



## VOLUNTARY ADMINISTRATION EXPLAINED

Since the Covid-19 has hit China in December 2019, it has gradually and exponentially hit the rest of the world resulting in many companies having found themselves in financial difficulty. Recently we have witnessed airline companies such as South African Airways going into financial difficulty and even the South African Government has turned down a request to inject USD 526 million for restructuring. Virgin Australia also went into external administration.

In Mauritius, on the 22<sup>nd</sup> April 2020, our national carrier company, Air Mauritius Limited, a public listed enterprise has been put into Voluntary Administration. Since then, many people have commented on this manoeuvre. The present brief has been prepared to explain Voluntary Administration which is governed by the Insolvency Act 2009 "IA 2009"

### **1. What is Voluntary Administration?**

In plain and simple term, Voluntary Administration is the process whereby an insolvent company is placed in the hands of independent person who can assess all the options available and generate the best possible outcomes for the owners and the creditors. As illustrated in Section 213 of the IA 2009, the purport of putting a company under administration is said to provide for the business, property and affairs of the company to be administered in a way that:

- a. Provides the opportunity for the company or as much as possible of its business, to continue in existence; or
- b. If it is not possible for the company or its business to continue in existence, results in a better return for the company's creditors and shareholders than would result from the immediate winding up of the company

### **2. Purpose and Objective of Voluntary Administration**

When a company experiences financial distress, continued sound governance is critical given the wide range of stakeholders that may be affected by poor-decision making. If a firm is financially distressed to the point where it becomes insolvent, a timely and considered response by managers may serve to limit the extent of harm resulting from failure. One of the options available to directors when the



company is faced with insolvency is to place the company in voluntary administration by appointing an administrator.

Once in Voluntary Administration, the company will have a short breathing space during which it can develop a strategy to address its insolvency. The primary purpose of administration is for the company to attempt to reach an arrangement with its creditors. Voluntary administration is also a method to involve the company creditors in producing a means to preserve the company.

The objectives of administration are two fold: (1) Save the business of the company or (2) or wind up the company's affairs in an orderly manner to provide a better return to its owners and creditors than what would have resulted from immediate liquidation.

It is apposite to note here that the Companies Act 2001 imposes a duty on the directors to call for a Board meeting to consider the appointment of a liquidator or administrator where they believe the company is unable to pay its debts. Failure by the directors to take the appropriate actions will entail personal liability of the directors.

### **3. Appointment of the Administrator**

The administration of the Company starts when the Administrator has been appointed. The Administrator has to be a qualified Insolvency Practitioner and can be appointed by the (1) the Company (2) where the Company is in liquidation, the liquidator (3) the provisional liquidator (4) secured creditor (5) the Court.

### **4. Appointment of the Administrator by the Company**

Section 215(6)(a) of the IA 2008 sets out the procedure how the company shall appoint an Administrator. Firstly the directors have resolved that in the opinion of the directors voting for the resolution, the company is insolvent or likely to become insolvent and secondly an administrator of the company should be appointed. A review of the laws from where our insolvency act originated calls for the conclusion that the power to appoint an administrator rest with the directors and there is no need for any shareholders' resolution, be it ordinary or special. This has been settled and confirmed in the case of **Aldrige v Mordaunt Estates Limited 2011 SCJ 186**. The appointment of the administrator shall be in writing.

### **5. Effect of Appointment of Administrator**

Once appointed, it is the Administrator who has control over the company's business, property and affairs.



- a. The appointment of the administrator does not remove the directors from office but however they cannot perform the function of an officer except where provided under the **IA 2009** or with the written consent of the Administrator.
- b. The Administrator becomes the agent of the company.
- c. No action can be brought against the company without the leave of the Court or the consent of the administrator.

#### **6. What are the options available to the Administrator?**

Under Section 222 IA 2008, the Administrator is required to investigate the affairs of the company and consider possible ways of salvaging the company's business in the interests of the creditors, the employees and the shareholders.

The Administrator may also carry on business and manage the company's affairs and its property with the objective of saving the company in the interest of the three stakeholders mentioned above. The Administrator may also terminate or dispose of all or part of the business as well as property.

#### **7. What is the effect of Administration on Employees?**

The appointment of an administrator does not automatically terminate an agreement to which a company is party to. In cases of voluntary administration, the employees will normally and generally be in possession of an employment contract dated before the company enters into voluntary administration.

The Administrator can however give notice of termination of the agreement within 21 days of his appointment. The notice of 21 days can also be extended by an application made by the administrator to the Court. The Administrator will be personally liable for the salary and wages of the employees if (1) no notice of termination has been issued within 21 days of his appointment or within the extension granted by the Court (2) if has adopted the agreements expressly in writing upon his appointment.

#### **8. When does Administration end?**

Inter alia, the administration of the company will end when

- a. A deed of Company Arrangement is executed by the company (DOCA)
- b. The creditors resolve that the administration should end
- c. A liquidator is appointed by the creditors at the watershed meeting by a resolution
- d. The Court, if satisfied that the company is solvent



## 9. Our Services

We remain open during the Lockdown and are available on the following to discuss with clients wanting to know anything further.

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