

An insight in **VOLUNTARY ADMINISTRATION**

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MAURITIUS

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Backdrop to Voluntary Administration

Faced against unparalleled uncertainties caused by the COVID-19 pandemic which is affecting business at all levels, company directors may find it difficult to ascertain that they would most likely be able to continue operations or promote the success of the company for the benefit of its members as a whole. Breaks in supply chain, faltering demands resulting in sharp decline in revenue, cash flow issues, failure to comply with loan repayments are all factors that may unfortunately progressively result in a number of companies facing insolvency or near insolvency situations.

It should be noted that directors have a duty to act with care, skill and diligence while holding their office as directors. Directors must therefore be prudent and be sufficiently prepared to mitigate impending risk of financial difficulties while preventing the risk of been exposed to personal claims.

Introduction

Voluntary Administration is a term actually making the headlines in our local press and on the international scene also following the economic downturn caused by the COVID pandemic. There has been a big buzz when our national carrier the 'Air Mauritius', considered to be the pride of Mauritius, was placed into Voluntary Administration during the lockdown. The wave of 'Liquidation' which is likely to raise high seems to start with some big enterprises and last week we saw Padco Ltd, another big construction company being placed into Voluntary Administration.

HLB Mauritius wishes to provide a brief overview for its readers and stakeholders for their better understanding of the term Administration and the mechanism involved.

What is Voluntary Administration?

Voluntary Administration is a process where company facing financial difficulties is placed in the hands of an independent professional who is a registered Insolvency Practitioner who will act as Administrator. After assessing all the options available the Administrator deploys the best avenue for the benefit of the business of the company and the company's creditors and its other stakeholders.

It should be noted that once the Voluntary Administration begins a statutory moratorium is automatically triggered against individual creditors and other legal proceedings against the company.

This means that no legal proceedings can be instituted against the company without leave of the Court. a person or an institution may not even enforce a charge over the property of the company unless he has the consent of the Administrator or an order from the Court.

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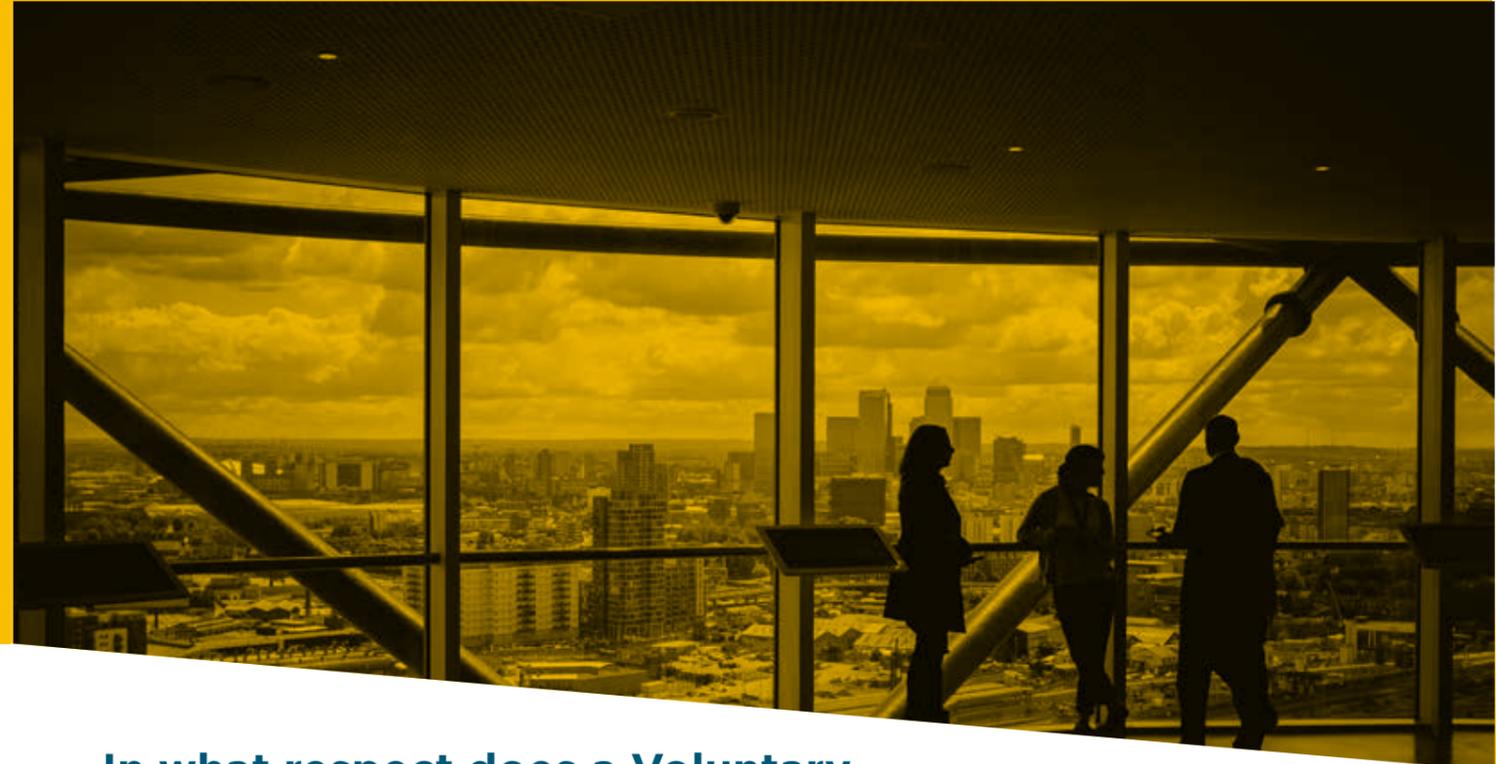
In what respect does a Voluntary Administration differ from a liquidation?

