Insolvency Online Administration

The no nonsense guide to **Administrations & Pre-packs**

[Limited Companies and LLPs]

Insolvency Online Tel: 020 8549 9915
Website: www.insolvency-online.co.uk Email: enquiries@insolvency-online.co.uk

Introduction

Welcome to our No Nonsense Guide to Administrations and Pre-packs.

There is so much information out there on the web that even professionals in the insolvency sector can get bogged down in the sheer volume and detail of what can be downloaded at the touch of a button.

Working on the maxim “less is more”, we have set ourselves the task of producing a No Nonsense Guide to Administrations and Pre-packs in fewer than 10 pages.

Needless to say, this document is really only a taste of the subject matter, but we trust that it will at least throw a light on the major areas and issues relating to this important area of business rescue and turnaround.

We would say this wouldn’t we, but at **Insolvency-Online**, we are keenly aware that no two corporate insolvency situations are the same- the people having to try and deal with the difficult issues being faced are different for a start and we never take for granted the fact that trading businesses are run by people not machines.

As a firm of highly experienced Licensed Insolvency Practitioners, we really do have the full tool kit to either fix insolvent companies where possible or at least ensure that viable businesses can be sold to live to fight another day.

A Guide can help you get your thoughts in order, but at the end of the day, most directors require specific advice to address specific issues, so please never hesitate to make contact with me or any of my colleagues at **Insolvency-Online**.

Please also note that all our formal appointment takers are licensed as Insolvency Practitioners by the Institute of Chartered Accountants in England and Wales.

Mike Bowell
mikeb@insolvency-online.co.uk

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1 General information

Definition of Administration

Administration is a formal process governed by the provisions of the Insolvency Act 1986 ["the Act"], the Insolvency [England and Wales] Rules 2016 ["the Rules"], the Enterprise Act 2002 together with case law that has been built up over the last 30 years. It came into being with the 1986 legislation and has become the premier rescue mechanism for insolvent companies, reflecting a more rescue-orientated insolvency regime. The process offers almost immediate protection from unwelcome creditor enforcement action, giving the directors, working with the Administrator, time to restructure the company's affairs to ensure future viability.

As part of the process, an Administrator [a Licensed Insolvency Practitioner] is appointed to manage the affairs of the company, usually working in conjunction with the existing Board of Directors. The Administrator has a duty of care to all parties and has a legal duty to perform his functions for the benefit of the whole body of creditors.

A well thought out Administration gives protection, preserves continuity and safeguards jobs.

Legal protection in ADMIN

By the directors lodging a simple notice into court, of the intention to put the company into Administration, an immediate freeze can be put on creditor actions such as:

- A winding up petition cannot be issued against the company
- Repossession of goods
- Landlord distress against company's assets
- Seizure of goods by Bailiff
- County Court Judgements
- Hire purchase companies cannot recover goods

This temporary freeze becomes permanent when the Administrator is appointed.

Legal objectives of ADMIN

The Act provides for a single hierarchy of 3 statutory objectives, namely:

1. rescue of the company as a going concern, or
2. achieving a better result for the company's creditors than would be likely if the company were immediately wound up or
3. realising property in order to make a distribution to secured and/or preferential creditors

2 ADMINISTRATION

Process of placing a company into Administration

Administration is simply a staging post, not an end in itself.

The first formal step is for the Board of Directors, at a properly convened meeting, to resolve to place the company into Administration.

In reality, however, before the directors can get to that stage, the first practical step is for the Board to take advice from a Licensed Insolvency Practitioner and working with him/her and also often with the company's other professional advisers, devise a Business Plan incorporating the fact that the company is likely to be placed into Administration. Legal objectives as described above are one thing, but a plan will need to be devised that can be carried out with a clear achievable goal. A clear exit strategy is essential if the legal objectives are to be achieved.

Once the plan has been finalised, the directors can appoint the Administrator, by filing a number of prescribed forms at court. If there is a holder of a Qualifying Floating Charge ["QFC"] [i.e. a bank holding a Debenture over the company's assets], notice must first be given to the QFC who in turn may appoint its own preferred Administrator. Again, in reality, the QFC holder will have been fully consulted beforehand to ensure that it is "on-side" and supportive of the strategy going forward.

Administrator's Proposals

Once appointed, the Administrator will notify creditors of his appointment and then within 8 weeks, he must send to creditors his Proposals for achieving the legal objectives of the Administration. The Proposals are effectively a summation of the Business Plan that was worked out pre-appointment. The Proposals will aim to show all creditors what the likely outcome is going to be and will propose a clear exit route out of Administration.

