

Trading Voluntary Administrations

Unfortunately some directors of companies still believe that the appointment of a voluntary administrator is the solution to all of their financial woes. They believe that the simple act of appointing a voluntary administrator will stop all of the demands for payment (it does) and allow them to get on with running the business while the administrator takes care of all of the creditors (it does not).

We have often found ourselves having to explain to directors that making the appointment will not automatically save their company from its financial problems. They do not understand that it may in fact speed the company's eventual demise, and may cost a lot of money in the process.

The number of voluntary administration appointments has decreased significantly since the amendments to the procedures for appointing a liquidator to a creditors' voluntary winding up. Most directors no longer use voluntary administration as a cheap and fast track to liquidation. There now is a faster more direct track in the Voluntary Liquidation provisions.

The belief that a voluntary administrator will leave the director to run the business of the company unimpeded is usually wrong. If for no other reason that the voluntary administrator is liable for the debts incurred during his appointment, he or she will usually take a very active role (maybe behind the scenes) in controlling any trading.

Something caused the insolvency of the company in the first place and the voluntary administrator will want to ensure that, if possible, this problem is solved during this period or the solution is found and will form part of any proposed deed of company arrangement.

In a number of cases however, trading will cease during the VA period. If the business is not profitable and the problems cannot be solved, it is not salable and it does not make commercial sense to run the business while a sale is completed, or if the administrator does not believe that a deed of company arrangement will be proposed and the company will be wound up anyway, he or she will most likely cease trading during the VA period.

Historically we have found that the main reason for the business to cease is that it is unprofitable and will never return to profitability. There is no solution to the problems. The company entered voluntary administration for a reason and many times that reason continues to exist and keeps the company insolvent. In these cases, continued trading will just increase the debts or (as these debts will be paid from available assets) decrease the assets available to creditors.

Sometimes these reasons are actually exacerbated by the appointment. Creditors and financiers may not provide necessary funding, suppliers will be hesitant to support the company with further credit even though the administrator will pay debts incurred during the VA period, customers may be very reluctant to deal with the company in administration particularly in contract work or work where a guarantee or ongoing support is necessary. Some employees also start looking elsewhere for work as they may be uncertain about their futures where they are.

Many of these issues also flow through to affect what type of proposal may be made for a deed of company arrangement. One of the first questions asked of directors is whether the business is, or can return to profitability – and how that will happen. Unless the business is profitable during the DOCA period, paying the existing debts through the DOCA by using money from ongoing trading will only result in more debts being incurred to new creditors that go unpaid.

Creditors will need to be convinced that something has changed to make the company viable before they will support a trading DOCA (a DOCA that is based on the continued profitable trading of the business). In many cases nothing really has changed and often nothing can be changed. Sometimes it is just not a profitable business and never will be.

In reality in a number of cases, appointing a voluntary administrator is now just a slow and expensive way of appointing a liquidator to the company when compared to the alternatives.