

# A Directors' guide to Administration



## **Contact**

If you have any queries or require assistance with any issues relating to the Administration of your business or your personal circumstances please contact us on:

**0870 495 8695**

help@totalitysolutions.com

or visit the website:

**[www.directorassist.co.uk](http://www.directorassist.co.uk)**



## **Disclaimer**

The content of this booklet is for general information only and does not constitute advice. Whilst every effort is made to ensure the accuracy of its contents Totality Solutions Limited accepts no responsibility for any loss arising out of its use.

## Contents

This booklet was developed to explore some of the risks and opportunities that directors face as a consequence of their company entering into Administration.

Additional information on the Administration process can be found on the website:  
[www.directorassist.co.uk](http://www.directorassist.co.uk).

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## The Statement of Affairs

A few days into the Administration certain directors will be asked to prepare and submit a Statement of Affairs.

### What is a statement of affairs?

This is a summary of the assets and liabilities of the business, similar in nature to a balance sheet. It states the book value of the assets of the business and what the directors believe they are worth.

### Who will be asked for a Statement of Affairs?

One or more current or former directors or employees, at the Administrators' discretion, may be asked to prepare a Statement of Affairs. Some may be asked to submit a Statement of Concurrence indicating whether they agree with a Statement prepared by another employee or director.

### What happens if I don't submit it on time?

Many Administrators will be willing to extend the deadline but they are not obliged to do so. Failure to provide a Statement of Affairs can attract a court fine of up to £500 per day.

### How to prepare a Statement of Affairs

The good news is that directors are not expected to understand the potential complexity in the preparation and presentation of the document - the Insolvency Act includes a provision for the costs incurred by a director to be paid by the Administrator.

#### **"Rule 2.32 of the Insolvency Rules 1986 - Expenses of statement of affairs**

**(1) A relevant person making the statement of the company's affairs or statement of concurrence shall be allowed, and paid by the administrator out of his receipts, any expenses incurred by the relevant person in so doing which the administrator considers reasonable....."**

Obtaining professional advice should be considered since the preparation of the Statement of Affairs requires an understanding of insolvency and employee rights legislation together with associated case law.

Some directors decide to prepare the Statement themselves. Information to help in this process can be found on the website [www.directorassist.co.uk](http://www.directorassist.co.uk).



## Protection for directors

The following should be considered by directors to minimise their risks:

- Document assumptions - It is critical for directors to ensure that whoever prepares the statement fully documents the assumptions used. As the contents may be queried or challenged in court many months or years later, this ensures that any issues can be addressed quickly and accurately.
- Obtain professional advice – this ensures that the statement is accurate and in the correct format. Obtaining professional advice normally has no direct cost to the directors.
- Ensure that any professional advice is independent of the company and its Administrators. The following parties are often not truly independent and may have an interest in presenting a particular position or outcome:
  - The Administrators or their staff;
  - The company's accountants;
  - The company's solicitors; and
  - Any intermediary involved in the appointment of the Administrators.

### Want help with preparing a Statement of Affairs?

Contact us on **0870 495 8695** and we will help you to collate the relevant documentation, place it in the correct format and properly document the process.

## Buying the business from the Administrators

Administration presents a potential opportunity for directors to acquire the business and its assets, free from its debts, at a knocked down price.

### Issues to consider

Before deciding whether to make an offer for the business, directors should undertake an objective review to establish whether it is a good investment opportunity and in particular consider the following:

- Whether the underlying problems within the business have been addressed – if they haven't then there will be additional costs and losses may have to be funded to secure the success of the business.
- Cash flow – credit and supplies may become more difficult to obtain and therefore directors need to ensure that there is sufficient working capital to get the business through this initial period.
- Suppliers – it is vital to get any key suppliers on board before buying the business and agree terms to ensure that the viability of the business is not compromised from the start.
- Customers – establish how customers are likely to react and consider any contractual termination clauses that could result in a loss of key customers. If possible, discuss the situation with key customers before buying the business to ensure that they understand the implications and benefits of the directors continuing the business.
- Employees – there may be some key employees without whom the ongoing business will struggle to survive. It is important to understand their position, whether they will support the business and consider how to motivate them, for example through an equity stake.
- Landlord – if the company's premises are required then it is important to resolve the basis of the new business's occupation, the associated costs and the impact of existing issues such as dilapidations.

Directors' judgement as to whether to buy the business from the Administrators can be clouded through loyalty to its stakeholders and the desire to ensure its survival. To ensure that the personal situation of the directors and that of other stakeholders, such as the employees, is not placed into further jeopardy the decision should be based upon a sound, objective business evaluation.

## How much to pay

The structure and price of the deal will depend upon the:

- Competition to buy it;
- Liabilities that may transfer over to the purchaser;
- Value of the assets as a going concern and breakup value;
- Likely third party claims over assets – e.g. reservation of title claims over stock, HP assets, etc;
- Value of intangible assets such as customer contracts and lists; and
- Additional non-cash value that can be provided to the Administrators such as assistance in collecting the debts.

## Funding the business

It may be possible to agree to pay for the business over a period of time but this is rare as Administrators prefer payment upon completion. It is therefore important to consider how the purchase of the business and its working capital will be funded.

It is usually possible to obtain funding from banks or asset based lenders for purchasing assets such as plant, machinery and property as well as for working capital through invoice discounting or factoring. Similarly bank loans and overdrafts may be available providing that the directors present a comprehensive and credible business plan.

A combination of external sources can minimise any personal funding required from the directors but it is likely that an element of this will be necessary.

It is crucial for directors to be realistic in their funding assumptions and to ensure that they have sufficient cash resources to get them through any short to medium term problems that may arise.



