential value of the only real asset of the Company its phone numbers.

Due to the complexity of the ownership of the phone numbers and their need for continuation various avenues were explored by both the director and Mr Rose as appointed liquidator to ensure the best return to creditors. After much deliberation and following professional advice from specialist solicitors the decision was taken to apply to court to place the Company into Administration. The court granted the application and Ian Michael Rose was appointed Administrator on 9 March 2015. Upon the placing of the Company into administration the winding up order was discharged. Due to the level of complication regarding the ownership of the Company's telephone numbers and the rarity of this situation the benefits of Administration meant the administrator could put forward a Company Voluntary Arrangement offering payment in full to creditors subject to their approval.



## **6. THE ADMINISTRATION PERIOD**

### ***Receipts and Payments***

Attached at Appendix I is a copy of the receipts and payments account from the commencement of administration to date. No funds have yet been received, however a sum of £1,713 remaining in the Insolvency Service Account is due from the preceding compulsory liquidation and is set to be received, currently no payments have been made.

Professional fees of £2,500 have been incurred by Foreman & Co Solicitors in respect of legal work associated with advising the Liquidator and the subsequent placing of the Company into Administration. These fees currently remain unpaid.

### ***Prior to Appointment***

In his capacity as Liquidator Ian Michael Rose reviewed the Company's position at length and conferred with experienced professionals as to the best route to protect creditors' interests. After various stalled attempts at resolving the Company's position he was advised in his capacity as Liquidator to seek appointment as Administrator and facilitate a potential exit from administration via a Company Voluntary Arrangement ("CVA").

### ***Conduct of the Administration***

Upon his appointment on 9 March 2015, the Administrator notified all parties as to his appointment as per the statutory requirements and began preparation of a CVA proposal. Attached to this document at Appendix VI is a copy of said proposal.

### ***Investigations***

The Administrator's investigations for the purposes of reporting to the Department of Business Enterprise and Regulatory Reform on the conduct of the director are ongoing. We shall be pleased to hear from creditors if they are aware of any matters which could be considered for inclusion in the report.

## **7. ADMINISTRATORS' PROPOSALS**

### ***Purpose of the Administration***

I am required to set out our proposals for achieving the purpose of the administration which in this context means one of the objectives specified in paragraph 3 of Schedule B1 to the Act as set out at section 4 of this report above.

For the reasons set out in this report, I consider that I can achieve the objective specified in subparagraph 3(1)(a), in rescuing the Company as a going concern.

I also believe that I will achieve the objective specified in sub paragraph 3(1)(b), by achieving a better result for the Company's creditors as a whole than would be likely if the company was wound up (without first being in administration) and the objective specified in sub paragraph 3(1)(c), realising property in order to make a distribution to one or more secured or preferential creditors.

I propose to continue to realise the assets of the Company and agree claims of unsecured creditors irrespective of the outcome of the proposed CVA.

The costs of the administration will be paid from the assets realised in the estate or as an expense of the CVA.

In order that the purpose of the administration may be fully achieved, I propose to remain in office as administrator in order to conclude the realisation of the Company's assets. The principal matters remaining to deal with in this respect are

- realisation of cash at bank
- facilitate exit from the administration via a CVA

### ***Exit from Administration***

I am of the opinion that to facilitate the best return to unsecured creditors a CVA proposal would offer the best route for exit.

I do not have a general power to make a distribution to unsecured creditors and may only do so if the court gives permission. It is considered that the court will only grant such permission in exceptional circumstances where the normal course for making distributions to unsecured creditors in a voluntary liquidation is inappropriate. Additionally, there may be matters for enquiry concerning a company's affairs which are not within the scope of an administrator's powers and which can only be properly dealt with by a liquidator.

Consequently, as soon as I am satisfied that I have fully discharged my duties as Administrator and that the purpose of the Administration has been fully achieved, subject to the proposed Company Voluntary Arrangement being approved by creditor majority I will seek to facilitate my exit as Administrator and pass the Company back to the director.

As an alternative should the proposed CVA not be acceptable to creditors I propose to implement the provisions of Paragraph 83 of Schedule B1 to the Act whereby on the registration of a notice sent to the Registrar of Companies, my appointment as administrator shall cease to have effect and the Company will automatically be placed into creditors voluntary liquidation. Paragraph 83(7) provides

The liquidator for the purpose of the winding up shall be-

- (a) a person nominated by the creditors of the company in the prescribed manner and within the prescribed period, or
- (b) if no person is nominated under paragraph (a), the Administrator

I confirm that as part of my proposals I propose (b) that I act as liquidator in the subsequent winding up of the Company. Creditors may nominate a different person as the proposed liquidator provided that the nomination is made after the receipt of the proposals and before the proposals are approved. The appointment of a person nominated as liquidator takes effect by the creditors' approval, with or without modification, of the administrator's proposals.

In the unlikely event that it transpires that it is not possible to finalise the Administration as envisaged within one year of the date of our appointment. Whilst Paragraph 76 of Schedule B1 to the Act provides that the appointment of an administrator shall cease to have effect at the end of the period of one year, beginning with the date on which it takes effect. The administrator's term of office may be extended either by court order for a specified period or by consent of the creditors for a specified period not exceeding six months. It may therefore become necessary at some future time for us to seek creditor consent to extending the period of the administration for up to a further 6 months following the anniversary of our appointment in order to ensure that the objective of the administration can be fully achieved.



### **Section 176A Funds for Unsecured Creditors**

Section 176A of the Act provides that, where the company has created a floating charge after 15 September 2003, the administrator must make a *prescribed part* of the company's *net property* available for the unsecured creditors and not distribute it to the floating charge holder. This is not applicable in this case since the secured creditor was repaid prior to the Company entering into Administration.

### **Administrators' Remuneration**

The Administrator proposes

- 1 that he be authorised to draw the sum of £5,000 plus VAT and disbursements in respect of his role as Liquidator of the Company whilst the Company was in Compulsory Liquidation
- 2 that the Administrator and any subsequently appointed Liquidator remuneration be on the basis of time properly given by him and his staff in attending to matters arising in the winding up and that the Administrator and any subsequently appointed Liquidator may draw fees and disbursements without further reference to creditors. For this purpose the standard hourly charge-out rates of all grades of staff which are likely to be involved on the case and disbursements are as set out as part of the information attached to this report
- 3 That in respect of expenses normally incurred, the Administrator and any subsequently appointed Liquidator be authorised to make a separate charge in accordance with Silke & Co Limited's policy note which accompanied the information attached to this report

Remuneration drawn will be notified to any creditors' committee appointed under paragraph 57 of Schedule B1 to the Act. In the absence of a creditors' committee, details of time incurred and disbursements drawn will be reported to creditors in accordance with *Statement of Insolvency Practice 9* issued by the Joint Insolvency Committee on behalf of the administrator's licensing body.

Total time spent to date on this assignment amounts to 34.6 hours at an average composite rate of £241.98 per hour resulting in total time costs to date of £8,372.50.

To assist creditors in determining this matter, further information as regards time costs and expenses is set out in Appendix V.

## **8. STATEMENT OF AFFAIRS**

The estimated Statement of Affairs and a list of creditors are attached to this report at Appendix III & IV.

## 9. CONCLUSION

Pursuant to paragraph 51 of Schedule B1 to the Act, the administrator's proposals (inclusive of the attached CVA proposals) will be considered at an initial meeting of the Company's creditors summoned in accordance with the Notice of meeting (Form 2 20B) accompanying this document

Subject to the approval of the Administrators proposals I will report on progress again approximately six months after the commencement of the administration, or at the conclusion of the administration, whichever is the sooner

A handwritten signature in black ink, appearing to read 'I. Rose', followed by a horizontal line.

**Ian Michael Rose**  
Administrator

Date 10 April 2015

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**APPENDIX I**

**ADMINISTRATORS' ACCOUNT OF RECEIPTS AND PAYMENTS**

**AS AT 10 APRIL 2015**

**National Hotlines Limited  
(In Administration)**

**Summary of Receipts & Payments  
09 March 2015 to 10 April 2015**

**RECEIPTS**

**Total (£)**

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**0.00**

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**PAYMENTS**

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**0.00**

**Balance In Hand**

**0.00**

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**0.00**

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Note - VAT is not recoverable

## APPENDIX II

### NATIONAL HOTLINES LIMITED

#### COMPARISON BETWEEN REMAINING IN COMPULSORY LIQUIDATION AND EXITING VIA A CVA FROM ADMINISTRATION AND ESTIMATED DIVIDEND PAYMENTS

	<u>Notes</u>	<u>Liquidation</u>	<u>ADM/CVA</u>
		£	£
<b>ASSETS SPECIFICALLY PLEDGED</b>			
Cash At Bank	(1)	82,448	82,448
Less Post Appointment Expenses of Associated Creditor	(2)	<u>(50,889)</u>	<u>Excluded</u>
Surplus/(Shortfall) c/fwd		31,559	82,448
Total Assets (Surplus)		<u>31,559</u>	<u>82,448</u>
<b>ASSETS NOT SPECIFICALLY PLEDGED</b>			
Premium Telephone Numbers	(3)	Unknown	Excluded
Book Debts	(4)	Unknown	Excluded
Funds Held In ISA Account	(5)	1,713	1,713
Voluntary Contributions		<u>0</u>	<u>0</u>
Total Assets Not Specifically Pledged		1,713	1,713
Total Assets Subject to Costs		<u>33,272</u>	<u>84,161</u>
<b>ESTIMATED COSTS</b>			
Petitioning creditor's & Official Receivers costs	(4,200)		N/A
Official Receiver's Fees on Realisations	(4,077)		N/A
Official Receiver's Fees on Distributions	(1,189)		N/A
Official Receiver's Disbursements	(500)		N/A
Secretary of State Fees	(7,036)		N/A
Liquidators Fees	(10,000)		(5,000)
Legal Fees	(2,500)		(2,500)
Administrators Fees	(5,000)		(5,000)
Supervisor's Fees (estimated)	N/A		(5,000)
Supervisor's Disbursements (estimated)	<u>N/A</u>		<u>(500)</u>
Total Costs		(34,502)	(18,000)
Total Assets Available to Preferential Creditors		<u>(1,230)</u>	<u>66,161</u>
<b>PREFERENTIAL CREDITORS</b>			
Employee Claims (Arrears of Pay & Holiday Pay)		0	N/A
Total Assets Available to Unsecured Creditors		<u>(1,230)</u>	<u>66,161</u>
<b>NON PREFERENTIAL CREDITORS</b>			
HM Revenue & Customs	(66,059)		(66,059)
Directors Loan Account	(9,353)		Excluded
Trade and Expense Creditors	<u>0</u>		<u>0</u>
Total Unsecured Creditors		(75,412)	(66,059)
SHORTFALL TO CREDITORS		<u>(76,642)</u>	<u>102</u>
<b>ISSUED SHAREHOLDING</b>			
Ordinary £1 shares		<u>(92,953)</u>	<u>(92,953)</u>
SHORTFALL TO SHAREHOLDERS		<u>(169,595)</u>	<u>(92,851)</u>
<b>ESTIMATED DIVIDEND PAYMENT (p in the £)</b>			
TO NON-PREFERENTIAL CREDITORS		<u>0 0</u>	<u>100 0</u>

## APPENDIX III

### NATIONAL HOTLINES LIMITED

#### ESTIMATED STATEMENT OF AFFAIRS AS AT 9 MARCH 2015

	<u>Notes</u>	<u>Book Value</u>	<u>Estimated to realise</u>
		£	£
<b>ASSETS SPECIFICALLY PLEDGED</b>			
Cash At Bank	(1)	82,448	82,448
Less Post Appointment Expenses of Ms J Morris	(2)	<u>(50,889)</u>	<u>(50,889)</u>
Shortfall/(Surplus)		31,559	31,559
Total Assets Specifically Pledged		<u>31,559</u>	<u>31,559</u>
<b>ASSETS NOT SPECIFICALLY PLEDGED</b>			
Premium Telephone Numbers	(3)	Unknown	Unknown
Book Debts	(4)	Unknown	Unknown
Funds Held In ISA Account	(5)	<u>1,713</u>	<u>1,713</u>
Total Assets Not Specifically Pledged		1,713	1,713
Total Assets Available to Preferential Creditors		<u>33,272</u>	<u>33,272</u>
<b>PREFERENTIAL CREDITORS</b>			
None			
Total Assets Available to Unsecured Creditors		<u>33,272</u>	<u>33,272</u>
<b>NON PREFERENTIAL CREDITORS</b>			
HM Revenue & Customs		(66,059)	(66,059)
Directors Loan Account		(9,353)	(9,353)
Trade and Expense Creditors		<u>0</u>	<u>0</u>
Total Unsecured Creditors		(75,412)	(75,412)
SHORTFALL TO CREDITORS		<u>(42,140)</u>	<u>(42,140)</u>
<b>ISSUED SHAREHOLDING</b>			
Ordinary £1 shares		<u>(92,953)</u>	<u>(92,953)</u>
SHORTFALL TO MEMBERS		<u><u>(135,093)</u></u>	<u><u>(135,093)</u></u>

**LIST OF CREDITORS**

**AS AT 9 MARCH 2015**

**APPENDIX IV**





**National Hotlines Limited**  
**Creditors with Statement of Affairs Figures**

Key	Name	SofA 1	SofA2	SofA Total
CH01	H M Revenue & Customs	66,059 00	0 00	66,059 00
CM00	Michael Tegerdine	9,353 00	0 00	9,353 00
<b>2 Entries Totalling</b>		<b>75,412.00</b>	<b>0.00</b>	<b>75,412.00</b>

**LIQUIDATORS & ADMINISTRATORS' TIME COSTS AND EXPENSES**

- a Silke & Co Limited policy for re-charging expenses, incorporating charge-out rates,
- b Narrative summary of time costs incurred and summary by staff grade and work activity for the period following my appointment as liquidator up to 9 March 2015
- c Narrative summary of time costs incurred and summary by staff grade and work activity for the period following my appointment as administrator up to 10 April 2015
- d Summary of disbursements posted up to 10 April 2015
- e A creditors' guide to liquidators' fees, administrators' fees and supervisors' fees

## **SILKE & CO LIMITED DISBURSEMENT AND CHARGEOUT RATES**

**EFFECTIVE FROM 1 OCTOBER 2013**

### **Disbursements**

#### **Definitions**

Category 1 - approval not required - specific expenditure that is directly related to a particular insolvency case, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges

Category 2 - approval required - all other items of expenditure Which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost, and/or where the cost of the expense incurred is an estimated, utilised cost with the estimate based on external costs or opportunity costs

#### **Charging Policy of Silke & Co Limited**

Category 1 expenses are recharged to the particular insolvency case at the rate incurred by Silke & Co Limited and as they are incurred

Category 2 expenses, the following items are recharged at the following rates

- Where meeting rooms of Silke & Co Limited are used for the purpose of statutory meetings of creditors the room hire is recharged to the individual insolvency case at £150 per meeting
- Car mileage is recharged to the individual insolvency case at the rate of 45p per mile
- The storage of books and records (when not charged as a Category 1 expense) is recharged at the rate of £1 50 per box per month
- Printing and photocopying is charged at 15p per sheet
- Faxes are charged at 50p per sheet
- Postage is charged at the relevant prevailing rate
- IPS computer charge £6 25 per Month (maximum £200 per case)
- Stationery charged at £5 00 per file

### **Chargeout Rates**

The hourly rates for the different levels of staff are shown below

Insolvency Practitioner	£350
Manager	£275
Assistant Manager	£225
Senior Administrator	£200
Administrator	£175
Cashier	£150
Assistants and Support Staff	£100

Time is charged to the individual insolvency case in 6 minute units

# Time Entry - Detailed SIP9 Time & Cost Summary

N1VC - National Hotlines Limited  
From 09/03/2011 To 08/03/2015  
Project Code POST

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
AP-ADMIN Administration & Planning	3.65	9.35	2.50	9.20	24.70	5,206.25	210.78
CR-CRED Creditors & Distributions	0.00	5.50	0.00	0.00	5.50	1,237.50	225.00
IN-INV Investigations	0.75	0.00	0.00	0.00	0.75	262.50	350.00
RA-FLTG Floating Charge Assets/Contributions	5.25	23.50	0.00	0.70	29.45	7,280.00	247.20
S1-EMP Employees	0.00	1.00	0.00	0.00	1.00	225.00	225.00
S3-STAT Statutory & Compliance	2.75	17.00	0.00	0.00	19.75	4,887.50	247.47
S5-PRE Pre Appointment	0.00	0.40	0.00	0.00	0.40	90.00	225.00
<b>Productive Time</b>	<b>12.40</b>	<b>56.75</b>	<b>2.50</b>	<b>9.90</b>	<b>81.55</b>	<b>19,188.75</b>	<b>235.30</b>
<b>Total Hours</b>	<b>12.40</b>	<b>56.75</b>	<b>2.50</b>	<b>9.90</b>	<b>81.55</b>	<b>19,188.75</b>	<b>235.30</b>
<b>Total Fees Claimed</b>						<b>0.00</b>	

# Time Entry - Detailed SIP9 Time & Cost Summary

N1VJ - National Holidays Limited  
From 09/03/2015 To 10/04/2015  
Project Code POST

Classification of Work Function	Partner	Manager	Other Senior Professionals	Assistants & Support Staff	Total Hours	Time Cost (£)	Average Hourly Rate (£)
AP-ADMIN Administration & Planning	2.50	3.70	0.00	0.80	7.00	1,787.50	255.36
RA-FLTG Floating Charge Assets/Contributions	0.00	0.20	0.00	0.00	0.20	45.00	225.00
SS-STAT Statutory & Compliance	3.00	24.40	0.00	0.00	27.40	6,540.00	238.69
<b>Productive Time</b>	<b>5.50</b>	<b>28.30</b>	<b>0.00</b>	<b>0.80</b>	<b>34.60</b>	<b>8,372.50</b>	<b>241.98</b>
<b>Total Hours</b>	<b>5.50</b>	<b>28.30</b>	<b>0.00</b>	<b>0.80</b>	<b>34.60</b>	<b>8,372.50</b>	<b>241.98</b>
<b>Total Fees Claimed</b>						<b>0.00</b>	

Time Entry - SIP9 Time & Cost Summary

Category 2 Disbursements

N1VC - National Hotlines Limited  
Project Code POST  
From 09/03/2011 To 08/03/2015

Other amounts paid or payable to the office holders firm or to party in which the office holder or his firm or any associate has an interest.

