

PRACTICE

How do I get paid if my employer goes into administration?



ASK US A QUESTION

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It is a regrettable but inevitable effect of any economic downturn that more businesses fail, often through no fault of their own and sometimes quite unexpectedly. Over the past few months BD has reported on several well-established, high-profile and reputable practices that have been forced to cut or delay salary payments, or worse still have gone into administration owing their staff significant amounts of pay.

In these situations, employees have protected rights as creditors — but the banks and

taxman always get their money first. The government will also step in to make minimum payments from the National Insurance Fund. But there is unlikely to be enough money to pay all the debts — that is why the business has gone into liquidation or administration. Employees can still lose a significant proportion of the pay due to them as well as their jobs.

You may be willing to take a salary cut, or delay your salary payments, to enable your practice to continue operating and to keep your job. But be careful to protect

and enhance your rights before agreeing to this, in case your employer goes bust and is unable to pay all its debts.

For example, you could become a higher priority secured creditor, to be further up the queue when the remaining money is being divided out to the debtors. It is well worth taking expert legal and financial advice and it should go without saying: get it in writing.

There are also professional and ethical issues at stake. Registered and chartered architects are bound by the Arb and RIBA codes. An RIBA chartered practice is

required to be a responsible employer and comply with the RIBA's employment code. It is unprofessional for principals of practices to avoid their debts intentionally by going bust and setting up a similar practice. The RIBA provides advice to its members about this, both as employees and employers and also to clients who may be left in the lurch. **RB**

DISCLAIMER

This column is for general information only, and is not intended to convey specific legal advice.

The government's National Insurance Fund can help

When a company goes into administration, an administrator takes charge with the aim of rescuing the business.

This means that the administration itself does not end any employees' employment; all employees continue to be employed unless told otherwise.

If an administrator terminates your employment, there is no guarantee that any out-standing wages and salary will be paid — though they will, subject to a cap, be paid in preference to various other debts. However, the government will guarantee certain payments through the National

Insurance Fund, to a maximum of £400 per week in each case (rising to £430 from February 1), and subject to deductions for tax. These are:

- Arrears of pay up to a maximum of eight weeks.
 - Holiday pay up to a maximum of six weeks taken or accrued in the 12-month period expiring on the date of the insolvency.
 - Statutory notice pay.
 - Employer's unpaid pension contributions to an occupational pension scheme or personal pension scheme. These are paid up to a maximum either arrears accrued in the 12 months before the insolvency; or 10% of the last 12 months' payroll, whichever is lowest.
 - Statutory redundancy pay less any amount paid by the company.
- If staff continue in employment past the period of 14 days from the administration, they are in a better position because any wages or salary will be paid in full as "an expense of the administration", meaning that they will be paid before claims for the administrator's fees and expenses. **PP**

Prepacks: enemy or saviour?

Was the method used to sell YRM to RMJM sharp practice or the best option in a tough situation?

Mark Twum-Ampofo explains

Pre-pack administration of a business can sometimes be referred to as a "managed buyout". The sale is often to the business's own directors, but can also be to an unrelated company — as with the recent sale of YRM to RMJM.

A business will enter administration if it is in financial difficulties and unable to pay its debts. On formal insolvency, an administrator will be appointed who will try to rescue the company as a going concern.

Pre-packing a company effectively means arranging the sale of the company's business in advance of this formal insolvency. A new company is set up prior to the administrator's appointment and acquires the assets of the old company on the day of the administration. Most liabilities will be left with the original company so the new company is solvent and can trade using the assets of the old company with no restrictions.

Out of pocket

The controversy arises when the existing management buys the business and large numbers of creditors are left out-of-pocket or employees lose their jobs.

Creditors find it strange that the business can be sold without any consultation with creditors, permission of the court, or an open-marketing process.

The administrator's role is to act in the interests of the company's creditors as a whole and when a company is declared insolvent its value falls rapidly as clients move elsewhere and employees look for new jobs. In a pre-pack the administrator takes the view that the best way to preserve this value is a swift pre-arranged sale of the business giving the appearance of a seamless transition.

The main alternatives to a pre-pack are:

- Trading Administration, where costs will increase and returns often diminish.
- Company Voluntary Arrangement (CVA), where creditors are asked to write off part of the debts they are due, a supervisor monitors the business and any default on the CVA proposal results in liquidation.
- Liquidation, where client and employee contracts will often terminate automatically as the liquidator will have no funds to pay them.

For employees, liquidation is the worst option as they are guaranteed to lose their jobs.

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Olympic PR fears are all talk

Social media will do Locog firms' marketing, says **Leanne Tritton**

Congratulations to Peter Murray who last week opened up the debate about the strict marketing protocols that all suppliers to Locog (London Organising Committee of the Olympic and Paralympic Games), including architects, have signed up to. He has simply made public a discussion that has been happening privately for years.

Many architects are further irritated and confused by the very elastic approach to enforcing the rules. However, it is wrong to assume that architects will miss out completely

on positive PR.

Firstly, reputation is not founded on what you say about yourself, but what others say about you. The no-marketing-rights protocol limits suppliers talking about their work but has no control over what others may say.

When the protocol was drafted, blogging was in its infancy and social media was just a glint in Mark Zuckerberg's eye. Now, the internet is jammed with architecture-ture enthusiasts who are sharing

information, photos and opinions on design and will undoubtedly pay little heed to any formal sponsorship arrangements in terms of naming (or shaming) architects.

The recent flurry of publicity over this issue will also spur on bloggers and commentators who have no vested interest in keeping the Olympic movement sweet. By the end of the summer, a digital footprint will provide a record of who was responsible for the design and build of the various aspects of the Olympic site. Five minutes searching Google or Twitter already yields fascinating results.

Let's also not forget the mainstream architectural press, which has consistently reported on the appointment and progress of the Olympic venues

and no doubt will continue to do so.

Secondly, architects need to have faith in facts rather than hoopla. As Murray points out, the Olympic design and construction process has already been acknowledged by most professionals as a success and it would be wrong to underestimate the intelligence and curiosity of quality clients who will do their own due diligence on the practices that have been instrumental in that process.

The Locog protocol does not prevent practices from making accurate factual statements about their work and including this information in pitch submissions. If thousands of athletes, media and spectators declare the venues to be a success, then a simple statement

of fact will be a more powerful tool in getting you through the door of your next client than any logo could offer.

While it will be frustrating for many architects to miss an opportunity to become household names, the important audience — future clients — will be watching. Failing that, make friends with some bloggers and tweeters and get them to do the talking. *Leanne Tritton is managing director of ING Media*

Despite the no-marketing-rights protocol, Hopkins has had plenty of publicity for its Velodrome design.