

What to do if a supplier goes into administration

The education sector has recently been impacted by the administration of Gaia Technologies (one of the UK's leading suppliers of ICT services to UK schools and universities) which entered administration due to "severe cash flow issues".

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Nationally there has been an increase in insolvencies, with administrations this year reaching their highest level since 2014. The education sector has recently been impacted by the administration of Gaia Technologies (one of the UK's leading suppliers of ICT services to UK schools and universities) which entered administration due to "severe cash flow issues". For those unfamiliar with the concept of administration, it can be daunting when a supplier goes into administration.

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

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 his 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. In that scenario you could apply to the court for an order for specific performance but, as mentioned above, you would need the administrators consent or the permission of the court to do so. If unsuccessful, you will rank among the other unsecured creditors for any loss.

You should review your contracts to see if they allow for termination if one 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 agrees 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.

Final words

When a supplier enters into administration, it can be unsettling and disruptive. Gaia Technologies, for example, offered such a comprehensive package to a vast quantity of schools that its impact has been widely felt. We have been advising a number of schools about their rights and options following that administration. If you are facing a situation where a supplier has entered, or is at risk of entering into, administration, obviously your main concern is ensuring continuity of supply. A pre-agreed transitional plan may help to achieve that in the event of administration. However, you should also have a back-up plan in place and be aware of your contractual rights, particularly events that trigger termination as different events could give rise to different remedies.

It is not surprising that there has been an increase in insolvencies given the economic uncertainty about Britain's future and the reality of Brexit. Post 31 October 2019 we might see a further spike in insolvencies. If you need any assistance navigating this topic then please get in touch.

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