

## Bretts Business Recovery - Administration

When your company goes into administration, it receives what's known as a moratorium i.e. legal protection.

This means creditors can't start any legal action against your company, which gives you time to restructure your business and plan an exit strategy.

Administration allows a company or business to survive as a going concern.

### **There are three ways a company can enter into Administration:**

- 1) By Court order, following the application of the company director or a creditor.
- 2) Appointment by a qualifying floating charge holder.
- 3) Appointment by the company or its directors.

### **Administration stops legal action being taken against a company, unless the Administrator or the Court give their permission, and must fulfil one of the following purposes:**

- a) The survival of the company (as opposed to the survival of the business the company carries on) as a going concern, or if it's not reasonably practicable;
  - b) A more advantageous realisation of the company's assets for creditors, than would be likely if the company was placed into liquidation: or if a) and b) are not reasonably practicable;
  - c) The realisation of the company's property, to make a distribution to the company's secured or preferential creditors.
- The Administrator has far reaching powers, and can do whatever's necessary to manage the affairs, business and property of the company.
  - The Administrator is an agent of the company to which they're appointed. This means he can contract without personal liability.
  - The Administrator is also an officer of the Court, and has a duty to act in good faith and in the interests of the company's creditors.

- Administration often results in the sale of the company's assets on a going concern basis. This may be agreed before the company goes into Administration, and completed immediately after it begins (known as a "Pre-Pack" or "Pre-Packaged Administration").
- A "Pre-Pack" can ensure a smooth transition, with minimal disruption to the business, preserving its goodwill and increasing outstanding debt repayments to creditors.
- Employees in companies under Administration usually keep their employment, transferring to the purchaser of the assets under the TUPE regulations (Transfer of Undertakings (Protection of Employment) Regulations 2006).
- If the Administrator decides to proceed with a pre pack sale, creditors receive a detailed report which outlines why action was considered appropriate.
- Administration ends automatically after one calendar year, unless the creditors agree to an extension.

## **Bretts Business Recovery – Administration**

### **CASE STUDY #1 – Travel Agent And Tour Operator**

#### **BACKGROUND:**

A long established travel agent operating in a niche market with a turnover of £3.4m, suffered internal conflict between Shareholders and Directors which impacted on the direction of the Company. As conflicts developed and with other external difficulties, business declined resulting in cash flow difficulties. After failed attempts to secure further investment to alleviate the Company's cash flow problems, the Directors sought consultation regarding the solvency of the Company.

#### **ACTION TAKEN:**

A full review and analysis of the Company was undertaken in conjunction with meeting the Company's accountants and Directors and thereafter the following steps were taken: -

- Helped the management to prepare prudent cash flow forecasts, to establish profitability of the business and rescue of the Company.
- Established contact and continued liaison with industry regulators such as CAA, ATOL, and IATA.
- Sought the sale of a subsidiary company registered in Scotland and its eventual voluntary winding-up.

- Assisted relevant regulators in dealing with passengers who had already travelled and were due to travel and managed the Company's bonding requirements.
- Identified significant book debts and liaised with a large number of foreign debtors.
- Managed the redundancy of staff and employment related issues.
- Obtained agreement from creditors to the Administrator's proposals.

#### **CURRENT POSITION:**

1. Prompt and effective cooperation with industry regulators has limited exposure of Directors and the company in respect of bonding issues.
2. Passengers were made aware of travel restrictions and provided details regarding rights to compensation.
3. Book debts in the region of £169,000 have been recovered, the majority of which are from non- UK companies and current realisations are in excess of £220,000.
4. Preferential creditors will be paid in full and a dividend to unsecured creditors will be made.

### **CASE STUDY #2 – CONSTRUCTION AND CIVIL ENGINEERING**

#### **BACKGROUND:**

This relatively new family run business sought to overcome the difficulties that new start-up Companies face, and achieved a turnover of £2.9m with a small profit. However, the Company lost its driving force when the managing director died prematurely and inexperienced family members took over.

The Company faced major problems on various contracts regarding both workmanship and materials, resulting in substantial losses and bad debt following unsuccessful legal action being taken to obtain recovery.

#### **ACTION TAKEN:**

The following steps were taken: -

- Monitoring of continued trading to allow completion of current work, based on health and safety regulation, insurance, site security and determination of contracts under the 1998 Edition of Agreement for Minor Building Works.

- Review of Company's financial position, to ensure sustainable trading.
- Supervision of workforce and mediation of incentives to ensure high quality of workmanship and continued workforce commitment.
- Novation of contracts.
- Recovery of retention monies and negotiation with clients.
- Continuation of litigation in respect of the recovery of a bad debt.
- Agreement reached with creditors on the Administrator's proposals.

#### **CURRENT POSITION:**

1. As a result of the adjustment, work in progress was successfully completed and funds received in to the Administration.
2. The Administrator was also able to negotiate the novation of the Company's largest contract providing further funds.
3. The Company's assets were sold and achieved the full amount estimated to be realised.
4. A settlement in respect of litigation is currently ongoing. Following investigations, additional sums have been recovered in respect of the Directors Loan Account.
5. It is anticipated that secured and preferential creditors will be paid in full and a substantial dividend paid to unsecured creditors.

#### **There are four ways a company may exit from Administration:**

- 1) **Liquidation** – If there are funds to distribute to unsecured creditors.
- 2) **Company Voluntary Arrangement** – If the business is able to generate a better return to creditors by continuing to trade, than if its assets were sold.
- 3) **Dissolution** – if there are no funds to be distributed to unsecured creditors.

- 4) **The company may be returned to its directors** if the company, and not just the business that it carries on, has survived as a going concern.

## For More Information, Please Contact BBR Today

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