

Notice of intention to appoint administrators: the directors' template

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When directors want to put their company into administration and a bank or other lender holds a qualifying floating charge, they must first give that lender at least 5 business days' written notice of intention to appoint (Schedule B1, para 26). A copy goes to court with a statutory declaration that the company is or is likely to become unable to pay its debts, and filing it starts a short interim moratorium against creditor action. The appointment must then be made within 10 business days of filing or the notice lapses (para 28(2)). The notice itself is a court document normally prepared by the proposed administrator's firm. What the directors have to produce is the thing that must travel with it under rule 3.23 of the Insolvency (England and Wales) Rules 2016: a record of the board's decision to appoint. That record is the template below, followed by a checklist of what the notice must say. This is general information, not legal advice.

THE RECORD OF THE DIRECTORS' DECISION

Rule 3.23(2)(b) requires the notice to be accompanied by "a record of the decision of the directors" where the directors are making the appointment. Minute the meeting properly; a majority of directors is enough (Schedule B1, para 105).

[COMPANY NAME] LIMITED (company number [number])

RECORD OF THE DECISION OF THE DIRECTORS TO APPOINT AN ADMINISTRATOR

Minutes of a meeting of the board of directors held at [place / by video call] on [date] at [time]

PRESENT: [names of directors present]

IN ATTENDANCE: [name], [firm], licensed insolvency practitioner (proposed administrator) [if attending]

CHAIR: [name]

1. Quorum. The chair confirmed that notice of the meeting had been given to all directors in accordance with the company's articles and that a quorum was present. [Where not all directors agree: record who voted for and against. A majority of the directors may act under paragraph 105 of Schedule B1 to the Insolvency Act 1986.]

2. Financial position. The board reviewed [the latest management accounts / cash-flow forecast / aged creditor listing] as at [date] and concluded that the company is, or is likely to become, unable to pay its debts. [One or two factual sentences on why.]

3. Advice received. The board noted the advice of [name] of [firm], a licensed insolvency practitioner, on the options available to the company, and that in [his / her] opinion the purpose of administration is reasonably likely to be achieved.

4. Checks before appointment. The board noted that, so far as the directors are able to ascertain: (a) the company is not in liquidation; (b) the company has not been in administration within the preceding 12 months; (c) no petition for the winding up of the company has been presented that is not yet disposed of; (d) no administration application has been made that is not

yet disposed of; (e) no administrative receiver of the company is in office; and (f) [there is / there is no] moratorium in force for the company under Part A1 of the Insolvency Act 1986.

5. Charge holders. The board noted that [name of lender] holds [a debenture dated [date]] which is or may be a qualifying floating charge, and that it must be given at least five business days' written notice of the directors' intention to appoint (Schedule B1, paragraph 26(1)). [Repeat for each holder. The board also noted that copies of the notice must be sent at the same time to any enforcement agent or person known to have taken legal process or distrained against the company, and to any supervisor of a company voluntary arrangement (rule 3.23(4)).]

6. RESOLVED: to appoint an administrator. IT WAS RESOLVED that the directors appoint [name], of [firm and address], a licensed insolvency practitioner, as administrator of the company under paragraph 22(2) of Schedule B1 to the Insolvency Act 1986, once the notice period has expired or each person entitled to notice has consented in writing. [If two or more administrators: record which functions are to be exercised jointly and which by any or all of them.]

7. RESOLVED: authority to act. IT WAS RESOLVED that [name of director] be authorised on behalf of the directors to give notice of intention to appoint, to make the statutory declaration required by paragraph 27(2) of Schedule B1, to file the notice and accompanying documents with the court, and to make and file the notice of appointment.

8. Timing noted. It was noted that the appointment cannot be made after ten business days beginning with the date the notice of intention is filed with the court (paragraph 28(2)), and that making a statement in a statutory declaration which is false and not reasonably believed to be true is an offence (paragraph 27(4)).

9. Conduct pending appointment. It was noted that the directors must have regard to the interests of the company's creditors, and the board agreed that no [new credit be incurred / payments be made outside the ordinary course / assets be transferred] before the appointment without further board approval.

There being no further business, the meeting closed at [time].

Signed: (Chair) Date:

WHAT THE NOTICE ITSELF MUST CONTAIN

Your practitioner drafts the notice, but you are the one signing the statutory declaration that goes with it, so check it against rule 3.23(1). It must be headed "Notice of intention to appoint an administrator by company or directors" and contain:

- ☐ identification details for the proceedings
- ☐ a statement that the directors intend to appoint an administrator
- ☐ the name and address of the proposed administrator
- ☐ the names and addresses of everyone given notice under paragraph 26(1), and a statement that each is or may be entitled to appoint an administrative receiver or a paragraph 14 administrator
- ☐ whether a Part A1 moratorium is in force for the company
- ☐ a statement that the company has not been in administration within the preceding 12 months

- ☐ a statement that there is no undisposed winding-up petition, no undisposed administration application and no administrative receiver in office
- ☐ whether the company is an Article 1.2 undertaking, and whether the proceedings will be COMI proceedings, establishment proceedings or outside the retained EU Regulation, with reasons
- ☐ a statement that the record of the directors' decision is attached
- ☐ a statement that a charge holder may consent in writing, but that once five business days have expired from delivery the appointment can be made without a reply

THE CLOCKS, IN ORDER

Step	Timing	Source
Serve notice on each qualifying floating charge holder	At least 5 business days before the appointment, unless each consents in writing	Sch B1 paras 26(1), 28(1)
Make the statutory declaration	Not more than 5 business days before the notice is filed	IR 2016 r.3.23(6) (b)
File a copy of the notice at court	As soon as reasonably practicable after giving notice	Sch B1 para 27(1)
Interim moratorium	From filing until the appointment, or until 10 business days pass without one	Sch B1 para 44(4)
Last day to appoint	Within 10 business days beginning with the filing date	Sch B1 para 28(2)

WHEN THE DIRECTORS CANNOT USE THIS ROUTE

- **A winding-up petition is already on file** and not disposed of, an administration application is pending, or an administrative receiver is in office (Schedule B1, para 25). If a petition has been served, see the petition response checklist and take advice the same day.
- **The company was in administration within the last 12 months** following an appointment by the company or its directors (para 23).
- **The lender acts first.** Once served, a qualifying floating charge holder can appoint its own administrator instead. The qualifying floating charge guide explains how that works.

Filing the notice also changes the look-back dates. For preference and undervalue claims, and for floating charges granted shortly before insolvency, the "onset of insolvency" becomes the date the notice was filed, if the appointment follows it (Insolvency Act 1986, s.240(3)(b) and s.245). Anything paid or granted in the notice period itself is inside the relevant time too, so the board minute's paragraph 9 is not a formality.

BEFORE YOU GET HERE

Administration is one route among several. Read how company administration works, compare it with liquidation and a CVA, and cost it with the administration cost calculator. If you have not yet minuted the decision to take advice, start with the board minutes template, and if your lender holds a debenture, the letter to your lender covers the conversation before any notice is served.

procedural template and general information, not legal or insolvency advice; the appointment is made with, and the court papers prepared by, a licensed insolvency practitioner.

Online version: <https://ltdturnaround.co.uk/templates/notice-of-intention-to-appoint-administrators/>