

TO ALL KNOWN CREDITORS

5 June 2017

Ref: AJD/SEC/LJ/LES/11.1  
Direct line: 0141 226 9332  
Direct Fax: 0141 226 9001  
Laura Jones  
email: scarragher@uk.ey.com

Dear Sirs

## **Land Engineering (Scotland) Limited (In Administration) ('the Company')**

I write further to my appointment as Joint Administrator of the above Company and attach a copy of my Statement of Proposals in accordance with paragraph 49 of Schedule B1 to the Insolvency Act 1986.

As you will note from the Proposals, there is no prospect of any funds becoming available to unsecured creditors other than by virtue of the prescribed part. As a consequence, I do not propose to summon a meeting of creditors. I am, however, inviting creditors to submit to me notice of their claim together with supporting evidence and accordingly enclose Form 4.7 (Scot) Statement of Claim by Creditor.

Rules 2.31, 2.32 and 7.6 of the Insolvency (Scotland) Rules 1986 provide for creditors to be able to request a meeting if certain conditions are met. I attach a copy of the appropriate Rules, for your information. You will note that any request for a meeting must be made within 8 business days of the date on which the Proposals were sent out, by creditors whose debts amount to at least 10% of total debts of the Company. The Rules also provide that a meeting can only be held if the expenses of summoning and holding such a meeting are paid by the creditor or creditors making the request and if security is first deposited with me for payment. The meeting may subsequently resolve that the expenses of summoning and holding the meeting are paid out of the assets of the Company as an expense of the Administration.

In the event that a creditors' meeting is not held, the proposals will be deemed to be accepted. The Joint Administrators' remuneration and Category 2 disbursements will be agreed with the secured creditor and the preferential creditors in accordance with the provisions of Rule 2.39(9) of the Insolvency (Scotland) Rules 1986.

Should you have any queries relating to this letter or any other aspect of the Administration, please do not hesitate to contact Laura Jones of this office on telephone number 0141 226 9332.

Yours faithfully  
for Land Engineering (Scotland) Limited (In Administration)



A J Davison  
Joint Administrator

Enc: Administrators' statement of proposals

A J Davison and C P Dempster are licensed in the United Kingdom to act as insolvency practitioners by The Institute of Chartered Accountants of Scotland.

The affairs, business and property of the Company are being managed by the Joint Administrators, A J Davison and C P Dempster, who act as agents of the Company only and without personal liability.

We may collect, use, transfer, store or otherwise process (collectively, "Process") information that can be linked to specific individuals ("Personal Data"). We may Process Personal Data in various jurisdictions in accordance with applicable law and professional regulations including (without limitation) the Data Protection Act 1998.

## **Rules 2.31, 2.32 and 7.6 of the Insolvency (Scotland) Rules 1986**

### **2.31 Meeting requisitioned by creditors**

The request for an initial creditors' meeting under paragraph 52(2) must be made within 8 days of the date upon which the administrator sends out his statement of proposals.

### **2.32**

(1) Rule 7.6(2)(a) does not apply if the requisitioning creditor's debt alone is sufficient to meet the requirement of paragraph 52(2)(a) or, as the case may be, paragraph 56(1)(a), without the concurrence of other creditors.

(2) In its application to initial creditors' meetings in administration, for the period of 35 days referred to in Rule 7.6(3) there is substituted a period of 28 days.

### **7.6 Meetings requisitioned**

(1) Subject to paragraph (8), this Rule applies to any request by a creditor or creditors:-

(a) to:-

(i) an administrator under [paragraph 52(2) or 56(1)], or

(ii) a liquidator under section 171(3) or 172(3),

for a meeting of creditors; or

(b) to a liquidator under section 142(3) for separate meetings of creditors and contributories, or for any other meeting under any other provision of the Act or the Rules.

(2) Any such request shall be accompanied by:-

(a) a list of any creditors concurring with the request, showing the amounts of the respective claims against the company of the creditor making the request and the concurring creditors;

(b) from each creditor concurring, written confirmation of his concurrence; and

(c) a statement of the purpose of the proposed meeting.

(3) If the administrator considers the request to be properly made in accordance with the Act or the Rules, he shall summon a meeting of the creditors to be held on a date not more than 35 days from the date of his receipt of the request.

(4) Expenses of summoning and holding a meeting under this Rule shall be paid by the creditor or creditors making the request, who shall deposit with the administrator caution for their payment.

(5) The sum to be deposited shall be such as the administrator may determine and he shall not act without the deposit having been made.

(6) The meeting may resolve that the expenses of summoning and holding it are to be payable out of the assets of the company as an expense of the administration.

(7) To the extent that any caution deposited under this Rule is not required for the payment of expenses of summoning and holding the meeting, it shall be repaid to the person or persons who made it.

- (8) This Rule applies to requests by a contributory or contributories for a meeting of contributories, with the modification that, for the reference in paragraph (2) to the creditors' respective claims, there shall be substituted a reference to the contributories' respective values (being the amounts for which they may vote at any meeting).
- (9) This Rule is without prejudice to the powers of the court under Rule 4.67(2) (voluntary winding up succeeded by winding up by the court).

**Land Engineering (Scotland) Limited  
(In Administration)**

Administrators' statement of proposals

Pursuant to paragraph 49 of schedule B1 to the  
Insolvency Act 1986

5 June 2017

# Abbreviations

The following abbreviations are used in this report:

<b>the Company</b>	Land Engineering (Scotland) Limited
<b>idv</b>	idverde Limited
<b>the Administrators</b>	Andrew Davison and Colin Dempster
<b>EY</b>	Ernst & Young LLP
<b>the Bank</b>	LBG/Bank of Scotland

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# 1. Introduction, background and circumstances giving rise to the appointment

## Introduction

On 30 May 2017 the Company entered Administration and A J Davison and C P Dempster were appointed to act as Joint Administrators. This document, including its appendices, constitutes the Joint Administrators' statement of proposals to creditors pursuant to paragraph 49 of Schedule B1 to the Insolvency Act 1986 and Rule 2.25 of the Insolvency (Scotland) Rules 1986.

Certain statutory information relating to the Company and the appointment of the Joint Administrators is provided at Appendix A.

## Background

The Company had traded since 1980 and was a well-established contracting, civil engineering and landscaping business based in Glasgow and Fenwick with a number of site offices around Scotland and historic turnover of c£45m per annum. The Company's activities were mainly contractual in nature, with both public and private sector clients although primarily focused on the public sector.

