

## 10. Business administration

The administration of a business includes the performance or management of business operations and decision making as well as the efficient organization of people and other resources to direct activities toward common goals and objectives.

The word is derived from the Middle English word *administracioun*, which came from the French *administration*, itself derived from the Latin *administratio* — a compounding of *ad* ("to") and *ministrare* ("give service").

Administrator is occasionally the title of the general manager or company secretary who reports to a corporate board of directors. This usage is archaic [citation needed]. In general, administration refers to the broader management function, including the associated finance, personnel and MIS services.

In some organizational analyses, management is viewed as a subset of administration, specifically associated with the technical and operational aspects of an organization, distinct from executive or strategic functions. Alternatively, administration can refer to the bureaucratic or operational performance of routine office tasks, usually internally oriented and reactive rather than proactive. Administrators, broadly speaking, engage in a common set of functions to meet the organization's goals. These "functions" of the administrator were described by Henri Fayol as "the six elements of administration" .

**Planning** – is deciding in advance what to do, how to do it, when to do it, and who should do it. It maps the path from where the organization is to where it wants to be. The planning function involves establishing goals and arranging them in a logical order. Administrators engage in both short-range and long-range planning.

**Organizing** – involves identifying responsibilities, grouping them into departments or divisions, and specifying organizational relationships.

**Coordinating synchronizes** the elements of the organization and must take into account delegation of authority and responsibility and span of control within units.

**Directing (Commanding)** – is leading people in a manner that achieves the goals of the organization. This requires proper allocation of resources and an effective

support system. Directing requires exceptional interpersonal skills and the ability to motivate people. One of the crucial issues in directing is the correct balance between staff needs and production.

**Review** – is a monitoring function that evaluates quality in all areas and detects potential or actual deviations from the organization's plan, ensuring high-quality performance and satisfactory results while maintaining an orderly and problem-free environment. Controlling includes information management, measurement of performance, and institution of corrective actions.

Creating output - includes all of the processes that create the product that the business sells.

## **10.1 Administration**

As a legal concept, administration is a procedure under the insolvency laws of a number of common law jurisdictions. It functions as a rescue mechanism for insolvent entities and allows them to carry on running their business. The process – an alternative to liquidation – is often known as going into administration. A company in administration is operated by the administrator (as interim chief executive) on behalf of the creditors as a going concern while options are sought short of liquidation. These options include recapitalising the business, selling the business to new owners, or demerging it into elements that can be sold and closing the remainder.

Administration differs from receivership in that it is usually carried out by a judicial authority, whereas receivership is called in by the bank or creditors involved.

## **10.2 Canada**

The Bankruptcy and Insolvency Act provides mechanisms for consumer and general proposals in order to give time for an insolvent person to be able to reorganize his affairs. For insolvent companies (or affiliated groups) owing more than \$5 million, a more flexible regime is available under the Companies' Creditors Arrangements Act ("CCAA).

### **10.3 United Kingdom**

In UK law, the administration regime is governed by the Insolvency Act 1986, as amended by the Enterprise Act 2002. An "administrator" can be appointed without petitioning the court by the holder of a floating charge (created since 15 September 2003), by the company or by its directors. Other creditors must petition the court to appoint an administrator. The administrator must act in the interests of all the creditors and attempt to rescue the company as a going concern. If this proves impossible he or she must work to maximize the recovery of the creditors as a whole. Only then may the administrator attempt to realize property in favor of one or more secured creditor. Administration is analogous to going into "Chapter 11" in the United States, although there are certain key differences, mainly stemming from the fact that English law does not include the debtor in possession concept. During the reorganization period, as a result, the administrator usually runs the business rather than the directors, and any additional liquidity requirements effectively have to be met by funds provided by existing creditors rather than by any super-senior 'DIP financing'.

The administrator is an officer of the court and an agent of the company, and is not personally liable for any contracts she or he makes on behalf of the company. He has the power to do anything necessary or expedient for the management of the affairs, business and property of the company.

