

## **ADMINISTRATION INITIATION**

### **Methods of Appointment**

There are two different methods by which an administrator may be appointed. A court order is not necessary in the case of appointments by a qualifying charge holder, by directors or by the company itself. This will cover the majority of cases. The administrator can be appointed by filing certain documentation with Court. This eases the administrative burden and the speed of the procedure.

Certain other parties are entitled to apply to court for an order for the appointment of an administrator. An application to Court for an administration order may be made by:-

- the company;
- the directors;
- Magistrates Courts (enforcing fines)
- one or more creditors;
- the supervisor of a CVA;
- the liquidator where the company is in liquidation;
- qualifying floating charger where the company is compulsory winding up

### **Appointment by Floating Charge Holder**

The Enterprise Act 2002 replaced the right of a charge holder over an entire company's assets to appoint a receiver with a right to appoint an administrator. A "qualifying" charge holder is usually a floating charge (i.e. a charge over all assets of a company) holder, who could have appointed an administrative receiver prior to the Enterprise Act reforms. A QFC must relate to the whole or substantially the whole of the company's assets.

In order to appoint an administrator, the floating charge on which the appointment relies must be enforceable and there must be a default under it. Generally, there must be a demand for repayment and a failure to pay. The company must not already be in administration, administrative receivership, or be in liquidation.

The QFC must give two business days notice to any prior QFC holder. This allows the more senior floating charge holder to take the initiative and appoint its own choice of insolvency practitioner as administrator. The prior QFC may either consent to the appointment of the administrator by the later QFC or do nothing. In this event, the serving QFC will be entitled to appoint the administrator on the expiry of two days. Prior notice is not necessary where the QFC already has the written consent of the prior charge holder.

There is a prescribed form of notice which must be filed in Court. The QFC files three copies of his appointment with the Court. The Court seals notices of appointment and endorses the date and timing of filing. The filing in Court triggers a moratorium on enforcement of legal claims and enforcement of court orders against the company.

## **Appointment by Directors**

The directors may appoint an administrator out of court under a similar procedure. This may not be done where the company is in liquidation or where an administrative receiver is already in office. There are certain other restrictions on appointment by the directors. Where these apply, the directors of the company may still apply to Court for an order for administration.

The directors must give five business day's notice of their intention to appoint a named administrator to anybody entitled to appoint an administrative receiver or administrator. This is to enable that party to appoint its own nominee as administrative receiver.

The directors of the company must file a notice of intention to appoint together with certain accompanying documents with the Court. A statutory declaration must be sworn

to the effect that the company is or is likely to become unable to pay its debts, is not in liquidation and the appointment is not subject to certain restrictions. Once the requisite period expires, the directors may file notice of appointment in Court.

## **Application to Court**

A written statement must be filed by the administrator setting out details of his professional relationships (relevant to possible conflict of interest) and his consent. He must confirm his opinion that it is reasonably likely that the purpose of the administration will be achieved.

An affidavit of support must be filed by and on behalf of the applicants setting out the following:-

- statement of company's financial position;
- specifying to the best of his knowledge, the company's assets and liabilities including contingent and prospective applicants;
- details of security known or believed to be held by the creditors of the company;
- details of any insolvency proceedings in relation to the company;
- any other matters which will assist the Court in deciding whether to make an order.

The application, statements and affidavits are filed with Court and the Court fixes a date for a hearing. The application and supporting documents must be served on various parties including any existing administrative receiver, a petitioner in a winding up, any proposed administrator, a supervisor of a CVA and the company itself. Notice of filing must be given to any enforcement officer charged with execution of a Court judgement.

## **Court Powers**

The Court has wide powers on the application and may make an order to dismiss the application, adjourn it, make an interim order, make a winding up order or make such other orders as the Court sees fit.

During administration, a moratorium operates to prevent secured and other creditors from exercising enforcement rights without leave of the administrator or the Court. The purpose is to allow time and space to develop a rescue proposal.

An interim application may be made where there has been an application to Court but the matter has not been fully determined or where an administration order has been made, but has not yet taken effect. Where a qualified charge holder has filed notice of intention to appoint an interim administrator, a moratorium will take effect until the earlier of five days or the appointment of the administrator itself. This also applies to out of Court appointments by a company or directors except a 10 day period rather than 5 days is the maximum duration.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.