

# Knowledge Bank 1

## ADMINISTRATION



### **Administration is available to a company or partnership that is insolvent or is likely to become so.**

The company is placed under the control of an insolvency practitioner and receives the protection of the court, which prevents creditors taking action against it without the permission of the court or the insolvency practitioner appointed as administrator.

#### **OBJECTIVES OF ADMINISTRATION:**

- To rescue a company or partnership as a going concern.
- To achieve a better position for creditors as a whole than would be achieved if the company or partnership was immediately wound up
- Realising assets in order to make a distribution to secured or preferential creditors.

#### **WHO CAN APPOINT AN ADMINISTRATOR?**

- The courts – on an application from creditors, directors, shareholders or partners
- The holder of a qualifying floating charge over the assets of the business
- The company or its directors.

#### **ADMINISTRATION PROCEDURE:**

##### **1. Appointment by court order**

- An application is presented to the court by the company, directors, creditors or shareholders with supporting statement by the proposed administrator that the purpose of the administration has a reasonable likelihood of being achieved.
- Administration order – administrator appointed. Any winding up petition would be dismissed.

##### **2. Appointment by secured creditor without a court order**

- A notice of intention to appoint is issued by the secured creditor and a copy of the notice may be filed at court to obtain interim protection. Two days' notice is given to the holder of any prior floating charge.
- After two days, a notice of appointment is filed at court together with a statement from the administrator stating the purpose of the administration has a reasonable likelihood of being achieved.

##### **3. Appointment by company or directors without a court order**

- A notice of intention to appoint is filed at court. This gives five days' notice to any charge holder whose charge allows them to appoint an administrator, which gives them the opportunity to appoint an administrator of their choice, should they wish.
- After five days but before ten days, a notice of appointment is filed at court together with a statement from the administrator that the purpose of the administration has a reasonable likelihood of being achieved.

#### **Following appointment**

1. Consequences of appointment: security over assets cannot be enforced without the consent of the secured creditor. The administrator can sell property subject to hire-purchase, mortgage and retention of title if the permission of the court is obtained.
2. Duties of the administrator: manages the business, proposes its future conduct and calls a meeting of creditors, if necessary.
3. Creditors' meeting: held within 10 weeks of business entering administration. Proposal can be approved, modified or rejected by a majority, in value, of those voting. In some circumstances, a creditors' meeting is not required.
4. Implementation: the administrator reports back to the court and the approved proposal is implemented.