

The Insolvency Act 1986

# Statement of administrator's proposals 2.17B

|  |  |
|--|--|
| Name of Company<br><b>A&amp;H Gadd Limited</b>                     | Company number<br><b>01722668</b>        |
| In the<br><b>Bristol District Registry</b><br>[full name of court] | Court case number<br><b>3408 of 2009</b> |

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

1. I (a) Simon Girling and Graham Randall of BDO LLP Fourth Floor, 1 Victoria Street, Bristol, BS1 6AA

\*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) Insert date

(b) 2 February 2010

Signed

Dated

2/2/10**Contact details:**

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

|   |                   |
|---|-------------------|
| BDO LLP, Fourth Floor, 1 Victoria Street, |                   |
| Bristol, BS1 6AA, .                       |                   |
| Our Ref                                   | SEG/PJM/2303/C15  |
|   | Tel 0117 930 1500 |
| DX Number                                 | DX Exchange       |

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

Companies House, Crown Way, Cardiff, CF14 3UZ

DX 33050 Cardiff



\*AAPW9H72\*

A29

03/02/2010

189

COMPANIES HOUSE

WEDNESDAY

**A&H Gadd Limited**  
**In Administration**

Statement to Creditors pursuant to Rule  
2.33 of the Insolvency Rules 1986 and  
Statement of Proposals under Paragraph 49  
of Schedule B1 of the Insolvency Act 1986

GDR/PJM/2303/C6



---

**TABLE OF CONTENTS**

| <b>Section</b>  | <b>Page</b> |
|---|-------------|
| <b>1 INTRODUCTION</b>   | <b>1</b>    |
| <b>2 EVENTS LEADING UP TO THE APPOINTMENT OF THE JOINT ADMINISTRATORS</b>                     | <b>1</b>    |
| <b>3 STATEMENT OF AFFAIRS AND STATUTORY INFORMATION</b>                                       | <b>2</b>    |
| <b>4 PRESCRIBED PART</b>  | <b>2</b>    |
| <b>5 ACHIEVING THE PURPOSE OF THE ADMINISTRATION</b>  | <b>2</b>    |
| <b>6 MANAGEMENT OF THE COMPANY'S AFFAIRS SINCE THE JOINT ADMINISTRATORS' APPOINTMENT</b>      | <b>3</b>    |
| <b>7 EC REGULATIONS ON INSOLVENCY PROCEEDINGS</b>   | <b>4</b>    |
| <b>8 JOINT ADMINISTRATORS' REMUNERATION</b>   | <b>4</b>    |
| <b>9 POSSIBLE OUTCOMES FOR THE COMPANY AND CREDITORS</b>                                      | <b>4</b>    |
| <b>10 STATEMENT OF PROPOSALS UNDER PARAGRAPH 49 OF SCHEDULE B1 OF THE INSOLVENCY ACT 1986</b> | <b>4</b>    |

**Appendix 1 - Statutory Information**

**Appendix 2 - Estimated Outcome Statement and schedule of creditors**

**Appendix 3 - SIP 9 Time Costs Report**

**Appendix 4 - BDO Policy on Fees**

**Appendix 5 - Creditors Guide to Fees**

**Appendix 6 - Proof of Debt Form**

**Appendix 7 - Form 2.21B**

**A&H GADD LIMITED - IN ADMINISTRATION ("the Company")**  
Registered No. 01722668  
Registered office situated at BDO LLP, One Victoria Street, Bristol, BS1 6AA  
previously Ash House, Cook Way, Taunton, Somerset, TA2 6BJ