The Company's recent financial results can be summarised below. Management have advised that full monthly management accounts continued to be prepared up until March 2017 showing the Company to be loss making in the latest financial year.

Period Year or Period Ended	Type Audited / Draft	Turnover £000	Gross Profit £000	Gross Profit %	Directors' Remuneration £000	Net Profit after Tax £000	Accumulated Reserves £000
31 August 2015	Audited	39,912	5,564	13.94	131	(305)	7,318
31 August 2014	Audited	42,888	6,106	14.23	34	67	7,623
31 August 2013	Audited	45,236	7,323	16.18	191	887	7,556
31 August 2012	Audited	42,989	8,071	18.77	0	1,383	6,669

## Circumstances Giving Rise to the Appointment of the Administrators

The Company had suffered from an increasingly competitive market, declining contract profitability (particularly in relation to its construction business) and contract pricing issues in the last 12 to 18 months leading to trading losses. With trading declining, the Company's cash position had worsened over recent months. Various options had been explored by the directors to address these challenges, including restructuring its market strategy to focus on higher margin work and implementing cost reduction measures. The directors also sought external investment and a sale of the Company. An offer had been received from idverde Limited ("idv") in February 2017 to acquire the Company's shares but the offer was withdrawn by idv following diligence and concerns over the risks associated with acquiring the Company. Unfortunately none of the directors' initiatives were ultimately successful and the directors therefore took the decision to appoint Administrators to the Company.



## 2. Purpose, conduct and end of Administration

### **Purpose of the Administration**

The purpose of an Administration is to achieve one of three objectives:

- a. To rescue the company as a going concern
- b. To achieve 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)
- c. To realise property in order to make a distribution to one or more secured or preferential creditors

Insolvency legislation provides that objective (a) should be pursued unless it is not reasonably practicable to do so or if objective (b) would achieve a better result for the company's creditors as a whole. Objective (c) may only be pursued if it is not reasonably practicable to achieve either objective (a) or (b) and can be pursued without unnecessarily harming the interests of the creditors of the company as a whole.

It was established on appointment that it was not reasonably practicable to rescue the Company as a going concern in accordance with objective (a) as, due to the extent of the Company's debts and ongoing losses incurred, a sale of the Company's shares was not possible.

Based on the information available to us following our appointment, we propose to pursue objective (b). The pre-pack sale (below) of part of the Company's business and assets enables this objective to be achieved by achieving a better result for creditors than if the company were wound up.

### **Conduct of the Administration**

#### ***Pre-packaged Sale of the Business and or Assets***

On 30 May 2017 the Joint Administrators completed a sale of part of the Company's business and assets to idv. The business, plant, equipment, work in progress and stock assets sold to idv related to the design, management, construction and maintenance services carried on under the Company's services, responsive and winter divisions together with projects at Grangemouth, Craighouse and Quartermile. 251 employees of the Company transferred to idv as part of the sale.

A detailed explanation of the transaction is attached at Appendix E to these proposals which demonstrates that this strategy represented the best available outcome for creditors as a whole in these particular circumstances.

#### ***Trading***

We formed the opinion that it was not appropriate to trade the Company's business following the Administration appointment and offer it for sale as a going concern for the following reasons:

- ▶ Most of the Company's contracts contained immediate termination provisions in the event of an insolvency situation.
- ▶ Lack of warranties for contracts.
- ▶ Working capital and overhead requirement in order to continue work on contracts.
- ▶ Significant arrears in supplier payments.

- ▶ Ongoing trading losses.

Accordingly, the Company ceased to trade on 30 May 2017 resulting in the immediate redundancy of 133 employees.

### ***Significant assets not included in the sale agreement***

The key assets not included in the sale are the Company's freehold property in Fenwick, the debtors/retentions in relation to the business sold to idv, the work in progress/debtors/retentions and stock and plant & equipment in relation to the remainder of the Company's business which was not sold and various loans including property, renewables and employees.

We have appointed agents to collect the debtors, work in progress and retentions balances and to auction the stock and plant & equipment. In relation to the various loans, we are in the process of establishing the background to these debts in order to maximise the recoveries obtainable from these assets. We will be appointing property agents shortly in relation to the freehold property to provide valuation and marketing advice and assistance.

We are not aware of any other significant realisable assets belonging to the Company. However we will report to you in the event it materialises that other recoverable assets are identified during the course of the Administration.

### ***Initial Meeting of Creditors***

The Joint Administrators are of the opinion that the Company will have insufficient property to enable a distribution to be made to unsecured creditors other than by virtue of the prescribed part and consequently, in accordance with the provisions of paragraph 52(1) of Schedule B1 to the Act, they do not intend to call an initial creditors' meeting.

The Joint Administrators will be obliged to call an initial meeting of creditors if it is requested by creditors of the Company whose debts amount to at least 10% of the total debts of the Company. The request must be made within 8 business days of the date on which these proposals are sent out (or such longer period as the court may allow) and must be in the prescribed form. The creditor summoning the meeting must lodge with the Joint Administrators a deposit as security for the expenses of summoning and holding the meeting. Further information is provided in the covering letter accompanying these proposals.

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

As previously stated, the Joint Administrators concluded that the objective of the Administration should be that of 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.

The Joint Administrators have realised a number of assets through the pre-packaged sale of the business and certain assets of the Company, as detailed above and in Appendix E. The Joint Administrators propose to continue to manage the affairs, business and property of the Company in order to achieve the objective set out at paragraph 3(b) of Schedule B1 of the Insolvency Act 1986, and inter alia, to:

- collect work in progress/debtors/retentions balances due to the Company;
- in conjunction with our appointed agent, market the freehold property at Fenwick for sale, review and assess any offers received, and take all such steps as are necessary to achieve a sale of the property to any selected preferred bidder;
- take all such steps as the Joint Administrators deem appropriate to realise value from the Company's other assets, including plant & equipment, stock and loans due to the Company;

- prepare and submit corporation tax returns and VAT returns;
- adjudicate on secured, preferential and unsecured non-preferential claims of creditors of the Company and thereafter calculate and make distributions to such creditors;
- complete all statutory reporting and compliance obligations;
- finalise the Administration, including payment of all Administration expenses and liabilities; and
- do all such things as the Joint Administrators in their reasonable opinion determine to be necessary and/or expedient in order to achieve the objective of the Administration.

