

OVERVIEW OF ADMINISTRATION

Reforms

Administration has no direct equivalent in Ireland. In some respects, the office is equivalent to that of an examiner. Administration is a procedure which may lead to several outcomes, ranging from a rescue and arrangement with creditors under a Creditors Voluntary Arrangement to eventual liquidation.

Administration was first introduced in 1986 and was reformed significantly in 2003. The holder of a floating charge created after 15th September 2003 is no longer entitled to appoint an administrative receiver. A “qualifying” floating charge holder (a QFC) has instead, the right to appoint an administrator.

A QFC is a charge holder one who holds a charge over all or substantially all the assets of a company. This is, in effect, a floating charge holder. A QFC may appoint an administrator without going to Court. This speed and relative lack of formality is an important advantage.

Purposes of Administration

The preferred purpose of administration is to rescue the company as a going concern. The administrator must endeavour to do this, unless he believes that it is not reasonably practicable. If this preferred purpose is not feasible and if he believes that a better result could be achieved for the company's creditors as a whole, than on an immediate liquidation, he may pursue this alternative purpose.

If the administrator thinks it is not reasonably practicable to achieve either of the above purposes (i.e. rescuing the company as a going concern or achieving a better result than immediate liquidation) and it does not unnecessarily harm the interest of the creditors of the company as a whole, he may realise the company's assets in order to make a distribution to one or more secured or preferential creditors.

The Company Voluntary Arrangement or a formal scheme of arrangement approved by Court may be used by an administrator as techniques to achieve one or more of the above three objectives.

Although, administration restricts the exercise of certain rights of secured and preferential creditors, their substantive rights are largely protected. The administration must not be conducted for the benefit of unsecured creditors at the expense of those who have secured rights. The realisation of property followed by distribution to secured and preferential creditors may be an appropriate purpose for administrators appointed by floating charge holders, where there are insufficient assets to pay any dividend to unsecured creditors.

Appointment

There are a number of different methods by which an administrator may be appointed. A court order is not necessary to appoint an administrator in the case of a qualifying charge holder and the company itself. This is an important point of difference with the Irish examinership procedure. An administrator can be appointed by filing certain documentation with Court. This eases the administrative burden and the speed of the procedure.

An out of Court appointment can be made by the following:-

- a qualifying floating charge holder;
- the directors;
- the company.

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

The Administrator

The office of administrator has no direct equivalent in Ireland. In some respects, it is equivalent to an examiner. However, administration is a procedure which may lead to several outcomes, ranging from an arrangement with creditors under the CVA (Creditors Voluntary Arrangement) procedure to eventual liquidation.

The administrator is an officer of the Court and owes duties to the creditors and to the Court. The administrator must perform his functions in the interests of the company as a whole. The administrator must be a qualified insolvency practitioner. His remuneration and expenses are to be paid in priority to the floating charge holder.

The administrator is the company's agent in the same way as a receiver. The administrator is not liable on the company's contracts. If the administrator decides not to pay under existing contracts, the moratorium on enforcement prevents the creditors enforcing against the company.

The administrator takes over the company and drafts the proposals for achieving the one of the above purposes. He must take control of the company's assets and must manage its affairs in accordance with proposals for achieving the stated objective. The administrator has full powers to do everything necessary for the management of the business, assets and property of the company. Directors can only exercise management powers, with the consent of the administrator. Directors of the company can be removed and new directors can be substituted.

Advantages of Administration

The principal advantage of Administration is its flexibility and relative simplicity. Court intervention is not necessarily required. The administrator has considerable freedom to reach the best overall solution for the benefit of the creditors as a whole. This is

not to say that this it is necessarily more beneficial for the charge holder than the former option of administrative receivership.

An administrator has the benefit of a moratorium while an administrator receiver does not. This gives the company an opportunity to arrange continued financing. An administrator has the same powers to trade, manage and sell as an administrative receiver. The charge holder has no liability to indemnify the administrator unless this is contained in the debenture document.

Administrations are recognised under EU regulations while administrative receiverships are not. Where assets are located in other EU jurisdictions, the regulations requires overseas court to co-operate with the IP.

Powers of Administrator

The administrator has full powers to do everything necessary for the management of the business, assets and property of the company. Directors of the company can be removed and new directors can be substituted. Directors can only exercise management powers, with the consent of the administrator.

The administrator has statutory powers to trade. These powers can be exercised in order to complete work in progress, protect outstanding debts and provide a breathing space. The administrator can require supplies from utility companies.

The administrator has power to call a meeting of the creditors, apply to Court for directions or make a distribution to secured or preferential creditors and (with the Court's permission) to ordinary unsecured creditors.

The administrator may dispose of floating charge assets as if they were not subject to the charge. The charge holder will have the same priority in respect of acquired property as he has in respect of disposed of property.

The administrator may apply to Court for an Order to enable him dispose of fixed charge property. It must be a condition that the charge holder receives the net proceeds of sale and any additional money so as to ensure that the fixed charge

holder receives the amount determined by the Court to be the net market value. The administrator has similar powers in respect of goods held under hire purchase, conditional sale, leasing or retention of title. The disposal must be likely to promote the purpose of the administration.

Administrators can bring actions against directors and other officers of the company for misfeasance, fraudulent trading, wrongful trading and breach of duty. He can challenge transactions at undervalue, unlawful preferences, extortionate credit transactions and certain floating charges. This must be done within certain time periods.

Duties of Administrator

The administrator's primary duty is to save the company as a going concern. He owes a duty to all creditors and must ensure that creditors are not prejudiced by his decision to continue trading. The administrator must publicise his appointment, must request a statement of affairs and must formulate a statement setting out proposals for achieving the administration purpose.

In order to consider whether trading is a better financial outcome, the IP should prepare inventories of assets and values as a going concern and on a break up basis and obtain valuations on a going concern and break up basis. He should evaluate unsecured claims and secured claims, produce estimated outcome statements and indicate whether there is financial advantage to continue trading.

The administrator must generally call meetings of the creditors to consider his proposals. He must submit a return on the conduct of directors.

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.