In the Bristol District Registry  
3408 of 2009

## **1 Introduction**

- 1.1 This report is addressed to the creditors of A&H Gadd Limited ("the Company") and incorporates the joint administrators' proposals. We do not propose to call a meeting of creditors because there will be insufficient assets to enable us to make any distribution to unsecured creditors. Under paragraph 52 of schedule B1 of the Insolvency Act 1986 if at least 10% of creditors require us to call a meeting they must notify us using form 2.21B (attached) by 16 February 2010. Please note that before such a meeting can be held we will require a deposit towards the cost of convening the meeting. Such deposit may be repaid subject to the approval of the other creditors. Where no creditors' meeting is held to consider the joint administrators' proposals, the proposals will have been deemed to be approved.
- 1.2 If a meeting of creditors is held in accordance with paragraph 1.1, creditors may approve the proposals with or without modifications subject to the joint administrators' agreement to any such modifications. If the creditors reject the joint administrators' proposals a report will be sent to the Bristol District Registry confirming that the creditors have rejected the proposals. The Court may then discharge the administration and make consequential directions. Alternatively, it may adjourn the hearing or make some other Order as it thinks fit.
- 1.3 If the joint administrators' proposals are agreed at the meeting of creditors the joint administrators will continue to control the business of the Company to the extent that it has not been transferred. The joint administrators would at some later date arrange for the Company to exit from the administration, as agreed by the creditors. Based on the information presently available and the current situation the joint administrators' proposal is that the Company will be dissolved once the administration is complete.

## **2 Events leading up to the appointment of the joint administrators**

- 2.1 The Company was incorporated on 12 May 1983 and traded as property developers and building contractors from premises in Taunton, Somerset. Clients included social housing providers, private developers, local authorities and other private businesses, as well as residential property sales to the general public.
- 2.2 The business traded profitably for a number of years, achieving pre-tax profits of £790,000 for the period ending November 2007. Unfortunately the downturn in the construction industry had a severe impact on trading conditions for the Company, with price reductions of up to 20% suffered on development units to facilitate any level of sales activity.
- 2.3 The reduction in turnover, coupled with additional working capital pressures from restriction of credit insurance throughout the industry, translated into a loss of margin and reduced profitability for the Company. Costs of developments continued to be incurred whilst external funding was unable to be obtained, leading to further cash pressures and increasing losses.
- 2.4 The Company moved to reduce these losses by renting out unsold development properties to cover funding costs in the short term. However, as conditions worsened during 2008 and 2009 it became clear that the Company required external advice on the financial position and the strategic options available.

- 2.5 A winding-up petition against the company was presented to Taunton County Court on 21 September 2009 by Taunton Fabrications Limited and later re-issued by Ashtead Plant Hire Co Limited to be heard on 21 January 2010. Consequently, the directors sought the advice of BDO LLP during December 2009. Following a review of the financial position it became clear that, with no available capital for the completion of existing construction projects and non-payment of sub-contractors leading to damages for delays, the prospects for the rescue of the Company were weak. It was concluded that entry into a formal insolvency process would be unavoidable. As such the directors made all staff redundant with immediate effect.
- 2.6 With assets largely limited to retentions on construction projects, and in order to protect the value of these contracts it was resolved that the speed and control afforded from administration (and the ensuing moratorium) would maximise any possible recoveries.
- 2.7 On 10 December 2009 at the request of the directors, an application for appointment of joint administrators was made by Barclays Bank Plc ("the Bank") being a Qualifying Floating Charge Holder, pursuant to paragraph 14 of schedule B1 of the Insolvency Act 1986. On 10 December 2009, Simon Girling and Graham Randall of BDO LLP were appointed joint administrators.
- 2.8 At Appendix 1 is a record of the names of the Company's directors and company secretary, together with details of their shareholdings.
- 3 Statement of affairs and statutory information**
- 3.1 The directors have not submitted a statement of affairs to us at the time of this report. We have therefore produced an estimated financial statement of the Company, together with a schedule showing details of estimated creditors' claims, attached at Appendix 2. We anticipate that the statement of affairs will be received shortly and we intend to forward this to Companies House upon receipt. We will include a copy with our next report.
- 4 Prescribed part**
- 4.1 Under the provisions of section 176A of the Insolvency Act 1986 the joint administrators must state the amount of funds available to unsecured creditors in respect of the prescribed part. This provision only applies where a company has granted a floating charge to a creditor after 15 September 2003. The Company has not granted a floating charge to any creditor after the 15 September 2003 and consequently there will be no prescribed part within this administration.
- 5 Achieving the purpose of the administration**
- 5.1 The statutory purpose of an administration consists of three objectives, and we now address the progress that has been made in this respect.
- (a) The first objective is to rescue the Company as a going concern (i.e. restructure the Company's business, resulting in the survival of the Company). We would comment that due to the redundancy of all employees prior to appointment and as the Company could not complete the development projects in which it was engaged through lack of available funding, that this has not been possible.
- (b) With regard to the second objective of achieving a better result for the Company's creditors as a whole than would be likely if the Company were wound up (without first being in administration), we would comment that this has not been achieved.