Transaction Date	Type and Purpose	Amount
17/08/2011	Companies House	1 00
08/09/2011	Companies House	1 00
07/10/2013	Companies House	1 00
01/03/2014	Bonding	60 00
Total		63 00



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## A CREDITORS' GUIDE TO LIQUIDATORS' FEES

### ENGLAND AND WALES

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#### 1 Introduction

- 1 1 When a company goes into liquidation the costs of the proceedings are paid out of its assets. The creditors, who hope 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 liquidator. The insolvency legislation recognises this interest by providing mechanisms for creditors to fix the basis of the liquidator's fees. This guide is intended to help creditors be aware of their rights to approve and monitor fees and explains the basis on which fees are fixed.

#### 2 Liquidation procedure

- 2 1 Liquidation (or 'winding up') is the most common type of corporate insolvency procedure. Liquidation is the formal winding up of a company's affairs entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either voluntary, when it is instituted by resolution of the shareholders, or compulsory, when it is instituted by order of the court.
- 2 2 Voluntary liquidation is the more common of the two. An insolvent voluntary liquidation is called a creditors' voluntary liquidation (often abbreviated to 'CVL'). In this type of liquidation an insolvency practitioner acts as liquidator throughout and the creditors can vote on the appointment of the liquidator at the first meeting of creditors.
- 2 3 In a compulsory liquidation on the other hand, the function of liquidator is, in most cases, initially performed not by an insolvency practitioner but by an official called the official receiver. The official receiver is an officer of the court and a member of The Insolvency Service, an executive agency within the Department of Trade and Industry. In most compulsory liquidations, the official receiver becomes liquidator immediately on the making of the winding-up order. Where there are significant assets an insolvency practitioner will usually be appointed to act as liquidator in place of the official receiver, either at a meeting of creditors convened for the purpose or directly by the Secretary of State for Trade and Industry. Where an insolvency practitioner is not appointed the official receiver remains liquidator.
- 2 4 Where a compulsory liquidation follows immediately on an administration the court may appoint the former administrator to act as liquidator. In such cases the official receiver does not become liquidator. An administrator may also subsequently act as liquidator in a CVL.

#### 3 The liquidation committee

- 3 1 In a liquidation (whether voluntary or compulsory) the creditors have the right to appoint a committee called the liquidation committee, with a minimum of 3 and a maximum of 5 members, to monitor the conduct of the liquidation and approve the liquidator's fees. The committee is usually established at the creditors' meeting which appoints the liquidator, but in cases where a liquidation follows immediately on an administration any committee established for the purposes of the administration will continue in being as the liquidation committee.
- 3 2 The liquidator must call the first meeting of the committee within 3 months of its establishment (or his appointment if that is later), and subsequent meetings must be held either at specified dates agreed by the committee, or when requested by a member of the committee, or when the liquidator decides he needs to hold one. The liquidator is required to report to the committee at least every 6 months on the progress of the liquidation, unless the committee directs otherwise. This provides an opportunity for the committee to monitor and discuss the progress of the insolvency and the level of the liquidator's fees.

#### **4 Fixing the liquidator's fees**

- 4.1 The basis for fixing the liquidator's remuneration is set out in Rules 4.127 – 4.127B of the Insolvency Rules 1986. The Rules state that the remuneration shall be fixed either
- as a percentage of the value of the assets which are realised or distributed or both, or
  - by reference to the time properly given by the liquidator and his staff in attending to matters arising in the liquidation

It is for the liquidation committee (if there is one) to determine on which of these bases the remuneration is to be fixed, and if it is to be fixed as a percentage, to fix the percentage to be applied. Rule 4.127 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 liquidator in connection with the insolvency,
- the effectiveness with which the liquidator appears to be carrying out, or to have carried out, his duties,
- the value and nature of the assets which the liquidator has to deal with

- 4.2 If there is no liquidation committee, or the committee does not make the requisite determination, the liquidator's fees may be fixed by a resolution of a meeting of creditors. The creditors take account of the same matters as the committee would. A resolution specifying the terms on which the liquidator is to be remunerated may be taken at the meeting which appoints the liquidator. If the fees are not fixed in any of these ways, it will be in accordance with a scale set out in the Rules.

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

##### **5.1 When seeking fee approval**

- 5.1.1 When seeking agreement to his fees the liquidator 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 liquidator 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 liquidator seeks agreement to his fees during the course of the liquidation, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the liquidator 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 liquidator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the liquidator 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 liquidator 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 liquidator'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 liquidator wishes to make
- The steps taken to establish the views of creditors, particularly in relation to agreeing the strategy for the assignment, budgeting, time recording, fee drawing or fee agreement
- Any existing agreement about fees
- Details of how other professionals, including subcontractors, were chosen, how they were contracted to be paid, and what steps have been taken to review their fees

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

- 5.1.4 Where the fee is charged on a percentage basis the liquidator should provide details of any work which has been or is intended to be sub-contracted out which would normally be undertaken directly by a liquidator 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 liquidator should notify the creditors of the details of the resolution in his next report or circular to them. When subsequently reporting to creditors on the progress of the liquidation, or submitting his final report, he 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 liquidator 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 liquidator 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 liquidator'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.

## 5.4 Realisations for secured creditors

Where the liquidator realises an asset on behalf of a secured creditor and receives remuneration out of the proceeds (see paragraph 8.1 below), he should disclose the amount of that remuneration to the committee (if there is one), to any meeting of creditors convened for the purpose of determining his fees, and in any reports he sends to creditors.

## **5.5 Reporting in compulsory liquidations**

It should be borne in mind that in compulsory liquidations there is no statutory requirement for the liquidator to report to creditors until the conclusion of the assignment. In most such cases, therefore, creditors will receive no information during the course of the liquidation unless they specifically request it.

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

6.1 Except in cases where there is a liquidation committee it is the creditors as a body who have authority to approve the liquidator's fees. To enable them to carry out this function they may require the liquidator to call a creditors' meeting. In order to do this at least ten per cent in value of the creditors must concur with the request, which must be made to the liquidator in writing.

6.2 If a creditor believes that the liquidator'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 liquidator 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 out of the assets of the insolvent company.

## **7 What if the liquidator is dissatisfied?**

If the liquidator considers that the remuneration fixed by the 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 or in accordance with the statutory scale 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 committee and the committee may nominate one or more of its members to appear or be represented at the court hearing. If there is no committee, the liquidator's notice of his application must be sent to such of the 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 out of the assets.

## **8 Other matters relating to fees**

8.1 Where the liquidator realises assets on behalf of a secured creditor he is entitled to be remunerated out of the proceeds of sale in accordance with a scale set out in the Rules. Usually, however, the liquidator will agree the basis of his fee for dealing with charged assets with the secured creditor concerned.

8.2 Where two (or more) joint liquidators are appointed it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute between them may be referred to the court, the committee or a meeting of creditors.

8.3 If the appointed liquidator is a solicitor and employs his own firm to act in the insolvency, profit costs may not be paid unless authorised by the committee, the creditors or the court.

8.4 There may also be occasions when creditors will agree to make funds available themselves to pay for the liquidator to carry out tasks which cannot be paid for out of the assets, either because they are deficient or because it is uncertain whether the work undertaken will result in any benefit to creditors. Arrangements of this kind are sometimes made to fund litigation or investigations into the affairs of the insolvent company. Any arrangements of this nature will be a matter for agreement between the liquidator and the creditors concerned and will not be subject to the statutory rules relating to remuneration.

## **9 Provision of information – additional requirements**

In any case where the liquidator is appointed on or after 1 April 2005 he must provide certain information about the time spent on the 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 liquidator 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 liquidator'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 liquidator, and requests must be made within two years from vacation of office

## **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, explain 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

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
- 102 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.
- 103 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?**

- 111 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**

- 121 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.
- 122 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.
- 123 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.
- 124 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.

### **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

## **VOLUNTARY ARRANGEMENTS - A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES**

### **1 Introduction**

- 1.1 In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangement. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

### **2. The voluntary arrangement procedure**

- 2.1 Voluntary arrangements are available to both companies and individual debtors. Company voluntary arrangements are often referred to as CVAs, and individual voluntary arrangements as IVAs.

- 2.2 The procedure is similar for both CVAs and IVAs and enables the company or individual to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement of their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them. A CVA may be used as a stand-alone procedure or as an exit route from an administration. It may also be used where a company is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances. A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings. The proposal will be considered by creditors at a meeting convened for that purpose. The procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors. In both CVAs and IVAs the proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

### **3. Fees, costs and charges - statutory provisions**

- 3.1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency Rules 1986 (rule 1.28 for CVAs and rule 5.33 (previously 5.28) for IVAs). They are

- any disbursements made by the nominee prior to the arrangement coming into effect, and any remuneration for his services agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or trustee, where the debtor is subject to bankruptcy proceedings),
- any fees, costs, charges or expenses which
  - are sanctioned by the terms of the arrangement (see below), or
  - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be)

- 3.2 The rules also require the following matters to be stated or otherwise dealt with in the proposal (rule 1.3 for CVAs and rule 5.3 for IVAs)

- The amount proposed to be paid to the nominee (as such) by way of remuneration and expenses, and

- The manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed

#### **4 The role of the creditors**

- 4.1 It is for the creditors' meeting to decide whether to agree the terms relating to remuneration along with the other provisions of the proposal. The creditors' meeting has the power to modify any of the terms of the proposal (with the consent of the debtor in the case of an IVA), including those relating to the fixing of remuneration. The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

#### **5 What information should the creditors receive?**

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

- 5.1.1 When seeking agreement for the basis or bases of remuneration, the voluntary arrangement proposal or the supervisor (where fees and disbursements are subject to agreement after approval of the arrangement) should provide sufficient supporting information to enable the creditors (or the committee of creditors where applicable) 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.

- 5.1.2 If any part of the remuneration is sought on a time costs basis, the proposal or the supervisor 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.

- 5.1.3 The proposal or the supervisor 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 supervisor or his or her staff.

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

The supervisor is required to send reports to creditors at specified intervals in accordance with rule 5.31A. When reporting to creditors, in addition to the matters specified in rule 5.31A, the supervisor 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 supervisor 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 supervisor 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 supervisor should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the supervisor or his or her staff.

### **5 3 Disbursements and other expenses**

5 3 1 Costs met by and reimbursed to the supervisor in connection with the voluntary arrangement 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 voluntary arrangement and a payment to an independent third party. These may include, for example, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the supervisor or his or her staff.
- Category 2 disbursements. These are costs that are directly referable to the voluntary arrangement but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the voluntary arrangement on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the supervisor 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 supervisor's remuneration. When seeking approval, the supervisor should explain, for each category of expense, the basis on which the charge is being made.

5 3 2 The following are not permissible

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

## **6. Provision of information – additional requirements**

The nominee or supervisor is required to provide certain information about the time spent on the case, free of charge, upon request by specified persons. The persons entitled to ask for this information are –

- any creditor,
- where the arrangement relates to a company, any director or member of that company, and
- where the arrangement relates to an individual, that individual.

The information which must be provided is –

- the total number of hours spent on the case by the insolvency practitioner 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 nominee's or supervisor'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

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nominee or supervisor, and requests must be made within two years from vacation of office

**7 What if a creditor or debtor is dissatisfied?**

7.1 Where a creditor or the debtor is dissatisfied the terms of the voluntary arrangement proposal may provide what action can be taken. In the absence of such a provision a creditor or a debtor who is dissatisfied by any act, omission or decision of the supervisor may apply to the court (s 263 Insolvency Act 1986)

**8 Effective date**

This guide applies where the nominee in relation to the arrangement agrees to act on or after 1 November 2011



COMPANY VOLUNTARY ARRANGEMENT PROPOSALS

**PROPOSAL FOR A VOLUNTARY ARRANGEMENT WITH CREDITORS**  
**PURSUANT TO PART 1 OF THE INSOLVENCY ACT 1986**

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**NATIONAL HOTLINES LIMITED (IN ADMINISTRATION)**

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This Proposal is presented for consideration under the following headings

- 1 Interpretation
- 2 Executive Summary
- 3 Advantages of a Voluntary Arrangement
- 4 Statutory Information
- 5 Company History
- 6 Statement of Affairs
- 7 Proposal
- 8 Administration of the Scheme
- 9 Other matters
- 10 Undertaking of Directors

**INDEX OF APPENDICES**

- I Estimated Statement of Affairs  
Notes and Certificate to Statement of Affairs  
Creditors with Statement of Affairs Figures
- II Summary Accounts for the Year Ended 30 September 2008
- III Comparison (between Liquidation and Company Voluntary Arrangement)
- IV Requisite Majorities
- V A Creditors' Guide To Insolvency Practitioners' Fees
- VI Silke & Co Limited Hourly Charge-out Rate
- VII Standard Terms & Conditions

## 1. **INTERPRETATION**

<b><u>Expression</u></b>	<b><u>Meaning</u></b>
"the Company"	National Hotlines Limited (In Administration)
"the Act"	The Insolvency Act 1986, as amended
"the Rules"	The Insolvency Rules 1986, as amended
"the creditors"	All preferential creditors and all unsecured creditors
"secured creditor"	Any creditor of the Company who holds in respect of their debt any security over property/assets of the Company
"preferential creditor"	Any creditor of the Company whose claim is preferential within Section 386 of the Insolvency Act 1986
"unsecured creditor"	Any person (other than a preferential creditor) who has, or claims to have, any claim against the Company (whether the claim be present, future or contingent or prospective and whether liquidated or for damages and whether arising in contract or tort or otherwise)
"CVA" or "Arrangement"	Company Voluntary Arrangement
'Administrator'	Ian Michael Rose
"Joint Supervisor"	Ian Michael Rose and Catherine Lee-Baggaley
"commencement date"	Date of approval of the CVA being the initial creditors' meeting date, or any subsequently adjourned meeting date

## 2. **EXECUTIVE SUMMARY**

Duration of CVA	12 Months
Total Creditors included in the CVA	£66,059
Total Creditors excluded from the CVA	£60,242
Total funds available in the CVA	£84,161
Legal Fees	£2,500
Liquidators Fees	£5,000
Administrators Fees	£5,000
Supervisors Fees (Estimated)	£5,000
Disbursements (Estimated)	£500
Estimated Dividend to unsecured creditors	100p in the £

## 3 **ADVANTAGES OF A VOLUNTARY ARRANGEMENT**

- 3 1 The administrator believes that a CVA under Part 1 of the Act is desirable for the following reasons -
- (a) To enable the Company to resume trading, and
- (b) To provide for an increased dividend to creditors
- 3 2 Unsecured creditors should receive a dividend in the region of **100 pence in the £** under a CVA, subject to the costs of the CVA, as opposed to a dividend of **Nil pence in the £** if the Company was to enter liquidation as evidenced by Appendix IV, based on the estimates of the assets disclosed in the certified Estimated Statement of Affairs in Appendix I
- 3 3 The comparison of the respective dividends in Appendix IV is intended merely to give some indication as to the substantially greater return that may be received by unsecured creditors under this Proposal and is not intended to be conclusive or binding as the actual dividends may vary
- 3 4 The costs incurred by the Joint Supervisors in administering the CVA are expected to be substantially less than those incurred by the administrator and subsequent liquidator if the Company was to remain in Administration
- 3 5 In the opinion of the Administrator Ian Michael Rose these are the main proceedings for the purposes of the EC regulations as implemented by the Insolvency (amendment) Rules 2002
- 3 6 For the reasons set out above, creditors and shareholders are urged to vote in favour of the Proposal