### Want help buying the business back?

We can help you to negotiate with the Administrator, prepare business plans and provide assistance to find funding. Contact us in confidence on **0870 495 8695**.

## Creditors' meetings

A meeting of creditors will usually be held within 10 weeks of the appointment of Administrators, although in certain circumstances the Administrator may not be required to hold a meeting.

### The purpose of the meeting

The meeting is intended to provide creditors with information relating to the conduct of the Administration to date and to approve the Administrators' proposals about how they intend to continue to manage the process. It normally includes aspects such as the Administrators' fees, appointment of a creditors' committee and how the Administration will end (see page 8 of this booklet).

### The Directors' role

The Administrator may request that one or more directors attend the creditors' meeting.

The Administrators will present their report and proposals to the meeting. The creditors will then have the opportunity to vote on resolutions for approval of the proposals and any other resolution that the Administrators may put to the meeting.

The Administrators will normally allow a limited number of questions to be asked of them and the directors. This meeting is not an opportunity for creditors to give the directors a grilling as to the reasons for the insolvency. If creditors have any concerns over the directors' actions these should be raised with the Administrator in writing rather than being aired at this meeting.

Most Administrators will restrict the questioning of directors at this meeting but before the meeting directors should ask the Administrators how they intend to structure the meeting. This way they can be prepared for any questions that may be asked.

Anything that occurs at this meeting will be recorded and will form part of the Administration records. Such records may form part of the report to the Department of Business, Enterprise and Regulatory Reform (BERR – formally known as the DTI) on the conduct of Directors (see opposite). Directors should therefore take great care with their responses.



## **Administrator's report on the conduct of directors**

### **Directors' questionnaires**

At some stage of the process, current and former directors (within the last 3 years) will be sent a questionnaire for completion.

The aim of the document is to gather information about the circumstances leading to the company's insolvency and the involvement of the directors. The responses may highlight issues that the Administrator needs to address or identify further information that may be required. The completed questionnaire will often be sent to BERR and may form part of their evidence should wrongdoing be suspected.

### **The report to BERR**

The Administrators must submit a confidential report to BERR, normally within 6 months of appointment, on the conduct of the directors in the lead up to and during the company's insolvency.

If the report contains details of any possible wrongdoing then BERR may investigate further. If they gather sufficient evidence they may seek to obtain a disqualification order or undertaking preventing the director from holding a management position in any company. Fortunately disqualification is relatively rare.

### **Protecting the director's position**

There are a number of actions that can be taken to minimise the risk to directors:

- The responses to information requests from the Administrator and BERR should be reviewed carefully prior to their submission and legal advice considered.
- Due to the nature of Administrations, information and documentation may become unavailable and may even be disposed of by the Administrator. It may therefore be prudent for the director to ensure that they or their advisor retain copies of any relevant documentation that may counter any allegation. Such items may include, for example, the management accounts supporting the business's solvency during the period prior to the appointment of Administrators.
- If the Administrator requires all company documentation and information to be given to them it is prudent to ensure that a receipt is obtained.
- If there is any suggestion of wrongdoing the director should consider taking immediate legal advice to ensure that their position is not compromised.

## **Directors' loan accounts**

If the directors received payment from the company in the form of a loan the Administrators will request repayment as soon as they are appointed. Directors should obtain legal advice to determine whether such loans will have to be repaid.

Any amount owed to the directors will be treated the same as any other unsecured, non-preferential creditor.

## **Redundancy**

Unfortunately as part of the Administration process, it is often necessary to reduce costs through employee redundancies. As directors are often the highest paid members of staff, there are potentially significant cost savings for the Administrators in terminating their employment.

### **The redundancy process**

Often the redundancy will happen quickly and directors will not generally be required to work their notice. The Administrator should give directors a guide to their employee rights together with RP1 and RP3 forms for completion.

Once these forms are completed and sent to the Redundancy Payment Service (RPS) the claim will be processed and certain payments made relating to redundancy, arrears and holiday pay (subject to statutory limits). There are situations where the RPS may reject a claim if, for example, they do not consider the director to be a true employee. In this event the director would have to take action in court or an Employment Tribunal to obtain payment from the RPS.

### **Following redundancy**

Directors retain their statutory responsibilities even after redundancy and may be required to assist the Administrator in their role. This may involve attending meetings with the Administrators, providing them with information and cooperation or assistance in certain activities such as recovering assets.

## **The end of the Administration**

Administration usually ends within a 12 month period but it may be extended by agreement with creditors or authority from a court.

At the end of the Administration the business may be placed into liquidation, a CVA or dissolved. If the company is placed into liquidation there will be an additional period of investigation, reporting and potentially distribution of money to creditors.

## About Totality Solutions

At Totality we believe that directors should have full access to professional advice and support throughout what can be a distressing process.

Directors may also need assistance to realise any potentially positive opportunities and to minimise the risks associated with being a director of a company in Administration.

### How we can help

We offer a confidential service aimed specifically at directors of companies in Administration. Such services include:

- Acquisition support – liaison with Administrators and legal advisors, due diligence, structuring the acquisition, advice on the purchase price and funding possibilities.
- Statement of Affairs – we will relieve you of much of the work associated with preparing the Statement of Affairs and ensure the process is properly documented. This can normally be undertaken at no cost to the directors (see page 2).
- Director's questionnaires – one of our Insolvency Practitioners can review the director's questionnaire prior to its submission to the Administrators to highlight issues that the director's responses may raise.

### Who are we?

Totality Solutions Limited is a firm of Chartered Accountants, insolvency and business recovery specialists.

Our Insolvency Practitioners are regulated by the Institute of Chartered Accountants in England and Wales.



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