
Voluntary Administration Overview

A voluntary administration is an option for an entity experiencing financial difficulty to appoint an independent external administrator to take control of the affairs of the company to determine the future direction of the company.

The most common circumstance is an appointment made by company directors who believe the company is insolvent or likely to become insolvent. In some circumstances a secured creditor or liquidator may also appoint an administrator.

Objective of a voluntary administration

The objective of a voluntary administration is to maximize the prospects of a company, or as much as possible of its business, continuing in existence. If it is not possible for the company or its business to continue in existence, voluntary administration may facilitate a better return for the company's creditors and members than would result from an immediate winding up of the company.

The role of an administrator

During the administration period the company is provided interim "relief" from its financial liabilities while the administrator takes full control of the company in order to formulate means to:

- salvage all or part of the company and/or its business; or
- restructure the company in a manner that allows the Company to continue;
- reorganise the company's business model; and/or
- Introduce measures that will maximise the return to creditors in an orderly winding up.

The aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation.

At the conclusion of either 20 business days or 25 business days after the date of his or her appointment, the administrator will report his/her findings to creditors and provide creditors with a recommendation as to the most appropriate option for the company going forward.

Length of the administration period

The administration period, also known as the convening period, is the period in which the Administrator deals with the affairs of the company, conducts investigations into the history and reports findings to creditors. The length of the convening period is:

- 20 business days beginning on the day after the administrator is appointed; or
- If the appointment takes place in the month of December or within 25 business days from Good Friday, then 25 business days beginning on the day after the administrator is appointed

In some circumstances where the administrator is not satisfied that there is sufficient time to deal with the affairs of the company, he/she may seek and order from the Court extending the convening period.



Reports & meetings during administration

The administrator is required to report to creditors advising of his/her recommendations and findings and to convening meetings of creditors in order for the administration of the company to be discussed in an open forum.

Initial meeting of creditors

The administrator must hold an initial meeting of creditors within eight (8) business days after being appointed. This meeting is convened by circulating a report to creditors advising of the appointment of an administrator to the company and the objectives of the administration.

At the initial meeting, creditors are provided the opportunity to be heard and to receive an initial summary from the administrator regarding the reasons for appointment and a preliminary assessment of the financial position of the company. At this meeting creditors are also provided the opportunity to determine whether to:

- appoint a committee of inspection; and
- if so, determine who will be the committee members

A committee of inspection is a small group of creditors that represents the greater body of creditors as a whole. A committee of inspection is generally only appointed in administrations with a large body of creditors.

At this meeting, creditors may also resolve to:

- remove the administrator from office; and
- appoint someone else as administrator of the company

Major meeting of creditors

At the end of the administration period, the administrator convenes a meeting of creditors by way of a report which details the Administrator's findings and provides creditors with a recommendation as to the most suitable option concerning the company's future.

At this meeting creditors will be provided an opportunity to discuss the issues discussed in the administrator's report and will consider and resolve that:

- the company execute a Deed of Company Arrangement; or
- the administration should end; or
- the company be wound up;

Creditors may resolve to adjourn the major meeting for a maximum period of up to forty-five (45) business days in instances where further time is necessary to make a decision on the future of the company.

Entitlement to vote at meetings

Any creditor can vote at a meeting of creditors providing their claim has been accepted partially or in full by the administrator for the purpose of voting at the meeting.

All resolutions are carried on the majority of voices by creditors attending (in person or by proxy). If this outcome is inconclusive or if requested by a creditor, the vote will be put to a poll. A poll is a vote which is determined on number and value of creditors in attendance (by proxy and by person). In the event of a hung vote (the majority of number voting one way and the majority in value voting the opposite way) the administrator will exercise a his/her casting vote to break the deadlock. The administrator may not break a deadlock in relation to a resolution to remove he or she from office or in relation to his or her remuneration.





Consequences to officeholders, employees, member, & creditors in an Administration

Officeholders

Upon the appointment of an administrator the powers of the company's officeholders are suspended.

In some circumstances the administrator may grant written authorisation to an officeholder, such as the director, to carry out certain duties during the administration period. For example, an administrator may authorise the director of an entity to continue to order materials or goods from suppliers if the entity continues to trade during the administration period.

The directors of a company in administration has a duty to assist the administrator including the following:

- completing a report on the company's affairs and property outlining the company's financial position and providing insight into pre-appointment circumstances of the company; and
- providing the administrator access to the company's books and records.

Employees

As at the date of the appointment of an administrator, outstanding employee entitlements are frozen and become a priority unsecured claim against the company in the administration.

In circumstances where the administrator continues to trade a company's business, employees may be retained by the administrator. The administrator is liable to pay all wages and entitlements incurred from the date of appointment.

Members

During the administration of an entity, the shareholders of the entity are not entitled to transfer their shares without the consent of the administrator.

Creditors

Upon appointment of an administrator, obligations to creditor of the company are suspended. All claims against the company's property by creditors are put on hold, as so to allow the company's property to be "protected" during the administration period in the following ways.

- The company cannot be wound up voluntarily.
- If application for a winding up order had been filed by a creditor prior to the appointment of an administrator, the Court may deem the administration to be in the best interests of the company and adjourn the hearing of the winding up application pending the outcome of the administration;
- A person cannot enforce a security interest on property of the company without the administrator's consent or leave of the Court. The exception to this provision is that, upon the appointment of an Administrator, a person holding a security interest over the entire assets and undertakings of the company is provided with thirteen business days from date of appointment of the administrator during which they may enforce their security interest.

- A person cannot enforce a lien or pledge over property of the company without the administrator's consent or leave of the Court.
- A landlord cannot carry out distress for rent in circumstances where the company is the lessee of property without the administrator's consent or leave of the Court;
- An owner or lessor of property that is used or occupied by the company cannot take possession of the property without the administrator's consent or leave of the Court;
- A creditor holding a personal guarantee from the directors cannot enforce that guarantee during the administration period; and
- All civil proceedings commenced against the company prior to the appointment of an administrator are stayed as at the date of the administrator's appointment and no civil proceedings can be continued or commenced against the company without the Administrator's consent or leave of the Court.

In summary, the principle behind the moratorium on creditors' claims and protection of the company's property during the administration is to force all creditors with competing financial interests to take a step back and allow the administrator ample time and resources to do his/her job without being impeded by such competing interests.

For more information on voluntary administration visit: slaventorline.com.au