#### **4 STATUTORY INFORMATION**

Company Name	National Hotlines Limited (In Administration)
Trading Name	National Hotlines
Date of incorporation	7 April 1992
Registration number	02704423
Previous names	None
Date of name change	N/A
Nature of business	Telecommunications
Registered office	Unit 2 Brentford Business Centre Commerce Road Brentford Middlesex TW8 8LG
Trading address	Unit 2 Brentford Business Centre Commerce Road Brentford Middlesex TW8 8LG
Authorised share capital	£74,074 divided into 74,074 Ordinary Class A Shares of £1 each  £18,519 divided into 18,519 Ordinary Class B Shares of £1 each
Issued share capital	£74,074 divided into 74,074 Ordinary Class A Shares of £1 each  £18,519 divided into 18,519 Ordinary Class B Shares of £1 each

Director	Michael Tegerdine 18 Riverside Laleham Reach Chertsey KT16 8RS	
Secretary	None	
Shareholders	Michael Tegerdine	58,370 Ordinary A Shares
	Alan O'Brien	15,704 Ordinary A Shares
	Jeremy Agace	1,402 Ordinary B Shares
	Paul Locke	2,805 Ordinary B Shares
	Dramla Consulting	1,317 Ordinary B Shares
	Hockley Investments Limited	1,984 Ordinary B Shares
	JM Agale 1973 Discretionary Trust	1,403 Ordinary B Shares
	BNY OCS Nominees Limited	2,244 Ordinary B Shares
	Alan Wheatley	3,898 Ordinary B Shares
	Barry Baldwin	3466 Ordinary B Shares
Accountants	Fitzgerald & Law 8 Lincoln's Inn Fields London WC2A 3BP	
Bankers	Lloyds Bank plc	
Security granted	Lloyds Bank plc– Debenture – Created on 02/08/93 and Registered on 09/08/1993 – Please note this debenture has now been satisfied	
	Lloyds Bank plc– Debenture – Created on 28/07/06 and Registered on 08/08/06 – Please note this debenture has now been satisfied	
VAT registration number	578 6574 75	
PAYE reference number	N/A	

## 5. COMPANY HISTORY

It is felt that a brief history of the Company, together with some details of the main reasons for its current financial difficulties, would be beneficial to the Company's creditors for a better understanding of this Proposal

National Hotlines Limited was incorporated in the name of National Hotlines Plc in April 1994, and was re-registered in its current name on 29 November 2002 as a private company

From the outset the Company traded successfully supplying 0800 Freephone numbers to businesses across the UK, employing 30 staff members at its peak. The business immediately generated a healthy profit

The business was based on a recurring monthly revenue model and generated a gross monthly income of approximately £13,500. There are currently 170 customers however, like many telecoms businesses, the Company experienced a high turnover within its customer base

The Company's fortunes changed when, within a 12 month period, the business lost its 3 largest

customers who collectively were responsible for generating 30% of the turnover. The directors had become over-reliant on the revenue from these 3 clients and their unexpected loss created a cash-flow void.

This over-reliance on just a few clients and subsequent loss of revenue, placed pressure on the business, which the directors were not quick enough to redress either through winning new business or cutting overhead costs quickly.

This resulted in the business getting behind with HM Revenue & Customs ("HMRC") liabilities. The Company foolishly carried unprofitable and under-performing staff members out of long-term loyalty, together with an expensive full time accountant which placed a further drain on the business until there was no option but to shed all staff members (incurring redundancy costs) leaving only the director.

The Company had very few creditors, and at the time of liquidation just HMRC liabilities, as it is an extremely simple concept, holding no stock whatsoever. The Company was unable to pay its liabilities to HMRC who issued a winding up petition. The first hearing of the petition on 9 June 2010, the director represented the Company at the hearing and advised the court he was selling a property and asked for an adjournment to the 11<sup>th</sup> August to provide a 2 week safety net. However, the court granted an adjournment only until the 28th July and marked it "final".

On 28th July 2010, the petition came before the court again by which time Mr Tegerdine claims he had been approached by a number of insolvency specialists offering help and advice. Nervous at his own ability to secure the short adjournment required, he asked a third party to represent the Company and advised them to seek an adjournment as the funds were imminent.

The Court did not agree to the adjournment request and the Company was wound up on Wednesday 28th July 2010. The anticipated £200,000 funds arrived on Friday 30th July 2010.

Following the winding up the director sought to rescind the winding up order however this was not successful.

Ian Michael Rose of Silke & Co was appointed liquidator via Secretary Of State Appointment on 28 March 2011. Since that date Mr Rose has been attempting to resolve the Company's position in his capacity as liquidator to the benefit of creditors. During this time the director Mr Tegerdine and his live in partner Jane Morris continued to make maintenance payments to ensure continuation of the Company's phone line services via the use of personal funds. This was in an attempt to maintain any potential value of the only real asset of the Company its phone numbers.

Due to the complexity of the ownership of the phone numbers and their need for continuation various avenues were explored by both the director and Mr Rose as appointed liquidator to ensure the best return to creditors. After much deliberation and following professional advice from specialist solicitors the decision was taken to apply to court to place the Company into Administration. The court granted the application and Ian Michael Rose was appointed Administrator on 9 March 2015. Due to the level of complication regarding the ownership of the Company's telephone numbers and the rarity of this situation the benefits of Administration meant the administrator could put forward a Company Voluntary Arrangement offering payment in full to creditors subject to their approval.

## **6. STATEMENT OF AFFAIRS**

6.1 Appendix I is a certified Estimated Statement of Affairs of the Company as at 9 March 2015.

6.2 The assets of the Company, if any, are shown on the Estimated Statement of Affairs.

6.3 It is proposed that the only assets of the Company which are to be included in the Arrangement are the Arrangement funds, as are disclosed in Section 7 of the Proposal. The remaining assets of the Company are therefore excluded from the Arrangement.

6.4 No property other than the assets or monies belonging to the Company or assets properly realisable by the Joint Supervisors are to be included in the CVA.

6 5 The Joint Supervisors shall hold all funds realised in a bank account in their names as "Joint Supervisors of National Hotlines Limited Voluntary Arrangement", until distributions are made to creditors. These funds will be held in trust for the CVA creditors bound by the Arrangement no matter who petitions for the Company's winding-up in the event of the Company going into liquidation.

6 6 The nature and the amounts of the Company's liabilities are shown in Appendix I.

(a) Any claims from creditors, which would be a preferential claim if the Company went into liquidation on the date that this Proposal is approved by a Meeting of Creditors, will be paid in priority to the claims of unsecured creditors.

(b) Any amounts owing to connected persons will be treated as deferred claims and shall be paid after the claims of the unsecured creditors as set out in Appendix I.

6 7 Should any liability exceed the estimated amount then that shall not constitute a breach of the Arrangement and shall not entitle any creditor to seek relief from the Court either by way of Winding-up Petition or otherwise.

## 7 PROPOSAL

The principal terms of this Proposal are as follows -

7 1 Within a period of twelve months from the date of the approval of the Arrangement

(a) The preferential creditors will be paid in full, if applicable.

(b) Unsecured creditors will receive an estimated dividend of **100 pence in the £** in full and final settlement of their debts.

(c) Should there be sufficient funds to pay creditors in full, interest under Section 189 of the Act will not be applicable.

7 2 The preferential creditors will be those creditors afforded preferential status by Schedule 6 of the Act. The relevant date for the purpose of calculating the creditors' claims will be the date of the approval of the Arrangement.

7 3 Contributions will be received by the Joint Supervisors, as follows -

Cash at Bank	-	£82,448
Funds Held in ISA Account	-	£1,713
<b>TOTAL CONTRIBUTIONS</b>		<b>£84,161</b>

Contributions arise from cash assets held in the bank account alongside available funds in the ISA account of the Company. To date no funds from the cash at bank have been received by the Administrator in respect of the said contributions.

7 4 Unless otherwise stated, recovery of the aforementioned cash at bank is already underway and will be paid to the Joint Supervisors immediately upon acceptance of the Arrangement and the Chairman of the Meeting of Creditors will initiate that payment upon closing the Meeting.

7 5 The Joint Supervisors will issue a Report to all creditors on completion of the Arrangement.

7 6 On the basis of the information set out above, it is anticipated that the Joint Supervisors will pay dividends as follows:

	<u>p/£</u>	<u>Anticipated Payment Date</u>
Year 1	- 100 0	Commencement Date + 12 Months
Total	- <u>100 0</u>	

- 7 7 The Voluntary Arrangement requires the approval of 75% or more in value of the creditors in person or by proxy, voting on the Resolution approving the Arrangement. Once approved it binds all creditors who were entitled to vote at the meeting and every creditor who would have been entitled to vote at the meeting had they been given notice of it. There are also provisions for valuing the votes of connected creditors. The Voluntary Arrangement also requires the approval of a majority in excess of 50% or more of the Members of the Company, present in person or by proxy. The prescribed extract from the Rules dealing with the requisite majorities at the meeting of creditors is set out in Appendix V of this document.
- 7 8 For the avoidance of doubt, if the Arrangement is approved at the Meeting of Creditors not only every creditor who is entitled to vote at the meeting held to consider the Company's proposal, but also every creditor who would have been entitled to vote at the meeting if they had been given notice of it shall, in respect of any debt -
- (a) have no remedy against the Company, without the leave of the court,
  - (b) receive such dividend as is to be paid to them in the course of the Arrangement in full and final settlement of their debt.
- 7 9 The rights, remedies and security of all secured creditors shall remain unaltered by the terms of this Arrangement.
- 7 10 It is proposed that preferential and unsecured creditors will be agreed and dealt with in the same manner as they would be in the event of the liquidation of the Company.
- 7 11 It is proposed that the Joint Supervisors be responsible for receiving the payments into the Arrangement, agreeing creditors' claims and distributing the Arrangement funds. The Joint Supervisors will not be responsible for the ongoing trade of the Company and will not have any personal liability in respect of the Arrangement and, in particular, for any debts incurred as a result of the Company continuing to trade.
- 7 12 It is proposed that the Joint Supervisors will have first call on the realisations in the Arrangement in respect of their fees, but not in priority to any fees or expenses outstanding and payable to the Joint Nominees.
- 7 13 It is proposed that if for any reasons the terms of this Arrangement are not adhered to the Joint Supervisors will place the Company into compulsory liquidation using the Arrangement funds at their disposal. Should the Joint Supervisors have drawn fees and as a result there are insufficient funds held by them to petition for the compulsory liquidation of the Company, the Joint Supervisors will repay such fees drawn as are necessary to pay the costs of issuing the petition.
- 7 14 The Creditors' Meeting, convened in accordance with Section 3 of the Act, will have the power to appoint a Committee of Creditors which will be deemed to represent the creditors in total and will be formed as if it was a Committee of Creditors in a liquidation and will have the same powers.
- 7 15 (a) The Joint Supervisors may at any time convene meetings of creditors and members for the purpose of varying the Arrangement.
- To any such meeting, the following provisions shall apply:
- (i) Not less than fourteen days notice must be given to the creditors insofar as they and their respective addresses are known to the Joint Supervisors.
  - (ii) The Joint Supervisors shall send with the notice of the meeting a report stating the reason for the proposed variation and the expected effects of it on the creditors.
  - (iii) The notice shall be accompanied by forms of proxy and shall state the date and time (being not earlier than noon on the business day before the day for which the meeting has been convened) by which completed forms of proxy must be lodged with the Joint Supervisors.
  - (iv) Rules 1.13 to 1.21 of the Rules shall apply to the meeting as appropriate, with reference to 'Nominees' and 'proposal' being read as references to the Joint Supervisors and the proposed variation respectively.
- (b) Any variation approved at any meetings shall be binding on all the creditors and members.



who had notice of the meeting or would have been entitled to vote at the meeting if they had been given notice of it. Any variation so approved shall be put into effect not earlier than twenty-eight days after its approval

7 16 It is proposed that the CVA will be deemed to have failed if the Joint Supervisors, with the sanction of a Creditors' Committee, if appointed, consider that one or more of the following has occurred -

- (a) Failure to comply with the terms of this Arrangement
- (b) Failure to disclose all relevant information appertaining to the Company, including full details of all assets and liabilities
- (c) Failure to do any act, within 14 days, of a written request from either of the Joint Supervisors which they may reasonably require

## 7 17 CONTINUATION OF BUSINESS

The director shall be solely responsible for the conduct of the Company's affairs and business and shall ensure

- (a) That all future liabilities including tax liabilities and VAT due after the date of approval of the Proposal are paid
- (b) That, other than assets sold and purchased in the ordinary course of trading, no asset with a value in excess of £1,000 shall be purchased or sold without prior written consent of the Joint Supervisors
- (c) That the business shall not be sold by the director until the Joint Supervisors have approved in writing the sale price and the terms of the sale and any Solicitor appointed in connection with the sale has given the Joint Supervisors an undertaking to remit the proceeds of the sale to them
- (d) That the director shall provide the Joint Supervisors with annual accounts and such information as either or both of them may reasonably require

7 18 For the avoidance of doubt, it is hereby stated that the director shall conduct the Company's business and shall be solely responsible for all aspects of its affairs from the date of approval of the Arrangement

7 19 Nothing contained herein shall restrict the right of any person to take proceedings for the recovery of sums which become due to him or her from the Company and as a result of any transaction or tort accruing after the date of approval of this Proposal

7 20 It is proposed that the Company's tax affairs are brought up to date, if applicable, within three months of the Proposal being accepted. The Company's tax affairs from the date of acceptance of the Arrangement are to remain a matter wholly dealt with by the Company and will not be dealt with by the Joint Supervisors. The director undertakes to also ensure that all future VAT returns and the Company's tax affairs are kept up to date with all returns and accounts being filed by the due date and all liabilities paid on time

7 21 It is proposed that the Company will continue to utilise its credit facilities, if any are provided, with the secured creditors of the Company. The assets subject to the security granted to these creditors will continue to be used by the Company during the period of the Arrangement

## 8. ADMINISTRATION OF THE SCHEME

### 8 1 ADMINISTRATOR AND JOINT SUPERVISORS

- (a) Ian Michael Rose was appointed as liquidator via secretary of state appointment on 28 March 2011 and it is estimated that the liquidators' fees will be £5,000 plus VAT and disbursements and paid as an expenditure of the administration

- (b) For the purpose of considering the Proposal the administrator in office is Ian Michael Rose of Silke & Co Limited at 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR There shall be paid to the administrator the sum of £5,000 plus VAT and disbursements for his fees as administrator for the purposes of the Proposal and for convening and holding the necessary meetings of Creditors and Members
- (c) The Joint Supervisors shall be Ian Michael Rose and Catherine Lee-Baggaley of Silke & Co Limited at 1<sup>st</sup> Floor, Consort House, Waterdale, Doncaster, DN1 3HR Any enactment to be done by the Joint Supervisors may be done by one or both of the Joint Supervisors Both Ian Michael Rose and Catherine Lee-Baggaley are persons qualified to act as Insolvency Practitioners in relation to the Company and are authorised to act as Licensed Insolvency Practitioners by the Insolvency Practitioners Association
- (d) It is proposed that the Joint Supervisors be remunerated on the basis of their costs calculated on the basis of time spent on the administration of the Arrangement They will also be reimbursed for their incidental expenses and be empowered to appoint Solicitors and/or agents to assist them as either of them see fit They shall discharge the fees of such Solicitors and/or agents in priority to all other claims from realisations of the assets They shall be authorised to draw sums on account of such fees and costs from time to time

## 8 2 **BANKING ARRANGEMENTS**

The Joint Supervisors shall open an account or accounts with a United Kingdom branch or branches of a recognised bank in their name as "Joint Supervisors of National Hotlines Limited Voluntary Arrangement" and pay into such account or accounts all funds received or realised by them for distribution under the terms of this Proposal Any funds held by the Joint Supervisors which, in their opinion, are not required for the immediate purposes of this Voluntary Arrangement may be placed by either of them on deposit with any recognised bank in the United Kingdom

## 8 3 **EXPENSES**

The Joint Supervisors shall be authorised to pay from the funds under their control the fees, costs, charges and expenses they are required to pay by virtue of Rule 1 28 in the following order of priority -

- (a) The fees, costs, charges, expenses and disbursements of the administrator as mentioned in paragraph 8 1(a)
- (b) The costs of creditors' Solicitors who have presented Winding-Up Petitions against the Company prior to the approval of the Arrangement, if applicable
- (c) The fees of any Valuers, Agents and Solicitors instructed by the administrator and/or Joint Supervisors to deal with any matter arising prior to or after the approval of the Arrangement
- (d) The remuneration and expenses properly chargeable or incurred by the Joint Supervisors in administering the Arrangement, preserving, realising or getting in any of the assets of the Company, as mentioned in paragraph 8 1(d)
- (e) The costs of any action to which the Joint Supervisors are a party, where by costs are incurred by them, in their capacity as Joint Supervisors, unless the court orders otherwise
- (f) The costs of complying with any obligations laid upon the Joint Supervisors by virtue of these Proposals or the Act or any Rules, Regulations or Orders made thereunder
- (g) The fees of any Solicitors or third parties instructed by the director to assist him in the preparation of these Proposals and the Statement of Affairs at an amount to be agreed with the Joint Supervisors
- (h) In the event that any tax or VAT is not paid out of the net sale proceeds, any tax assessable on the Company or the Supervisor in respect of chargeable gains arising on

or after the approval of these Proposals in respect of assets transferred to the Joint Supervisors

- (i) Such other sums as he shall be authorised or required to pay by virtue of any rule of Law

#### 8 4 DUTIES AND POWERS OF THE JOINT SUPERVISORS

- (a) The Joint Supervisors are to receive the sums and the proceeds of sale of the assets provided in the Company's Proposal and to act in accordance with the provisions set out above
- (b) The Joint Supervisors have powers to bring, institute or defend any action or legal proceedings relating to the conduct of the Arrangement and to employ Solicitors and Counsel at the expense of the Arrangement
- (c) The Joint Supervisors have powers to employ agents including Solicitors, to assist in realisation, sale and disposal of assets. The Joint Supervisors may act on the opinion and advice of any information obtained from their agents and shall not be responsible for any loss occasioned by so acting whether such opinion, advice, or information howsoever conveyed or purporting to be conveyed, contained some error or shall not be authentic

#### 8 5 VACANCY IN OFFICE OF THE JOINT SUPERVISORS

Should a vacancy arise in the office of Joint Supervisor the remaining Supervisor will be entitled to continue supervision solely. However should both Supervisors be required to vacate office any such vacancy may be filled by the creditors in a General Meeting. For this purpose a Meeting may be convened by any creditor or senior employee of the Joint Supervisors and chaired by the convenor or by some other person nominated by the convenor in writing. The expenses of convening the Meeting shall be paid out from the funds in the Arrangement in priority to the remuneration and expenses of the Supervisor.