The objective and primary purpose of an Administration is to save a company, keep it afloat and give it all chances to continue operations. The Administrator is expected to deploy all conducive conditions including re-engineering strategies and restructuring opportunities in order to provide the necessary breathing space to the company and maintain it in operations. Contrarily, a Liquidation is triggered with a view to wind up and terminate the business affairs of a company.

When should a Voluntary Administration be considered?

A company should consider a Voluntary Administration when:

- The company has a viable business but is facing financial difficulties and needs some re-engineering of its debts and financial commitments in order to be able to continue operations in better conditions. This is achieved by the firming up of an agreement with all creditors, lenders, employees and other stakeholders including state debt owners to reduce or re-schedule all liabilities and financial commitments and enable the company to continue operations by rebuilding sales and profit margins.
- The company is insolvent and is looking towards achieving a more advantageous re-scheduling of its liabilities and the realisation of its assets.



How is the Administrator appointed?

As mentioned above a Voluntary Administrator is a licensed Insolvency Practitioner “IP” appointed to run the process of the Voluntary Administration. The appointment may be initiated by either:

- The directors who have resolved that the company is insolvent or likely to become insolvent;
- The liquidator, when the company is already into liquidation
- Secured creditor/s holding a charge or charges over the whole or substantially the whole of the company’s property.
- The Court, upon the application made by a liquidator or provisional liquidator, secured creditor/s, the Directors of Insolvency or the Registrar of Companies.



Duties and responsibilities of the Administrator

The Administrator while discharging his fiduciary obligations takes complete control of the affairs of the company and the restructuring process. His main objective is to:

- Attempt to salvage the company’s business as a going concern; or
- Propose a more advantageous outcome for creditors than would otherwise be achieved if the company was placed into liquidation.

Following his appointment, the Administrator takes charge of the business, he is provided within 7 days a statement of the company’s affairs by the directors of the company. He is required to investigate into the company’s affairs and consider possible ways of salvaging the company’s business in the interests of the creditors, employees and shareholders.

