Administration Order

What is Administration?

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 winding up (for example by continued limited trading to enable it to complete orders and/or achieve an orderly sale of its business and/or assets).

Who can benefit from it?

Companies requiring protection from creditors to provide breathing space to enable either a sale of the business or a restructuring plan to be implemented thus securing survival and to enable an orderly wind down of contracts and work in progress to enhance the realisations of the assets thus improving the dividend prospects to creditors.

Historically, the procedure has been under-utilised due to the high cost of preparing a detailed report for the Court and the need to make an application to the Court for the appointment of Administrators in all cases. Following the implementation of the relevant sections of the Enterprise Act 2002, the procedure has become considerably simplified and an application to the Court is no longer required in all circumstances. Appointing Administrators is now generally far cheaper than under the old procedure although ongoing costs (particularly if it is intended to trade the company throughout the administration process) are likely to be higher than a creditors' voluntary liquidation.

The Procedure in Brief

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):

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

If, following the outcome of our free business review and consultation process, our recommendation is for appointment of an 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.

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.

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. 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.

In certain circumstances, it is not possible to appoint an Administrator through the above process and a Court hearing is required to appoint. The main circumstances where a hearing will be required are where the appointment of an administrator is sought by a 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.

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 the appointment is sought by the QFC and there is no holder of a prior 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.

During the moratorium period (which commences upon the occurrence of one of the above events and expires only upon discharge of the Administration):

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.

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.

The Administration will be automatically discharged after 12 months although this period may be extended by a maximum period of six months with the consent of all secured creditors and a majority of unsecured creditors of the company or for an equivalent or greater period by order of the Court.

Key Components for a Successful Administration

Where trading is intended, the Administrator must be able to fund his continued trading of the business either directly from the ongoing cash flow generated through the continued trading of the company or alternatively from funds secured against the assets of the company.

The Administrator must also be confident of achieving one of the statutory objectives before agreeing to take the appointment.

Advantages of Administration

The Company
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.

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.

Exit routes from administration are now considerably more flexible than under the previous procedure. An Administrator now has power to distribute funds to secured and preferential creditors and (with the consent of the Court) to unsecured creditors. The Administrator may now exit into liquidation (compulsory or voluntary), seek the entering into of a CVA or the dissolution of the company. Alternatively, the Administration may be discharged and control of the company returned to the directors

Directors
It is likely to reduce the scope for S213 and 214 of the Insolvency Act, fraudulent or wrongful trading actions being brought against the directors.

Creditors
An Insolvency Practitioner assumes control of the company with a view to implementing proposals which hopefully will be to the benefit of creditors.

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.

Disadvantages of Administration

The Company
This is an expensive procedure as the day to day control of the affairs of the company is assumed by the Administrator's firm.

Directors
The directors lose control of the day to day running of the company and can often lose their jobs.

Creditors
The Administrator cannot bring actions for fraudulent or wrongful trading, although if the company proceeds into liquidation following the administration, actions can be brought at that time by the liquidator.