### ***Distributions to Creditors***

It is proposed that distributions will be made in the Administration to the secured, preferential and unsecured non-preferential creditors of the Company (by virtue of the prescribed part).

### **The End of the Administration**

It is proposed that, if at the end of the Administration, the Company has no further property which might permit a distribution to its creditors, the Joint Administrators will send a notice to that effect to the Registrar of Companies. On registration of the notice, the Joint Administrators' appointment will come to an end. In accordance with the provisions of paragraph 84(6) of Schedule B1 to the Insolvency Act 1986, the Company will be deemed to be dissolved three months after the registration of the notice.

If for any reason, distributions require to, but cannot, be made to the non-preferential unsecured creditors in the Administration pursuant to paragraph 65(3) of Schedule B1 to the Insolvency Act 1986, it is proposed that, at the end of the Administration, the Company will move straight into creditors' voluntary liquidation upon the filing with the Registrar of Companies of a notice pursuant to paragraph 83 of Schedule B1 to the Insolvency Act 1986. It is proposed that the liquidators will be A J Davison and C P Dempster of Ernst & Young LLP and that any act required or authorised under any enactment to be done by the liquidators may be done by either or all of them.

In accordance with paragraph 83(7) of Schedule B1 to the Insolvency Act 1986 and Rule 2.47(3) of the Insolvency (Scotland) Rules 1986, creditors may nominate a different person as the proposed liquidator, provided that the nomination is made after the receipt of these proposals and before the proposals are approved. It should be noted in this regard that a person must be authorised to act as an insolvency practitioner in order to be appointed as liquidator.

### 3. Statement of affairs

The directors have not yet submitted a Statement of Affairs as notice for the preparation and submission of a Statement of Affairs was only recently issued to the nominated director.

In the absence of a Statement of Affairs, we attach at Appendix B, a pro forma balance sheet extract from the Company's latest management accounts showing the Company's assets and liabilities at 31 March 2017.

Whilst the balance sheet shows a net asset position of £1.65m, we would comment as follows:

- the balance sheet has been compiled by Company management and has not been subject to independent review or statutory audit;
- the figures do not represent the position at 30 May 2017. In particular, the book value of work in progress/debtors/retentions was significantly lower;
- the values are shown before applicable costs of realisation and administration;
- there is significant uncertainty over the recoverability of work in progress/debtors/retentions balances in light of the majority of contracts being terminable on insolvency and the likelihood of disputes, contra, set off issues arising following the Company ceasing to trade;
- realisations from plant and equipment and stock not sold to idv are likely to be lower than shown due to these assets being sold ex situ on a break up basis following the Company ceasing to trade;
- there are a number of loans due from third parties (c£1.3m in total), recoveries from which are currently uncertain;
- the figures do not include claims from contingent creditors including the Bank which may arise following the Administration appointment e.g. performance bonds, dilapidations;
- the figures do not include claims from redundant employees in respect of arrears of wages, holiday pay and pension contributions which would rank preferentially. In addition unsecured claims from redundant employees in respect of lieu of notice and redundancy pay are excluded.

Once costs of realisation and preferential creditors are taken into account, we currently estimate that there may be a shortfall to the Bank as secured creditor and consequently no amounts available to allow a dividend to be declared to the unsecured non-preferential creditors of the Company (other than by virtue of the prescribed part).

## 4. Prescribed part

The prescribed part is a proportion of floating charge assets set aside for unsecured creditors pursuant to section 176A of the Insolvency Act 1986. The prescribed part applies to floating charges created on or after 15 September 2003. The Company's floating charge was created on 24 June 2011 and accordingly the prescribed part will apply.

At this early stage, the Joint Administrators are unable to estimate the value of the Company's net property and the value of the prescribed part. The Joint Administrators are however of the opinion at this stage that a distribution to non-preferential unsecured creditors by virtue of the prescribed part will be made.

## 5. Administrators' remuneration and disbursements and payments to other professionals

### Remuneration

The statutory provisions relating to remuneration are set out in Rule 2.39 of the Insolvency (Scotland) Rules 1986. Further information is given in the Association of Business Recovery Professionals' publication A Creditors' Guide to Administrators' Fees, a copy of which may be accessed from the web site of the Institute of Chartered Accountants of Scotland at <https://www.icas.com/technical-resources/creditor-guides-to-office-holder-remuneration> - Creditor's guide to an Administrator's Remuneration PDF, or is available in hard copy upon written request to the Joint Administrators.

In the event that a creditors' meeting is not requisitioned and a creditors' committee is not formed, the Joint Administrators will seek to have their remuneration fixed by the secured creditor (and the preferential creditors, should a distribution be made by the Joint Administrators) in accordance with Rule 2.39 of the Insolvency (Scotland) Rules. The Joint Administrators will ask for their remuneration to be fixed on the basis of time properly given by them and their staff in dealing with matters arising in the Administration.

Details of time spent and charge out rates will be provided to the secured creditor and preferential creditors when requests for approval of our fees are made. These will be made available to any other creditor upon written request to the Joint Administrators and will be included in our six monthly progress report to creditors.

### Disbursements

Appendix C includes a statement of the Joint Administrators' policy for charging disbursements. In the event that a creditors' meeting is not requisitioned and a creditors' committee is not formed, the Joint Administrators propose they be permitted to charge Category 2 disbursements in accordance with the charging policy set out in Appendix C.

Further details of disbursements will be provided in our six monthly report to creditors.

### Payments to other professionals

The Joint Administrators have to date engaged the following other professionals to assist them. They were chosen on the basis of their experience in similar assignments and their specialist knowledge of the market and the Company's assets.

Name of firm	Nature of service	How contracted to be paid
Brodies LLP	Legal advisors	Time cost basis
G A Johnston Associates	Quantity surveyor services	15% of gross collections achieved from work in progress/debtors/retentions balances
Sweeney Kincaid	Plant/equipment advisors	7.5% of gross sale proceeds achieved from the sale of plant and machinery and stock. Time cost basis for the removal of plant and machinery and stock from site

No fees have been paid to date.