### 9. OTHER MATTERS

- 9 1 To the best of the administrators knowledge and belief, there are no circumstances given the Company's Compulsory liquidation or subsequent Administration, of claims in respect of the following sections under the Act -

- Section 238 (transactions at an undervalue)
- Section 239 (preferences)
- Section 244 (extortionate credit transactions)
- Section 245 (floating charges invalid)

In the event of any transaction subsequently being discovered which could give rise to the possibility of a claim against the Company in respect of the above, the Joint Supervisors have the power to petition for the Compulsory Winding-up of the Company if they consider this to be in the creditors' interest

- 9 2 A Winding Up Petition was presented against the Company by HM Revenue & Customs on 19 April 2010 in the High Court Of Justice Chancery Division, London under number 3206 of 2010. The Company was subsequently wound up on 28 July 2010 upon which K J Jackson of the Official Receivers Office, Bloomsbury Street, London was appointed. Subsequently Ian Michael Rose was appointed liquidator by way of a secretary of state appointment on 28 March 2011.

- 9 3 Following an application to Doncaster County Court by Ian Michael Rose as Liquidator the Company entered into Administration on 9 March 2015.

- 9 4 The director has not given personal guarantees in respect of any of the Company's liabilities.

- 9 5 For the purposes of this Arrangement no guarantees will be given in respect of the Company's debts by any third party, other than those referred to at paragraph 9 4 above.

- 9 6 For the purpose of this Arrangement no third party assets or contributions are to be included, other than those mentioned in paragraph 7 3.

9 7 **CREDITORS' COMMITTEE**

- (a) Should a Creditors' Committee be formed, then the Members of the Committee shall be those persons appointed by the creditors but no person shall be a member until he has confirmed in writing to the Joint Supervisors that he consents so to act
- (b) The function of the Committee is to assist the Joint Supervisors in the administration of the Voluntary Arrangement

9 8 **PARTICIPATING CREDITORS**

(a) **Claims**

The amounts in respect of which the Company's creditors shall be entitled to receive payments from the Joint Supervisors under the terms of this Voluntary Arrangement shall be the sums for which their proofs of debt as submitted following the Company entering into liquidation and subsequently administration on the date that these Proposals are approved by a Meeting of Creditors. The provisions of Rule 4.90 of the Rules (mutual credit and set-off) shall apply to this Arrangement

- (b) As soon as practicable after the approval of this Proposal (provided no application under Section 6 is pending), the Joint Supervisors shall send a notice to each creditor shown in the Company's Statement of Affairs, requiring them to provide such details of the amount claimed to be due to them from the Company, as the Joint Supervisors think fit. The Joint Supervisors shall

- (i) Send a similar notice to any other person they believe may be one of the Company's Creditors
- (ii) Be entitled but not obliged to insert a similar notice in such newspaper or newspapers as they consider appropriate
- (iii) Be entitled to ask for any further details or documentation they think necessary for the purpose of establishing the amount due to any person claiming to be a creditor

- (c) Creditors shall not be entitled to receive any payment from the Joint Supervisors under the Arrangement unless

- (i) They are bound by virtue of any undertaking to that effect and that any payments made to creditors are accepted in full and final settlement of all claims that they may have against the Company
- (ii) They have submitted to the Joint Supervisors details of the amounts they claim to be due to them from the Company
- (iii) The Joint Supervisors have admitted their claim for the purpose of participation in any payment to be made by them under this Arrangement

9 9 **ORDER OF PRIORITY OF DISTRIBUTION TO CREDITORS**

After paying or making provision for fees, costs, charges, disbursements and expenses, which the Joint Supervisors are required to pay by virtue of Rule 1.28 of the Rules or any Rule of Law, the Joint Supervisors shall apply the remaining funds they hold pursuant to this Voluntary Arrangement as follows -

- (a) Firstly, in payment of preferential debts, if any, as defined in paragraph 7.2 hereof
- (b) Secondly, in payment of the Company's unsecured debts, which are not preferential debts
- (c) Thirdly, in payment on debts falling within (a) and (b) calculated in accordance with Section 189 of the Act, the date of liquidation being substituted for the date of the approval of these Proposals, if applicable
- (d) Fourthly, in payment of amounts due to connected persons

- (e) Lastly, in payment of any surplus funds to the shareholders, in accordance with the Memorandum and Articles of Association of the Company

#### 9 10 PAYMENT OF DIVIDENDS

- (a) It is proposed that a dividend will be paid to the unsecured creditors annually, after having provided for the costs of completing the Arrangement and after confirming any liability for tax assessable on the Company or the Joint Supervisors or any chargeable gains arising on or after the approval of this Proposal Rule 4 182(1) of the Rules (provision for interim dividends on disputed or unascertained debts) shall apply to the Voluntary Arrangement
- (b) Dividends to creditors shall be paid by cheque and sent to them by post, at their risk, to the address notified by them to the Joint Supervisors
- (c) If any dividends remain unclaimed after the Joint Supervisors have notified the creditors that the Voluntary Arrangement has been fully implemented -
  - (i) They shall pay the amounts thereof to the Company and provide the director with a list of the persons to whom they are payable
  - (ii) The Joint Supervisors shall have no further duties, obligations or liabilities to those creditors
- (d) Rule 4 182(2) (proof after dividend declared) of the Rules shall apply to this Arrangement

#### 9 11 DURATION

- (a) This Arrangement shall continue for a maximum of one year until the Joint Supervisors issue either -
  - (i) A certificate that there is nothing more to be done under the Arrangement (a "Certificate of Due Completion")
  - (ii) A Certificate that there is material irregularity or omission in connection with the Proposal or Arrangement or that there has been a failure to comply with the terms of the Arrangement (a "Certificate of Termination")
  - (iii) The Joint Supervisors have complied with the provisions of Rule 1 29 (completion or termination of the arrangement) of the Rules
- (b) Upon the issue of a Certificate of Due Completion, the Company shall be released from all liabilities to persons bound by this Arrangement by virtue of Section 5(2)(b) of the Act, or by virtue of an undertaking to that effect
- (c) Unless and until a Certificate of Non-Compliance is issued, no creditor bound by the Arrangement shall be entitled to commence or continue legal proceedings against the Company or its property For this purpose, legal proceedings include winding-up proceedings, garnishment, execution and distress
- (d) The issue of a Certificate of Non-Compliance shall not prejudice the Joint Supervisors right to exercise any of their powers under the Voluntary Arrangement or to realise the assets and funds under their control and distribute the monies so realised in accordance with the terms of the Voluntary Arrangement

#### 9 12 CREDIT FACILITIES

The Company does not intend to arrange any credit facilities other than the normal terms of credit from suppliers Should the Company require additional credit facilities over and above the normal terms of credit from suppliers, then the written consent of the Joint Supervisors must be obtained

#### 9 13 The director shall keep the Joint Supervisors of the Arrangement fully informed of -

- (i) any change of registered office and trading addresses
- (ii) any change of director, directors and shareholder's details
- (iii) any change of contact email address and telephone numbers

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9 14     **THE PRESCRIBED PART**

To the best of the administrators knowledge and belief, the prescribed part is not applicable on account of the debenture granted to Lloyds TSB Bank plc has been satisfied in full

9 15     **EC REGULATIONS**

- (a) The administrator confirms that, should this Proposal and the Standard Conditions be approved by the Company's creditors, the EC Regulation on Insolvency Proceedings 2000 ("the EC Regulation") will apply to the Arrangement
- (b) The Company's centre of main interest is within the United Kingdom as a result of which the Arrangement, if approved, will be main proceedings for the purposes of the EC Regulation

**10. UNDERTAKING OF ADMINISTRATOR**

I, Ian Michael Rose the appointed administrator of the Company, hereby submit the following Proposal for consideration under Section 1 (3)b of the Insolvency Act 1986

I hereby confirm that this document fairly sets out my proposal for a Voluntary Arrangement and that to the best of my knowledge and belief all statements are true

Signed:



**Ian Michael Rose**  
**Administrator**

Date:

14 April 2015.

## APPENDIX I

### NATIONAL HOTLINES LIMITED

#### ESTIMATED STATEMENT OF AFFAIRS AS AT 9 MARCH 2015

	Notes	Book Value		Estimated to realise	
		£	£	£	£
<b>ASSETS SPECIFICALLY PLEDGED</b>					
Cash At Bank	(1)	82,448		82,448	
Less Post Appointment Expenses of Ms J Morris	(2)	<u>(50,889)</u>		<u>(50,889)</u>	
Shortfall/(Surplus)			31,559		31,559
Total Assets Specifically Pledged			<u>31,559</u>		<u>31,559</u>
<b>ASSETS NOT SPECIFICALLY PLEDGED</b>					
Premium Telephone Numbers	(3)	Unknown		Unknown	
Book Debts	(4)	Unknown		Unknown	
Funds Held In ISA Account	(5)	<u>1,713</u>		<u>1,713</u>	
Total Assets Not Specifically Pledged			1,713		1,713
Total Assets Available to Preferential Creditors			<u>33,272</u>		<u>33,272</u>
<b>PREFERENTIAL CREDITORS</b>					
None					
Total Assets Available to Unsecured Creditors			<u>33,272</u>		<u>33,272</u>
<b>NON PREFERENTIAL CREDITORS</b>					
HM Revenue & Customs		(66,059)		(66,059)	
Directors Loan Account		<u>(9,353)</u>		<u>(9,353)</u>	
Trade and Expense Creditors		<u>0</u>		<u>0</u>	
Total Unsecured Creditors			(75,412)		(75,412)
SHORTFALL TO CREDITORS			<u>(42,140)</u>		<u>(42,140)</u>
<b>ISSUED SHAREHOLDING</b>					
Ordinary £1 shares			<u>(92,953)</u>		<u>(92,953)</u>
SHORTFALL TO MEMBERS			<u>(135,093)</u>		<u>(135,093)</u>



**National Hotlines Limited**  
**Creditors with Statement of Affairs Figures**

<b>Key</b>	<b>Name</b>	<b>SofA 1</b>	<b>SofA2</b>	<b>SofA Total</b>
CH01	H M Revenue & Customs	66,059 00	0 00	66,059 00
CM00	Michael Tegerdine	9,353 00	0 00	9,353 00
<b>2 Entries Totalling</b>		<b>75,412.00</b>	<b>0.00</b>	<b>75,412.00</b>

## **NOTES TO ESTIMATED STATEMENT OF AFFAIRS**

- 1        The Cash at Bank is being held by Lloyds TSB and will be requested for release to the joint supervisors subject to approval of the proposed CVA. This revenue was automatically generated following the compulsory winding up of the Company as Lloyds TSB Bank plc continued to operate automated direct debit instructions.
- 2        Without the introduction of funds from the director and his partner for continuation of the associated phone line costs this cash at bank would not be available to creditors. If the Company is to return to liquidation then the cash at bank would be reduced less the expenses of the director and his partner which in turn would offer a derisory dividend to creditors against the proposed CVA given the applicable costs in liquidation.
- 3        The value of the Company Phone Numbers are unknown as it is not clear if the numbers can be classed as a viable asset for recovery or sale due to the contractual requirements surrounding their use and potential reassignment. The administrator believes this will not require a costly third party review should the CVA be accepted given there is sufficient cash available to discharge creditors in full inclusive of statutory interest under the proposed CVA.
- 4        The book debts of the Company are unknown but given the nature of trading the director has stated he does not believe any further debts would be recoverable in either administration, liquidation or a CVA scenario.
- 5        The funds held in the ISA account of the Company represent the remaining cash assets received following the appointment of Ian Michael Rose as liquidator minus applicable costs to date.
- 6        The inclusion of any claim does not constitute an admittance of the debt. All claims are subject to formal adjudication.
- 7        The Estimated Statement of Affairs is not subject to any costs or expenses associated with the Arrangement.
- 8        It is assumed the Company will be placed into liquidation should the CVA not take effect.

**APPENDIX II**  
**NATIONAL HOTLINES LIMITED (IN ADMINISTRATION)**

**SUMMARY ACCOUNTS**

	Year ended 30/09/2008 £	Year ended 30/09/2007 £
Turnover	192,687	221,463
Gross profit/(loss)	177,643	197,285
Profit/(loss) for the financial period	(338)	527
Accumulated profits/(losses) at period end	108,983	109,321
Directors' remuneration	10,870	10,450
Dividends paid	Nil	Nil
Fixed Assets	173,169	98,807
Current Assets	210,194	380,390
Current Liabilities	(129,700)	(191,952)
Long term Liabilities	(52,087)	(85,331)
Shareholders funds/net assets (net liabilities)	201,576	201,914

# APPENDIX III

## NATIONAL HOTLINES LIMITED

### COMPARISON BETWEEN EXIT FROM ADMINISTRATION VIA LIQUIDATION AND EXITING VIA A CVA FROM ADMINISTRATION AND ESTIMATED DIVIDEND PAYMENTS AS AT 13 APRIL 2015

	Notes	Liquidation	CVA
		£	£
<b>ASSETS SPECIFICALLY PLEDGED</b>			
Cash At Bank	(1)	82,448	82,448
Less Post Appointment Expenses of Ms J Morris	(2)	(50,889)	Excluded
Surplus/(Shortfall) c/fwd		31,559	82,448
<b>Total Assets (Surplus)</b>		<b>31,559</b>	<b>82,448</b>
<b>ASSETS NOT SPECIFICALLY PLEDGED</b>			
Premium Telephone Numbers	(3)	Unknown	Excluded
Book Debts	(4)	Unknown	Excluded
Funds Held In ISA Account	(5)	1,713	1,713
Voluntary Contributions		0	0
<b>Total Assets Not Specifically Pledged</b>		<b>1,713</b>	<b>1,713</b>
<b>Total Assets Subject to Costs</b>		<b>33,272</b>	<b>84,161</b>
<b>ESTIMATED COSTS</b>			
Petitioning creditor's & Official Receivers costs		(4,200)	N/A
Official Receiver's Fees on Realisations		(4,077)	N/A
Official Receiver's Fees on Distributions		(1,189)	N/A
Official Receiver's Disbursements		(500)	N/A
Secretary of State Fees		(7,036)	N/A
Legal Fees		(2,500)	(2,500)
Liquidators Fees		(10,000)	(5,000)
Administrators Fees		(5,000)	(5,000)
Supervisor's Fees (estimated)		N/A	(5,000)
Supervisor's Disbursements (estimated)		N/A	(500)
<b>Total Costs</b>		<b>(34,502)</b>	<b>(18,000)</b>
<b>Total Assets Available to Preferential Creditors</b>		<b>(1,230)</b>	<b>66,161</b>
<b>PREFERENTIAL CREDITORS</b>			
Employee Claims (Arrears of Pay & Holiday Pay)		0	N/A
<b>Total Assets Available to Unsecured Creditors</b>		<b>(1,230)</b>	<b>66,161</b>
<b>NON PREFERENTIAL CREDITORS</b>			
HM Revenue & Customs		(66,059)	(66,059)
Directors Loan Account		(9,353)	Excluded
Trade and Expense Creditors		0	0
<b>Total Unsecured Creditors</b>		<b>(75,412)</b>	<b>(66,059)</b>
<b>SHORTFALL TO CREDITORS</b>		<b>(76,642)</b>	<b>102</b>
<b>ISSUED SHAREHOLDING</b>			
Ordinary £1 shares		(92,953)	(92,953)
<b>SHORTFALL TO SHAREHOLDERS</b>		<b>(169,595)</b>	<b>(92,851)</b>
<b>ESTIMATED DIVIDEND PAYMENT (p in the £)</b>			
<b>TO NON-PREFERENTIAL CREDITORS</b>		<b>0 0</b>	<b>100 0</b>

