

Steps to take when responding to an administration

This note provides a general overview of administration and what options are open to local authorities.

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Many companies (including suppliers and tenants) are currently facing a constant battle to stay afloat given the current economic situation. The financial support schemes offer a temporary solution but cannot continue indefinitely. It is very likely that when they are removed that we will see an increase in the number of insolvencies.

The retail, hospitality and tourism sectors have been badly affected, and we have seen a number of household names enter an insolvency process or announce restructurings in an attempt to mitigate the effects of the pandemic. Paperchase and the Arcadia Group both entered into administration in the last two months. Local authorities have seen a significant reduction in their income with tenants not paying their rent and business rates and/or entering into insolvency processes. Local authorities are also faced with the obligation to pay their suppliers promptly and put in place appropriate payment measures to support supplier cash flow (including paying in advance), which could mean exposing themselves to a greater liability if that supplier becomes insolvent. When faced with a company entering into administration, it can be daunting for those unfamiliar with this concept.

This note provides a general overview of administration and what options are open to you as local authorities.

What is insolvency?

Insolvency arises when individuals or businesses have insufficient assets to cover their debts or are unable to pay their debts when they fall due.

What is administration?

Administration is a formal insolvency procedure where a company is placed under the control of an insolvency practitioner, known as an administrator.

Administration stops any legal action or process against a company from proceeding unless the administrators or the courts give permission.

What is the purpose of administration?

An administrator must perform their functions (in the interest of the company's creditors as a whole) with the objective of:

1. rescuing the company as a going concern;
2. achieving a better result for the company's creditors as a whole than would be likely if the company was put into liquidation; and
3. selling the company's property in order to make a distribution to one or more secured or preferential creditors.

The administrators must identify a potential exit route for the business, which can include selling the underlying assets in a 'pre pack' sale, moving to a company voluntary agreement to restructure debts, or (in the worst case) liquidation and dissolution.

What can an administrator do?

The administrators take over the control of the company's business and assets from the company's directors in order to achieve one of the purposes of administration. The administrators will review the company's position and assess whether there is enough support (from employees, suppliers, etc.) to continue to trade the business.

The administrators can take whatever action they feel is necessary for the management of the company and its property, including making/fulfilling contracts.

What if I am owed money?

Unless you are a secured creditor, you should submit details of your claim to the administrators (known as a proof of debt) and wait for the administrators to assess it.

What happens if I owe the company money?

Your debt will still be due and the administrators will expect you to make payment. There may be reasons to withhold or set-off these monies and advice should be taken if appropriate.

Will the company still supply me post administration?

In the absence of any express term to the contrary, contracts do not automatically terminate upon entry into administration.

The administrators may, after weighing up the interests of the company against those of the creditors, decide not to perform the contract.

As a matter of course, you should review your contracts to see if they allow for termination if a party enters into administration or if there is a change in its financial standing. If they do contain such a clause then you should consider whether it is in your interest to exercise it.

Even if the existing contracts are continuing to be performed, you should have back-up plans in place in case the position changes or the company moves from administration to liquidation.

Administrators can also enter into new contracts on behalf of the company after their appointment.

When does administration end?

The administration automatically ends after one calendar year, unless the creditors or the court agree to an extension. In practice, many companies remain in administration for more than one year.

If the company can be rescued as a going concern, the administrators may be able to hand back control of the company to the directors. However, this rarely happens. More often, the net proceeds of the company's assets are distributed to the company's creditors, either by the administrator or by a subsequently appointed liquidator. The administration can therefore end either by the company moving into liquidation or by the company being dissolved without liquidation.

Changes introduced by the Corporate Insolvency and Governance Act 2020 (CIGA)

CIGA introduces three significant changes all designed to help rescue viable businesses that are in financial difficulty:

- A new moratorium that gives qualifying companies 20 business days' breathing space from creditors (with the possibility of further extensions) to allow the business to look at its options and try to deal with its financial problems. However, there is a procedure that companies will need to follow before they can take advantage of this.
- To the extent that you are acting as a supplier to the insolvent company, there are restrictions on the ability of suppliers to terminate contracts on the grounds of customer insolvency and/or any breaches of contract that arose before the customer's formal insolvency.
- A new insolvency procedure to allow a company to restructure its debts, with the ability to compromise the rights of secured/unsecured creditors and shareholders.

There are however special provisions for public private partnership projects ("PPP") which are that:

- PPP companies are not eligible for a moratorium.
- Debts arising under a PPP contract are not eligible for a payment holiday under the new moratorium process.
- In certain circumstances, the restrictions on terminating supplier contracts on insolvency will not apply.

Disruption

When a company enters into administration, it can be unsettling and disruptive.

We have advised a number of local authorities as to their rights and options following an administration and each took different decisions based on their own individual circumstances.

It is imperative that those who are owed money submit proof of debts to share in any returns. [Here is a link to our previous article about engaging in the creditor process.](#)

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