## Appendix A Statutory information

### Company Information

Company Name: Land Engineering (Scotland) Limited  
 Registered Office Address: c/o Ernst & Young LLP  
 Ten George Street  
 Edinburgh, EH2 2DZ  
 Registered Number: SC070682  
 Trading Name: n/a  
 Trading Addresses: Gardrum House, Stewarton Road  
 Fenwick  
 Kilmarnock, KA3 6AS  
  
 Suite 4A, Skypark 5  
 45 Finnieston Street  
 Glasgow, G3 8JU

### Details of the Administrators and of their appointment

Administrators: A J Davison and C P Dempster  
 Date of Appointment: 30 May 2017  
 By Whom Appointed: The appointment was made by the Company's Directors under the provisions of paragraph 22(2) of Schedule B1 to the Insolvency Act 1986.  
 Court Reference: Court of Session

Any of the functions to be performed or powers exercisable by the Administrators may be carried out/exercised by any one of them acting alone or by any or all of them acting jointly.

### Statement concerning the EC Regulation

The EC Council Regulation on Insolvency Proceedings does apply to this Administration and the proceedings are main proceedings. This means that this Administration is conducted according to UK insolvency legislation and is not governed by the insolvency law of any other European Union Member State.

### Share Capital

Class	Authorised		Issued & Fully paid	
	Number	£	Number	£
Ordinary	5,220	5,220	5,220	5,220

**Directors and secretary and their shareholdings**

<b>Name</b>	<b>Director or Secretary</b>	<b>Date Appointed</b>	<b>Date Resigned</b>	<b>Current Shareholding</b>
John MacDonald	Secretary & Director	19/06/1995	n/a	n/a
Stuart Dillett	Director	28/05/1993	n/a	n/a
Karen Jarvie	Director	21/07/2015	n/a	n/a
Iain Ross	Director	12/09/2014	n/a	n/a
David Lamont	Director	27/06/2016	n/a	n/a
William Shaw	Director	16/09/2015	07/12/2016	n/a



## Appendix B      Company balance sheet at 31 March 2017

### Land Engineering (Scotland) Limited Pro Forma Balance Sheet at 31 March 2017

	£
<b>Fixed assets</b>	
Tangible fixed assets	1,472,101
	<b>1,472,101</b>
<b>Current Assets</b>	
Stocks	113,792
Trade debtors	5,073,075
Retentions	1,178,778
WIP	2,715,187
Amounts due from related parties	1,377,464
Prepayments and other debtors	90,832
	<b>10,549,127</b>
<b>Liabilities</b>	
Bank overdraft	(2,330,221)
Trade creditors	(3,591,181)
Subcontractors	(2,749,112)
HMRC - PAYE, VAT and NIC	(1,396,565)
Accruals and other creditors	(298,149)
	<b>(10,365,228)</b>
<b>Net assets (note 1)</b>	<b><u>1,656,001</u></b>

#### Note 1:

Excluded from the pro forma balance sheet is an amount of c£4.2m due from the Company's parent, Gardrum Investments Limited. Its only assets are its shareholding in the Company and a number of other group companies, the majority of which have no realisable assets.

## Appendix C Statement on administrators' charging policy for remuneration and disbursements pursuant to Statement of Insolvency Practice No. 9

### Charging and disbursement policy

#### *Administrator's charging policy for remuneration*

The Administrators have engaged managers and other staff to work on the Administration. The work required is delegated to the most appropriate level of staff taking account of the nature of the work and the individual's experience. Additional assistance is provided by accounting and treasury executives dealing with the Company's bank accounts and statutory compliance diaries. Work carried out by all staff is subject to the overall supervision of the Administrators.

All time spent by staff working directly on case-related matters is charged to a time code established for the case. Time is recorded in units of six minutes. Each member of staff has a specific hourly rate, which is subject to change over time. The current hourly rates used are shown below.

<b>Charge out rates</b>		<b>1 July 2016 to 30 June 2017 (£)</b>
Partner	Partner	710
	Executive Director	660
	Director	565
Manager	Assistant Director	500
	Senior Executive	390
Other senior professionals Assistants and Support	Executive	280
	Assistant Executive	225
	Analyst	150-225
	Accounting and Treasury Executive	130-135

### Administrators' charging policy for disbursements

#### *Statement of Insolvency Practice No. 9 divides disbursements into two categories.*

Category 1 disbursements are defined as specific expenditure relating to the administration of the insolvent's affairs and referable to payment to an independent third party. Such disbursements can be paid from the insolvent's assets without approval from the creditors' committee or the general body of creditors. In line with Statement of Insolvency Practice No. 9, it is our policy to disclose Category 1 disbursements drawn but not to seek approval for their payment. We are prepared to provide such additional information as may reasonably be required to support the disbursements drawn.

We expect Category 1 disbursements to be incurred in the Administration. Further details will be provided in our six monthly report to creditors.

Category 2 disbursements are charges made by the office holder's firm that include elements of shared or overhead costs. Statement of Insolvency Practice No. 9 provides that such disbursements are subject to approval as if they were remuneration. It is our policy, in line with the Statement, to seek approval for Category 2 disbursements before they are drawn.

We expect Category 2 disbursements to be incurred in the Administration. Further details will be provided in our six monthly report to creditors.

## **Appendix D    Administrators' receipts and payments account for the period from 30 May 2017 to 5 June 2017**

The only income received since our appointment as Administrators relates to the consideration for the pre-pack sale of the business to idv which completed on 30 May 2017. These funds are currently being held by the Administrators' solicitors pending a post-Administration bank account being set up.

There have been no payments made in the post-appointment period to date.

## **Appendix E     Detailed Explanation of Pre-Pack Transaction**

Attached is the Administrators' letter to creditors providing a detailed explanation of the pre-pack sale to idv.

TO ALL KNOWN CREDITORS

5 June 2017

Ref: AJD/SEC/LJ/D05.13  
Direct line: 0141 226 9332  
Laura Jones

Dear Sirs

**Land Engineering (Scotland) Limited (In Administration) (“the Company”)**  
**Principal trading addresses: Gardrum House, Stewarton Road, Fenwick, Kilmarnock, KA3 6AS and Suite 4A, Skypark 5, 45 Finnieston Street, Glasgow, G3 8JU**

On 30 May 2017 the Company entered Administration and Colin Dempster and I were appointed as Joint Administrators. The appointment was made by the Company’s directors under the provisions of paragraph 22 of Schedule B1 to the Insolvency Act 1986. I enclose a copy of Form 2.11B (Scot), for your information.

As licensed insolvency practitioners, we are bound by the Insolvency Code of Ethics when carrying out all professional work relating to the Administration.

**Sale of the business**

On 30 May 2017 we completed a sale of part of the Company’s business and assets to idverde Limited (“idv”) for a total consideration of £987,379.

