Client solutions: an example

An alternative to winding up

A company that can be made profitable and cash generating when relieved of its debt burden may well benefit from a CVA. If creditor pressure is severe – but negotiable – the CVA may need to be preceded by administration. In such circumstances the purpose of the administration is to gain protection from individual creditor actions with a view to having the company continue as a going concern. The exit route from administration would be through the CVA.

The issues for our client

The directors of the FCA registered company had been trying to defend a winding-up petition, but saw they could not put off the petitioning creditor any longer. The company had only very limited tangible assets, a few unlisted shares and some potential income under informal agreements. Its valuable asset was its FCA registration. When they contacted Mercer & Hole we identified that they should seek to use the moratorium provided by putting the company into administration to protect the value of the company's business and assets.

- Company survived and is now trading normally
- Prevention of aggrieved creditors taking action
- Sufficient activity to satisfy the FCA

Sale of the company's residual assets

Continued over page

How we helped

We established an administration strategy to rescue the company as a going concern through a CVA. One of the directors was interested in refinancing the company and anticipated being able to negotiate with sufficient creditors to persuade them to accept a CVA proposal. Given the apparent depth of the company's insolvency, this appeared ambitious, but it was the only way to generate sensible realisations from the company's assets. The FCA registration could not be transferred and would only have value to the company itself. Any exit mechanism from administration other than a CVA would lose the value of the principal asset.

The solution

In order to preserve the registration, it was necessary for the company's registered activity to continue and, by using the directors' knowledge and experience and by subcontracting operations to a related company, we were able to undertake sufficient activity to satisfy the FCA. Naturally, a good deal of work went into ensuring compliance with FCA regulations, but it did eventually pay off as the business generated a modest income and we were successful in retaining the FCA registration.

It became necessary to raise further funds by selling the company's residual assets (again to the director's related companies) and this was done with the specific agreement of the creditors' committee. They recognised that any strategy other than seeking to maintain and extract value from the company's FCA registration would lead to there being no return at all to creditors. The negotiations to persuade creditors to accept the CVA proposals were protracted and the administration lasted almost two years. Finally, we paid a lump sum to those creditors who were not prepared to exchange their claims for equity.

Preserving the future business

The result was that the company survived and is now trading normally.

The key to this successful rescue was the director's ability to persuade a sufficient majority of creditors to accept a CVA proposal. This is the basis of any CVA, but in this case the negotiations were facilitated by the administration moratorium. It prevented certain initially aggrieved creditors from taking action against the company. Two years was a long breathing space during which the company was restructured financially.

If you are unsure of which future strategy works for your business the Mercer & Hole Corporate Restructuring team are here to help. Please contact one of our partners below.

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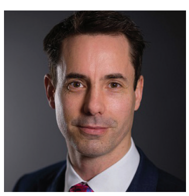

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