The Administrator is then required to call the first creditors meeting (which should be held within 10 days the administration begins) to decide whether to appoint a creditors committee that will consult with the Administrator about matters relating to the administration, receive and consider reports by the Administrator.

The Administrator then convenes a watershed meeting within the convening period of 28 days of his appointment. A notice of the above meeting has to be given to all creditors and published in a daily newspaper not less than 7 days before the meeting. The notice must be accompanied by Administrator’s report regarding the affairs of the company and Administrator’s statement setting out the proposals for achieving the purpose of the administration.

What is a Deed Of Company Administration “DOCA”?

A DOCA is essentially the “deal” that is proposed to the creditors of the company in Voluntary Administration. The aim of the DOCA is to maximise the chances of the company’s survival and to provide a better return for the creditors than an immediate winding up would produce .

The DOCA can be tailor-made and designed to suit the prevailing circumstances. It usually provides for the following :

- The operative conditions of the company
- The nature and duration of any moratorium that will be triggered by the DOCA
- The distribution mechanism to be applied for any realised proceeds among creditors

What are the reporting obligations of the Administrator?

The Administrator has a duty to file a report with the statement of affairs:

- Within six (6) months, from the day he was appointed, and
- Each subsequent period of six (6) months during which he holds office to the Registrar of Companies with a copy to the Director of Insolvency.

The Administration also has the duty to report any offence involving dishonesty or any other offence committed by past or present officers or shareholders of the company.

A report to the Court has to be made whenever any such order is made.



In case an Administrator is not in a position to hold the Watershed Meeting within 28 days of his appointment, he must apply to the Court for any extension of time.

A rescue plan is put in place within a period of 28 days following the appointment of the Administrator and the plan is tabled at a meeting termed the ‘Watershed Meeting’ with creditors. Depending on the prevailing circumstances surrounding the business, the Administrator may considered the following options:

Arrangements with creditors

This is achieved through the Deed of Company Administration (“DOCA”) which provides for the repayment of the debts of the company to the creditors over a mutually agreed period of time. This may include debt to equity swap option as part of the agreement reached with creditors.

Sale as a going concern:

This option provides for the disposal of the whole or part of the business as a going concern. Given the time restriction imposed on the Administrator, realisation of a fair value may however be difficult.

Transfer of assets to a special purpose vehicle “SPV”:

assets known as the ‘performing assets’ of the company are transferred to a ‘Special Purpose Vehicle (“SPV”)’. New financial arrangement may be done by which creditors or debt holders would obtain a shareholding in the SPV. The nonperforming assets would be left in the distressed company which would be dissolved through a creditors’ winding up. The SPV would become the new trading company with either no debt or with a reduced amount of ‘sustainable’ debt.

Effects on the Directors and Employees of the company in Voluntary Administration?

The appointment of an Administrator does not remove the directors from office, however they may not exercise their functions as directors of the company unless with the prior written approval of the Administrator.

As for employees working under a contract of employment, the Administrator is personally liable for the payment of wages and salaries that accrue under the contract during the administration period, unless the Administrator has given lawful notice of termination of the contract of employment within 21 days of his appointment.

The delay of 21 days may be extended by the court if an application in this respect is made by the Administrator.

How does a Voluntary Administration ends

A Voluntary Administration ends at the occurrence of one of the following events:

- The objective of the Administration has been achieved or
- The Administrator concludes the purpose of the Administration cannot be achieved or
- A compromise is reached within the convening period between the creditors and the company and even prior to the holding of the watershed meeting or
- A creditor having a claim of not less than 10% of the total value of creditors claim resolve that the administration should end and resolves to appoint a liquidator instead, or
- The Court terminates the Administration on the application of any one of the parties, the creditor, director, deed administrator or persons having a locus standi. If the company is insolvent the Court may appoint a liquidator to liquidate its affairs.



HLB MAURITIUS has a full-fledged Insolvency Practice with a focused team of professionals that can provide distressed businesses with tailor made advice. Over the past decades our insolvency expert team has handled numerous high-profile restructuring and insolvency assignments.



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