The business, plant, equipment, work in progress and stock assets sold to idv related to the design, management, construction and maintenance services carried on under the Company’s services, responsive and winter divisions together with projects at Grangemouth, Craighouse and Quartermile.

In accordance with Statement of Insolvency Practice 16 (“SIP16”), a detailed explanation of the transaction is set out below.

**Purpose of this letter**

The term “pre-packaged/pre-pack sale” refers to an arrangement under which the sale of all or part of a company’s business or assets is negotiated with a purchaser prior to the appointment of an Administrator and the Administrator completes the sale immediately on, or shortly after, appointment.

This is the case here and so the purpose of this letter is to inform creditors of the Company, in accordance with SIP16, of the background in relation to the pre-pack sale of the aforementioned business and related assets of the Company, and to demonstrate to creditors that such a pre-pack sale has been undertaken with due regard to their interests.

## Background

The Company had traded since 1980 and was a well-established contracting, civil engineering and landscaping business based in Glasgow and Fenwick with a number of site offices around Scotland and historic turnover of c£45m per annum. The Company's activities were mainly contractual in nature, with both public and private sector clients although primarily focused on the public sector.

The Company had suffered from an increasingly competitive market, declining contract profitability (particularly in relation to its construction business) and contract pricing issues in the last 12 to 18 months leading to trading losses. With trading declining, the Company's cash position had worsened over recent months. Various options had been explored by the directors to address these challenges, including restructuring its market strategy to focus on higher margin work and implementing cost reduction measures. The directors also sought external investment in the Company, as follows:

- in the last quarter of 2016, the directors engaged Noble Grossart ("NG"), a well-known Edinburgh Merchant Bank, to assist them in seeking new equity for the Company. NG approached five private equity houses who they believed were most likely to be interested in the Company's business. NG advised that, although there was a good initial response, all potential investors eventually declined. The main factor was that the business was too complicated with different types of turnover and as a result there was a high risk that the restructuring required to "right size" the Company would take longer and cost more to achieve than was being forecast. In particular, the large construction contracts were seen to be of the highest risk.
- when it became clear that private equity was not a viable option, the directors then pursued a sale of the Company. They approached idv in January 2017 and commenced formal discussions to sell the business. idv were considered by the directors to be the most likely acquirer of their business, as idv have a similar business in England and were looking to expand into Scotland. At the start of February 2017, idv submitted an offer for the Company's shares subject to a number of assumptions and diligence. They were granted exclusivity to 30 April 2017 to conduct their diligence and complete the deal. Having conducted further diligence, idv advised the Company on 20 April 2017 that they were no longer interested in a share sale and were examining the possibility of a purchase of the Company's entire business through a pre-pack sale and would continue to conduct their diligence on this basis.
- following this, the directors approached another potential interested party, another private equity house and a potential provider of grants or loans. However, none of these initiatives were successful.

## Initial introduction to the Company

Whilst idv continued with their diligence, KPMG were engaged by the Company in late April 2017 to provide advice to the Company with regard to its options. Following KPMG's review, the Company concluded that they needed assistance in planning for a pre-pack sale. We were therefore introduced to the Company by KPMG on 5 May 2017, as KPMG could not assist the Company with regard to a pre-pack due to their position as auditors.

We were engaged by the Company on 10 May 2017 to assist in a corporate advisory capacity to perform the following work:

- „ Review the Company's short term cash position.

- „ Prepare an options analysis for the Company.
- „ Assist with the engagement of agents to provide valuations on the Company's assets (fixed assets, debtors, WIP and retentions).
- „ Prepare an Estimated Outcome Statement.
- „ Assist the Company in the sales process, including meetings with idv and communication with the secured creditor (LBG/Bank of Scotland)(“the Bank”) and prepare for a potential pre-pack sale.
- „ Contingency Planning, in the event that a sale and pre-pack of the whole business was no longer a viable option.

### **Pre-appointment considerations**

#### Marketing of the business and assets

We immediately considered with the directors whether the Company's business could be more widely marketed in the circumstances which the Company faced at the time. This involved consideration of the immediate cash requirements of the Company and the steps which the directors had already taken to explore a sale of the Company (see Background section above for further information).

The Company's short term cash forecast indicated that there was limited time available to explore a sale. At the time of our engagement, the Company's cash forecast indicated that it may not be able to trade beyond 19 May 2017.

For the following reasons, the view was reached that it was not in the best interests of the Company's creditors to conduct further marketing of the Company's business:

- „ there was insufficient time available for any newly introduced parties to consider whether they had an interest in the Company's business and to conduct the diligence necessary to make an offer (particularly bearing in mind that idv had been performing diligence on the business for over three months and were still continuing with this). There was significant complexity in the business in terms of its wide range of services and contracts. We considered that these factors would realistically require a purchaser at least a month, if not significantly longer, from initial introduction to conduct their diligence, submit and negotiate an offer and complete a transaction. As indicated above, the Company's cash flow forecast provided to us at the time of our engagement suggested that the Company were likely to have insufficient cash to allow trading to continue beyond week ending 19 May 2017. Whilst subsequent cash initiatives undertaken by the directors (including taking steps to cease work on certain projects, not commence new projects and accelerate debtor receipts) indicated that the Company could possibly continue trading for a short period beyond 19 May 2017, this was by no means certain as increasing rumours in the market were resulting in suppliers threatening legal action or taking practical steps to reduce their exposure. The board of directors took legal advice in this regard and closely reviewed the position on a daily basis. The trading and cash position was therefore precarious and did not provide any reasonable platform for new potential buyers to understand the business, conduct their diligence, negotiate an offer and complete a deal.

