



Light Touch Administrations

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Light Touch Administration Protocol

- Why? – the reason for developing the protocol.
- How? – what's different about a protocol light touch administration.
- What? – the statutory purpose and a light touch administration.
- When? – the alternative procedures.
- But! – the regulators' view.
- However! – the courts' reaction.
- And you? – will practitioners use it?



Why? – the reason for developing the protocol.

- Lock-down 1 (March 2020)
 - Enforced business closures
 - Staff on furlough
 - Minimal trading, yet company survival remains possible
- Need for a debtor in possession procedure?
 - Reduced professional cost
 - But greater stakeholder risk?



Why? – the reason for developing the protocol.

- Protocol developed in response
 - A way of using the administration procedure
 - Eminent practitioners designed it:
 - Counsel (Mark Phillips QC)
 - Insolvency Lawyers Association
 - City of London Law Society
- High profile use
 - Debenhams administration order
 - But Debenhams lost its concessions when Arcadia went into administration
 - And so lost the buyer for its business
 - Now in liquidation



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How? – what's different with the protocol?

- Standard administration
 - Appointment by administration order?
 - Statutory purpose: rescue the company as a going concern?
- With partial restoration of directors' powers
 - ¶64 schedule B1
- And clear definition of directors' powers
 - Protocol template



How? – what's different with the protocol?

- Standard administration
 - Appointment by court order
 - Not essential
 - But – for now – a very good idea



How? – what's different with the protocol?

- With partial restoration of directors' powers
 - ¶64 schedule B1

... an officer ... may not exercise a management power without the consent of the administrator.

“management power” ... a power which could ... interfere with the ... administrator's powers,

consent may be general or specific.



How? – what's different with the protocol?

- And clear definition of directors' powers

Protocol template

- Requires:
 - Rescue of the company as an objective.
 - Adequate working capital to pay administration expenses as they fall due.
 - Regular, specified, reporting.
- Restores power to directors to:
 - Trade 'normally' (within limits).
- Retains the administrators' rights to step in and take over.
- Envisages exit through a CVA or Pt 26[A] scheme, or less formal settlement.



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What? – the statutory purpose.

- The protocol template envisages:
 - Rescue of the company as a purpose; and
 - Exit through a CVA / Pt 26[A] scheme or other settlement.
- But Debenhams (which used the protocol) was likely to sell (beneficial realisation as a purpose).
- And *Davey v Money* (2018) – a ‘light touch’ (heavily sub-contracted) administration – was fine for the purpose of asset realisation.



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When? – the alternative procedures.

- You can think about a light touch administration:
 - Protocol
 - Or modified
- Or:
 - 'Conventional' administration;
 - Pre-administration moratorium;
 - Moratorium (Part A1 – CIGA'20)
 - CVA (R3 CoViD-19 template?)



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But! – the regulators' view.

- ICAEW's concerns
 - Published before we saw CIGA'20.
 - No longer (easy to find) on the ICAEW website.
 - About:
 - The power directors might have.
 - Points the template may not cover.
 - Assessing the directors' character (particularly in lock-down).
 - The IP's risks:
 - Legal;
 - Regulatory.
 - Monitoring visits will look at the level of the IP's 'control and oversight'.



But! – the regulators' view.

- Dealing with ICAEW's concerns:
 - The power directors might have.
 - It's not agency; the administrator is not delegating their authority (they are limiting it).
 - Define and monitor.
 - Points the template may not cover. Examples (from ICAEW):
 - Funding – banking
 - H&S
 - GDPR (and other regulatory)
 - Assessing the directors' character (particularly in lock-down).
 - Reporting and monitoring?
 - The IP's risks:
 - Legal – not unique to 'light touch administrations'
 - Regulatory.
 - Monitoring visits will look at the level of the IP's 'control and oversight'.



But! – the regulators' view.

- Particular sensitivity for:
 - Pre-packs
 - Phoenixes
 - Private debentures
- Limit the directors to normal operational issues – don't allow them power over issues like those.
- Other protections:
 - Appoint by administration order.
 - Pull the plug quickly if it goes wrong.
 - Keep the main stakeholders informed.



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However! – the courts' reaction.

- Debenhams – set up when the court appointed the administrators.
- *Davey v Money* – court accepted a 'light touch' (heavily delegated) administration as legitimate (in later litigation).
- Courts dislike administrations that override stakeholder interests (particularly with internal disputes).
- Administration orders are safer if there may be a dispute.



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And you? – will practitioners use it?

- Alternatives:
 - Moratorium.
 - Narrow eligibility criteria. (You need more confidence of hitting a smaller target.)
 - Practitioner risk.
 - Non-trading administrations
 - Pre-packs.
 - Close and mothball.
 - Pre-appointment administration moratoriums
 - Can be extended if a court application leading to a CVA.
 - Use the protocol template to define interim powers for directors?
 - CVAs
 - Use the protocol template to limit directors' powers pre-appointment?



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