

Administrations in England and Wales - a creditor's guide

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1. Introduction

Insolvency is a complex process whose boundaries are defined by legal requirements and case law. It can be difficult for those unfamiliar with insolvency to understand the reasons why decisions are taken by insolvency practitioners, and what impact a company's insolvency might have on them. The purpose of this document is to provide creditors with some context to help them understand the administration process better, what they may expect in terms of information provision, and their rights as creditors of an insolvent company.

2. Why is the company in administration?

Companies are only placed in administration where they are in financial difficulties. They must be insolvent, which means that either the value of the debts they owe is more than the value of the assets they own, or that they have insufficient available funds to pay the debts they owe as they become due for payment.

Administration is an insolvency procedure where insolvency practitioners are placed in control of the company, in place of its directors. This means that, during the period for which it is in administration, the affairs, business and property of the company will be managed by them. There are usually at least two insolvency practitioners appointed, and referred to as Administrators.

A company may be placed into administration by an order of the court, following an application by, amongst others, the company, its directors, one or more creditors, or, if it is in liquidation, its liquidator.

Alternatively, and more frequently, the company will enter administration via an out of court route, the Administrators being appointed by the company, acting by its shareholders, by its directors or by a secured creditor, if they have security that includes enough of the company's assets to entitle them to appoint the Administrators.

3. What do the Administrators do?

The Administrators have a legal duty to work to achieve one of three possible objectives, either:

- to achieve a rescue of the company as a going concern;
- to achieve a better result for the company's creditors as a whole than would be likely if the company had been placed in liquidation, rather than administration; or
- to sell assets of the company and pay the net proceeds to one or more secured or preferential creditors.

The Administrators must try and achieve the first of these objectives unless they think either that it is not reasonably practicable to rescue the company as a going concern, or that pursuing the second objective would achieve a better result for the company's creditors as a whole. In practice, achievement of the first objective will not happen often; as explained above Administrators are appointed as a result of a company's insolvency, so restoring the company to solvency will be unlikely unless the company receives an unexpected gain, or its creditors agree to write off some of their debts.

The Administrators may pursue the third objective only if they think that it is not reasonably practicable to achieve either of the first two objectives, and they do not unnecessarily harm the interests of the creditors of the company as a whole.

The Administrators will set out how they intend to achieve their chosen objective in a statement of their proposals which will be sent out to creditors, further details about this are set out below.

The powers given to the Administrators to pursue their objective are very broad. They include powers to carry on the company's business and to realise its assets. The company's board of directors lose their powers, unless directed otherwise by the Administrators.

To achieve their objective, the Administrators may have to take difficult decisions regarding the company's trading, if it is continuing. The Administrators may find it impractical or uneconomic to have the company perform certain contracts entered into prior to their appointment, or need to discontinue trading at some or all of the company's locations.

The Administrators act as agent of the company, and are not personally liable for contracts entered into as Administrators. However, goods and services supplied to a company in administration, at the request of the Administrators will be paid for as an expense of the administration.

4. What will happen to my debt?

Debts due to unsecured creditors are frozen at the date of the Administrators' appointment. Secured and preferential creditors are paid before unsecured creditors. Secured creditors are those that have some form of security over a company's property (for instance a bank with a fixed and floating charge debenture). Secured creditors are entitled to be repaid their debt out of the proceeds of sale of the secured assets in priority to ordinary unsecured creditors.

Unsecured creditors are those owed money by the company whose debts are not given priority by having registered security – most trade suppliers will be in this category.

Preferential creditors are a special category of unsecured creditor. They consist mainly of certain debts due to employees and the Redundancy Payments Service and are paid in priority to all other unsecured creditors

If the Administrators are able to achieve a survival of the company, the management of the business and assets can be returned to the directors on the conclusion of the administration. The directors and staff of the company will then deal with unsecured creditors' pre-appointment claims.