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## APPENDIX IV

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### REQUISITE MAJORITIES

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The Insolvency Rules 1986 1 19(1), (2), (3) and (4) provide as follows -

- 1 19(1) Subject to paragraph (2), at the creditors' meeting, a resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it
- 1 19(2) A resolution to approve the Proposal or a modification is passed when a majority of three-quarters or more (in value) of those present & voting in person or by proxy have voted in favour of it
- 1 19(3) In the following cases there is to be left out of account a creditor's vote in respect of any claim or part of a claim -
- (a) where written notice of the claim was not given, either at the Meeting or before it, to the Chairman or [nominee],
  - (b) where the claim or part is secured,
  - (c) where a claim is in respect of a debt wholly or partly on, or secured by, a current bill of exchange or promissory note, unless the creditor is willing -
    - (i) to treat the liability to him on the bill or note of every person who is liable on it antecedently to the Company and against who a Bankruptcy Order has not been made (or in the case of a Company, which has not gone into Liquidation), as a security in his hands, and
    - (ii) to estimate the value of the security and (for the purpose of entitlement to vote, but not of any distribution under the Arrangement) to deduct it from his claim
- 1 19(4) Any Resolution is invalid if those voting against it include more than half the value of the creditors counting in these latter only those -
- (a) to whom notice of the meeting was sent
  - (b) whose votes are not to be left out of account under paragraph (3), and
  - (c) who are not, to the best of the Chairman's belief, persons connection with the Company
- 1 19(5) It is for the chairman of the meeting to decide whether under this Rule -
- (a) a vote is to be left out of account in accordance with paragraph (3), or
  - (b) a person is a connected person for the purposes of paragraph (4)(c),
- and in relation to the second of these two cases the chairman is entitled to rely on the information provided by the company's statement of affairs or otherwise in accordance with this Part of the Rules
- 1 19(6) If the chairman uses a proxy contrary to Rule 1 15, his vote with that proxy does not count towards any majority under this Rule
- 1 19(7) The chairman's decision on any matter under this Rule is subject to appeal to the court by any creditor or member and paragraphs (5) to (7) of Rule 1 17A apply as regards such an appeal
-

## **APPENDIX V**

### **VOLUNTARY ARRANGEMENTS - A CREDITORS' GUIDE TO INSOLVENCY PRACTITIONERS' FEES**

#### **1. Introduction**

- 1 1 In a voluntary arrangement, as in other types of insolvency, the amount of money available for creditors is likely to be affected by the level of costs, including the remuneration of the insolvency practitioner appointed to implement the arrangement. This guide explains how fees are fixed in voluntary arrangements, how the creditors can affect the level of fees, and the information which should be made available to them regarding fees.

#### **2. The voluntary arrangement procedure**

- 2 1 Voluntary arrangements are available to both companies and individual debtors. Company voluntary arrangements are often referred to as CVAs, and individual voluntary arrangements as IVAs.
- 2 2 The procedure is similar for both CVAs and IVAs and enables the company or individual to put a proposal to their creditors for a composition in satisfaction of their debts or a scheme of arrangement of their affairs. A composition is an agreement under which creditors agree to accept a certain sum of money in settlement of the debts due to them. A CVA may be used as a stand-alone procedure or as an exit route from an administration. It may also be used where a company is in liquidation, but this is extremely rare. The proposal will be made by the directors, the administrator or the liquidator, depending on the circumstances. A proposal for an IVA may be made by a debtor whether or not he is already subject to bankruptcy proceedings. The proposal will be considered by creditors at a meeting convened for that purpose. The procedure is extremely flexible and the form which the voluntary arrangement takes will depend on the terms of the proposal agreed by the creditors. In both CVAs and IVAs the proposal must provide for an insolvency practitioner to supervise the implementation of the arrangement. Until the proposal is approved by the creditors, the practitioner is known as the nominee. If the proposal is approved, the nominee (or if the creditors choose to replace him, his replacement) becomes the supervisor.

#### **3. Fees, costs and charges - statutory provisions**

- 3 1 The fees, costs, charges and expenses which may be incurred for the purposes of a voluntary arrangement are set out in the Insolvency Rules 1986 (rule 1 28 for CVAs and rule 5 33 (previously 5 28) for IVAs). They are
- any disbursements made by the nominee prior to the arrangement coming into effect, and any remuneration for his services agreed between himself and the company (or the administrator or liquidator, as the case may be) or the debtor (or the official receiver or trustee, where the debtor is subject to bankruptcy proceedings),
  - any fees, costs, charges or expenses which
    - are sanctioned by the terms of the arrangement (see below), or
    - would be payable, or correspond to those which would be payable, in an administration, winding up or bankruptcy (as the case may be)
- 3 2 The rules also require the following matters to be stated or otherwise dealt with in the proposal (rule 1 3 for CVAs and rule 5 3 for IVAs)
- The amount proposed to be paid to the nominee (as such) by way of remuneration and expenses, and
  - The manner in which it is proposed that the supervisor of the arrangement should be remunerated and his expenses defrayed

#### **4 The role of the creditors**

- 4 1 The nominee should be prepared to disclose the basis of his fees to the meeting if called upon to do so. Although there are no further statutory provisions relating to remuneration in voluntary arrangements, the terms of the proposal may provide for the establishment of a committee of creditors and may include among its functions the fixing of the supervisor's remuneration.

## **5. What information should the creditors receive?**

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

- 5 1 1 When seeking agreement for the basis or bases of remuneration, the voluntary arrangement proposal or the supervisor (where fees and disbursements are subject to agreement after approval of the arrangement) should provide sufficient supporting information to enable the creditors (or the committee of creditors where applicable) 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.
- 5 1 2 If any part of the remuneration is sought on a time costs basis, the proposal or the supervisor 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.
- 5 1 3 The proposal or the supervisor 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 supervisor or his or her staff.
- 5 2 After the bases of remuneration have been fixed, the supervisor is required to send reports to creditors at specified intervals in accordance with rule 5.31A. When reporting to creditors, in addition to the matters specified in rule 5.31A, the supervisor 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 supervisor 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 supervisor 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 supervisor should also provide details and the cost of any work that has been sub-contracted out that could otherwise be carried out by the supervisor or his or her staff.

### **5.3 Disbursements and other expenses**

- 5 3 1 Costs met by and reimbursed to the supervisor in connection with the voluntary arrangement 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 voluntary arrangement and a payment to an independent third party. These may include, for example, room hire, storage, postage, telephone charges, travel expenses, and equivalent costs reimbursed to the supervisor or his or her staff.
  - **Category 2 disbursements** These are costs that are directly referable to the voluntary arrangement but not to a payment to an independent third party. They may include shared or allocated costs that can be allocated to the voluntary arrangement on a proper and reasonable basis, for example, business mileage.

Category 1 disbursements can be drawn without prior approval, although the supervisor 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 supervisor's remuneration. When seeking approval, the supervisor should explain, for each category of expense, the basis on which the charge is being made.

5.3.2 The following are not permissible

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

**6. Provision of information – additional requirements**

The nominee or supervisor is required to provide certain information about the time spent on the case, free of charge, upon request by specified persons. The persons entitled to ask for this information are –

- any creditor,
- where the arrangement relates to a company, any director or member of that company, and
- where the arrangement relates to an individual, that individual

The information which must be provided is –

the total number of hours spent on the case by the insolvency practitioner 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 nominee's or supervisor'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 nominee or supervisor, and requests must be made within two years from vacation of office

**7. What if a creditor or debtor is dissatisfied?**

Where a creditor or the debtor is dissatisfied the terms of the voluntary arrangement proposal may provide what action can be taken. In the absence of such a provision a creditor or a debtor who is dissatisfied by any act, omission or decision of the supervisor may apply to the court (s 263 Insolvency Act 1986)

**8. Effective date**

This guide applies where the nominee in relation to the arrangement agrees to act on or after 1 November 2011



## **APPENDIX VI**

### **SILKE & CO LIMITED DISBURSEMENT AND CHARGEOUT RATES**

**EFFECTIVE FROM 1 OCTOBER 2013**

#### **Disbursements**

##### **Definitions**

Category 1 - approval not required - specific expenditure that is directly related to a particular insolvency case, where the cost of the expense incurred is referable against an independent external supplier's invoice or published tariff of charges

Category 2 - approval required - all other items of expenditure Which cannot, or cannot easily, be directly related to a particular insolvency case because there is an element of shared or allocated cost, and/or where the cost of the expense incurred is an estimated, utilised cost with the estimate based on external costs or opportunity costs

##### **Charging Policy of Silke & Co Limited**

Category 1 expenses are recharged to the particular insolvency case at the rate incurred by Silke & Co Limited and as they are incurred

Category 2 expenses, the following items are recharged at the following rates

- Where meeting rooms of Silke & Co Limited are used for the purpose of statutory meetings of creditors the room hire is recharged to the individual insolvency case at £150 per meeting
- Car mileage is recharged to the individual insolvency case at the rate of 45p per mile
- The storage of books and records (when not charged as a Category 1 expense) is recharged at the rate of £1 50 per box per month
- Printing and photocopying is charged at 15p per sheet
- Faxes are charged at 50p per sheet
- Postage is charged at the relevant prevailing rate
- IPS computer charge £6 25 per Month (maximum £200 per case)
- Stationary charged at £5 00 per file

#### **Chargeout Rates**

The hourly rates for the different levels of staff are shown below

Insolvency Practitioner	£350
Manager	£275
Assistant Manager	£225
Senior Administrator	£200
Administrator	£175
Cashier	£150
Assistants and Support Staff	£100

Time is charged to the individual insolvency case in 6 minute units

## **APPENDIX VII**

### **COMPANY VOLUNTARY ARRANGEMENT STANDARD TERMS & CONDITIONS**

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## **PART I. INTERPRETATION**

### **1 Miscellaneous definitions**

1 In the Arrangement, except where the context otherwise demands

- (a) **"the Act"** means the Insolvency Act 1986 as amended,
- (b) **"the Arrangement"** means the Proposal and the Conditions read together,
- (c) **"Associate"** shall have the meaning given to it in section 435 of the Act,
- (d) **"the Conditions"** are these Conditions,
- (e) **"the Court"** means any court having jurisdiction in respect of the Arrangement,
- (f) **"Creditor"** is a person bound by the Arrangement to whom a Debt is owed,
- (g) **"Debt"** has the meaning given to it in section 382 of the Act with the modifications necessary to refer to a voluntary arrangement,
- (h) **"the Debtor"** means the Company that makes the Proposal,
- (i) **"Dividend"** means a distribution to Creditors,
- (j) **"Excluded Assets"** are those assets identified in the Proposal as being excluded from the Arrangement,
- (k) **"Paragraphs"** are Paragraphs of these Conditions, and Sub-paragraph shall be construed accordingly,
- (l) **"Preferential Creditor"** is a Creditor with a Debt falling within section 175 of the Act and **"Preferential Debt"** shall be construed accordingly,
- (m) **"Property"** has the meaning given to it in section 436 of the Act,
- (n) **"the Proposal"** is the document annexed hereto together with modifications and documents incorporated thereto, being a proposal under Part I of the Act,
- (o) **"the Rules"** means the Insolvency Rules 1986 as amended,
- (p) **"Security"** has the meaning given to it in section 383 of the Act, and **"Secured Creditor"** shall be construed accordingly,
- (q) **"the Supervisor"** is the person or persons for the time being appointed to supervise the implementation of the Arrangement,
- (r) **"Shareholder"** is a holder of ordinary or preference shares

### **2 The Conditions**

2 The Conditions are an integral part of the Arrangement. In the event of any ambiguity or conflict between the Conditions and the Proposal and any modifications to it, the Proposal as modified shall prevail

## **PART II. COMMENCEMENT, EFFECT, AND DURATION OF ARRANGEMENT**

### **3 Commencement of Arrangement**

3 The Arrangement shall come into effect upon the approval thereof by the Creditors pursuant to the provisions of the Act and Rules

### **4 Nature and effect of the Arrangement**

- 4(1) [Nature of Arrangement] The Arrangement is a proposal under Part I of the Act for a scheme of arrangement of the Debtor's affairs or a composition in full and final satisfaction of the Debtor's Debts
- 4(2) [Claims against third parties] Unless the Proposal indicates to the contrary, nothing in the Arrangement shall be construed as effecting a composition or satisfaction of any Debt owed by a person other than the Debtor, whether that Debt is owed jointly by the Debtor or otherwise
- 4(3) [Restriction on Creditors' rights] After the commencement of the Arrangement, no Creditor shall, in respect of any Debt which is subject to the Arrangement
  - (a) have any remedy against the property or person of the Debtor,
  - (b) commence or continue any action or other legal proceeding against the Debtor
  - (c) during that time, a Creditor shall look only to the Arrangement for his remedies and for payment in respect of any debts
- 4(4) [Saving for certain rights] Nothing in this Paragraph or elsewhere in the Conditions shall be construed as affecting the following rights
  - (a) the right of any Secured Creditor to enforce his Security, except with the Secured Creditor's consent,
  - (b) the right of the Supervisor or any Creditor to present a winding-up petition under section 274(4)(b) of the Act for default in connection with the Arrangement
  - (c) the right of any Creditor to bring or continue legal proceedings against the Debtor and to obtain a judgment against the Debtor in the full amount of its Debt for the sole purpose of making a claim against an insurer of the Debtor by virtue of the Third Party (Rights Against Insurers) Act 1930

## **5 Existing proceedings against Debtor**

- 5(1) [Discontinuance of existing proceedings] Legal proceedings against the Debtor in existence at the commencement of the Arrangement in respect of Debts which are subject to the Arrangement shall, unless they are of a type contemplated by Paragraph 4(4), be discontinued by the Creditor as soon after the commencement of the Arrangement as is practicable
- 5(2) [Costs of existing proceedings] Legal costs of a Creditor or Shareholder in proceedings other than winding-up referred to in Sub-paragraph (1) shall be a Debt falling within the Arrangement
- 5(3) [Costs of winding-up proceedings] Petition costs of a Creditor who presented a winding-up petition against the Debtor prior to the commencement of the Arrangement shall be treated as an expense of the Arrangement to rank after the costs of the Nominee but before those of the Supervisor

## **6 Existing execution against Debtor's assets**

- 6(1) [Partly-completed execution] A Creditor who, before the commencement of the Arrangement, has issued execution against the goods or land of the Debtor in respect of a Debt which is subject to the Arrangement, or has attached a Debt due to the Debtor from another person in respect of such a Debt shall, unless the execution or attachment was completed before the commencement of the Arrangement, discontinue the execution or attachment as soon after the commencement of the Arrangement as is practicable
- 6(2) [Completion of execution or attachment] For the purposes of Sub-paragraph (1)
- (a) an execution against goods is completed by seizure and sale or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979,
- (b) an execution against land is completed by seizure, by the appointment of a receiver or by the making of a charging order absolute under section 1 of the Charging Orders Act 1979,
- (c) an attachment of a Debt is completed by the receipt of the Debt

## **7 Mutual credit and set-off**

- 7(1) [Application] This Paragraph applies where before the commencement of the Arrangement there have been mutual credits, mutual Debts or other mutual dealings between the Debtor and any Creditor other than in the circumstances to which Paragraph 74 of these Conditions apply
- 7(2) [Account to be taken] An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set-off against the sums due from the other
- 7(3) [No account where Creditor has notice] Sums due from the Debtor to another party shall not be included in the account taken under Sub-paragraph (2) if that other party had notice at the time they became due that a winding-up petition relating to the Debtor was pending
- 7(4) [Restriction on post-commencement set-off] Other than as provided for in this Paragraph, set-off shall not be available in respect of any Debt or item of Property
- 7(5) [Balance provable or to be paid] Only the balance (if any) of the account taken under Sub-paragraph (2) is provable in the Arrangement or, as the case may be, to be paid to the Debtor or, if the Proposal so provides, to the Supervisor

## **8 Duration of Arrangement**

- 8(1) [General rule] Unless extended under the provisions of these Conditions, the Arrangement shall continue until the end of the period stated in the Proposal
- 8(2) [Extension of duration by Supervisor] The Supervisor may, if he thinks fit for the purposes of finalising the administration of the Arrangement, extend the duration of the Arrangement by sending a notice to this effect ("an Extension Notice") to the Debtor and all Creditors and Shareholders of the Company. This may be done on up to 2 occasions for a period of up to 6 months in the first instance and for a period of up to 3 months in the second instance
- 8(3) [Extension Notice] An Extension Notice shall be sent not less than 7 days prior to the date upon which the Arrangement is otherwise due to complete and must state the reason or reasons for the extension
- 8(4) [Effect of extension] In the event of an Extension Notice being sent, the Arrangement shall continue for the period specified therein, or for the maximum allowable period for that extension (being 6 months for a first extension and 3 months for a second extension) commencing on the date immediately after that on which the Arrangement would otherwise have been completed, whichever is sooner
- 8(5) [Supervening notice calling a meeting of Creditors] In the event that a meeting of Creditors has been called by the Supervisor for a time after the Arrangement would otherwise have expired, the duration of the Arrangement shall be extended to the date of that meeting and of any adjournment thereof
- 8(6) [Further extension] Any extension for a period longer than that provided for under Paragraph 8(2) shall require approval as a variation in accordance with Paragraph 81