- „ few potential buyers operated either in all of the markets of the Company (eg competitors tended to only operate in certain of the markets) or with the same business model (eg certain competitors sub contracted the work rather than have an ‘in house’ work force) and so most buyers were only likely to be interested in part of the business. Understanding and analysing a segregation of the business was likely to add to the complexity of any deal and therefore the timescale involved.
- „ our corporate finance colleagues’ view was that there were no obvious alternative buyers for the Company’s business, nor did they believe that any party could complete a deal in the timescales envisaged. This was also the view of the Company’s directors.
- „ the risk that widening out the marketing process would alert the market to the issues facing the Company which could exacerbate the Company’s existing trading problems.
- „ the risk that idv withdrew their offer or refused to progress it given the ongoing diligence expense involved. idv advised the directors on a number of occasions that they would review their position should the directors conduct a wider marketing of the Company’s business as they felt that this could possibly seriously damage the business which they were looking to acquire.
- „ the unsuccessful steps which had already been taken by the directors (when the business was in a better shape) to attract investment into the Company indicated that there was little appetite for the business in the investment community. Many of the concerns expressed by these parties would be equally applicable to trade buyers.
- „ the contractual nature of the business, with insolvency being a potential termination event for most of its contracts, and the exposure to a significant TUPE risk were two factors which we knew from experience were likely to be major obstacles to any sale of this type of business in a pre-pack scenario.
- „ the practical implications of conducting further marketing would have meant an already severely stretched management team, who had been working long hours to keep the business together and meet idv’s due diligence requests, would have to spend less time on these matters, creating a real risk that either the business would cease or idv would either not progress with their offer or walk away.

We continued to assess this on a regular basis including, inter alia, discussing the strategy with our corporate finance colleagues. Our position as regards further marketing of the business did not however change.

Accordingly, there were practically only two options available to the Company, firstly to see whether a pre-pack offer/sale to idv could be achieved within the short timescales involved or alternatively to request the appointment of Administrators with an immediate closure of the Company’s business.

Given the potentially significantly improved recoveries to creditors from a sale of the business on a going concern basis, we assisted the Company in exploring the sale of the Company’s business to idv on a pre-pack basis. The Bank were approached and agreed to allow an increase in their debt to take place in order to allow sufficient time to explore a sale of the business to idv.



Our view is therefore that the strategy to pursue the completion of a sale to idv and not conduct further marketing represented the best available outcome for creditors as a whole in these particular circumstances.

#### Creditors

The Company has the following registered charges:

<b>Date of creation of charge</b>	<b>Date of registration of charge</b>	<b>Details of charge</b>	<b>Name of charge holder</b>
5 July 2011	7 July 2011	Standard security over farm and lands of Gardrum, Fenwick	Bank of Scotland plc
24 June 2011	30 June 2011	Bond and floating charge	Bank of Scotland plc

Throughout the process, regular consultations were held with the secured creditor with regard to the strategy outlined above.

There are no other secured creditors. Other major creditors were not consulted, firstly, because of the lack of time available, and, secondly, because it was necessary to keep negotiations confidential in order to prevent erosion of value due to the risk of customers terminating uncompleted contracts.

#### Other alternatives

We formed the opinion that it was not appropriate to trade the Company's business following an Administration appointment and offer it for sale as a going concern for the following reasons:

- „ Most of the Company's contracts contained immediate termination provisions in the event of an insolvency situation.
- „ Lack of warranties for contracts.
- „ Working capital and overhead requirement in order to continue work on contracts.
- „ Significant arrears in supplier payments.
- „ Ongoing trading losses.

#### **Statutory purpose of Administration**

The purpose of an Administration is to achieve one of three objectives:

- a) To rescue the company as a going concern.
- b) To achieve 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).

- c) To realise property in order to make a distribution to one or more secured or preferential creditors.

The objective being pursued is objective (b). The pre-pack sale of the Company's business and assets enabled this objective to be achieved by maximising asset values and minimising creditor claims.

### Valuation of the business and assets

Sweeney Kincaid (industrial auctioneers with membership of the National Association of Valuers and Auctioneers) were instructed to value the Company's plant and equipment and stock and Gordon Johnston, FRICS, MCI Arb, G A Johnston Associates (Chartered Quantity Surveyors) was instructed to value the Company's work in progress. They have confirmed their independence and that they carry adequate professional indemnity insurance.

Details of the valuations are as follows:

Type of asset	Basis of valuation*	Valuation (£)	Notes
Plant and equipment	Market value ex situ	632,308	Relating only to idv sale
Work in progress	Break up	10,791	Relating only to idv sale
Stock	Market value ex situ	17,000	All stock
<b>Total</b>		<b>660,099</b>	

\* Ex situ/break up valuations were used as a day one closure and break up sale was the only alternative to selling to idv

### The transaction

As previously stated, the pre-pack sale was completed on 30 May 2017. Further details of the transaction are given below:

#### The purchaser and related parties

The purchaser is idv ("the purchaser").

There is no connection between the purchaser and the directors, shareholders or secured creditors of the Company or their associates. There are no directors, former directors or their associates of the Company who were involved in the financing, management or ownership of the purchaser prior to the sale. No directors had given guarantees for amounts due from the Company to a prior financier and that financier is not financing the new business.

### The assets

The assets sold comprise the following:

Description of asset sold	Valuation of assets sold (£)	Purchase consideration (£)
Plant and equipment	632,308*	565,796
Work in progress	10,791	396,583
Stock	17,000	24,998
Goodwill	See comments below	1
Customer list	See comments below	1
<b>Total</b>	<b>660,099</b>	<b>987,379</b>

\*Valuation after auction costs

The transaction is a sale of certain elements of the business and assets of the Company as outlined at the start of this letter.

### Sale consideration

As previously stated, the sale consideration was £987,379. The sale price was the best reasonably obtainable in all the circumstances and, as indicated above, considerably exceeds the total valuation received for the assets sold.

All of the total consideration of £987,379 has been paid. The figure for work in progress was estimated on completion of the sale and will be adjusted either upwards or downwards on the basis of the actual book value of work in progress at 30 May 2017. The adjustment will be based on 27% of the difference between the actual work in progress book value and the estimated book value, subject to the consideration for work in progress being no lower than £300,000.

The sum of £2 was attributed to goodwill and customer lists as part of the sale, reflecting the significant losses made by the Company in recent years suggesting no significant value in the goodwill and reflecting that most contracts had insolvency termination provisions which would allow customers to terminate the contracts on insolvency and approach other suppliers.

Securing the aforementioned sale has also brought a number of associated benefits to creditors including:

- idv have taken over completion of, and responsibility for, the obligations of the Company under the contracts currently in place with customers of the business acquired. This should allow for seamless completion of works and minimise any interruption to contracts, thereby enhancing book debt and retention recoveries (idv have agreed to act as agents of the Company in collecting the book debt and retentions relating to the business which they have acquired on a 5% commission basis).