As explained earlier, restoring the company to solvency may require its creditors to write off some of their debts. This would usually be done as part of a procedure called a Company Voluntary Arrangement (**CVA**), in which the creditors agree to accept a proportion of their debt to enable the company to survive. In this case, agreement and payment of the creditors' claims will be dealt with within the CVA.

If survival of the company is not possible, but sufficient sums are generated from the sale of the company's business and assets to enable funds to be distributed to unsecured

creditors, the Administrators may be able to deal with their claims and pay them a dividend, but require the permission of the court to do so.

Alternatively, after payment of the costs and expenses of the administration, any funds for unsecured creditors may be passed to a liquidator, who will agree creditors' claims and distribute the surplus to them as a dividend. The Administrators may become the liquidators.

Funds may become available for distribution to unsecured creditors either because the secured creditors who rank ahead of them have been paid in full, or from the Unsecured Creditors' Fund, which is also referred to as the 'prescribed part'. The Unsecured Creditors' Fund is generated as a proportion (effectively 20%) of net realisations from the floating charge assets of the Company (typically stock, plant and machinery and in some cases book debts) up to a maximum of £600,000, which will be shared by the unsecured creditors unless one or more of the following criteria applies:

- the floating charge was created prior to 15 September 2003;
- the net realisations from floating charge assets are less than £10,000, and the Administrators think the cost of making a distribution to unsecured creditors would be disproportionate to the benefits;
- the court makes an order following an application by the Administrators that the cost of making a distribution to unsecured creditors would be disproportionate to the benefits.

Funds that are distributed to unsecured creditors are paid as a proportion of each creditor's debt. The process of realising the assets and verifying what each creditor is owed will take time. As the Company may owe far more than value of their assets, the amount received by unsecured creditors may only be a fraction of what they are owed, in some cases they will receive nothing. The Administrators will provide information on the amount they estimate is likely to become available to creditors in their reports (see section five).

If you believe that you own something in the company's possession, you should contact the Administrators without delay with full proof of ownership and be prepared to identify what you are claiming. The Administrators will examine your claim carefully before deciding whether to release goods in question, pay you for them or otherwise.

5. What information will I receive?

It is AlixPartners' policy to upload the reports to creditors onto the firm's creditor information portal, at www.alixpartnersinfoportal.com, in accordance with the Insolvency Rules 1986 and in order to save costs to the insolvent estate. Log-in details will be provided following appointment to enable creditors to access documents relating to the company. Reports posted to the portal will be provided in hard copy if requested by a creditor.

The Administrators will notify all known creditors of their appointment as soon as reasonably practicable.

Where a sale of the company's business or assets takes place on or after the appointment of the Administrators, and the sale process has begun prior to their appointment (this is commonly known as a 'pre-packaged sale') the Administrators are required to notify creditors as soon as is reasonably practicable, setting out details

relating to the sale and explaining why, in their opinion, the sale was the best option available to creditors.

A copy of the Administrators' proposals setting out how they intend to achieve the purpose of administration must be made available to all creditors within eight weeks of their appointment. This will include details of what has been done in the period, which of the objectives the Administrators believe is achievable, what outcome the Administrators believe might be achieved for creditors, and how the administration will end.

The Administrators are also required to obtain a decision of creditors within ten weeks of the date the company went into administration in order to consider the administrator's proposals. However, the requirement does not apply if the Administrators think, and state in their proposals, that either:

- the company has sufficient property to enable all creditors to be paid in full;
- the company has insufficient property to enable a distribution to be made to unsecured creditors except out of the Unsecured Creditors' Fund which may have to be set aside out of floating charge assets (see section four); or
- neither of the first two purposes of administration can be achieved (see section three).

The Administrators must hold a meeting if requested by creditors whose debts amount to at least 10% of the total debts of the company.

After approval of the Administrators' proposals, a progress report on the progress of the administration will be made available to all creditors every six months and a final progress report will be sent at the end of the administration.