- (c) The final objective is realising property in order to make a distribution to one or more secured or preferential creditors, and we can advise that this objective will be achieved. As the principal asset was retention payments on construction projects it was necessary to quickly implement the collection of these debts, which was best achieved by the level of control and rapid implementation afforded by administration, thereby maximising realisations achieved. A distribution to preferential creditors, per section 9 of these proposals (below) will be made. We also anticipate that a distribution will become available to the Bank under its floating charge over the Company's assets dated 9 December 1998.

## **6 Management of the Company's affairs since the Joint Administrators' appointment**

### **6.1 Initial Actions**

- 6.1.1 Prior to our appointment as administrators, we met with the directors of the Company to discuss the financial and trading position.
- 6.1.2 Although initial marketing attempts by the directors had resulted in some interest in various aspects of the business, none of these leads materialised into any offer to purchase the business as a going concern.
- 6.1.3 Given the financial position of the Company at this time, and the lack of strategic options available, it became apparent that the Company could not afford to sustain its workforce. Therefore, prior to the appointment of administrators, the directors made all the staff redundant.
- 6.1.4 Immediately following appointment we instructed independent agents, Alder King, to consider the potential value in the retention assets and other debtors and work in progress of the Company and to provide an assessment of the likely timing and strategy to collect these sums.
- 6.1.5 In addition, we instructed independent chattel agents GoIndustry DoveBid ("GoIndustry") to take control over all tangible assets and to provide valuations and realisation strategies for the same. GoIndustry have also dealt with third parties and providers of hire purchase and lease equipment to facilitate sale or return of these goods.

### **6.2 Customers and contractual matters**

- 6.2.1 Our staff have been dealing with a number of ongoing issues, in particular queries of general creditors and sub-contractors, together with investigations into other asset realisations. These are currently being progressed, largely with the assistance of our agents (detailed above).
- 6.2.2 If any customer has queries in relation to their contract they should contact a member of our team on 0117 930 1500.

### **6.3 Creditors' claims**

- 6.3.1 Preferential claims (representing unpaid wages and accrued holiday pay) within the administration have been estimated at £96,000.
- 6.3.2 Unsecured creditors' claims notified to us to date total approximately £4.4million, including estimated employee claims of £300,000 for redundancy costs and compensation or lack of notice. Also included within this sum is an estimated liability of £400,000 owed to HM Revenue & Customs in respect of PAYE and VAT arrears.

- 6.3.3 At the date of appointment a balance of approximately £1.5million was outstanding to the Bank under its overdraft facility and secured loan.

## **7 EC Regulations on Insolvency Proceedings**

- 7.1 We are required under the Insolvency Rules 1986 to state whether and if so the extent to which the above regulations apply to this administration. In this case the EC Regulation will apply, and these will be main proceedings.

## **8 Joint Administrators' Remuneration**

- 8.1 Kindly note that under the terms of the Insolvency Rules 1986 the joint administrators are obliged to fix their remuneration in accordance with Rule 2.106(2) of the Insolvency Rules 1986. This permits remuneration to be fixed either as a percentage of the value of the property with which the joint administrators have to deal or, alternatively, by reference to the time the joint administrators and their staff have spent attending to matters in this administration.
- 8.2 Attached at Appendix 3 is a schedule detailing time costs accrued to date and work undertaken in that respect. As you will see time costs of £39,633.75 have been incurred to date, but not yet drawn, along with expenses of £8,453.07.
- 8.3 Where there is no prospect of a dividend to the unsecured creditors of a company, the qualifying floating charge holder agrees the fees of the joint administrators. In respect of this administration we intend to ask the qualifying floating charge holder, Barclays Bank Plc, to approve our remuneration on a time costs basis.
- 8.4 For your guidance only we attach a Creditors' Guide to Administrators' Fees, together with a document that outlines the policy of BDO LLP in respect of fees and disbursements.