- assuming that idv are able to obtain novation of certain contracts, they have undertaken to replace two performance bonds provided by the Bank and HCC International Insurance Company plc, thereby reducing potential creditor claims in the Administration.
- minimising preferential creditor claims from employees resulting from the transfer of 251 of the Company's employees to idv under TUPE.
- the avoidance of redundancy and lieu of notice claims by 251 employees who have transferred to idv and who otherwise would have been made redundant. We believe that the claim which has been avoided is in excess of £1.3m.

The only asset subject to a fixed charge (standard security) is the Company's freehold property in Fenwick which idv did not wish to acquire and was therefore excluded from the sale. All of the asset realisations included in the sale are consequently allocated to the floating charge.

### **Significant assets not included in the sale agreement**

The key assets not included in the sale are the Company's freehold property, the debtors/retentions in relation to the business sold to idv, the work in progress/debtors/retentions and stock and plant & equipment in relation to the remainder of the Company's business which was not sold and various loans including property, renewables and employees.

We have appointed G A Johnston Associates to act as our agents in relation to the debtors, work in progress and retentions and Sweeney Kincaid as our agents to collect and auction the stock and plant & equipment. In relation to the various loans, we are in the process of establishing the background to these debts in order to maximise the recoveries obtainable from these assets. We will be appointing property agents shortly in relation to the freehold property to provide valuation and marketing advice and assistance.

### **Connected party transaction**

We are not aware of any connection between the Company and its management and idv.

### **Other matters**

In accordance with paragraph 49(5) of schedule B1 to the Insolvency Act 1986, we are required to prepare a report and proposals to creditors within eight weeks of our appointment. This report is enclosed with this letter.

The enclosed report also sets out our proposals for remuneration and seeks approval for the basis. The statutory provisions relating to remuneration are set out in Rule 2.39 of the Insolvency (Scotland) Rules 1986. Further information is given in the Association of Business Recovery Professionals' publication 'A Creditor's Guide to an Administrator's Remuneration', a copy of which may be accessed from the web site of the Institute of Chartered Accountants of Scotland at <https://www.icas.com/technical-resources/creditor-guides-to-office-holder-remuneration> or is available in hard copy upon written request to the Joint Administrators.

Please note that debts incurred by the Company before our appointment will rank as unsecured claims against the Company. Any sums due to the Company arising after our appointment must be paid in full and without set-off against any debts incurred by the Company prior to our appointment.

The directors are required to submit a statement of affairs to us and you will appreciate that the full financial position is not yet known. Please send me a detailed statement of any sums due to you from the Company.

Certain debts due from the Company may be preferential in accordance with section 386 of the Insolvency Act 1986. If you consider that you have a claim in this category, please advise me immediately. If you hold any security for your claim or you consider that you have title to any assets in the Company's possession, please forward details to me as soon as possible.

You may be entitled to VAT bad debt relief on debts arising from supplies more than six months old. This procedure does not involve the Administrators and claims should be made directly to HM Revenue and Customs.

Please note that with effect from the date of our appointment, the Company will not be responsible for payment for any goods or services delivered to the Company except against orders which bear the signature of one of the Joint Administrators, or our representative, whose specimen signature and authority limit appears at the end of this letter. Goods and services so ordered will be paid for on normal credit terms. If any orders placed with you by the Company prior to our appointment have not been completed, they should not be completed unless you receive written confirmation from either of us, or our authorised representative, that the goods or services are still required. Please let me have a statement of any orders placed by the Company prior to our appointment which have not yet been completed.

If there are any matters concerning the Company's affairs which you consider may require investigation and consequently should be brought to our attention, please forward the details to me in writing as soon as possible.

If you require any further information or explanation, please do not hesitate to contact my assistant, Laura Jones on 0141 226 9332.

Yours faithfully  
for Land Engineering (Scotland) Limited (In Administration)



A J Davison  
Joint Administrator

Enc Form 2.11B (Scot) Notice of Administrator's Appointment

A J Davison and C P Dempster are licensed in the United Kingdom to act as Insolvency Practitioners by The Institute of Chartered Accountants of Scotland. As licensed insolvency practitioners, we are bound by the Insolvency Code of Ethics when carrying out all professional work relating to the Administration.

The affairs, business and property of the Company are being managed by the Joint Administrators, A J Davison and C P Dempster, who act as agents of the Company only and without personal liability.

We may collect, use, transfer, store or otherwise process (collectively, "Process") information that can be linked to specific individuals ("Personal Data"). We may Process Personal Data in various jurisdictions in accordance with applicable law and professional regulations including (without limitation) the Data Protection Act 1998.



The authorised signatory for orders is:

S E Carragher who will sign  
(Authority up to £20,000)

Shona E. Carragher

The Insolvency Act 1986

# Notice of administrator's appointment

Pursuant to paragraph 46 of Schedule B1 to the Insolvency Act 1986 and Rule 2.19 of the Insolvency (Scotland) Rules 1986



Name of Company Land Engineering (Scotland) Limited	Company number SC070682
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(a) Insert full name(s) and address(es) I / We (a) Andrew James Davison and Colin Peter Dempster  
Ernst & Young LLP, Ten George Street, Edinburgh, EH2 2DZ

give notice that I was / we were appointed as administrators of the above company on:

(b) Insert date (b) 30 May 2017

and attach a copy of the administration order / notice of appointment

Signed  Signed   
Dated 30/5/17 Dated 30/5/17  
Joint / Administrator(s) IP No(s) 9353 8908

### 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

Laura Jones	
Ernst & Young LLP, G1, 5 George Square, Glasgow, G2 1DY	
	Tel: 0141 226 9332
DX Number:	DX Exchange:

Companies House receipt date barcode

When you have completed and signed this form please send it to the Registrar of Companies at:  
**Companies House, 139 Fountainbridge, Edinburgh, EH3 9FF**  
**DX 235 Edinburgh / LP 4 Edinburgh-2**