## **9 Completion of Arrangement**

- 9(1) [The Completion Certificate] Upon the expiration of the Arrangement, the Supervisor shall, if the Debtor has complied with his obligations under the Arrangement, issue a certificate ("the Completion Certificate") stating that the Proposal has been fully implemented
- 9(2) [Effect of Completion Certificate] Save to the extent provided in Paragraph 4(4), upon the issue by the Supervisor of a Completion Certificate, the Debtor shall be released from all Debts which are subject to the Arrangement
- 9(3) [Notification of issue of Completion Certificate] Copies of the Completion Certificate issued under this Paragraph shall be sent by the Supervisor to the Debtor, the Creditors, the Shareholders, the Secretary of State for Trade and Industry and the Court together with the Supervisor's report under Rule 1 29 (completion or termination of Arrangement)

## **10 Substantial Compliance**

- 10(1) [Issue of certificate where substantial compliance] The Supervisor may, if he thinks fit, issue a Completion Certificate notwithstanding the fact that the Debtor has not complied with all of its obligations under the Arrangement provided that the Debtor has
- (a) made all payments required of it under the terms of the Arrangement,
- (b) provided a full explanation of any breach of the terms of the Arrangement required by the Supervisor,
- (c) paid to the Supervisor such sum (if any) as the Supervisor shall reasonably have required to compensate the Creditors for any reduction in Dividend caused by the Debtor's breach of the terms of the Arrangement
- 10(2) [Notification to creditors] Where the Supervisor proposes to issue a Completion Certificate under Sub-paragraph 1 he shall notify the Creditors accordingly and invite them to submit any comments within 21 days from the date of notification
- 10(3) [Treatment as full implementation] If the Supervisor issues a Completion Certificate under Sub-paragraph (1), the Arrangement shall be treated as fully implemented for the purposes of Rule 5 34

## **11 Termination of Arrangement**

- 11(1) [Termination in certain circumstances] The Arrangement shall terminate upon
- (a) the Supervisor issuing a Certificate of Termination under Paragraph 71,
- (b) the making of a winding-up order against the Debtor,
- (c) the passing of a resolution for the voluntary winding-up of the Company
- none of which circumstances shall affect the trusts created under Paragraph 28
- 11(2) [Notice of termination] The Supervisor shall, on discovering the occurrence of a terminating event, but in any event not more than 28 days after such discovery, give notice of such termination and the reason therefore to the Debtor, the Directors of the Debtor and Creditors

## **PART III: SUPERVISOR'S FUNCTIONS, POWERS ETC**

### **12 Supervisor's functions**

- 12(1) [Primary function] The Supervisor's primary function is to supervise the Debtor's performance of its obligations under the Arrangement and to administer the Arrangement
- 12(2) [Other functions] The Supervisor shall also undertake such functions as are given to him in the Proposal, Act and Rules

### **13 Supervisor's powers**

- 13 Subject to those powers more particularly given to him in the Arrangement, Act and Rules, the Supervisor shall have the following powers
- 13(1) [Getting in assets] power to take possession of, collect, get in and hold any or all of the assets which, under the terms of the Arrangement, he is to hold as Supervisor,
- 13(2) [Realisation of assets] power to sell or otherwise dispose of any asset referred to in Sub-paragraph (1) in such manner as may seem to him expedient,
- 13(3) [Putting funds on deposit] power to place money coming into his hands during the course of the Arrangement on deposit with any established United Kingdom clearing bank or building society,
- 13(4) [Appointing agents] power to engage legal representatives, managers, agents and other persons to assist the Supervisor in the performance of his functions under the Arrangement,
- 13(5) [Delegation] power to delegate to his firm and any appropriate partner, employee or agent thereof any or all of his duties and functions under the Arrangement save those which by law he is required to perform personally,
- 13(6) [Insurance] power to effect and maintain insurances in respect of any asset subject to the Arrangement,

- 13(7) [Power to claim] power to prove, rank, claim and draw a Dividend in respect of such Debts owed to the Debtor as fall within the Arrangement,
- 13(8) [Power to direct Debtor] power, in the event that the Supervisor is unable or it is impracticable for him to do any act or thing which he is empowered to do himself, to direct the Debtor to do that act or thing on his behalf,
- 13(9) [Compromise] power to make any arrangement or compromise on behalf of the Company
- 13(10) [Petition] power to present or defend a winding up petition
- 13(11) [Dismissal Of Petition] The Joint Supervisors will be empowered to make application for the dismissal of any winding up petition on approval and successful implementation of the Arrangement
- 13(12) [Ancillary power] power to do any other act or thing which is necessary or expedient for the purposes of exercising the above powers or for carrying out his functions under the Arrangement

#### **14 Supervisor's powers upon completion/termination**

- 14(1) [Exercise of powers after completion/termination] Completion and/or termination of the Arrangement shall not affect the Supervisor's power to carry out such of his functions and to exercise such of his powers as are necessary for him to fully carry out his duties, obligations and responsibilities under the Arrangement, Act and Rules and to resolve such matters as may have arisen during the course of the Arrangement
- 14(2) [Retention of funds by Supervisor] Upon completion and/or termination of the arrangement, the Supervisor shall be entitled to retain for such period as he reasonably deems necessary from any funds under his control such moneys as he reasonably thinks fit on account of his fees, costs, charges, liabilities and expenses, and shall advise Creditors and the Debtor in writing of the quantum of the funds so retained and the reasons why

#### **15 Exercise of Supervisor's functions and powers**

- 15(1) [Application of winding-up provisions] In the event that the Arrangement does not provide guidance to the Supervisor as to what action he should take in any given situation, the Supervisor shall apply the provisions of the Act and Rules in so far as they relate to winding-up with necessary modifications
- 15(2) [Consultation of Creditors] If the Supervisor is uncertain as to what action he should take in any situation, or wishes to ascertain the wishes of Creditors on a matter concerning the Arrangement, he may seek the advice and/or direction of the Creditors' Committee and/or the majority or most material of the Creditors and he may act upon such advice and/or direction
- 15(3) [Directions from the Court] This Paragraph is without prejudice to the Supervisor's right to refer matters concerning the Arrangement to the Court for guidance and/or directions if, in his discretion, he shall think fit

#### **16 Restriction upon Supervisor's duty and liability**

- 16(1) [Supervisor's duty] The Supervisor shall be under no obligation to perform any act or carry out any function save for those expressly provided for in the Arrangement, the Act or Rules
- 16(2) [Supervisor's liability] Neither the Supervisor, his firm or any of his agents or employees shall incur any personal liability in negligence or otherwise for any act or omission carried out by him or any of them in connection with the Arrangement, unless such act or omission constitutes one of dishonesty or a breach of the Supervisor's obligations under the Act, Rules or the Arrangement

#### **17 Supervisor's fees, costs and expenses**

- 17(1) [Amount of fees] The Supervisor shall be entitled to charge fees for his services in accordance with the time actually and reasonably expended by him and his staff in carrying out the Supervisor's functions under the Arrangement by reference to the ordinary hourly rates of the Supervisor and his staff as shall apply from time to time
- 17(2) [Payment of fees, costs and expenses] The fees, costs, charges and expenses of the Supervisor shall be paid out of the assets of the Arrangement from time to time as the Supervisor thinks fit. The Supervisor shall provide such information to any Creditors' committee appointed in relation to the Arrangement as is reasonably necessary to explain how the fees, costs, charges and expenses were determined or incurred, as the case may be
- 17(3) [Supervisor's right of recourse to Court] If the Supervisor is dissatisfied with a determination of the Creditors Committee or a meeting of Creditors on a matter involving his fees, costs, charges and/or expenses, he shall have the right to refer the matter to the Court, whose decision on the matter shall bind all parties

#### **18 Supervisor's resignation**

- 18(1) [Methods of resignation] A Supervisor may resign from office with the approval of a meeting of Creditors or with the leave of the Court

- 18(2) [Grounds of Supervisor's resignation] The Supervisor may only resign from office on one or more of the following grounds
- (a) ill health,
  - (b) cessation of practice as an insolvency practitioner,
  - (c) change of circumstances rendering it impracticable for him to continue in office,
  - (d) impracticability to have the present number of persons acting as Supervisor to the Arrangement
- 18(3) [Report of Supervisor's administration] The notice to Creditors convening a meeting for the purpose of receiving his resignation shall specify the grounds upon which the Supervisor wishes to resign and shall be accompanied by a report of the Supervisor's administration of the Arrangement which includes an up to date summary of his receipts and payments
- 19 Removal of Supervisor from office**
- 19(1) [Methods of removal] On cause being shown, the Supervisor may be removed from office by the Court or by a resolution of a meeting of Creditors
- 19(2) [Notice of requisitioned meeting] Any notice served by a Creditor upon the Supervisor under Paragraph 60(2) (notice requisitioning meeting) for the purpose of convening a meeting of Creditors to remove the Supervisor from office must set out the grounds upon which his removal is sought
- 19(3) [Report of Supervisor's administration] The notice sent out by the Supervisor to Creditors convening such a requisitioned meeting shall specify the grounds upon which his removal is sought and shall be accompanied by a report of the Supervisor's administration of the Arrangement including an up to date summary of his receipts and payments
- 20 Vacation of Office by Supervisor**
- 20(1) [Resignation/removal of Supervisor where more than one acting] If the Creditors resolve to accept the resignation of a Supervisor, or to remove a Supervisor from office, and there will be another person in the office of Supervisor for the time being, the Supervisor who is resigning or being removed shall vacate office immediately
- 20(2) [Resignation/removal of Supervisor where no other acting] If the Creditors resolve to accept a Supervisor's resignation or to remove a Supervisor from office, and there is no other person in the office of Supervisor for the time being, that resignation and/or removal shall not take effect and the Supervisor shall not vacate office unless and until a meeting of Creditors or the Court appoints a replacement Supervisor
- 20(3) [Loss of qualification] The Supervisor shall vacate office immediately if he ceases to be a person who is for the time being qualified to act as Supervisor
- 20(4) [Notice of vacation of office] A Supervisor who, for any reason, vacates office shall forthwith give notice of that fact to the Court, the Debtor the Creditors, the Shareholders, and the Secretary of State for Trade and Industry
- 20(5) [Duties of Supervisor upon vacation of office] A Supervisor who, for any reason, vacates office shall, as soon as practicable, deliver up to his successor Supervisor or Supervisors all books, records and papers relating to the Arrangement and his administration thereof together with all assets of which he is a trustee under the terms of the Arrangement
- 20(6) [Continuing duty of former Supervisor] Former Supervisors shall be obliged to give such assistance to the Supervisor of the Arrangement from time to time as he may reasonably require for ascertaining what transpired during the tenure of office by the former Supervisor
- 21 Vacancy in the office of Supervisor**
- 21(1) [Meeting of Creditors to fill vacancy] If, for any reason, there is a vacancy in the office of Supervisor, that vacancy may be filled by a meeting of Creditors or by the Court
- 21(2) [Convening a meeting where no Supervisor acting] If no Supervisor is in office, such a meeting of Creditors may be convened by the Debtor, any Creditor, any person who was in partnership with the Supervisor immediately before the vacancy occurred, or by the former Supervisor's authorising body
- 21(3) [Chairman where no Supervisor acting] In the event that a meeting of Creditors is called when no Supervisor is in office, the person who convened the meeting shall act as chairman of that meeting

#### **PART IV: DEBTOR'S WARRANTY, DUTIES & OBLIGATIONS**

**22 Debtor's warranty**

- 22(1) [Disclosure in Proposal] The Directors of the Debtor warrant that they have disclosed in the Proposal full and complete particulars of all matters required of them under the Act and Rules including (without prejudice to the generality of the foregoing) particulars of all of the Debtors assets, Debts and liabilities, whether actual, contingent or prospective



- 22(2) [Accuracy of Proposal] The Directors of the Debtor warrant that the contents of the Proposal are true and accurate in all material respects as at the date of the commencement of the Arrangement, subject only to those qualifications that may be disclosed by the Directors of the Debtor at the meeting of Creditors held to approve the arrangement, which qualifications shall be recorded by the Supervisor in his report to the Court under Rule 1 24 (report of Creditors' meeting)
- 22(3) [Disclosure of third party information] The Debtor authorises any creditor to disclose to the Supervisor such information relating to the Debtor, its dealings or property as may reasonably be required to assist in the implementation of the Arrangement

**23 Debtor's duties in relation to Supervisor**

- 23(1) [Duty to co-operate with Supervisor] The Directors of the Debtor undertake and agrees that during the subsistence of the Arrangement they will
- (a) give to the Supervisor such information as to the Debtors assets, liabilities and other affairs,
  - (b) attend on the Supervisor, his agents, representatives or nominees at such times, and
  - (c) do all such other things,
- as the Supervisor shall reasonably require for the purpose of carrying out his functions and duties under the Arrangement
- 23(2) [Duty to submit accounts] The Directors of the Debtor undertake and agree to furnish the Supervisor with accounts relating to the Debtors business of such nature, as at such date and for such period as the Supervisor may reasonably require

**24 Duty to hand over property to Supervisor**

- 24 Forthwith after the Commencement of the Arrangement, and subject to the provisions of the Proposal, the Directors of the Debtor shall do all that is required for putting the Supervisor into possession of the assets included in the Arrangement

**25 Further Documents**

- 25 Without prejudice to the generality of the Debtor's other duties under the Arrangement, the Directors of the Debtor shall, at the request of the Supervisor, execute such Mortgages, Charges, Deeds, Transfers, Trusts, Powers of Attorney or other documents as may reasonably be required by the Supervisor for the protection and/or realisation of assets, to secure the Debtor's compliance (or its Directors) with its obligations under the Arrangement, or otherwise to facilitate the implementation of the Arrangement

**26 Debtor's acknowledgement**

- 26(1) [Agreement to be bound] The Directors of the Debtor undertake to carry out the obligations imposed upon them under the Arrangement in full and at the times provided for
- 26(2) [Consequences of breach] The Directors of the Debtor acknowledge that the likely consequence of their failure to comply with his obligations hereunder in full and at the times provided for is that the Arrangement will fail and the Debtor will be wound-up
- 26(3)
- 26(4) [Rule 1 30] Each of the Directors of the Debtor acknowledge that they commit an offence if they make any false representation or commit any other fraud for the purpose of obtaining the approval of Creditors to the Arrangement

**PART V: ARRANGEMENT ASSETS**

**27 Arrangement assets**

- 27 Property other than Excluded Assets belonging to or vested in the Debtor at the date of commencement of the Arrangement which would form part of the Debtor's estate in a winding-up shall be subject to the Arrangement and be an asset thereof

**28 After-acquired assets**

- 28 [After-acquired property subject to Arrangement] Assets subject to the Arrangement will include, save such equipment, stock or other property as are necessary to the Debtor for use in its business, any property acquired by the debtor between the commencement date of the Arrangement and the date of its completion and/or termination which would have been capable of being an asset of the Arrangement if it belonged to or was vested in the Debtor at the date of commencement of the Arrangement Any such asset shall be subject to the Arrangement and be an asset thereof

**29 Trust of Arrangement assets**

- 29(1) [Assets in the possession of the Debtor] Property constituting an asset of the Arrangement in the possession, custody or control of the Debtor shall be held by the Debtor upon trust for the purposes of the Arrangement until realisation thereof (if so provided) in accordance with the Arrangement
- 29(2) [Assets in the possession of the Supervisor] Property constituting an asset of the Arrangement in the possession, custody or control of the Supervisor shall be held by the Supervisor upon trust for the purposes of the Arrangement
- 29(3) [Trusts to survive termination of Arrangement] The trusts referred to in Sub-paragraphs (1) and (2) shall not come to an end upon termination of the Arrangement. Instead those assets shall be got in and realised by the Supervisor, and any proceeds applied and distributed in accordance with the terms of the Arrangement

**30 Restriction on sale of business**

- 30 Until the Supervisor has issued a certificate of due completion, or without his prior written consent, the Directors and Shareholders of the Debtor will not sell or agree to sell the business, its goodwill, or any asset, save in the ordinary course of business and for the purpose of trading

**PART VI: CLAIMS**

**31 Notice to submit claims**

- 31 As soon as practicable after the commencement of the Arrangement, and provided no application under Section 6 of the Act (challenge of meeting's decision) or an appeal under Rule 1 17(5) (appeal from chairman's decision) is pending, the Supervisor shall send a notice ("a Notice to Submit Claims") to every Creditor and other person to whom the Debtor may be indebted of whom he has notice requiring them to provide such details of their claims as the Supervisor thinks fit

**32 Submission of claims**

- 32 Creditors shall submit their claims in writing to the Supervisor in the form, if any, required by the Supervisor, or one which is substantially similar