## **9 Possible outcomes for the Company and creditors**

- 9.1 The Insolvency Act 1986 and Insolvency Rules 1986 provide a variety of options regarding the possible exit routes for the Company from the administration, being primarily a company voluntary arrangement, liquidation or dissolution of the Company. It is the joint administrators' recommendation and proposal, as detailed below, that once all assets have been realised and distributed in the administration, that the joint administrators arrange for the Company to be dissolved.
- 9.2 We anticipate that sufficient funds will become available to enable a distribution to preferential creditors. However, such a dividend will be dependent upon realisations from debtor retentions and I am not yet able to estimate the quantum of any potential preferential distribution.
- 9.3 Current estimates indicate that there will be insufficient funds available to enable a distribution to unsecured creditors. The prescribed part distribution will not apply in this instance as the Company has not granted a floating charge to any creditor after the 15 September 2003. Should sufficient funds become available to enable an unsecured distribution then we intend to apply to court to distribute within the administration.

## **10 Statement of proposals under paragraph 49 of schedule B1 of the Insolvency Act 1986**

In accordance with paragraph 49 of schedule B1 of the Insolvency Act 1986 the joint administrators make the following proposals for achieving the purpose of the administration:

**Formal Proposals - the Joint Administrators propose that:**

- (a) they continue to realise assets in accordance with objective 3 of the statutory purpose of the administration, and;
- (b) they make payments to the secured and preferential creditors should sufficient assets be realised, and;
- (c) they exit the administration by way of dissolving the Company under paragraph 84 of schedule B1 of the Insolvency Act 1986, and;
- (d) should sufficient funds become available to enable a distribution to unsecured creditors, then the administrators will apply to court to distribute in administration, and;
- (e) in the event of (d) that creditors approve the remuneration of the joint administrators on a time costs basis, and;
- (f) should a creditors meeting be requisitioned, then creditors consider and if thought fit appoint a creditors' committee to assist the joint administrators (such committee must comprise of between 3 and 5 creditors).
- (g) In the absence of a distribution to unsecured creditors, that the qualifying floating charge holder approves the remuneration of the joint administrator on a time costs basis.

A further resolution is put to the creditors:

- (h) That the joint administrators be discharged from liability under the administration per paragraph 98 of schedule B1 of the Insolvency Act 1986, 28 days after the joint administrators' filing their final report and sending it to creditors.

Dated: 2 February 2010

  
.....  
Simon Girling  
Joint Administrator



SEG/PJM/2303/C11

**A&H Gadd Limited  
In Administration**

**Statutory Information**

**Company Number:** 01722668

**Date of Incorporation:** 12/05/1983

**Address of Registered Office:** One Victoria Street, Bristol, BS1 6AA Formerly Ash House, Cook Way, Taunton, Somerset, TA2 6BJ

**Directors:** Colin Alan Graves  
Alan Gordon Clapp  
Andrew James Gadd  
Paul Martyn Hughes  
Brian Anthony Rice  
Geoffrey Robert Wheeler

**Company Secretary:** Colin Alan Graves

**Nominal Share Capital:** £566 - divided into 566 ordinary shares of £1 each

**Registered Shareholders:** No of £1 ordinary shares held

GADD HOLDINGS LIMITED

|               |
|---------------|
| 566           |
| <u>566566</u> |

**Trading Results:**

| Y/E        | Turnover<br>£ | Gross Profit<br>£ | Net Profit<br>(after tax)<br>£ | Directors'<br>remuneration<br>£ | Balance on<br>P & L A/c<br>£ |
|------------|---------------|-------------------|--------------------------------|---------------------------------|------------------------------|
| 30/11/2007 | 12,951,285    | 1,061,647         | 91,405                         | 744,874                         | -                            |