6. What will happen after the administration is finished?

An administration is an insolvency process that is designed to last for a limited time only. The administration will end automatically after one year, but this period may be extended for a period of up to one year with the agreement of the creditors, or with the permission of the court if more time is needed to achieve the purpose of administration;

The exit route that is chosen by the Administrators will depend upon the circumstances of the case, and to a large extent upon the objective that can be achieved in the administration. The following exit routes are possible:

- Return of the company to the control of its directors, and management, if the company has been rescued and returned to solvency. As stated above, this is not a common exit route, and may be used in conjunction with a CVA in which the company's creditors agree to waive some of their debts to help the company return to solvency.
- Creditors Voluntary Liquidation (**CVL**) – An administrator does not have the power to make a distribution to unsecured creditors, other than the Unsecured Creditors' Fund, without consent of the court. Should sufficient asset realisations enable further funds to creditors than the Unsecured Creditors' Fund, the Administrators may file a notice with the Registrar, which will have the effect of bringing the appointment of the Administrators to an end and will move the Company automatically into CVL.

- Compulsory Liquidation – A liquidator of a company has certain powers such as the ability to disclaim onerous contracts or assets that are not available to an administrator. If such powers become necessary, the Administrators may make an application to court to end the Administration and request that the court places the Company into compulsory liquidation. The Administrators will send notice of any such application to the Company and its creditors.
- Dissolution – if all the assets have been sold and the proceeds distributed and there are no outstanding matters, the administration will be ended and the company dissolved shortly afterwards.

7. What rights do I have as a creditor?

The appointment of the Administrators prevents creditors from initiating or continuing legal actions against a company in administration. Any petition for the winding up of the company must be dismissed or suspended. In addition, except with the consent of the administrator or the permission of the court:

- no steps may be taken to enforce security over the company's property or to repossess goods in the company's possession under any sale or hire agreement;
- no other proceedings, execution, or legal process may be commenced or continued, and no distress may be levied, against the company or its property; and
- a landlord may not exercise a right of forfeiture in relation to premises let to the company.

Creditors may decide to form a creditors' committee which must consist of at least three and not more than five creditors. The creditors' committee receives reports from the Administrators and may meet periodically.

If a creditor wishes to receive further information to that provided in the progress reports provided by the Administrators, they may request it, further details of what information they may request is provided in the appendix to this report, and in each progress report sent to creditors by the Administrators.

If you are unhappy with the Administrators' handling of the case, either in respect of your claim or otherwise, you should first contact the Administrators to try to resolve the problem. A creditor who believes they have been prejudiced by the Administrators' conduct and is not satisfied by the explanations he receives may be able to make an application to court.

The Administrators are insolvency practitioners licensed in the UK. Should your complaint be unresolved after you have raised it with them and you think that the Administrators are guilty of professional misconduct, you have the right to refer the matter to the Insolvency Service via their [online Complaints Gateway](#). AlixPartners is regulated by The Insolvency Practitioners Association (**IPA**) and The Institute of Chartered Accountants in England and Wales (**ICAEW**).

8. A guide to the remuneration of the Administrators

The Administrators' remuneration will be paid out of the funds which are realised from the sale of company business and assets. The basis on which they may be charged can be on the basis of their time costs, as a percentage of the value of funds realised, or as a fixed fee. A combination of these bases may also be used.

If a creditors' committee is formed, it will be responsible for agreeing the Administrators' remuneration. If no committee is formed, it can be fixed by the creditors who effectively bear the cost of the remuneration.

If the company's secured creditors will not be paid in full they will be responsible for approving the Administrators' remuneration, together with the preferential creditors where applicable. If the secured creditors are being paid in full, it is the unsecured creditors who are responsible for approving the Administrators' remuneration.

If either the Administrators or the creditors are dissatisfied with the basis or level of remuneration approved or charged, or cannot agree on an appropriate basis, they may apply to the court to set the remuneration.

Further guidance for creditors on the Administrators' remuneration may be found on the R3 website at <https://www.r3.org.uk/what-we-do/publications/professional/fees>.

AlixPartners

6 New Street Square
London EC4A 3BF

t: +44 (0) 20 7098 7400 f: +44 (0) 20 7098 7401

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alixpartners.com