

LLP - Administration

An administration order is an order directing that, during the period that the order is in force, the affairs, business and property of the LLP shall be managed by a person (the **Administrator**) appointed by the Court.

The Court may make an administration order if:

- it is satisfied that an LLP does not satisfy, or is unlikely to be able to satisfy, the solvency test, and
- it considers that the making of an order may achieve one or more of the following:
 - the survival of the LLP, and the whole or any part of its undertaking as a going concern, or
 - a more advantageous realisation of the LLP's property than would be effected on a winding up

The order shall specify the purpose for which it is made, and a may be made notwithstanding the fact that the LLP has been placed into winding up.

Application for an Administration Order

An application for an administration order may be made to the Court by all or any of the following, acting together or separately:

- The LLP
- Any member of the LLP
- Any creditor of the LLP, either contingent or prospective
- The Commission (in respect of supervised LLP's)
- The liquidator (either where the court has made an order for winding up, or which has been appointed by the members)

Notice of an application to the Court for an order shall be served on the LLP, the Registrar, the Commission (in the case of a supervised LLP) and any other such persons including any creditors. Each shall be given the opportunity of making representations to the Court before any order is made.

Notice of the intention to make an application order shall be delivered to the Registrar **at least two clear days before** the making of the application. Upon receipt of the notice the Registrar shall publish on the Guernsey Registry website a notice that an application for administration is to be made.

During the period between the making of an application and the making of an order (or the dismissal of the application) no order shall be made for the LLP's winding up; the occurrence of a winding up event specified in section 85(1)(1) or (b) of the LLP (Guernsey) Law 2013 shall have no effect: and no proceedings may be commenced or continued against the LLP, except with the leave of the Court. (Note: rights of set-off and secured interests, and rights of enforcement are unaffected by an application action).

On hearing an application for an administration order, the Court may, on such terms and conditions as it thinks fit:

- Grant or dismiss the application
- Adjourn the hearing (conditionally or unconditionally)
- Make an interim order, or any other order. An interim order may without limitation restrict the performance of any function of the members, or of the LLP.

Effect of an Administration Order

On the making of an administration order any application for the winding up of the LLP shall be dismissed.

Any winding up order in force shall be discharged or suspended, and any winding up action shall cease to have effect or shall be suspended.

During the period for which an administration is in force: no order may be made for winding up the LLP; any winding up event specified in section 85(1)(1) or (b) of the LLP (Guernsey) Law 2013 will have no effect; and no proceedings may be commenced or continued against the LLP, except with the leave of the Court. (Note: rights of set-off and secured interests, and rights of enforcement are unaffected by an application action).

An LLP must ensure that all correspondence contains the administrators name and a statement that the affairs, business and property of the LLP are being managed by the administrator; and where there is a website the administrator name and a statement that the affairs, business and property of the LLP are being managed by an administrator must appear in a reasonably prominent location on that website.

The Office of Administrator

The administrator shall be sworn before the Court when the Court makes the administration order, or at any other time directed by the Court.

In performing his functions the administrator is deemed to act as the LLP's agent, but shall not incur personal liability except to the extent that he is fraudulent, reckless or grossly negligent, or acts in bad faith.

The administrators remuneration, and any costs, charges and expenses properly incurred in the administration are payable from the LLP's property in priority to all other claims. The administrator's fees shall be fixed by the Court.

The administrator may be removed at any time by Order of the Court, or may resign his office by giving notice of his resignation to the Court. In addition a person ceases to be an administrator in the event of his death. The Court may appoint a replacement.

General Powers and Duties of the Administrator

Where an administration order is made the administrator shall, **within 7 days of the day of his appointment**, send a copy of the order to the Registrar. Upon receipt of the notice the Registrar shall publish on the Guernsey Registry website a notice that an administration order has been made.

A copy of the order must also be sent to the LLP, and within 28 days of the making of the order the administrator shall (unless the Court orders otherwise, send notice to all creditors of the LLP so far as he is aware of their addresses; and in the case of a supervised LLP send notice of the order to the Commission.

A copy of the order should also be sent to any other persons within such time as the court may direct.

Upon his appointment the administrator shall take into his custody or under his control all the property to which the LLP is, or appears to be, entitled. The administrator shall manage the affairs, business and property of the LLP in accordance with any directions given by the Court, and may do all such things as may be necessary or expedient for the management of the affairs, business and property of the LLP.

The administrator may apply to the Court for directions in relation to the extent or performance of any function, and any matter arising in the course of his administration.

The administrator has the power to prevent the involvement in the management of the LLP of any member, and to call any meeting of the member or creditors.

Any function conferred on the LLP which could be performed in such a way as to interfere with the performance by the administrator of his functions **may not** be performed without the consent of the administrator.

The administrator may require all or any persons-

- Who are or have been members of the LLP,
- Are in, or have been in the employment of the LLP within the period of 1 year before the date of the administration order,
- Are or have, within the preceding year been officer or member of, or in the employment of a body corporate, limited partnership or other body type, which is or was within the preceding year a member of the LLP,

-to make out and submit to him a statement of affairs of the LLP. This statement shall be verified by affidavit of the persons required to submit it and shall show the particulars of the LLP's property and debts, the names and addresses of its creditors, any securities held by any of its creditors and the dates when those securities were given, and any other further information the administrator may require.

Discharge or Variation of an Administration Order

The administrator may apply at any time to the Court for the order to be discharged or varied if it appears to him that the purpose specified in the order has been achieved, or is incapable of being achieved, or it would be otherwise desirable or expedient to discharge or vary the order.

Where an application for an order is to be discharged or varied by the Court is granted the administrator shall **within 7 days after the day of the order**, send a copy of the order effecting the discharge or variation to the Registrar. In addition the Court may direct a copy of the order to be delivered to such other person's as it directs.