

DIRECTORS GUIDE

HOW TO APPOINT AN ADMINISTRATOR IN ADMINISTRATION

When a company is facing financial difficulties and is unable to pay its debts, directors may consider administration as a way to rescue the company or achieve a better outcome for creditors than immediate liquidation. Appointing an administrator is the first step in the administration process, but it must be done in accordance with legal requirements and considerations.

This guide explains the process of appointing an administrator, key considerations, and the director's role in the procedure.

1. What is Administration?

Administration is a formal insolvency procedure designed to rescue a company or achieve a better outcome for creditors than immediate liquidation. An administrator (usually an insolvency practitioner) is appointed to take control of the company, with the aim of restructuring the business, selling its assets, or achieving a return for creditors through a structured plan.

2. Who Can Appoint an Administrator?

There are three main ways in which an administrator can be appointed:

By the Directors (Voluntary Administration)

- The directors of the company have the authority to appoint an administrator if the company is in financial distress.
- This is often done when the company is facing insolvency but may still have a chance to restructure or be sold.

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By a Creditor (Court-Appointed Administration)

- A creditor can apply to the court to appoint an administrator if they have a claim against the company.
- This is typically used if directors are unwilling to appoint an administrator or if the company is not responding to the creditor's demands.

By the Court (Compulsory Administration)

- A court can appoint an administrator if a creditor applies for a winding-up order (i.e., a liquidation order) but instead suggests administration as a viable alternative.

3. The Process of Appointing an Administrator

Step 1: Consider the Options

Before appointing an administrator, directors must carefully consider the financial position of the company, including:

- **Insolvency Status:** The company must be insolvent, meaning it cannot pay its debts as they fall due or its liabilities exceed its assets.
- **Likelihood of Recovery:** Directors need to determine if the company has a realistic chance of being rescued or if it should be liquidated. Administration is typically appropriate if there is a chance of rescuing the business or restructuring it to pay off creditors.

If administration is deemed the best option, directors must then proceed with the appointment.

Step 2: Appointing an Insolvency Practitioner

- **Choose a Licensed Insolvency Practitioner (IP):** The administrator must be a licensed insolvency practitioner. Directors should contact an experienced IP to discuss the company's financial situation.
- **Check IP's Availability:** Ensure the IP has the expertise and availability to act as the administrator for the company.
- **Formal Agreement:** Once an IP is selected, they will enter into a formal agreement with the company to act as the administrator.

Step 3: Board Resolution

- **Board of Directors Approval:** The directors must call a board meeting to discuss and approve the appointment of an administrator. If the company is a small private limited company, only the board's approval is required. For larger companies, it may require shareholder approval as well.
- **Resolution to Appoint:** The board must pass a resolution to formally appoint the administrator. This is a written resolution that documents the decision to appoint the IP as the administrator.

Step 4: Filing the Appointment with the Court

- Form 2.4B (Notice of Appointment): The appointment must be filed at Companies House by submitting the appropriate forms, specifically Form 2.4B, which is a notice of the administrator's appointment.
- Effect of Filing: Once the form is submitted, the administrator takes over control of the company. The company is then protected from creditor action due to the moratorium that accompanies the administration.

Step 5: Moratorium

- Legal Protection: Upon appointment, the company benefits from a 14-day moratorium (initially) that protects it from legal actions, including winding-up petitions and creditor lawsuits. This moratorium may be extended depending on the circumstances.

Business Continuity: During the moratorium, the administrator takes control of the company's operations and may begin restructuring or selling the company's assets.

4. Key Considerations Before Appointing an Administrator

1. Directors' Duties

Directors must be mindful of their legal duties when considering administration. They must act in the best interests of the company and its creditors, ensuring that the decision to appoint an administrator is based on sound business judgment.

- **Duty to Creditors:** Once the company is insolvent, the directors' duties shift from the shareholders to the creditors. Directors must ensure that their actions are aimed at maximizing returns for creditors and that they do not favor themselves or shareholders.
- **Personal Liability:** Directors could be held personally liable if they act fraudulently or negligently, so it is important that the decision to appoint an administrator is made for the right reasons.

2. Cost of Administration

While administration offers a potential route for rescuing the company, it can also be expensive. The costs of the administrator's fees, including legal, accounting, and asset valuation fees, should be carefully considered. These fees are typically paid from the company's assets, which could reduce the returns to creditors.

3. Impact on Employees

The appointment of an administrator can have a significant impact on the company's employees. While some employees may be retained if the business is sold or restructured, others may face redundancy. Directors should consider employee welfare and seek professional advice if needed.

4. Possible Outcomes of Administration

Once an administrator is appointed, there are several potential outcomes:

- **Rescue the Company:** The company may be restructured or sold, allowing it to continue trading.
- **Sale of Assets:** The administrator may sell parts or all of the business to raise funds to pay creditors.
- **Creditors' Voluntary Liquidation (CVL):** If the company cannot be rescued, the administrator may opt to liquidate the company to realize its assets and distribute them to creditors.

5. Administrator's Role After Appointment

Once appointed, the administrator will take over control of the company. Their duties include:

- Assessing the company's financial position.
- Negotiating with creditors to restructure debt or agree on payment plans.
- Selling the business or assets to achieve the best outcome for creditors.
- Reporting to creditors and the court on the progress of the administration.

5. Directors' Rights and Responsibilities During Administration

Even though the administrator takes control, directors still have certain rights and responsibilities:

- Directors must continue to cooperate with the administrator and provide relevant information about the company's finances and operations.
- Directors can propose a rescue plan if the administrator is open to restructuring, though they may not retain control over the company.
- Directors must not engage in actions that could worsen the company's financial situation, such as trading while insolvent.

6. Conclusion: When to Appoint an Administrator

Directors should appoint an administrator when they believe there is a chance of rescuing the company or if it's in the best interest of creditors to achieve a better outcome than immediate liquidation. The process must be handled with care, and professional advice from a licensed insolvency practitioner is crucial.

By following the correct procedure and fulfilling their duties, directors can help navigate the company through its financial difficulties, potentially saving the business and minimizing the financial losses for all involved.