

ADMINISTRATION PROCEDURE

Post Appointment Steps

An administrator appointed out of Court (e.g. by a floating charge holder) must file notice of appointment with the Court offices. The Court office seals the notice and endorses the time of filing. The administrator must advertise his appointment as soon as reasonably practicable in the London Gazette and such other newspaper as the administrator thinks appropriate.

The administrator must also give notice as soon as reasonably practicable to various parties including the company, creditors of whose claim he is aware, any receiver or administrative receiver, any enforcement officer or any other person who is taking enforcement action against the company's property or assets as well as a supervisor of any existing CVA. Notice of appointment must also be filed with the Companies Office within seven days.

The administrator must, as soon as reasonably practicable, give notice to certain parties to provide a statement of affairs. This would include officers and prior officers of the company as well as certain employees and key personnel. Once so required, the relevant persons shall have 11 days (which period the administrator may extend), in which to submit a statement of affairs. The administrator can apply to Court for a limited disclosure in relation to the statement of affairs on the basis that it would prejudice the conduct of the administration.

Statutory Objectives and Proposals

Once an administration order is made, the administrator takes over responsibility for the company. An administrator takes control of the company's business for the

benefit of all creditors and not just the QFC or other secured creditors. Once an administrator is appointed, he or she must act in accordance with one of three statutory purposes.

- rescuing the company as a going concern or
- achieving a better result for the creditors as a whole than in a winding up at that time or
- realising assets in order to make a distribution to one or more secured and /or preferential creditors

The administrator must formulate proposals stating which statutory objective of the administration are achievable. The proposals can propose a scheme of arrangement or a CVA. The proposals may not have a negative impact on secured or preferential creditors, unless they consent.

In practice, the administrator will meet the directors, managers, customers and potential purchasers to consider the position. The administrator may prepare detailed profit and cash flow forecasts in order to identify the company's working capital and longer term financial requirements. The administrator is not bound to perform the company's existing contracts. As a practical matter, the administrator may need to pay certain parties in order to trade.

A copy of the administrator's proposals must be filed in Companies House. They must also be given to all creditors and members of whom the administrator is aware as soon as possible and in any event within 8 weeks of the date the company entered administration. Alternatively, they can be advertised in a newspaper publishing an address at which copies of the proposals can be obtained.

Meetings

The administrator must convene an initial creditors' meeting. No initial meeting is required where the company has sufficient assets to enable creditors to be paid in full or where there are insufficient assets to enable a distribution to be made to all unsecured creditors or where neither of the two principal objectives can be achieved. Even in these situations, creditors can still require that an initial meeting is convened.

The initial meeting must be held as soon as reasonably practicable and in any event, within 10 weeks of the company going into administration. It is possible to apply for an extension of this time limit. 14 days' notice of the meeting must be given to all known creditors, directors and officers. The meeting must be advertised in the same newspaper as the original appointment and others, if appropriate.

The purpose of the initial meeting is to approve the administrator's proposals and/or to make modifications. The administrator must consent to any modification. A simple majority in value of those present and voting in person or by proxy, is sufficient. The resolution is invalid if those voting against the proposal constitute a majority of notified unconnected creditors.

If the administrator's proposal includes the setting up of a CVA, the initial meeting could perform the function of a meeting to approve the CVA proposal. 75% in value are required to approve a CVA. The meeting can be adjourned if the resolution is not approved.

Rights of Creditors to Vote

Those entitled to vote must file proof of debt (and proxies if they wish) before the meeting. Secured creditors can only vote in respect of the unsecured elements of their debt. They may vote on the full value, if the administrator's proposal states that there are insufficient assets to pay a dividend to unsecured creditors and the creditors have requisitioned an initial meeting.

Hire purchase, lease, and conditional sale creditors are entitled to vote on the basis of the amount due to them at the date the company entered administration. A creditor cannot vote in respect of an unliquidated or unascertained claim, unless the chairman agrees to accept the debt at an estimated minimum value for the purpose of entitlement to vote.

Creditors may be required to produce documents to substantiate their claim. Creditors can appeal against the chairman's determination as to validity or quantum.

The administrator reports the decision of the initial meeting as soon as reasonably practicable, to all creditors who received notice of the meeting, to certain other parties, to the Court, the Registrar of Companies and other creditors who did not have notice of the meeting and of whom he has subsequently become aware.

If the administrator reports that his proposal has not been approved, the Court may;

- order the appointment shall cease;
- adjourn the hearing;
- make an interim order for winding up;
- make an order for a winding up;
- make any other order the Court thinks appropriate.

It is possible for the creditors' meetings to take place by correspondence. In this instance, creditors have a certain period in which to submit their votes. If 10% or more in value of the creditors require, a meeting must be held.

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.