

It Is All in the Timing: High Court Confirms *Globespan* Decision on When an Administration Appointment Truly Ends

An administrators' appointment automatically ends after one year, unless steps are taken to extend it. The Enterprise Act introduced a new streamlined process for moving quickly and easily from administration to creditors' voluntary liquidation, just by filing a notice at Companies House under para 83(3) Sch B1 of the Insolvency Act (IA) 1986. Problems have arisen where that notice has been filed very late in the day and not received before the administrators' term of office automatically ends.

In the recent High Court decision of *Property Professionals + Limited* [2013, EWHC 1903 (Ch)] HHJ Purle has confirmed the obiter statement made by the Court of Appeal earlier this year in the *Globespan* decision (*Re Globespan Airways Limited* [2013]) as to when the term of an administration ends, for the purposes of moving from administration to creditors' voluntary liquidation, pursuant to paragraph 83 Sch B1 of the IA 1986.

Facts

The administrators were appointed at 2:13 p.m. on 3 February 2010. On 31 January 2011, the administrators sent a Form 2.34B to the Registrar of Companies to convert the administration to a creditors' voluntary liquidation under paragraph 83 of Schedule B1 to the IA 1986. The form was received by the Registrar on 3 February 2011, by 9:30 a.m. The form was rejected by the Registrar as an address, correctly supplied in one place in the form, had not been duplicated elsewhere in the form. The form was re-submitted on 15 February 2011, after the administration had ended, on any basis of determination, under paragraph 76 of Schedule B1 to the IA 1986, and was registered shortly thereafter.

The question was whether, for the Form 2.34B to be effective, it was necessary for the administrators' appointment to still be in force:

- when the Form was sent; or
- when it was originally received by Companies House; or
- when the Form was eventually registered by the Registrar.

If it is the second option, when precisely did the administration end? If the appointment was at 2:13 p.m. on 03 February 2010, was it at midnight on 02 February 2011 (i.e., the end of the day preceding the date of the anniversary of the appointment) or was it immediately before 2:13 p.m. on 03 February 2011?

The Court also considered whether the registrar was right to reject the application because of the technical defect of simply failing to repeat an address in one part of the form that had already been given elsewhere in the same document and should have been apparent.

Globespan had confirmed that the date of conversion from administration to CVL is the date on which the Registrar registers the Form 2.34B. LJ Arden had expressed the view that the term of the administration (which in that case had commenced at 10 a.m. on 17 December 2009), terminated just before 10 a.m. on 17 December 2010. This was an *obiter* statement and this point was still at issue when HHJ Purle heard this case.

HHJ Purle approved LJ Arden's *obiter* statement and found in this case that the administration ends

automatically at the point immediately prior to the one year anniversary of the time shown on the notice of appointment (i.e., here the term ended immediately before 2:13 p.m. on 03 February 2011).

HHJ Purle expressed the view that, following the decision in *Re: E Squared Limited* [2006], provided the form was sent prior to the expiry of office, that would be sufficient, even if it was not received until **after** the time of expiry of office. The time of the administration is impliedly extended to the point of registration, to ensure there is no gap between processes.

Conclusion

This is a useful clarification of the precise moment when an administration ends, which may well have wider implications beyond the immediate issue, for example in relation to actions commenced against a company just before the expiry of the term, where the question arises as to whether the statutory moratorium is still operative.

It also underlines that the critical step for administrators is to ensure that the Form 2.34B is sent to the Registrar before their term of office expires – it should not matter if the form is not received until after the time of expiry, or even if the form is in some way defective and requires amendment. Provided the original form is sent before expiry of office, the administration will be impliedly extended to the point at which the Registrar eventually registers the Form.

If you have questions, please contact your usual Squire Sanders lawyers or the individual listed in this publication.

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