## A&amp;H Gadd Limited - In Administration

## Estimated Outcome Statement

As at 2 February 2010

|   | Section<br>Ref. | Book values<br>as at<br>10.12.09<br>£ | Estimated<br>to realise<br>£ |
|---|-----------------|---------------------------------------|------------------------------|
| <b>Specific charge assets</b>                       |                 |                                       |                              |
| Commercial vehicles                                 |                 | 20,362                                | 2,750                        |
| Office equipment                                    |                 | 25,756                                | 1,250                        |
|   |                 | 46,118                                | 4,000                        |
| Less: HP liabilities                                |                 | (78,021)                              | (78,021)                     |
| Deficit to HP creditors                             |                 | (31,903)                              | (74,021)                     |
| <b>Floating charge assets</b>                       |                 |                                       |                              |
| Debtors (retentions)                                |                 | 975,153                               | 501,000                      |
| Office equipment                                    |                 |                                       | 13,000                       |
| Plant & machinery                                   |                 |                                       | 15,000                       |
| Motor vehicles                                      |                 |                                       | 10,000                       |
| <b>Total Floating Charge Assets</b>                 |                 | 975,153                               | 539,000                      |
| <b>Less: costs of realisation</b>                   |                 |                                       |                              |
| Administrators' fees                                |                 |                                       | (63,740)                     |
| Legal costs   |                 |                                       | (10,000)                     |
| Agents' costs                                       |                 |                                       | (55,825)                     |
| <b>Available to Preferential Creditors</b>          |                 |                                       | 409,435                      |
| <b>Preferential Creditors</b>                       |                 |                                       |                              |
| Employees/DTI                                       |                 |                                       | (96,000)                     |
| <b>Available to Barclays Bank Plc</b>               |                 |                                       | 313,435                      |
| Less: owed to Barclays Bank Plc                     |                 |                                       | (1,500,000)                  |
| <b>Surplus / Deficiency after secured creditors</b> |                 |                                       | (1,186,565)                  |
| <b>Unsecured creditors</b>                          |                 |                                       |                              |
| Trade creditors                                     |                 | (3,591,307)                           |                              |
| HM Revenue & Customs (estimated)                    |                 | (400,000)                             |                              |
| Deficit to HP creditors                             |                 | (74,021)                              |                              |
| Employees - notice pay and redundancy               |                 | (300,000)                             |                              |
| <b>Total Unsecured Creditors</b>                    |                 |                                       | (4,365,328)                  |
| <b>Deficit as regards unsecured creditors</b>       |                 |                                       | (5,551,893)                  |

Note: All costs are shown net of VAT, which is assumed to be recoverable

A&H Gadd Limited - In Administration

Summary of Time Charged and Rates Applicable for the Period From 10 December 2009 to 2 February 2010

|                               | PARTNER |          | DIRECTOR |         | MANAGER |           | SENIOR ADMINISTRATOR |         | ADMINISTRATOR |           | GRAND TOTAL |           | AV RT  |
|-------------------------------|---------|----------|----------|---------|---------|-----------|----------------------|---------|---------------|-----------|-------------|-----------|--------|
|                               | Hours   | Total £  | Hours    | Total £ | Hours   | Total £   | Hours                | Total £ | Hours         | Total £   | Hours       | Total £   | £      |
| B. Steps on Appointment       | 3.50    | 1,274.00 | 0.00     | 0.00    | 26.10   | 6,942.60  | 0.00                 | 0.00    | 52.35         | 7,131.20  | 81.95       | 15,347.80 | 187.28 |
| C. Planning and Strategy      | 1.75    | 637.00   | 0.00     | 0.00    | 4.00    | 1,064.00  | 0.00                 | 0.00    | 9.00          | 1,224.00  | 14.75       | 2,925.00  | 198.31 |
| D. General Administration     | 0.00    | 0.00     | 0.00     | 0.00    | 0.10    | 30.30     | 0.00                 | 0.00    | 39.55         | 3,975.20  | 39.65       | 4,005.50  | 101.02 |
| E. Assets Realisation/Dealing | 2.75    | 1,001.00 | 0.00     | 0.00    | 24.25   | 6,450.50  | 0.00                 | 0.00    | 14.70         | 2,020.90  | 41.70       | 9,472.40  | 227.16 |
| G. Employee Matters           | 0.00    | 0.00     | 0.00     | 0.00    | 0.00    | 0.00      | 0.00                 | 0.00    | 3.55          | 482.80    | 3.55        | 482.80    | 136.00 |
| H. Creditor Claims            | 0.00    | 0.00     | 0.00     | 0.00    | 4.50    | 1,197.00  | 0.00                 | 0.00    | 11.70         | 1,533.65  | 16.20       | 2,730.65  | 168.56 |
| I. Reporting                  | 6.75    | 2,457.00 | 0.00     | 0.00    | 7.50    | 1,995.00  | 0.00                 | 0.00    | 1.60          | 217.60    | 15.85       | 4,669.60  | 294.61 |
|                               | 14.75   | 5,369.00 | 0.00     | 0.00    | 66.45   | 17,679.40 | 0.00                 | 0.00    | 132.45        | 16,585.35 |             |           |        |

|                     |        |           |
|---------------------|--------|-----------|
| Net Total           | 213.65 | 39,633.75 |
| Secretarial Expense | 0.00   | 0.00      |
| Other Disbursements | 0.00   | 185.16    |
| Billed              | 0.00   | 0.00      |
| Grand Total         | 213.65 | 39,818.91 |