**33 Variation of claims**

- 33 A Creditor's claim may at any time be withdrawn or varied

**34 Production of documents**

- 34 The Supervisor may call for any document or other evidence to be produced to him, where he thinks it necessary, for the purpose of substantiating the whole or any part of the claim

**35 Affidavit substantiating claim**

- 35 The Supervisor may, if he thinks it necessary, require a claim to be verified by affidavit

**36 Supervisor to allow inspection of claims**

- 36 The Supervisor shall, so long as claims lodged with him are in his hands, allow them to be inspected, at all reasonable times on any business day, by
- (a) any Creditor who has submitted his claim (unless that claim has been wholly rejected for the purposes of Dividend or otherwise), and
  - (b) the Directors of the , and
  - (c) the Debtor

**37 Admission and rejection of claims for Dividend**

- 37(1) [Admission] A claim may be admitted for Dividend either for the whole of the amount claimed by the Creditor, or for part of that amount
- 37(2) [Rejection] If the Supervisor rejects a claim in whole or in part, he shall prepare a written statement of his reasons for so doing and send it to the Creditor

**38 Appeal against decision on claim**

- 38(1) [Application by Creditor] If a Creditor is dissatisfied with the Supervisor's decision with respect to his claim or its ranking he may apply to the Court, within 21 days (or such longer period as the Court shall, in the special circumstances, allow) of receiving the statement sent under Paragraph 36(2) for the decision to be reversed or varied
- 38(2) [Application by Debtor or other Creditor] The Debtor or any other Creditor may, if dissatisfied with the Supervisor's decision admitting or rejecting the whole or any part of a claim, make such an

- application within 21 days (or such longer period as the Court shall, in the special circumstances, allow) of becoming aware of the Supervisor's decision
- 38(3) [Costs of appeal] The Supervisor is not personally liable for the costs incurred by any person in respect of an appeal under this Paragraph unless the Court so orders
- 39 Debts of uncertain value**
- 39(1) [Estimation of Debt or liability] The Supervisor shall estimate the value of any Debt which, by reason of its being subject to a contingency or for any other reason, does not bear a certain value
- 39(2) [Notification to Creditor] The Supervisor shall notify the Creditor in writing of any such estimate. If the Creditor is dissatisfied with the Supervisor's decision he may exercise his rights under paragraph 37
- 39(3) [Claim of Debts of uncertain value] Where the value of any Debt is estimated by the Supervisor under Sub-paragraph (1), the amount provable in the Arrangement shall be the amount of the estimate
- 40 Secured Creditors**
- 40(1) [Proving for balance of Debt] A Secured Creditor may claim for the balance of his Debt (if any), after deducting the value of his Security
- 40(2) [Voluntary surrender of Security] If a Secured Creditor voluntarily surrenders his Security for the general benefit of the Creditors, he may claim for his whole Debt, as if it were unsecured
- 40(3) [Altering value of Security] A Secured Creditor may, with the agreement of the Supervisor or the leave of the Court, at any time alter the value which he has, in his claim, put upon his Security
- 40(4) [Test of Security's value] If the Supervisor is dissatisfied with the value which a Secured Creditor puts on his Security (whether in his claim or by way of re-valuation), he may require the Security to be professionally valued by a person agreed as between the Creditor and the Supervisor, or in default of such agreement by the Court
- 40(5) [Professional valuation treated as amended valuation] Where a professional valuation has been carried out under the previous Sub-paragraph, that valuation shall be treated as an amended valuation of the Creditor
- 40(6) [Realisation of Security] If a Creditor who has valued his Security subsequently realises it
- (a) the Creditor shall forthwith notify the Supervisor and shall give the Supervisor such information relating thereto as he may reasonably require,
- (b) the net amount realised shall be substituted for the value previously put by the Creditor on the Security, and
- (c) that amount shall be treated in all respects as an amended valuation by him
- 41 Foreign currency Debts**
- 41(1) [Conversion into sterling] For the purpose of claiming for a Debt incurred or payable in a currency other than sterling, the amount of the Debt shall be converted into sterling at the official exchange rate prevailing on the date of the commencement of the Arrangement
- 41(2) [The official exchange rate] The official exchange rate is the middle exchange rate on the London Foreign Exchange Market at the close of business, as published for the date in question. In the absence of any such published rate, it is such rate as the Supervisor and Creditor agree or, in default of such agreement, the Court determines
- 42 Debts payable at future time**
- 42 Subject to Paragraph 55 (adjustment of Dividend where payment made before time) a Creditor may claim for a Debt of which payment was not yet due at the date of commencement of the Arrangement
- 43 Interest on Debts**
- 43 Where a Debt bears interest, that interest may be claimed as part of the Debt except in so far as it is payable in respect of any period after the commencement of the Arrangement
- 44 Cost of submitting claims**
- 44(1) [Creditor bears cost of submitting claim] Every Creditor bears the cost of submitting his own claim, including such cost as may be incurred in obtaining valuations, providing documents, affidavits or other evidence to the Supervisor
- 44(2) [Supervisor's costs] Costs incurred by the Supervisor in estimating the value of a Debt of uncertain value shall be an expense of the Arrangement

## **PART VII: PAYMENT OF DIVIDENDS**

- 45 Distribution by Dividend**

- 45(1) [Duty to declare and distribute Dividends] At the time or times specified in the Proposal or, if none, whenever the Supervisor has sufficient funds in hand for the purpose, the Supervisor shall, subject to the retention of such sums as he considers necessary for payment of the expenses of the Arrangement, declare and distribute Dividends among the Creditors in respect of those of their claims which have been admitted
- 45(2) [Calculation and distribution of Dividend] In the calculation and distribution of a Dividend the Supervisor shall make provision
- (a) for any Debts which are the subject of claims which have not yet been determined, and
- (b) for disputed claims
- 45(3) [Relevant date for claims] The amount on which any dividend is calculated will be the amount that would be admitted for dividend purposes had a Creditor petitioned for the winding-up of the Debtor on the day the Arrangement was approved

#### **46 Notice of intended Dividend**

- 46(1) [Notice to Creditors who have not claimed] No more than three months before declaring a Dividend to non-preferential Creditors, the Supervisor shall give notice of his intention to do so to all such Creditors whose addresses are known to him and who have not submitted their claims
- 46(2) [Last date for submitting claims] Any notice sent out to Creditors under Sub-paragraph (1) shall specify a date ("the Last Date for Submitting Claims") up to which claims may be lodged. The Last date for Submitting Claims shall be the same for all Creditors, and not less than 21 days from the date of the notice

#### **47 Notice of declaration**

- 47(1) [Notice to Creditors who have claimed] The Supervisor shall give notice of the Dividend to all Creditors who have submitted their claims
- 47(2) [Particulars in notice] The notice shall include the following particulars
- (a) amounts realised from the sale of assets subject to the Arrangement and/or amounts paid by the Debtor to the Supervisor under the Arrangement,
- (b) payments made by the Supervisor during the course of the Arrangement,
- (c) provision (if any) made for unsettled claims, and funds (if any) retained for particular purposes,
- (d) the total amount to be distributed, and the rate of Dividend,
- (e) whether, and if so when, any further Dividend is expected to be declared
- 47(3) [Simultaneous distribution] The Dividend may be distributed simultaneously with the notice declaring it
- 47(4) [Method of payment] Payment of Dividend may be made by post, or arrangements may be made with any Creditor for it to be paid in another way, or held for his collection
- 47(5) [Endorsement in negotiable instrument] Where a Dividend is paid on a bill of exchange or other negotiable instrument, the amount of the Dividend shall be endorsed on the instrument, or on a certified copy of it, if required to be produced by the holder for that purpose

#### **48 Claim altered after payment of Dividend**

- 48(1) [Amount claimed increased] If, after payment of Dividend, the amount claimed by a Creditor is increased, the Creditor is not entitled to disturb the distribution of the Dividend, but he is entitled to be paid, out of any money for the time being available for the payment of any further Dividend, any Dividend or Dividends which he has failed to receive before that money is applied to the payment of any such further Dividend
- 48(2) [Claim withdrawn, disallowed, reduced] If, after a Creditor's claim has been admitted, the claim is withdrawn or disallowed, or the amount of it is reduced, the Creditor shall repay to the Supervisor any amount overpaid by way of Dividend

#### **49 Secured Creditors**

- 49(1) [Application of Paragraph] The following applies where a Creditor re-values his Security at a time when a Dividend has been declared
- 49(2) [Reduction in unsecured claim] If the re-valuation results in a reduction of his unsecured claim ranking for Dividend, the Creditor shall, as soon as practicable, repay to the Supervisor any amount received by him as Dividend in excess of that to which he would be entitled having regard to the re-valuation of the Security
- 49(3) [Increase of unsecured claim] If the re-valuation results in an increase of his unsecured claim, the Creditor is entitled to receive from the Supervisor, out of any money for the time being available for the payment of a further Dividend, before any such Dividend is paid, any Dividend or Dividends which he has failed to receive, having regard to the re-valuation of the Security. However, the Creditor is not entitled to disturb any Dividend declared (whether or not distributed) before the date of the revaluation

**50 Assignment of Debts or rights to Dividend**

- 50(1) [Notice of assignment] If a person entitled to a Dividend gives notice to the Supervisor that he wishes the Dividend to be paid to another person, or that he has assigned his entitlement or Debt to another person, the Supervisor shall pay the Dividend to that other person accordingly
- 50(2) [Contents of notice] A notice given under this Paragraph must specify the name and address of the person to whom payment is to be made

**51 Debts payable at future time**

- 51(1) [Entitlement to Dividend] Where a Creditor has claimed for a Debt of which payment is not due at the date of the declaration of Dividend, he is entitled to Dividend equally with other Creditors, but subject as follows
- 51(2) [Calculation of amount of reduction] For the purpose of Dividend (and for no other purpose), the amount of the Creditor's admitted claim (or, if a distribution has previously been made to him, the amount remaining outstanding in respect of his admitted claim) shall be reduced by a percentage calculated as follows

$$\frac{I \times M}{12}$$

where I is 5 per cent and M is the number of months (expressed, if need be, as or as including, fractions of months) between the declaration of Dividend and the date when payment of the Creditor's Debt would otherwise be due

**52 Debts of unpaid Creditors**

- 52(1) [Creditors not entitled to Dividend] Creditors who do not claim in the Arrangement shall not be entitled to receive any Dividend
- 52(2) [Unclaimed Dividends paid to Debtor] Dividends due to Creditors who have claimed in the Arrangement but who have not claimed or been paid their Dividends shall, at the end of the Arrangement, be paid to the Debtor
- 52(3) [Debtor liable for unclaimed Dividends] Once a Dividend has been paid to the Debtor under the previous Sub-paragraph, the Creditor must claim it from the Debtor and no other person

**PART VIII. PRIORITY OF PAYMENTS AND DISTRIBUTIONS**

**53 Costs and Expenses of the Arrangement**

- 53(1) [Expenses to be paid first] Subject to Paragraphs 5(3) and 72 the fees, costs, charges, expenses and liabilities properly charged or incurred by or on behalf of the Nominee or the Supervisor are expenses of the Arrangement and shall be paid in priority to all other charges, expenses, liabilities and Debts
- 53(2) [Charge in relation to expenses] The Supervisor shall have a charge on the assets subject to the Arrangement in respect of the expenses of the Arrangement

**54 Priority of Debts and application of surplus**

- 54(1) [Priority of preferential Debts] In the distribution of sums due to be paid to Creditors under the terms of the Arrangement, Preferential Debts shall be paid in priority to other Debts
- 54(2) [Ranking of preferential Debts] Preferential Debts rank equally between themselves after the expenses of the Arrangement
- 54(3) [Ranking of ordinary Debts] Debts other than Preferential Debts rank equally between themselves and, after the Preferential Debts, shall be paid in full unless the sums due to be paid to Creditors are insufficient for meeting them, in which case they abate in equal proportions between themselves
- 54(4) [Surplus after payment] Any surplus remaining after the payment of the Preferential and other Debts shall first be applied in paying interest on those Debts in respect of the periods during which they have been outstanding since the commencement of the Arrangement (for this purpose interest on Preferential Debts ranks equally with interest on Debts other than Preferential Debts) and thereafter returned to the Debtor
- 54(5) [Interest rate on surplus] The rate of interest payable under Sub-paragraph (4) in respect of any Debt is whichever is the greater of the following
- (a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the Arrangement, and
- (b) the rate applicable to that Debt apart from the Arrangement

**PART IX: THE CREDITORS COMMITTEE & MEETINGS OF CREDITORS**

**55 The Creditors' Committee**

- 55(1) [Establishment] Any meeting of Creditors may establish a committee ("the Creditors' Committee"), consisting of not less than 3 and not more than 5 members to represent the interests of the Creditors and to provide such assistance and guidance to the Supervisor as he may reasonably require
- 55(2) [Eligibility] All the members of the Creditors' Committee must be Creditors of the Debtor, and any Creditor (other than one who is fully secured) may be a member, so long as
- (a) he has lodged a claim, and
  - (b) his claim has neither been wholly disallowed for voting purposes, nor wholly rejected for the purposes of distribution or Dividend
- 55(3) The Committee of Creditors shall assist the Supervisor in discharging his duties and shall have the following specific powers -

- (a) To approve any amendments to the Arrangement in accordance with Paragraph 7 19 and Paragraph 7 20
- (b) To approve the remuneration of the Joint Supervisors

The provisions of the Insolvency Rules 4 152 (2) to 4 170 (with the exception of Rules 4 154, 4 158(1), 4 165, 4 167(3) and 4 167(5)) shall apply to the membership and procedures of the Committee of Creditors, substituting as necessary the "Joint Supervisors" for the "Liquidator", "Voluntary Arrangement" for "Liquidation" and "Committee of Creditors" for "Liquidation Committee" where such names or expressions appear within the Rules

- 55(4) [Expenses of members] The reasonable travelling expenses directly incurred by any member of the Creditors' Committee or their representatives in respect of their attendance at the meetings of the Creditors' Committee, or otherwise on the Creditors' Committee's business, shall rank as an expense of the Arrangement

#### **56 Power to call/requisition meetings of Creditors**

- 56(1) [Supervisor's power to call meetings] The Supervisor may, if he thinks it desirable, summon and conduct meetings of Creditors for any purpose connected with the Arrangement
- 56(2) [Power to requisition a meeting] If requested in writing by the Debtor, or by Creditors with not less than one-quarter in value of the total amount of Debts subject to the Arrangement, the Supervisor shall, unless relieved by the Court from so doing, convene a meeting of Creditors within 21 days from the receipt of such request
- 56(3) [Content of notice requisitioning meeting] A notice served upon the Supervisor under Sub-paragraph (2) shall state the purpose for which the meeting is to be held

#### **57 Calling Creditors' meetings**

- 57(1) [Notice of meeting] Notice of a Creditor's meeting shall be given by the person convening the meeting to the Debtor and every Creditor whose address is known to him or identified in the Proposal at least 14 days before the date fixed for the meeting, or such shorter period as the Court may allow
- 57(2) [Contents of notice] The notice to Creditors shall specify the purpose for which the meeting is convened and a time and date (not earlier than 4 00 p m on the business day before the meeting) by which Creditors must lodge proxies and those who have not already lodged claims must do so, in order to be entitled to vote at the meeting
- 57(3) [Forms of proxy] With every notice convening a Creditors' meeting there shall be sent out forms of proxy
- 57(4) [Venue of meeting] In fixing the venue for a meeting of Creditors, the person convening it shall have regard to the convenience of the parties who may wish to attend
- 57(5) [Time of meeting] Meetings of Creditors shall be convened for commencement between the hours of 10 00 and 16 00 on a business day, unless the Court otherwise directs
- 57(6) [Chairman of meeting] Unless Paragraph 21(3) (chairman where no Supervisor acting) applies, the Supervisor, or a person experienced in insolvency matters and nominated by him, shall be chairman of the meeting

#### **58 Cost of summoning meetings**

- 58(1) [Security for payment of expenses] Subject to Sub-paragraph (3) below, the cost of summoning and holding a meeting of Creditors at the instance of the Debtor or Creditors under Paragraph 60(2) shall be paid by that person or persons, who shall deposit security for their payment with the Supervisor
- 58(2) [Appropriate security] The sum to be deposited shall be such as the Supervisor determines to be appropriate, and the Supervisor shall be under no obligation to act without the deposit having been paid

- 58(3) [Vote for cost to be an expense of arrangement] Where a meeting is so summoned, it may vote that the expenses of convening and holding it shall rank as an expense of the Arrangement
- 58(4) [Repayment of deposit] To the extent that any deposit made under this Paragraph is not required for the payment of expenses of convening and holding the meeting, it shall be repaid to the person who made it

## **59 Entitlement to vote**

- 59(1) [Conditions for voting] Subject as follows, at a meeting of Creditors a person is entitled to vote as a Creditor only if
- (a) he has duly lodged his claim by the time and date stated in the notice of the meeting, and
  - (b) the claim has been admitted under the next Paragraph for the purpose of entitlement to vote, and there has been lodged, by that time and date, any proxy requisite for that entitlement
- 59(2) [Unliquidated and unascertained claims] A Creditor shall not vote in respect of a Debt for an unliquidated amount, or any Debt whose value is not ascertained, except where the Chairman agrees to put upon the Debt an estimated minimum value for the purpose of entitlement to vote
- 59(3) [Secured Creditors] A Secured Creditor is entitled to vote only in respect of the balance (if any) of his Debt after deducting the value of his Security as estimated by him

