



A creditor's guide to administration

February 2023

A licensed insolvency practitioner ('IP') has given you this because you, or your business, may be owed money by a company in administration.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to England and Wales. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult a licensed insolvency practitioner or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case would benefit you or your business.

R3, the insolvency and restructuring trade body, can provide you with a list of members near you, through the member search function on its website. If you're looking to speak to someone about insolvency advice, or find a local insolvency practitioner, insolvency lawyer, or restructuring expert and they're a member of R3, they'll be on there – and many will offer a free consultation to people who are looking for help with their business finances – [find a R3 Member](#).

In what circumstances does a company find itself in administration?

When a company is facing financial difficulties it can be placed into administration. This means that, during the period for which it is in administration, the affairs, business and property of the company will be managed by a person ('the administrator') appointed for that purpose. The administrator must be a licensed insolvency practitioner and has the status of officer of the court.

How can a company be placed into administration?

A company may be placed into administration:

- by an order of the court, on application by, amongst others, the company, its directors, one or more creditors, or, if it is in liquidation, its liquidator or if it is in a CVA, its supervisor.
- without a court order, by the direct appointment of an administrator by the company, its directors or a holder of a qualifying floating charge (that is a creditor who holds comprehensive security of a type which qualifies it to make such an appointment).

What is the purpose of administration?

Administration effectively provides a breathing space to allow a rescue package or more advantageous realisation of assets to be put in place.

The administrator must perform his functions with the objective of:

- rescuing the company as a going concern (as opposed to the business that the company carries on so that it can continue to trade as a going concern),

- or achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration),
- or realising property in order to make a distribution to one or more secured or preferential creditors.

The administrator must perform his functions with the first of these objectives unless he thinks either:

- that it is not reasonably practicable to achieve that objective, or
- that the second objective would achieve a better result for the company's creditors as a whole.

The administrator may perform his functions with the third objective only if:

- he thinks that it is not reasonably practicable to achieve either of the first two objectives, and
- he does not unnecessarily harm the interests of the creditors of the company as a whole.

The administrator must perform their functions as quickly and efficiently as reasonably practicable in the best interests of the creditors as a whole.

What are the powers of an administrator?

An administrator's powers are broad. They include powers to carry on the company's business and realise its assets. However, the administrator must not make a substantial disposal to a connected person within the first eight weeks of administration unless they either:

- obtain approval of the transaction from the creditors

- have received and considered a report obtained by the connected person from an evaluator on the reasonableness of the proposed disposal.

The administrator must send a copy of the report to the creditors at the same time as they send the administrator's proposals (see below).

Does the administrator pay unsecured creditors the money owed to them?

Debts due to unsecured creditors are frozen at the date of the administrator's appointment.

If the outcome of the administration is 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.

If survival of the company is not possible, but sufficient sums are realised from the sale of the company's business and/or assets to enable funds to be distributed to unsecured creditors, the administrator may be able to deal with their claims and in certain circumstances pay them a dividend, after payment of the costs and expenses of the administration.

Permission of the court is required where there is a distribution to unsecured creditors other than from a segregated pot of monies known as the prescribed part.

Sometimes the outcome of the administration will be a company voluntary arrangement, within which creditors' claims will be dealt with.

Six months after writing off a debt in your accounts, you can claim VAT Bad Debt Relief from HM Customs and Excise for the VAT you have paid.

If you believe that you own something in the company's possession, you should contact the administrator as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The administrator will examine your claim carefully before deciding whether to release the goods in question, pay you for them or otherwise.

How does administration come to an end?

An administration may come to an end:

- automatically after one year – but this period may be extended with the agreement of the creditors or the permission of the court if more time is needed to achieve the purpose of administration.
- by court order, if the administrator thinks the purpose of administration cannot be achieved, or, where he was appointed by the court, if he thinks the purpose has been achieved.
- where the administrator was appointed out of court, if he thinks the purpose has been achieved.

On conclusion of an administration:

- the company may be returned to the control of its directors and management.
- the company may go into liquidation.
- the company may be dissolved.

- if a voluntary arrangement has been agreed during the administration, the arrangement may continue according to its terms (it is possible for a voluntary arrangement to run concurrently with an administration).

Is the administrator bound by contracts entered into by the company prior to his appointment?

An administrator has a general duty to the company to attempt to achieve the purpose of administration. In doing so, the administrator may find it impractical to have the company perform certain contracts entered into prior to his appointment, although he will have regard to the financial implications of breaches of the company's contracts. Special provisions apply to employment contracts.

Is the administrator liable for sums due under contracts entered into by the company subsequent to his appointment?

An administrator is not personally liable for contracts entered into as administrator, but normally the administrator will pay for goods or services provided subsequent to his appointment, as an expense of the administration.

As an unsecured creditor, what information am I entitled to?

The administrator must notify all known creditors of his appointment as soon as reasonably practicable and must make available a statement of proposals to all creditors for achieving the purpose of administration to all creditors within eight weeks of his appointment together with a notice to creditors of the decision procedure. The initial decision date for the decision must be within ten weeks of the date the company went into administration.

However, there is no need for the administrator to seek a decision from the company's creditors if he has stated in his proposals that:

- 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 reserved fund which may have to be set aside out of floating charge assets; or
- neither of the first two purposes of administration can be achieved.

The administrator will be able to use a process of deemed consent where they write to creditors with a proposal. If they do not receive objections from 10% or more of creditors, the proposal will be deemed to be approved. If 10% or more creditors object, the office holder will use an alternative decision-making process, such as:

- a virtual meeting
- correspondence
- electronic voting

After approval of the administrator's proposals, a report on the progress of the administration is sent to all creditors every six months and at the end of the administration. The information provided in the report will include:

- what the administrator has done,
- what assets have been sold and to whom,
- the receipts and payments to date and details of the administrator's remuneration and expenses.

Can the unsecured creditors form a creditors' committee?

Yes. A creditors' committee may be appointed at a meeting of creditors and must consist of at least three and not more than five creditors. R3 has produced a separate guide explaining insolvency creditors' committees, which is available [here](#) or from the person who gave you this guide.

Can a creditor initiate or continue legal actions against a company in administration?

No. 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.

How is the administrator's fee determined?

R3 has produced a separate guide explaining insolvency officeholders' remuneration, which is available [here](#) or from the person who gave you this guide.

What should I do if I am dissatisfied with the administrator's handling of the case?

You should first contact the liquidator to try to resolve the problem. If you are still not satisfied, you can submit a complaint to the IP's regulator via the [Insolvency Service complaints portal](#).

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals.

R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

The Institute of Chartered Accountants in England and Wales

Tel: 01908 248 250 www.icaew.com

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.com

Chartered Accountants Ireland (CAI)

Tel: 00 353 637 7200 www.charteredaccountants.ie

Disclaimer

Information in this guide is intended to provide an overview only and relates to administrations in England and Wales. It is not a replacement for seeking advice specific to your circumstances.