**A&H Gadd Limited - In Administration**

In accordance with best practice I provide below details of policies of BDO LLP in respect of fees and expenses for work in relation to the above insolvency.

The current charge out rates per hour of staff within my firm, who may be involved in working on the insolvency, follows: This in no way implies that staff at all such grades will work on the case.

**GRADE £**

|                         |     |
|-------------------------|-----|
| Partner 1               | 460 |
| Partner 2               | 371 |
| Director                | 330 |
| Senior Manager          | 266 |
| Manager                 | 227 |
| Assistant Manager       | 198 |
| Senior Executive        | 167 |
| Executive               | 136 |
| Junior Executive        | 122 |
| Cashier                 | 136 |
| Trainee                 | 97  |
| Support staff/Secretary | 61  |

The rates charged by BDO LLP, One Victoria Street, Bristol, BS1 6AA are reviewed in December and July each year and are adjusted to take account of inflation and the firm's overheads.

Time spent on casework is recorded directly to the relevant case using a computerised time recording system and the nature of the work undertaken is recorded at that time. Units of time can be as small as 3 minutes. BDO LLP records work in respect of insolvency work under the following categories:-

Pre Appointment  
Steps upon Appointment  
Planning and Strategy  
General Administration  
Asset Realisation/Management  
Trading Related Matters  
Employee Matters  
Creditor Claims  
Reporting  
Distribution and Closure  
Other Issues.

Under each of the above categories the work is recorded in greater detail in sub categories. Please note that the 11 categories provide greater detail than the six categories recommended by the Recognised Professional Bodies who are responsible for licensing and monitoring insolvency practitioners.

Where an officeholder's remuneration is approved on a time cost basis the time invoiced to the case will be subject to VAT at the prevailing rate.

Where remuneration has been approved on a time costs basis a periodic report will be provided to any committee appointed by the creditors or in the absence of a committee to the creditors. The report will provide a breakdown of the remuneration drawn and will enable the recipients to see the average rates of such costs.

#### **Other Costs**

Where expenses are incurred in respect of the insolvent estate they will be recharged. Such expenses can be divided into two categories.

#### **Category 1**

This heading covers expenses where BDO LLP has met a specific cost in respect of the insolvent estate where payment has been made to a third party. Such expenses may include items such as advertising, couriers, travel (by public transport), searches at Companies House, land registry searches, fees in respect of swearing legal documents, external printing costs etc. In each case the recharge will be reimbursement of a specific expense incurred.

A further disbursement under this heading is the cost of travel where staff use either their own vehicles or company cars in travelling connected with the insolvency. In these cases a charge of 40p per mile is raised which is in line with the Inland Revenue Approved Mileage Rates (median - less than 10,000 miles per annum) which is the amount the firm pays to staff.

Where applicable, disbursements will be subject to VAT at the prevailing rate.

#### **Category 2**

Additionally some firms recharge expenses for example postage, stationery, photocopying charges, telephone and fax costs, which cannot economically be recorded in respect of a each specific case. Such expenses, which are apportioned to cases, require the approval of the creditors, before they can be drawn, and these are known as category 2 disbursements. The policy of BDO LLP, effective from 1 July 2003, is not to recharge any expense which is not a specific cost to the case, therefore there will be no category 2 disbursements charged. Category 2 disbursements, because they are imprecise, require approval by the creditors before they can be drawn.

