



Corporate Turnaround and Insolvency

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Administration - a change of purpose

How do you exit an administration where the stated purpose of the administration is no longer applicable?

We recently encountered a case where this technical question arose. The purpose of the administration, as approved by creditors, was expressed to be to realise assets for one or more secured creditors. However, some time later circumstances changed and the company's shareholders indicated they were able to pay off the company's creditors in full, which meant the company could exit administration and be rescued as a going concern. The shareholders intention was to preserve the company's AIM listing which required the exit from administration to be achieved within 6 months from its commencement.

However, as rescue was not the stated purpose of the administration, the exit route set out in paragraph 80 of Schedule B1 of the Insolvency Act 1986, where a notice can be filed stating that the purpose has been sufficiently achieved, was not immediately available.

The opportunity to save the company (and for all creditors to be repaid) was lost because there was insufficient time to exit the administration, through filing a notice or making an application to court, to preserve the AIM listing, which meant that it was not worth the shareholders' while to provide the necessary funds. Creditors therefore got a worse result than they might have had.

The following factors were relevant:

- An administrator is bound to adhere to the purpose agreed by creditors at their initial meeting. If the administrator wishes to pursue a different strategy, he/she must convene a creditors meeting, for approval of revised proposals. (Paragraph 54(2) of Schedule B1 Insolvency Act 1986).
- The administrator may make "insubstantial" deviations from the approved proposals but an entirely new purpose must be considered substantial and require the approval of the creditors.
- Creditors should approve the change in purpose before steps are taken to implement it. Whilst a challenge may be unlikely an administrator risks his conduct being

investigated and his discharge being delayed if he departs from the stated purpose of the administration.

- Once the revised proposals have been approved at a creditors' meeting, the administrator can take the approved action and then exit the administration through the filing of notice procedure set out in paragraph 80 of Schedule B1.

In cases of real urgency the administrator can ask the court for assistance:

- Under paragraph 68(3)(c) of Schedule B1, the court could give directions to allow the administrator to pursue a different purpose and exit from the administration
- The administrator could also apply to the court to exit the administration under paragraph 79 of Schedule B1.
- The success of an application can never be guaranteed. Courts instinctively prefer creditors approval for such changes, however provided a good case can be made out and the administrators' revised plan is plausible, the fact that the creditors would be paid in full and suffer no prejudice should weigh strongly in favour of either application being granted.

It is in the administrator's interests to draw the initial proposals as wide as the situation will allow. Careful drafting can reduce the need to convene further creditors' meetings for formal revisions to the proposals during the course of the administration.

In Re Dana (UK) Ltd [1999] 2 B.C.L.C. 239, Neuberger J said he thought it would not contravene the terms or the spirit of the Act and would be good sense to include in the proposals a streamlined mechanism so that any future decisions or variations of decisions of the administrators could be effectively approved by a group of representative creditors. If approved such a mechanism would be a way round what he called the potentially "cumbersome" revision requirements.

In principle, it seems that a proposal that allowed the administrators to change the purpose of the administration provided no creditor was adversely affected should also be acceptable.

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