## **60 Admission and rejection of claim**

- 60(1) [Chairman's discretion] The chairman has power to admit or reject a Creditor's claim for the purpose of his entitlement to vote, and the power is exercisable with respect to the whole or any part of the claim
- 60(2) [Appeal from chairman's decision] The chairman's decision on entitlement to vote is subject to appeal to the Court by any Creditor, or by the Debtor, within 21 days of the meeting of Creditors at which the decision was made, or such longer period as the Court shall, in the special circumstances, allow
- 60(3) [Voting subject to objection] If the chairman is in doubt whether a claim should be admitted or rejected, he shall mark it objected to and allow the Creditor to vote, subject to his vote being subsequently declared invalid if the objection to the claim is sustained
- 60(4) [Where chairman's decision reversed] If, on an appeal, the chairman's decision is reversed or varied, or a Creditor's vote is declared invalid, the Court may order another meeting to be summoned, or make such other order as it thinks fit, provided that the Court considers the matter is such as to give rise to unfair prejudice or a material irregularity
- 60(5) [Costs of appeal] The chairman is not personally liable for the costs incurred by any person in respect of an appeal under this Paragraph unless the Court so orders

## **61 Majorities required to pass resolutions**

- 61(1) [Resolutions by majority in value] Subject as follows, at a meeting of Creditors a resolution is passed when a majority in value of Creditors present and voting, in person or by proxy, have voted in favour of the resolution
- 61(2) [Resolutions varying terms of Arrangement] In the case of a resolution varying the terms of the Arrangement, a majority in excess of three-quarters in value of those present and voting, in person or by proxy, is required to pass the resolution
- 61(3) [Votes rendering resolution invalid] Any resolution is invalid if those voting against it include more than half in value of the Creditors who are not, to the best of the chairman's belief, Associates of the Debtor
- 61(4) [Resolution for the appointment of Supervisor] In the case of a resolution for the appointment of a Supervisor
- (a) if on any vote there are 2 nominees for appointment, the person who obtains the most support is appointed, provided that such support represents a majority in value of all those present (in person or by proxy) at the meeting and entitled to vote, and
  - (b) if there are 3 or more nominees, and one of them has a clear majority over both or all of the others together, that one is appointed, and
  - (c) in any other case, the chairman shall continue to take votes (disregarding at each vote any nominee who has withdrawn and, if no nominee has withdrawn, the nominee who obtained the least support last time), until a clear majority is obtained for any one nominee
- 61(5) [Resolution for joint appointment] The chairman may at any time put to the meeting a resolution for the joint appointment of any 2 or more nominees if he thinks it appropriate

## **62 Chairman of meeting as proxy-holder**

- 62 Where the chairman at a meeting holds a proxy for a Creditor which requires him to vote for a particular resolution, and no other person proposes that resolution, he shall himself propose it

## **63 Suspension/adjournment of meeting**

- 63(1) [Suspension] Once only in the course of any meeting, the chairman may, in his discretion and without an adjournment, declare the meeting suspended for any period up to one hour
- 63(2) [Adjournment] The chairman at any meeting may, in his discretion, and shall, if the meeting so resolves, adjourn it to such time and place as seems to him to be appropriate in the circumstances, provided that if the chairman is the Supervisor and a resolution has been proposed for his removal, the chairman shall not adjourn the meeting without the consent of at least one half in value of the Creditors present (in person or by proxy) and entitled to vote
- 63(3) [Period of adjournment] An adjournment under this Paragraph shall not be for a period of more than 14 days, or such longer period as the Court may allow
- 63(4) [Use of claims and proxies at adjourned meeting] Where a meeting is adjourned under this Paragraph, claims and proxies may be used if lodged at any time up to 4 00 p m on the business day immediately before the adjourned meeting

#### **64 Record of proceedings**

- 64(1) [Minutes of proceedings] The chairman of any Creditors' meeting shall cause minutes of the proceedings at the meeting, signed by him, to be retained as part of the records of the Arrangement
- 64(2) [List of Creditors attending] The chairman shall also cause to be made and kept a list of all the Creditors who attended the meeting either in person or by proxy and the amount of their claims for voting purposes
- 64(3) [Record of resolutions] The minutes of the meeting shall include a record of the resolutions which were taken at the meeting and the decision on each one
- 64(4) [List of creditors to be circulated] The list of Creditors referred to in Sub-paragraph (2) shall be sent with the chairman's report to Creditors, the Debtor and the Court

#### **65 Postal resolutions**

- 65(1) [Application of procedure] The following procedure may be utilised by the Supervisor, if he thinks fit, for the purposes of ascertaining the wishes of Creditors on any matter concerning the Arrangement other than the removal of the Supervisor
- 65(2) [Notice of proposed resolution] The Supervisor may send to the Debtor and every Creditor whose address is known to him or identified in the Proposal a notice containing a copy of any proposed resolution on which a decision is sought, which shall be set out in a such a way that agreement with or dissent from each separate resolution may be indicated by the recipient on the copy so sent
- 65(3) [Contents of notice] The notice must specify a date ("the Last Date for Voting"), not less than 21 days after the date of sending thereof, by which Creditors must lodge their votes with the Supervisor and those who have not already lodged claims must do so, in order to be entitled to vote
- 65(4) [Creditors requiring meeting] Creditors with one-quarter in value of the total amount of Debts subject to the Arrangement may, within 14 days from the date upon which the Supervisor sent out the resolution, request the Supervisor in writing to summon a meeting of Creditors to consider the matters raised by the resolution and, if they so request, the Supervisor shall call a meeting of Creditors for that purpose
- 65(5) [Deemed passing of resolution] In the absence such a request, the resolution is deemed to have been carried at a duly convened meeting of Creditors, if, of the written votes received by the Supervisor by the end of the Last Date for Voting, a sufficient majority of Creditors as defined in Paragraph 61 entitled to vote on the resolution have indicated their consent to the resolution in writing
- 65(6) [Application of voting rights and majorities] The provisions of Paragraphs 63(entitlement to vote), 64 (admission and rejection of claims) and 65 (majorities required to pass resolutions) shall apply to postal votes as they do to votes at meetings of Creditors
- 65(7) [Copy of resolutions] A copy of every resolution taken under this Paragraph, together with copies of the votes of Creditors received by the Supervisor endorsed by the Supervisor with the date upon which the vote was received by him, shall be kept with the records of the Arrangement

### **PART X: PROVISIONS FOLLOWING BREACH OF THE ARRANGEMENT**

#### **66 Breach by the Debtor of the terms of the Arrangement**

- 66 The Debtor shall be regarded as in breach of the Arrangement if
- (a) it fails to comply with any of his obligations under the Arrangement,
- (b) information which was false or misleading in any material particular or contains any material omissions
- (i) was contained in any statement of affairs or other document supplied by the Debtor under Part I under the Act to any person, or
- (ii) was otherwise made available by the Debtor to its Creditors at or in connection with any meeting of Creditors held, or any postal resolution taken, in connection with the Arrangement, or



- (c) the Debtor or its Directors fail to do all such things as may for the purposes of the Arrangement have been reasonably required of the Debtor by the Supervisor

**67 Procedure following breach**

- 67(1) [Notice of Breach] If, at any time, it appears to the Supervisor that the Debtor is in breach of the Arrangement, then, unless such breach is remedied forthwith, he shall as soon as practicable issue to the Debtor a notice ("Notice of Breach") identifying the breach and requiring the Debtor within one month of sending the notice
- (a) to remedy the breach if it is capable of being remedied, and, if he thinks fit
- (b) to give a full explanation of the breach
- 67(2) [Remedy of breach] If, within the one month period referred to in Sub-paragraph (1), or such longer period not exceeding a further one month as the Supervisor shall reasonably allow, the Debtor
- (a) remedies his breach of the Arrangement,
- (b) if so required in the Notice of Breach, provides a full explanation of the breach, and
- (c) pays to the Supervisor such sum (if any) as the Supervisor may reasonably require to compensate the Creditors for any reduction in Dividend caused by the Debtor's breach,
- no further action shall be taken against the Debtor save that the Supervisor shall report the breach to the Creditors when he next sends his comments to Creditors on the progress and efficacy of the Arrangement under Rule 126 (Supervisor's accounts and reports), or on the next convenient occasion, if earlier
- 67(3) [Certificate of Termination/winding-up petition] If the Debtor has not done those things specified in Sub-paragraph (2) by the time specified or allowed, the Supervisor shall if he considers it appropriate, convene a meeting of Creditors to resolve whether or not to do the following things
- (i) issue a certificate ("Certificate of Termination") terminating the Arrangement by reason of the Debtor's breach,
- (ii) present a petition for the winding-up of the Debtor,
- (iii) vary the terms of the arrangement under Paragraph 81,
- (iv) take no action
- (v) Alternatively the Supervisor shall utilise his discretion as Supervisor to allow the Debtor time to bring the arrears up to date without the necessity of notifying Creditors or issue a certificate of termination
- 67(4) [Supervisor's duty] If the Creditors resolve to issue a Certificate of Termination and/or to present a winding-up petition against the Debtor, the Supervisor shall do so as soon as practicable
- 67(5) [Copies of Certificate of Termination] A copy of any Certificate of Termination issued by the Supervisor shall be sent to the Debtor, the Directors of the Debtor and Creditors and Shareholders together with the notice under Paragraph 11

**68 Retention of funds by Supervisor**

- 68 The Supervisor shall, at all times during the course of the Arrangement, retain sufficient of the funds coming into his hands as represents his best estimate of the costs of petitioning for the Debtor's winding-up should the Creditors so direct under the previous Paragraph hereof. Such costs shall be provided for in priority to any other costs of the Arrangement

**PART XI. MISCELLANEOUS PROVISIONS**

**69 Third Party obligations**

- 69(1) [Application of Paragraph] This Paragraph applies where the Proposal includes any obligation on the part of a person other than the Supervisor or Debtor to pay monies, transfer assets or do any other thing
- 69(2) [Evidence of agreement] The third party shall sign the Proposal or such other document evidencing his agreement to be bound by the obligation as the Supervisor shall reasonably require
- 69(3) [Enforcement of obligation] The obligations of the third party shall be enforceable by the Supervisor, or by the Debtor at the direction of the Supervisor
- 69(4) [Failure a default of arrangement] The failure by the third party to carry out the obligation when due shall constitute a breach of the arrangement

**70 Variation of the Arrangement**

- 70(1) [Variation with Creditors' approval] The provisions of this Arrangement may be amended with the approval of a meeting of Creditors
- 70(2) [Consent of Debtor/third party to variation required] No variation of the terms of the Arrangement shall be of any effect unless made with the consent of the Debtor and any third party affected thereby
- 70(3) [Saving for certain rights] No variation which restricts the following rights shall be of effect
- (a) the right of any Secured Creditor to enforce his Security, except with the Secured Creditor's consent,

- (b) the right of a Preferential Creditor to be paid in priority to other Creditors, except with that Creditor's consent,
- (c) the right of a Preferential Creditor to be paid pro rata with other Preferential Creditors, except with that Creditor's consent
- 70(4) [Unfair prejudice and material irregularity] No variation shall be of effect if it unfairly prejudices the rights of any Creditor or if there has been any material irregularity in the operation of the provisions of this Paragraph
- 70(5) [Meeting of Creditors] When convening a meeting of creditors, notice shall include details of the proposed variation. The meeting will be convened pursuant to Section 4 of the Act and 1 13 and 1 21 of the Rules with the following amendments
  - (a) reference to "the proposal" to read "proposed variation"
  - (b) reference to the "Nominee" to read "Supervisor"
  - (c) creditors claims for voting purposes will be calculated with reference to the date of the meeting held to consider the original proposals
  - (d) no variation will be considered which proposes to change the Supervisor
- 70(6) [Restriction on variation] No variation shall be of effect if it causes the Arrangement to cease to be a voluntary arrangement within Part I of the Act

## **71 Tax liabilities arising on realisations**

- 71 [Tax to be paid out of proceeds] Taxation liabilities of the Debtor arising on the sale or other realisation of any asset subject to the Arrangement shall, in so far as those proceeds are sufficient, be discharged out of the sale proceeds of the asset in question

## **72 Invalidity and/or illegality**

- 72 If any provision or part of the Arrangement is found to be contrary to the Act or Rules, illegal, invalid or contrary to public policy, that will not affect the validity of the remainder of the Arrangement and the provision or part of the Arrangement in question shall be construed accordingly

## **73 Claims of the landlord**

- 73 [Claims of Landlord] A liability or debt arising in respect of any leasehold premises or licence to occupy will be dealt with as follows
  - (a) arrears of rent and any other debt or liability due as at the date of the Arrangement was approved will rank as an unsecured creditor
  - (b) if the Company vacates the premises during the course of the Arrangement, the landlords claim for any debt or liability arising after approval of the Arrangement will be an unsecured claim by virtue that it was a contingent claim existing at the date the Arrangement was approved. The amount of the claim will be calculated as the lower of an amount equal to 2 years rent, or, an amount equal to the rent due for the period beginning on the date the premises are vacated and ending on the date the premises are released

## **74 Supervisor's liabilities**

- 74 Neither the Supervisor, his firm, nor any of his agents, employees or servants shall, for any reason whatsoever, or in any manner whatsoever, incur any personal liability in respect of any act, deed, thing or omission carried out by any of them in connection with their acting as Supervisor or in connection with the supervision and implementation of this Arrangement unless by reason of negligence. The Supervisor will not enter into any contract or other arrangements in a position or manner so as to incur any personal liability

## **75 Set-off of repayments**

- 75 [Set-off of repayments] Set-off of refunds due from the Crown against debts due to the Crown will be in accordance with statute and established legal principles

## **76 Wrongdoing**

- 76 If the Supervisor becomes aware of any matter which in the context of a liquidation would constitute a prior transaction under Sections 238, 239, 244 or 245 which was not disclosed in the Proposal then he shall forthwith report the same to the creditors and convene a creditors' meeting. Subject to the rights of the Company to apply to the court, the Supervisor shall propose at such meeting the failure of the Arrangement

## **77 Ambiguity**

- 77 Where any part of these conditions incorporates any provisions of the Act or Rules and such incorporation gives rise to an ambiguity or inconsistency, then the Supervisor shall within his own

absolute discretion resolve such ambiguity or inconsistency as he shall think fit Any such decision shall be subject to the jurisdiction of the Court

## **PART XII: CONTINUATION OF BUSINESS**

### **78 Continuation of Business**

- 78(1) The following Conditions shall only apply if the Company's business is to be continued for any reason whatsoever
- 78(2) The Company shall continue its business under the control of its existing directors and in its existing name
- 78(3) Until such time as the Arrangement has been completed, the Company shall not
- (a) enter into any contract or agreement or undertaking for the sale of its business or any part thereof without the consent of the Supervisor,
  - (b) dispose of the goodwill of his business or any assets forming part of or essential to such goodwill without such consent as aforesaid,
  - (c) sell or otherwise dispose of, alter or amend the existing shareholding or the subscribers thereto nor make any scrip or rights issue or declare any dividend to the shareholders,
  - (d) make any other material changes to the extent, nature or place of his business except
    - (i) in accordance with any provisions of the Arrangement,
    - (ii) with the written agreement of the Supervisor,
    - (i) if bound by law to do so
  - (e) allow any annual increase in the director's remuneration which in percentage terms is higher than the annual increase of the Retail Prices Index
- 78(4) Until completion of the Arrangement or such time as the Company ceases to carry on its business, whichever is the earlier, the Company shall
- (a) submit such accounts, financial information and returns to the Supervisor as the Supervisor may require,
  - (b) consult the Supervisor as often as the Supervisor may require on the conduct and management of its business and keep the Supervisor informed on any material developments relating thereto
  - (c) The Company will not incur any further credit to operate its business other than normal trading arrangements during the currency of the Arrangement, unless the creditor concerned and the Supervisor agrees such credit Payment will be made in accordance with the terms of credit agreed with the creditor concerned
  - (d) The Company shall ensure that adequate insurance cover is maintained at all times, over the assets of the Company during the currency of the Arrangement
  - (e) The Company shall not purchase or sell any assets of a capital nature (above £1,000) during the currency of the Arrangement without the specific knowledge and agreement of the Supervisor
  - (f) The Company shall comply with all relevant legislation during the currency of the Arrangement

### **79 Taxation**

- 79 The Company alone shall be responsible for the payment of any taxation liabilities (including any liability for PAYE, National Insurance Contributions and Value Added Tax) arising from the continuation of its business or otherwise howsoever arising after the approval of the arrangement Any reference in the Proposal to the profits of the business means the profits of the business calculated on generally accepted accounting principles before any deduction or provision for tax The Company will ensure that all necessary returns and payments are made in accordance with all relevant statutory or other lawful Revenue requirement