

Administration

<p>What is Administration?</p>	<p>Administration is designed to provide an umbrella procedure to permit a company to formulate a rescue or restructuring strategy or to maximise the value of the company with a view to achieving a better return to its creditors than would be achieved in a</p>	<p>winding up (for example by continued trading to enable it to complete orders and/or achieve an orderly sale of its business and/or assets).</p>
<p>Who can benefit from it?</p>	<p>Companies requiring protection from creditors to pursue either a sale of the business, or implement a restructuring plan to enable an orderly wind down of contracts and work in progress, and/or enhance asset realisations thus improving dividend prospects to creditors.</p> <p>Secured creditors, holding a valid and enforceable Floating Charge, who are concerned about their investment in a company are usually able to appoint Administrators under the terms of their security / charge to protect their position.</p>	<p>Whether appointed by the company / its directors or a secured creditor, the Administrators act on behalf of all creditors, in accordance with their statutory duties, and as officers of the Court.</p> <p>Appointing Administrators using either of the two out of Court procedures is relatively straightforward, not expensive and is far cheaper than making an application to Court. However the on-going costs (particularly if it is intended to trade the company throughout the administration process) are likely to be higher than a creditors' voluntary liquidation.</p>
<p>The Procedure in brief</p>	<p>A company may only be placed into Administration if, in the opinion of the proposed Administrator, one or more of the following objectives are likely to be achieved (in descending order of importance):-</p> <ol style="list-style-type: none"> 1. Rescue of the company as a going concern 2. A better result for the company's creditors than winding up 3. The realisation of property to distribute to secured or preferential creditors <p>If, following the outcome of our free business review and consultation process, our recommendation is for appointment of an</p>	<p>Administrator, the route which needs to be followed depends largely upon the identity of the person seeking to appoint and a number of other factors.</p> <p>Broadly speaking, if the person seeking to appoint is the company or its directors or the holder of a floating charge (whenever created) over the whole or substantially the whole of the company's assets (referred to as a qualifying floating charge (QFC) in the legislation), the appointment of an Administrator can be achieved by filing a notice with the Court, without the need for complex documentation to be prepared or for the matter to be listed for a Court hearing.</p>