The new administration regime introduced by the Enterprise Act 2002 replaces the previous situation where administrative receivership was available as an alternative to administration, which has traditionally been a more rescue-oriented insolvency regime. This regime allowed the holder of a floating charge to appoint an administrative receiver to realize assets in his favor, and also to block an administration order sought by a borrower. This was felt to be too favorable to the floating charge holder at the expense of other creditors. Holders of a floating charge created prior to 15 September 2003 retain their right to appoint an administrative receiver, but all purported rights to do so created after that date will

be construed as rights to appoint an administrator (subject to certain specific, rare exceptions).

A court order is issued that forbids any form of legal or insolvency action without the court's permission. An application to the court for an administration order may be made by the company, the directors, a creditor or any combination of them. The Enterprise Act 2002 amended the Insolvency Act 1986 to provide an out-of-court process to appoint an administrator to the holder of a floating charge or the company or its directors. This is considerably cheaper and simpler than the previous system, which involved an application to court.

#### **10.4 Administration order**

In the UK, an administration order is a process designed to protect limited companies from their creditors while a debt restructuring plan is carried out and presented to creditors and courts. This administration order process requires a licensed insolvency practitioner to act as the administrator appointed by the court.

#### **10.5 Pre-pack administration**

A pre-pack is the process of selling the assets of a company immediately after it has entered administration. It is sometimes the case that the previous directors or management purchase the assets of the company from the administrator and set up a new company.

This process has advantages in that it enables the administrator to realise a greater amount for the assets due to business continuity and the goodwill of the company are preserved. The employees of the company are also usually transferred to the new company preserving jobs.

Pre-packs have attracted criticism because of the appearances it gives to unconnected parties that the company has just continued without its creditors. SIP 16 was introduced in January 2009 to assist Insolvency Practitioners in pre-pack cases. It was designed to make the process more transparent for creditors and to ensure that fair value was obtained for the assets.

In November 2009, the Office of Fair Trading announced a [3]study into corporate insolvencies, with particular focus on pre-pack administrations. It will report on whether the insolvency market is operating efficiently, with enough freedom of competition between insolvency practitioners and whether consumers and creditors are being treated as fairly as possible.

A recent example of a pre-pack is the sale of the assets of Cobra Beer to Coors immediately after Cobra Beer entered administration. This allowed the brand to continue, save jobs but also leave suppliers out of pocket by an estimated £75 million.

### **10.6 Individual administration order in England, Wales and Northern Ireland**

In this process, a debtor who has enough money left over after priority creditors and essential expenses, may be able to arrange an individual voluntary arrangement. (Debtors with less serious problems may prefer a debt management plan).

### **10.7 Australia**

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Australian law establishes a system of voluntary administration, whereby administrators are appointed by a resolution of the board of the relevant company. The Board may appoint an administrator in circumstances where the company is, or will become at some future time, insolvent. In certain circumstances, a liquidator or receiver of an insolvent company may elect to appoint an administrator. Once appointed, the administrator must prepare a report containing recommendations as to whether the company should be returned to the control of the directors, wound up or execute a deed of company arrangement.

Administrators are required to be registered liquidators, and by virtue of their appointment have broad powers to deal with company property. The appointment of an administrator "freezes" any legal proceedings (on foot or anticipated) against the company, and control of the company is given entirely to the administrator.

Directors of the company are prohibited from acting in their capacity as directors for the duration of the administration.

While administrators are personally liable for any debts incurred by the company in the course of the administration, they are granted a statutory indemnity against these debts.

The Australian insolvency regime, encompassing administrations, liquidations and receiverships, is the subject of ongoing discussion in respect of law reform.

### **10.8 Republic of Ireland**

The Republic of Ireland operates a similar process called examiner ship, but companies require permission from the High Court to enter and leave examiner ship.