Approval of Proposals/Meeting of creditors

The introduction of the Insolvency [England and Wales] Rules 2016 ["the Rules"] on 6 April 2017 has sought to remove the need for a physical meeting of creditors although one can be summoned if certain criteria are met. Creditors have to be given due notice of a Decision Procedure and given a Decision Date which means the date when a decision is to be made in a Decision Procedure. Effectively, the Rules aim to achieve "non-meeting" decision processes completed by correspondence which include email and electronic voting and resolutions by correspondence.

Attitude of HM Revenue & Customs ["HMRC"]

Since September 2003, HMRC has not retained the status of Preferential Creditor in respect of any part of its claim. Accordingly, like any other Unsecured Creditor, it will be keen to see that any Proposals are viable and will maximise realisations for creditors. In our experience, HMRC tends to be supportive of the Administration process. Nevertheless, moves are afoot to grant HMRC a preferential status in respect of certain taxes and it is envisaged that this amendment to the laws will occur in 2020.

Role of directors post Administration

On appointment, the Administrator takes over the management of the company and the executive powers of the directors' can only be exercised by them with the consent of the Administrator.

There is no particular statutory guidance, but naturally, the Administrator will want to draw upon the experience and knowledge of the directors in order that the Proposals that are to be put to the creditors are to succeed. In a trading Administration, it is more than likely that the Administrator will leave some or indeed all trading powers with the directors.

Exit Routes out of Administration

In the Proposals sent to creditors, the Administrator will have outlined the anticipated exit route, namely one of the following:

1. Return the company to the control of the directors
2. Company Voluntary Arrangement ["CVA"]-requiring the agreement of creditors [please refer to our Guide which can be found at www.cva.insolvency-online.co.uk]
3. Voluntary Liquidation
4. Compulsory Liquidation
5. Dissolution

Where the company has been saved, routes 1 or 2 above will be utilised. In cases where the company cannot continue, exit is via 3, 4, or 5.

3 Pre-packaged Administration ["Pre-pack"]

A much maligned and often misunderstood way of preserving value in difficult financial circumstances.

Definition of a Pre-Pack

The term "Pre-pack" refers to an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an Administrator and the Administrator effects the sale immediately on, or shortly after, his appointment. Sometimes referred to as "accelerated M & A", a Pre-pack is very much a "done deal" as far as the company's Unsecured Creditors are concerned.

When should it be used?

The only reason it should be used is quite simple really- it must achieve A BETTER RESULT FOR CREDITORS than any other course of action. Well, that is our interpretation; others may take a different view.

In our opinion, a Pre-pack should only be used in circumstances of acute financial distress, where an urgent solution is required to ensure that value is preserved. Having said that, we are great believers in the Pre-pack phenomenon.

In most cases, the assets are sold on to the existing directors or management team resulting in continuity and little or no disruption to the business as far as the

outside world is concerned. Creditors should have no problems with this approach as long as it can be clearly demonstrated to them that the best price for the assets was achieved in the circumstances - it is our job as business advisers and Administrators to ensure that we and the directors can fully justify the decision to carry out such a disposal.

What are the safeguards?

On 1 November 2015, new guidelines as stated in the 'Statement of Insolvency Practice (SIP) 16' were introduced where the Administrator is required to immediately provide creditors with details of the full background concerning their appointment and a justification of the Pre-pack sale. SIP 16 is designed to make the process more transparent for creditors and to ensure that fair value has been obtained for the assets.

In such a disposal it would be a very foolish Insolvency Practitioner who did not ensure that professional valuations of the assets were obtained before the sale.

4 A brief word on the alternatives

In the area of turnaround and reconstruction, the following procedures could be considered:

- Administrative Receivership – can only be contemplated if there is a holder of a pre 15 September 2003 fixed and floating charge (usually a bank or other secured creditor). The Chargeholder may appoint an Administrative Receiver (who must be a licensed Insolvency Practitioner) to recover the money it is owed. The Administrative Receiver takes over the management of the business prior to selling the business and its assets.

- Company Voluntary Arrangement (CVA) – leaving the company under the control of its directors. Sometimes this can be achieved without the need to place the company into Administration - please refer to our No-Nonsense Guide for CVAs for a complete review of the process.

Contact Us

We accept that making that initial contact with a professional can be very difficult for directors who have been trying their best, for probably several months, to resolve a company's distressed financial position.

It is our job to give you the right advice and ensure that, as far as possible, the directors' decision making cannot be challenged at a later date.

We really are a good team to deal with, so please do not hesitate to contact us:

Tel: 020 8549 9915

Email: enquiries@insolvency-online.co.uk