

A SIMPLE GUIDE ON COMPANY'S ADMINISTRATION PROCESS

BY: JUDY MUGO, SENIOR ASSISTANT OFFICIAL RECEIVER

INTRODUCTION

Company Administration process is one of the available alternatives to liquidation process. It is governed by the insolvency Act 2015, Part VIII of the Act deals with the Administration process.

An Administrator of a company must be a licensed Insolvency Practitioner or the Official Receiver of the Republic of Kenya.

A) What is company administration?

Company Administration is a process whereby an Insolvency Practitioner is appointed to restructure a business by ensuring that it is a going concern with aim of either turning it into profitable company or effecting a sale of the business to preserve its value.

B) Objectives of the administration process.

The main objectives of placing a company under administration are:-

- a) To maintain the company as a going concern;
- b) To achieve a better outcome for the company's creditors as a whole than would likely to be the case if the company were liquidated (without first being under administration);
- c) To realize the property of the company in order to make a distribution to one or more secured preferential creditors.

C) Who can appoint an administrator?

A company can be placed under Administration by:

- a) Court
- b) Holder of a Qualifying Floating Charge
- c) Company or its directors

D) Effect of the administration order.

-On the making of an administration order in respect of the company, an application for the liquidation of the company may not be made and any application for the liquidation of the company that is pending is suspended.

-On making of the administration order, the company is placed under moratorium for the entire administration period.

E) General overview of the administration process

-Once the Administrator is appointed, he should send a notice in regards to his appointment to the company, all known creditors and the registrar. The Administrator should also undertake to publish a notice of his appointment in one of the local newspapers or in the Kenya Gazette.

-Upon requesting the relevant person, the Administrator is provided with the company's statement of affairs within twelve (12) days and comes up with a proposal on how to achieve the purpose of the administration; if not achievable the Administrator should give an explanation thereof.

-The statement of proposal may include:-

a) Proposal for a voluntary arrangement or;

b) Proposal for a compromise or arrangement to be sanctioned under the companies Act.

- The Administrator should then send the proposal to all the known creditors, members of the company and to the registrar for registration purposes.

- The Administrator's proposal is then tabled in the creditors' meeting for consideration. The creditors may either:-

a) Approve the proposal without modification;

b) Approve with modification to which the Administrator must consent to.

- The Administrator's statement of proposal should not include action that affects the rights of secured creditor or rights of a preferential debt.

- The Administrator's statement of proposal can also be revised if the Administrator believes that the revision is substantial. The revision can be done with or without modification by the creditors.

- The Administrator then reports the decision made to court and lodges a copy with the registrar and the same is adopted.

- The Administrator need not convene a creditors meeting if the company has sufficient property to pay each creditor or if the objective of the administration cannot be achieved.

- If the Administrator's proposal is not approved with or without modifications, the court makes an order terminating the appointment of the Administrator.

A) Functions and Powers of the Administrator

The Insolvency Act confers functions and powers upon the Administrator upon appointment. The functions and powers are outlined in the fourth schedule of the Act and they include:-

a) Powers to convene members/creditors meeting;

b) Power to remove and appoint a director to the office;

c) Power to take any action that contributes to the effective and efficient management of the affairs and property of the company;

d) Power to distribute company's assets to the creditors;

e) Duty to assume control of property of the company;

f) Power to dispose of property that is subject to floating charge;

g) Power to dispose of goods that are in possession of the company under a credit purchase.

B) How long does the Administration Process take?

The appointment of an Administrator automatically ends at the end of twelve (12) months from the date including the date in which it took effect. However, the Administrator can make an application in court requesting for an extension for a period not exceeding six (6) months

C) Termination of Administration Process

The Administration process can be terminated in the following circumstances:

- a) If the purpose of the administration has been sufficiently achieved, the Administrator should undertake to lodge a copy with the court and registrar to that effect.
- b) A creditor of the company may make an application to the court for an order terminating the appointment of the Administrator if there are allegations of improper motives
- c) The Court can terminate administration process if a company has been placed under liquidation on public interest.

D) Termination of Administration Process

The appointment of an Administrator can be terminated through several ways:

- a) Resignation
- b) Death
- c) If the Administrator ceases to be an Insolvency Practitioner
- d) By court if satisfied that the circumstances exist that make it inappropriate for the Administrator to continue being in office.

E) Dissolution of a Company under Administration Process

If the Administrator is of the opinion that a company that is under administration has no property that might allow a distribution to its creditors, the Administrator lodges a notice to that effect with the court, registrar and each creditor that the Administrator is aware of. At the end of three (3) months the company is dissolved.

F) Conclusion

Company Administration process is one of the alternatives to liquidation. The Administrator should ensure that the company is a going concern, this enables it pay its liabilities without the creditors interfering with the process. If the Objective of administration is achieved, the Administrator surrenders the company back to its directors. If the objective is not achievable, the Administrator has an option of converting the administration process to liquidation.

Once the appointment of an Administrator ends for whatever reason, the Administrator is discharged from liability in respect of all acts done or omitted to be done as an Administrator.