**1 Introduction**

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

**2 The nature of administration**

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

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

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

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

**3 The creditors' committee**

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

**4 Fixing the administrator's fees**

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

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

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

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

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

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

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

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

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

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

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

**5.1 When seeking fee approval**

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

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

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

- 5.1.3** Where the administrator seeks agreement to his fees during the course of the administration, he should always provide an up to date receipts and payments account. Where the proposed fee is based on time costs the administrator should disclose to the committee or the creditors the time spent and the charge-out value in the particular case, together with, where appropriate, such additional information as may reasonably be required having regard to the size and complexity of the case. The additional information should comprise a sufficient explanation of what the administrator has achieved and how it was achieved to enable the value of the exercise to be assessed (whilst recognising that the administrator must fulfil certain statutory obligations that might be seen to bring no added value for creditors) and to establish that the time has been properly spent on the case. That assessment will need to be made having regard to the time spent and the rates at which that time was charged, bearing in mind the factors set out in paragraph 4.1 above. To enable this assessment to be carried out it may be necessary for the administrator to provide an analysis of the time spent on the case by type of activity and grade of staff. The degree of detail will depend on the circumstances of the case, and professional guidance has been provided setting out a minimum of 6 category headings under which the work done by the officeholder and his staff should be analysed. As a firm BDO LLP operates a computerised time recording system which analyses work done under the following categories:-

- Pre Appointment Matters
- Steps upon Appointment
- Planning and Strategy
- General Administration
- Asset Realisation/Management
- Trading Related Matters
- Employee Matters
- Creditor Claims
- Reporting
- Distribution and Closure
- Other Issues

Professional guidance suggests the following categories as a basis for analysis by grade of staff:

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

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

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

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

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



## **5.2 After fee approval**

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

## **5.3 Expenses and disbursements**

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

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

- 6.1** If a creditor believes that the administrator's remuneration is too high he may, if at least 25 per cent in value of the creditors (including himself) agree, apply to the court for an order that it be reduced. If the court does not dismiss the application (which it may if it considers that insufficient cause is shown) the applicant must give the administrator a copy of the application and supporting evidence at least 14 days before the hearing. Unless the court orders otherwise, the costs must be paid by the applicant and not as an expense of the administration.

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

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

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

- 8.1** Where there are joint administrators it is for them to agree between themselves how the remuneration payable should be apportioned. Any dispute arising between them may be referred to the court, the creditors' committee or a meeting of creditors.
- 8.2** If the administrator is a solicitor and employs his own firm to act on behalf of the company, profit costs may not be paid unless authorised by the creditors' committee, the creditors or the court.

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

In any case where the administrator is appointed on or after 1 April 2005 he 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.

**PROOF OF DEBT**

**In The High Court of Justice  
Chancery Division  
Companies Court**

**No 3408 of 2009**

**A&H Gadd Limited  
- In Administration -**

**Date of Administration 10 December 2009**

- 1 Name of creditor
- 2 Address of creditor
- 3 Total claim including VAT and interest as at  
the date of the appointment of administrators £  
*(see overleaf)*
- 4 Details of documents by which debt can be  
substantiated (please attach copy documents)
- 5 Amount of any interest included in claim £
- 6 Is the whole or part of the debt preferential? Yes / No  
If so, state amount, and details £  
**See notes overleaf**
- 7 Particulars of how and when debt incurred
- 8 Particulars and value of any security held and  
the date it was given
- 9 Signature of creditor  
or other authorised person .....
- Name in BLOCK LETTERS .....
- Creditor's reference: .....
- 10 Position or Relationship with Creditor .....

### **For Use of Administrator Only**

11 Admitted to vote for £

Date

Joint Administrator

12 Admitted preferentially  
for £

Date

Joint Administrator

Admitted non-preferentially  
for £

Date

Joint Administrator

### **Guidance Notes re Preferential Debts:**

The categories of preferential debts under S.386(1) of the Insolvency Act 1986 are as follows:

- pension scheme contributions
- remuneration etc of employees
- Levies on Coal & Steel Productions.

### **VAT Bad Debt Relief**

The provisions of the Finance Act, 1990, came into effect on 26 July, 1990, and introduced changes in the way that VAT on Bad Debts is recovered.

Your claim overleaf must be quoted inclusive of VAT. You may claim relief on your VAT return when the debt is at least six months old and has been written off. Any dividend you receive in respect of this claim will include payment in respect of the VAT element of your debt and you will be responsible for declaring such VAT to HM Customs & Excise.