London

T 0207 317 9160
 F 0207 317 9169
 E London@harrisons.uk.com

Manchester

T 0161 876 4567
 F 0161 876 4554
 E Manchester@harrisons.uk.com

Reading

T 0118 951 0798
 F 0118 939 4409
 E Reading@harrisons.uk.com

<p>Continued...</p>	<p>If the appointment is sought by the company or its directors and the company has granted a QFC, which is enforceable on the date the appointment is sought, the company needs to give at least five business days' notice of its intention to appoint an Administrator to the holder of the QFC.</p> <p>Upon receipt of the notice of intention to appoint, the QFC holder may either do nothing (in which case the appointment may be made once the five days' notice have elapsed), may consent in writing to the appointment, or may appoint an alternative Administrator to the person proposed by the company.</p> <p>In certain circumstances, it is not possible to appoint an Administrator through the above process and a Court hearing is required to enable the appointment to be made.</p> <p>The main circumstances where a hearing will be required are where the appointment of an administrator is sought by an unsecured creditor or, where the appointment is sought by the company but a winding up petition has been presented prior to the appointment of an Administrator.</p> <p>Upon the filing of a notice of intention to appoint (where there is a QFC holder) or upon the filing of a notice of appointment (where there is no QFC) or upon the issuing of an application to the Court for the appointment of an Administrator (creditor or company where winding up petition issued) a statutory moratorium comes into existence in favour of the company.</p>	<p>During the moratorium period (which commences upon the occurrence of one of the above events and only expires upon discharge of the Administration process or, the expiry of 10 business days if no Administration appointment is made):-</p> <ol style="list-style-type: none"> 1. No resolution may be passed for the winding up of the company or winding up order made or administrative receiver appointed; 2. No steps may be taken to enforce security over the company's property; 3. No steps may be taken to repossess goods in the company's possession under a hire purchase agreement or to enforce retention of title; 4. A landlord may not exercise a right of forfeiture by re-entry; 5. No legal process (including execution or distress) may be instigated or continued with against the company or its assets. <p>The Administrator may agree to, or the Court may by order permit, actions by creditors which would otherwise be in breach of paragraphs 2 to 5 of the moratorium.</p> <p>The Administration will be automatically discharged after 12 months, although this period may be extended by a maximum period of 12 months with the consent of creditors (in accordance with the applicable provisions of the insolvency legislation), or for an equivalent or greater period by order of the Court.</p>
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<p>Key Components for a successful Administration</p>	<p>Where trading is intended, the Administrator must be able to fund his continued trading of the business either directly from the on-going cash flow generated through the continued trading of the company or alternatively from funds secured against the assets of the company.</p>	<p>The Administrator must also be satisfied that it is possible to achieve one of the statutory objectives, before agreeing to take the appointment.</p>
<p>Advantages of Administration</p>	<p><i>The Company</i> Administration is an extremely powerful procedure precluding creditors from taking enforcement action against the company as soon as the notice/application is lodged at Court.</p> <p>It provides breathing space for the Administrator to implement measures designed to meet one of the objectives listed above. In particular it provides an opportunity for the survival of the business, either by sale or restructuring, thus saving jobs.</p> <p>There are a number of different exit routes from administration which the Administrator is able to use subject to the circumstances of each case. An Administrator has the power to distribute funds to secured and preferential creditors and, subject to certain conditions, the unsecured creditors without the need to apply to Court for consent. The Administrator may exit into liquidation (compulsory or voluntary), propose a CVA or file for the dissolution of the company. Alternatively, the Administration may be discharged and control of the company returned to the directors.</p>	<p><i>Directors</i> Directors will have complied with their duties through taking positive action to preserve the assets of the company and instruct an Insolvency Practitioner.</p> <p><i>Creditors</i> An Insolvency Practitioner assumes control of the company with a view to implementing proposals which hopefully will be to the benefit of creditors.</p> <p>The Administrator is required to investigate and report on the conduct of the directors. The Administrator can bring actions pursuant to S238 and S239, transactions at an undervalue and preferences. See the Director's Responsibilities Factsheet for further details.</p>

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<p>Disadvantages of Administration</p>	<p><i>The Company</i> This is an expensive procedure as the day to day control of the affairs of the company is assumed by the Administrator's firm.</p> <p><i>Directors</i> The directors lose control of the day to day running of the company and can often lose their jobs.</p>	<p><i>Creditors</i> Administration (as like in Liquidation), crystallises creditors positions in respect of amounts owed, meaning that creditors will have a claim in the Administration and are prevented from taking enforcement action to recover their individual debts against the company. All unsecured creditors rank equally in Administration and behind secured and preferential creditors.</p>
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LLPs and Partnerships		
Is it the same as Company Administration?	The procedure closely follows that applying to companies. The main differences is that personal and partnership law does not generally recognise floating charges, with the exception of agricultural floating charges and charge holder appointments are	likely to be limited accordingly. Also the reporting requirements under Company Directors Disqualification Act (CDDA) do not apply in the Administration of a partnership that is not an LLP.
Can the appointment be made without a Court hearing?	<p>Yes. The entitlement to make an appointment rests with the partners as a whole. Unanimity would therefore appear to be required although the application itself may be made by an individual partner or partners, acting on behalf of the partnership as a whole. The partnership must be insolvent and the statutory purposes (survival of the partnership or better realisation for creditors than winding up) must be capable of achievement.</p> <p>As with company administration, an application may not be made without a hearing where a pending petition for winding up has not been disposed of.</p>	<p>In these cases, an application must be made to the Court by the partners. Creditors may only seek to have an administrator appointed by application to the Court, which will be disposed of at a formal hearing.</p> <p>The interim and final moratorium on creditors enforcement rights which apply to companies also apply to partnerships subject to administration. The moratorium prevents insolvency or other proceedings being instigated or continued against the partnership or its property without the permission of the administrator or consent of the Court.</p>
How does the Administration end?	The administration will automatically end 12 months after the appointment of administrators but may be extended for a further period of 12 months with consent of creditors (or through an application to Court).	The administrator might choose to exit from administration by a number of means including exiting from office and returning the partnership business to the partners, having restored it to solvency; proposing a voluntary arrangement; or entering into compulsory liquidation.

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