## The Insolvency Act 1986

### Notice of Claim for Voting Purposes

Convocatoria para la presentación de créditos. Plazos aplicables  
Výzva k přihlášení pohledávky. Závazné lhůty  
Opfordring til anmeldelse af fordringer. Vær opmærksom på fristerne  
Aufforderung zur Anmeldung einer Forderung. Etwaige Fristen beachten!  
Nõude esitamise kutse. Järgitavad tähtajad  
Πρόσκληση για αναγγελία απαιτήσεως. Προσοχή στις προθεσμίες  
Invitation to lodge a claim. Time limits to be observed  
Invitation à produire une créance. Délais à respecter  
Invito all'insinuazione di un credito. Termine da osservare  
Uzaicinājums iesniegt prasījumu. Terminī, kas jāievēro  
Kvietimas pateikti reikalavimą. Privalomieji terminai  
Felhívás követelés bejelentésére. Betartandó határidők  
Stedina għal preżentazzjoni ta' talba. Limiti taż-żmien li għandhom jiġu osservati  
Oproep tot indiening van schuldvorderingen. In acht te nemen termijnen  
Wezwanie do zgłoszenia wierzytelności. Przestrzegać terminów  
Aviso de reclamação de créditos. Prazos legais a observar  
Výzva na přihlásenie pohľadávky. Je potrebné dodržat stanovené termíny  
Poziv k prijavi terjatve. Roki, ki jih je treba upoštevati!  
Kehotus saatavan ilmoittamiseen. Noudatettavat määräajat  
Anmodan att anmäla fordran. Tidsfrister att iaktta

---



Statement of Claim by Creditor

Pursuant to Rule 4.15(2)(a) of the Insolvency (Scotland) Rules 1986

WARNING

It is a criminal offence

- for a creditor to produce a statement of claim, account, voucher or other evidence which is false, unless he shows that he neither knew nor had reason to believe that it was false; or
- for a director or other officer of the company who knows or becomes aware that it is false to fail to report it to the liquidator within one month of acquiring such knowledge.

On conviction either the creditor or such director or other officer of the company may be liable to a fine and/or imprisonment.

Notes

- |  |  |
|--|--|
| <p>(a) <i>Insert name of company</i></p>   | <p>(a) Land Engineering (Scotland) Limited</p>   |
| <p>(b) <i>Insert name and address of creditor</i></p>  | <p>(b)</p>   |
| <p>(c) <i>Insert name and address, if applicable, of authorised person acting on behalf of the creditor</i></p>  | <p>(c)</p>   |
| <p>(d) <i>Insert total amount as at the due date (see note (e) below) claimed in respect of all the debts, the particulars of which are set out overleaf</i></p>   | <p><i>I submit a claim of (d) in the liquidation of the above company and certify that the particulars of the debt or debts making up that claim, which are set out overleaf, are true, complete and accurate, to the best of my knowledge and belief.</i></p> |
| <p>(e) <i>The due date in the case of a company</i></p> <p>(i) <i>which is subject to a voluntary arrangement is the date of a creditors' meeting in the voluntary arrangement:</i></p> <p>(ii) <i>which is in administration is the date on which the company entered administration</i></p> <p>(iii) <i>which is in receivership is the date of appointment of the receiver; and</i></p> <p>(iv) <i>which is in liquidation is the commencement of the winding up.</i></p> |  |

Signed

\_\_\_\_\_  
Creditor/person acting on behalf of creditor

*The date of the commencement of the winding up is:*

Date

- (i) *in a voluntary winding up the date of the resolution by the company for winding up (section 86 or 98); and*
- (ii) *in a winding up by the court, the date of the presentation of the petition for winding up unless it is preceded by a resolution for voluntary winding up (section 129)*

## PARTICULARS OF EACH DEBT

## Notes

*A separate set of particulars should be made out in respect of each debt.*

- |  |   |
|--|---|
| <p>1. <i>Describe briefly the debt, giving details of its nature, the date when it was incurred and when payment became due.</i></p> <p><i>Attach any documentary evidence of the debt, if available.</i></p>  | <p>1. <b>Particulars of debt:</b></p>         |
| <p>2. <i>Insert total amount of the debt, showing separately the amount of principal and any interest which is due on the debt as at the due date (see note (e)). Interest may only be claimed if the creditor is entitled to it. Show separately the VAT on the debt and indicate whether the VAT is being claimed back from HM Customs and Excise.</i></p>   | <p>2. <b>Amount of debt:</b></p>              |
| <p>3. <i>Insert the nature and amount of any preference under Schedule 6 of the Act claimed in respect of the debt.</i></p>  | <p>3. <b>Preference claimed for debt:</b></p> |
| <p>4. <i>Specify and give details of the nature of any security held in respect of the debt including</i></p> <p style="margin-left: 20px;">a) <i>the subjects covered and the date when it was given;</i></p> <p style="margin-left: 20px;">b) <i>the value of the security.</i></p> <p><i>Security is defined in section 248(b) of the Insolvency Act 1986 as meaning “any security (whether heritable or moveable), any floating charge and any right of lien or preference and any right of retention (other than a right of compensation or set off)”. For claims in administration procedure security also includes a hire purchase agreement, agreement for the hire of goods for more than three months and a conditional sale agreement (see Rule 2.33).</i></p> <p><i>In liquidation only the creditor should state whether he is surrendering or undertakes to surrender his security; the liquidator may at any time after 12 weeks from the date of commencement of the winding up (note (e)) require a creditor to discharge a security or to convey or assign it to him on payment of the value specified by the creditor</i></p> | <p>4. <b>Security for debt:</b></p>           |
| <p>5. <i>In calculating the total amount of his claim in a liquidation, a creditor shall deduct the value of any security as estimated by him unless he surrenders it (see note 4).</i></p>  | <p>5. <b>Total amount of the debt:</b></p>    |
| <p>6. <i>In the case of a member state liquidator creditor, specify and give details of underlying claims in respect of which he is claiming as a creditor.</i></p>  | <p>6. <b>Underlying claims</b></p>            |

## **Notes to Administration Statement of Claim Form:**

1. Please attach a detailed statement of your account as at the date on which the Company entered Administration
2. If your claim is preferential (e.g., for wages, holiday pay or certain pension arrears) or secured please give details and attach supporting documentation.
3. VAT bad debt relief may usually be claimed six months after the date of supply.

## **Extracts from the Insolvency (Scotland) Rules 1986**

### **2.33 hire-purchase, conditional sale and hiring leasing agreements**

1. Subject as follows, an owner of goods, under a hire-purchase agreement or under an agreement for the hire of goods for more than 3 months, or a seller of goods under a conditional sale agreement, is entitled to vote in respect of the amount of the debt due and payable to him by the company on the date that the company entered administration.
2. In calculating the amount of any debt for this purpose, no account shall be taken of any amount attributable to the exercise of any right under the relevant agreement, so far as the right has become exercisable solely by virtue of the making of an administration application, a notice of intention to appoint an administrator or any matter arising as a consequence, or of the company entering administration.