

Checklist: Insolvency - administration

What is administration?

- Administration is the procedure in which a company that is, or is likely to become, insolvent can be reorganised or have its assets sold for the benefit of creditors. When a company goes into administration, an insolvency practitioner takes over the control of the company's affairs from its directors.
- The main aim of administration is to rescue the company so that it can continue trading as a going concern. If this cannot be achieved, there are two other reasons why a company may go into administration:
 - To achieve a better result for the company's creditors as a whole than would be likely if the company was put into liquidation.
 - To sell the company's property to make a distribution to the company's secured or preferential creditors.
- A secured creditor is, in general terms, entitled to be repaid from the proceeds of the secured assets. Preferential debts include certain employee claims and contributions to occupational pension schemes.
- In the majority of cases, the administration of a company leads to the sale of its assets. Administration may achieve a better result for the company's creditors than immediate liquidation, because, for example, the company may be able to continue trading allowing greater value to be achieved for its assets as part of a sale on a going concern basis.
- Pre-pack administration is the process in which the sale of the company's assets is agreed before the company goes into administration, and is then completed immediately after the start of the administration.
- The administration of a company must be completed within one calendar year unless the creditors or the court agrees to an extension. In practice, many companies remain in administration for more than one year and administrations can last several years.
- When the purposes of the administration have been achieved, the company may come out of administration and continue normal trading, although this is unusual in practice. More commonly, the net proceeds of the company's assets are distributed to the company's creditors, often by a subsequently appointed liquidator.
- When the net proceeds are distributed, creditors whose debts are not secured or preferential may receive a percentage of their debt by way of dividend. This may be as little as one or two pence in the pound, and can be nothing at all.

The administrator

- The administrator must be a qualified insolvency practitioner. Often more than one administrator is appointed to act jointly.
- The administrator acts as an agent of the company and an officer of the court and therefore has a duty to act in good faith. They must also be, and be seen to be, independent and impartial in their management of the company and its property.

- Once appointed, the administrator must take all the company's property into their custody or control.
- As the company's agent, the administrator can cause the company to contract with third parties. Sums due under such contracts are paid in priority to the administrator's fees and expenses, and distributions to floating charge holders and unsecured creditors.
- Administrators have a duty to perform their functions as quickly and efficiently as possible and in the interests of the creditors as a whole.

What does administration mean for a creditor company?

- As soon as a company is placed in administration, creditors are prevented from bringing or pursuing legal proceedings against the company or its assets.
- It is possible to ask the administrator's or the court's permission to bring proceedings against a company that is in administration. However, a creditor who has a monetary claim is unlikely to be granted permission as it is generally only claims that relate to the ownership of property that are allowed to continue.
- If your company is owed money by a company that has gone into administration, often the best option is to submit details of your claim to the administrator (known as your proof of debt) and wait for the administrator to assess it.
- As a creditor, your company may be able to join a creditor's committee to help the administrator fulfil their functions. Administrators have a duty to report to the company's creditors on their progress. Becoming a member of the creditors' committee may provide you with an opportunity to access more detailed information and comment on the way the administrators are conducting the administration.

Limitation periods

- When a company is in administration, although as a creditor you will be blocked from bringing an action against the company, time will continue to run for the limitation period of your claim. The limitation period for a simple contract claim is six years. Where time is running out, your company can protect its position by:
 - Obtaining the administrator's acknowledgement of the claim. Note that this restarts the applicable limitation period and does not stop time running.
 - Applying to the administrator or the court for permission to issue proceedings against the company.

What action can my company take if the administrator is doing a bad job?

If your company has any concerns with the conduct of the administrator, you should initially raise any issues with the administrators themselves or via any creditors' committee. If the matter is not resolved adequately there are a number of legal remedies that you can consider.

- You can apply for a court order:
 - On the basis that the administrator's conduct has unfairly harmed your interests, or the administrator is failing to perform their duties as quickly or efficiently as possible.
 - On the basis of any wrongful exercise of legal authority by the administrator.

- To remove the administrator. This should only be used in extreme circumstances.

The courts do not permit these remedies to be used by any one creditor to leapfrog claims of other creditors, nor to require the administrator to devote a disproportionate amount of time or resources to their particular claim.

More information

This is only general guidance, not legal advice. If you have any questions please contact Alan Lodge on alanl@n-v.co.uk

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