



## Buying from Administrators: Maximising the opportunity to expand

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### Buying from Administrators: Maximising the opportunity to expand.

The recent Bodyshop administration has sparked a lot of conversations around the use of the administration process by companies. Everyone seems to have a view, often without understanding the process.

Someone recently shared their view with me that “*administration is a tool for corporate theft from creditors*”. I disagree – it’s a useful tool for saving what is left of a business that would otherwise collapse; and for a competitor with cash, it’s a good way to grow your business – but you need to know what you’re doing.

#### What is the process?

Administration is an insolvency process where the insolvent company is put under the control of licensed insolvency practitioners (**Administrators**). Generally, before Administrators are appointed, the company must be unable to pay its debts and the Administrators must be satisfied that one of 3 statutory purposes can be achieved:

- 1) to rescue the company as a going concern.
- 2) if that’s impossible, to achieve a better result for creditors than liquidation; or
- 3) if that’s impossible to realise the company’s property to make a distribution to its secured or preferential creditors.

If none are possible, then alternatives must be pursued – such as liquidation (i.e., terminal close down).

Generally, once appointed Administrators will look for a buyer for the insolvent business and its assets. While the initial plan may be to sell it back to the directors, the Administrators are under a duty to achieve the best price. Save for exceptional circumstances, that includes marketing it to potential purchasers for at least a limited period.

#### Tips when buying from Administrators:

**Be in the game.** Register with marketing lists for agents/accountants who sell distressed businesses and keep your ears to the ground in your market. If an opportunity to bid arises, act quickly – Administrators don’t hang about.

**Make your offer clear.** A share sale is unlikely; most administration sales will be asset sales. This leaves the insolvent company’s liabilities with them. Be clear what assets you are bidding for and what you are not. Don’t forget any intellectual property and, where appropriate, ensure the bid includes an assignment of it.

**Don’t expect warranties.** Administrators know little about the assets they’re selling and won’t give warranties or guarantees. Assets are sold as seen, and your related risk is reflected in the price you offer. You’ll need to assess the information available and physically inspect the assets you’re buying.

**Don’t dilly-dally.** Administration sales happen quickly, and there’s no room for procrastination. You need to move quickly. The window for due

diligence and information available, will be limited. You'll need to get comfortable quickly with the level of risk involved and factor it into the price.

Administrators will expect **indemnities** from buyers against any liabilities that may arise in relation to the assets sold as a result of the sale. This will include things such as employee liabilities and third-party claims to the assets. Factor that into the price.

**Employees.** The appointment of Administrators will not automatically terminate contracts of employment. You need to establish that key employees don't intend to leave, and ensure they are motivated moving forward. As a general rule (there are some exceptions) the contracts of (and liabilities to) the employees relating to the assets you're buying will transfer to you automatically on sale.

**Who owns the assets?** Administrators will only sell such title as the company has. Stock will transfer subject to retention of title if a supplier hasn't been paid, and title to third party assets (HP, lease or those used under licence) won't transfer. Suppliers won't be obliged to supply on the same terms post sale. Be prepared to negotiate with suppliers and the third-party owners post completion. Where intellectual property is used under licence, you'll need to establish whether the licence is transferable, or if you need a new licence from the owner.

**Property.** If the company occupies leasehold premises that are key, you'll usually be given a short-term licence to occupy post completion – during that time you negotiate with the landlord to agree a lease assignment or new lease. You'll need to address this quickly post completion and negotiate with the landlord promptly. If the property is vital to the business, enquiries should be made of the landlord pre-completion to ensure they will (in principle) at least agree to play ball.

If **customer contracts** and **customer lists** transfer as part of the sale, you will need to ensure that those contracts can be assigned and won't terminate and consider any GDPR issues you will need to address before using any data. The sale contract will likely require you to comply with GDPR obligations.

## Frank Bouette

Frank is recognised as an expert in Restructuring and Insolvency law, and one who provides decisive practical solutions. He is an experienced and highly regarded Restructuring & Insolvency lawyer.

Frank's experience is in transactional and contentious insolvency, acting for lenders, investors, creditors, directors, OMBs, borrowers and office holders on a wide range of transactions. He often represents a wide range of well-known firms in the market.

He specialises in providing managed solutions in financially distressed scenarios to assist OMBs, companies, directors, lenders, investors and other stakeholders, as well as insolvency office holders.

He makes it his business to understand and explore the needs and ultimate aims of clients, before delivering clear advice and practical solutions.

His particular strengths are assisting lenders and investors with managed exits from distressed lending / investments in a way that minimises losses and (where possible) preserves viable businesses; and assisting OMBs and directors navigate choppy waters and minimise their personal risks while trying to safeguard their business.

Frank has particular experience assisting with the restructuring of care homes & dental practices and assisting with financial distress in the education and charities sectors.

If you would like to discuss any of these themes further, please get in touch with Frank Bouette, Partner, Restructuring & Insolvency:

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