

Administration: A Step by Step Guide



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A Guide to Company Administration

What is Company Administration?

Company administration is the formal process used to close down and dissolve an insolvent company whilst also obtaining protection from the court against actions against the company by creditors.

When is company administration appropriate?

Typically a company will be placed into administration as opposed to say, liquidation, or CVA (“Company Voluntary Arrangement”), when there is a chance to save the business but where some aspects of the company are not viable. This usually involves a sale of the business and assets being sold on a going concern basis, or after a period of marketing, to another company leaving the liabilities to be dealt with by the Administrator. Whereas in liquidation, there is often a break in trading and the assets are then sold on a forced sale/break up basis and in a CVA the business continues in its current form with no sale being made.

What are the advantages of Company Administration?

The advantages are usually that the process will typically result in a better return for the creditors, and ensure that the business is saved and handed back to its directors, or lastly that it affords the current director/shareholder (or a third party) a better opportunity to purchase the business with very little disruption to its day-to-day activities and relationships with customers & suppliers.

In list form, the advantages of company administration include:-

- Court protection from actions by creditors
- A better returns to creditors
- A better chance of saving the business as a going concern
- Often more employee jobs are saved
- There is less disruption to trading and relationships with customers & suppliers
- Many company debts are often written off within the process
- The current directors/shareholders have a great opportunity to purchase the business back
- Directors could benefit from the insolvency practitioner having fewer powers to investigate and bring actions than their powers within Liquidation.

When is Company Administration suitable for my business?

There are a number of scenarios which would result in a company administration being suitable for your business however the only way to be certain of this is to ask a fully licensed Insolvency Practitioner. The general indicators that Company Administration is more suitable however are:-

1. The Company is insolvent but the business on the whole is good;
2. There is interest in purchasing the business from either the current directors, the current shareholders or from third parties;
3. There are either, legal proceedings currently in place against the Company (such as a Winding up Petition), or legal proceedings are imminent; and
4. Where minimal disruption to trading and relationships with suppliers & customers will result in greater returns for the creditors.

Are there any disadvantages to Company Administration?

The main disadvantage of placing a company into administration is that the process is more costly (but this should not adversely diminish the return to creditors as a result of the already increased realisations).

A further disadvantage is that a large proportion of business sales are often completed back to the same directors and/or shareholders which can result in creditor concerns as to whether a fair price has been paid and whether the insolvency practitioner's dealings are conflicted.

How does the Company Administration process work?

The process for placing a company into administration is quite complicated as it involves specific forms and supporting paperwork to be filed at Court, Companies House and then served upon various parties.

The exact process depends on whether the company has any secured creditors (e.g. a bank), has an outstanding winding up petition, or has a sale of the business already lined up.

As a rough guide, companies typically take about a week to be placed into Administration as a result of the best practice method of filing a notice of the intention to appoint an administrator at Court then awaiting 5 business days before a notice of appointment (confirming the Company Administration) is filed. However, this may take longer if there are secured creditors (as a result of the requirement to give them time to consider whether they wish to consent to the process) but also if negotiations and logistical matters are ongoing regarding the marketing and sale of the business.

Obtaining a Company Administration may take longer if a winding up petition has been presented against the company as a hearing, in front of a court judge is required, which can often result in delays. A hearing is required in this regard as the judge must consider the suitability of the Administration process against the alternative insolvency processes. This in turn can lead to greater costs as a result of the more detailed documentation required.

Can I place my company into Administration myself?

A director or a shareholder of the insolvent company can give an instruction to place the insolvent company into administration to a licensed insolvency practitioner however they cannot handle the administration themselves. Given the complexity of the process and the many previous cases where administration appointments have been challenged (for incorrect paperwork) it is also advisable to insist on a solicitor drafting all the court documents on your Company Administration.

What protection does a Company Administration give me from my creditors?

An interim moratorium is given to the insolvent company when the notice of intention to appoint an administrator is filed at court. This puts a stay (stops) all legal actions from being commenced, or continued with, for the next 10 business days. A full moratorium is then granted upon the form appointing the administrator being filed at court which offers the same protection from legal actions as the interim moratorium but this time it lasts for the duration of Administration.

What are the costs to placing my Company into Administration?

The costs vary as they are on a time costs basis but are almost always taken from the realisations of the case and therefore do not have to be funded up front.

What steps should I take prior to placing my Company into Administration?

There are a number of things which can be done however this will vary on your particular case therefore specific instructions will be given to you by the IP. The main items for consideration however, are:-

1. IP - Firstly, contact a licensed insolvency practitioner in order to obtain approval to the Administration process above all alternative processes (together with their approval to act on your behalf).
2. TIMETABLE - Then agree with the insolvency practitioner the timetable for ceasing to trade, the filing of the documentation and the sale.
3. INFORMATION - Gather together full details of all assets and liabilities of the Company and provide them to the insolvency practitioner together with proof of ID and address for all Directors and for shareholders with 25% or more of the total shares.
4. EMPLOYEES - Dismiss or consult with the employees of the Company in accordance with the Insolvency practitioner's instructions (remember this could involve the completion of work in progress or could result in wage liabilities falling due between instruction and appointment of the administrator and therefore any dealings with employees must be considered carefully).
5. PAYMENTS / CREDIT – Cancel all direct debits and standing orders and stop taking credit. You must then ensure that the only payments which are made are done so in the ordinary course of business and to the ultimate benefit of the creditors generally (e.g. to complete WIP etc.)

SUMMARY

Company Administrations are a useful tool used by insolvency practitioners to close down insolvent companies but also complete a sale of the business.

Company Administrations offer court protection from legal actions being continued or commenced.

The IP's costs can be higher but the sale and/or continuation of dealings with suppliers & customers often results in a better return for creditors or a rescue of the Company as a going concern.

Typically more employee jobs are saved due to their being some form of transfer of the business.

A company will usually be placed into Administration within 1 week from instruction.