

Concept of “Administration”  
under the  
Mauritius Insolvency Act 2009

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## Powers of the Administrator - §223 of the *Insolvency Act (IA)*

- (1) An administrator has the power to carry out the functions and duties of an administrator under this IA*
- (2) An administrator's powers include the power to –*
  - (a) begin, continue, discontinue, and defend legal proceedings;*
  - (b) carry on, to the extent necessary for the administration, the business of the company; and*
  - (c) appoint an agent to do anything that the administrator is unable to do.*
- (3) An administrator, when performing a function or exercising a power in that capacity, is the company's agent.*

## Proceedings in court - §244 of the IA

*During the administration of a company, proceedings in a Court against the company or in relation to any of its property shall not be commenced or continued, except with the*

*(a) administrator's written consent or*

*(b) permission of the Court on terms that the Court thinks appropriate.*

## Effect on company officers/directors - §224 of the IA

*(1) The appointment of an administrator does not remove the directors of the company from office.*

*(2) A director of a company that is in administration may not exercise or perform, or purport to exercise or perform, a function or power as an officer of the company except*

*(a) with the prior, written approval of the administrator or*

*(b) as expressly permitted by this Sub-Part.*

## Effect on employees - §225 of the IA

- 1) The appointment of an administrator does not automatically terminate an employment agreement to which the company is a party.*
- (2) The administrator is not personally liable for any obligation of the company under an employment agreement to which the company is a party, unless the administrator expressly adopts the agreement in writing.*

## Investigation of company's affairs - §228 of the IA

*As soon as practicable after the administration of a company begins, the administrator shall*

*(a) investigate the company's business, property, affairs, and financial circumstances; and*

*(b) form an opinion about whether it would be in the creditor's interest for*

*(i) the company to execute a deed of company arrangement;*

*(ii) the administration to end; or*

*(iii) a liquidator to be appointed.*

## First Creditors' meeting - §234 of the IA

- (1) The administrator shall call the first creditors' meeting to decide whether to
  - (a) appoint a creditors' committee and, if so, to appoint its members; and*
  - (b) replace the administrator.**
- (2) The meeting shall be held within 10 days after the date on which the administration begins.*

## Watershed meeting - §237 of the IA

- (1) The administrator shall convene the watershed meeting within the convening period.*
- (2) The convening period is the period of 28 days after the date on which the administrator is appointed.*



## Decision at Watershed meeting - §240 of the IA

*1) At a watershed meeting, the creditors may*

*(a) resolve that the company execute a deed of company arrangement specified in the resolution;*

*(b) resolve that the administration should end; or*

*(c) unless the company is already in liquidation, by resolution appoint a liquidator.*

*(2) The resolution referred to in subsection (1) shall be carried with the majority and in accordance with sections 232 and 233.*

## Deed of Company Arrangement (DOCA) – *Section G of the IA*

- A *deed of company arrangement* is a binding agreement between a company and its creditors setting out how the affairs and assets of the company will be dealt with if the company is in danger of becoming insolvent or has entered voluntary administration.
- This Section shall apply when the creditors, at a watershed meeting, have resolved that the company execute a *deed of company arrangement*

## Deed Administrator- §255 of the IA

- (1) The administrator of a company in administration shall be the deed administrator, unless the creditors at the watershed meeting by resolution appoint someone else to be the deed administrator.*
- (2) A natural person who is not disqualified under subsection (3) may be appointed deed administrator.*
- (3) A person shall not be appointed deed administrator if that person is disqualified from acting as a liquidator of the company, unless the Court orders otherwise.*
- (4) A person shall not be appointed deed administrator unless that person has consented in writing and has not withdrawn the consent at the time when the deed of company arrangement is executed.*

## Company's failure to execute DOCA - §264 of the IA

*Where the creditors at a watershed meeting have passed a resolution that the company execute a deed of company arrangement, and the company fails to do so within the deadline for execution, the administrator shall*

*(a) apply for the appointment of a liquidator to the company; or*

*(b) if the company is already in liquidation, apply for the liquidation to resume.*

## Extent to which the deed binds the creditors - §266 of the IA

- (1) A deed of company arrangement binds all creditors including secured creditors in respect of claims that arise on or before the day specified in the deed pursuant to section 260(2)(h).*
- (2) A secured creditor may not realise or otherwise enforce his charge except so far as the*
  - (a) deed provides for the secured creditor to realise or enforce his charge and the secured creditor at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or*
  - (b) Court makes an order to that effect under section 268.*
- (3) An owner or lessor of property may not exercise his rights in relation to that property, except so far as –*
  - (a) the deed provides for the exercise of rights in relation to an owner or lessor of property who at the watershed meeting voted in favour of the resolution as a result of which the company executed the deed; or*
  - (b) the Court makes an order to that effect under section 268.*

## Variation of deed - §271 of the IA

- (1) The creditors may vary a deed of company arrangement by a resolution passed at a meeting convened under section 275, but the variation must not be materially different from the proposed variation set out in the notice of the meeting.*
- (2) A creditor of a company in administration may apply to the Court for an order cancelling the variation of the deed of company arrangement by the creditors.*
- (3) On the application, the Court may*
  - (a) cancel or confirm the variation, on specified conditions (if any);**and*
  - (b) make any other order that the Court thinks appropriate.*

## Termination of deed - §272 of the IA

*A deed of company arrangement may be terminated*

*(a) by the Court under section 273;*

*(b) by a resolution of the creditors under section 274; or*

*(c) automatically, where the deed specifies circumstances in which the deed will terminate, and those circumstances occur.*

# Example of Company under Administration

XXX LTD, a company that develops augmented reality (AR) and virtual reality (VR) software and solutions was placed into Administration in March 2019 by its directors in order to repay suppliers' outstanding amounts (US\$0.6M) and a significant bank loan (US\$3M).



# XXX LTD under Administration - 1

*XXX LTD directors appointed an Administrator via a board resolution on 26 March 2019*

- Before the First Creditors' meeting, the Administrator reviewed the financial affairs of XXX LTD with the CEO to discuss available recovery options and met with officials from the bank (US\$3M loan) and the biggest unsecured creditor (US\$0.5M due) to explain potential repayment solutions.
- The Administrator decided to operate the company as is without changes to directors or employees.

# XXX LTD under Administration - 2

*Administrator scheduled the First Creditors' Meeting on 8 April 2019 within 10 days of his appointment by company directors*

- Creditors validated the Appointment of Administrator after listening to the proposed recovery plan consisting of paring down expenses and finding a strategic partner to either sell the company or enter a Joint Venture (JV) with.

# XXX LTD under Administration - 3

*Administrator scheduled First Watershed Meeting on 22 April 2019 within 28 days of his appointment by company directors*

- Administrator liaised with the Holding Company of XXX LTD (HOLDCO) to seek approval for finding a strategic partner to turn around the financial situation of the company.
- Administrator with the help of the CEO of XXX LTD reached out to several potential buyers in RSA interested in the AR and VR technology.
- Administrator cut down rent & telecom expenses and negotiated with suppliers to reduce outstanding amounts.

# XXX LTD under Administration - 4

*Administrator scheduled the Second Watershed Meeting on 19 June 2019 within 42 days of the first one*

- Administrator obtained new financial forecasts from HOLDCO. The increase in revenue from royalties to new franchisees will be sufficient to repay loan and debt payments within 5 years.
- Administrator negotiated with one group of investors from the RSA willing to relocate the assets from Mauritius to Johannesburg, RSA and share in the additional revenue from training and software solutions.
- Administrator reported the positive progress to the creditors who supported the ongoing plan.

# XXX LTD under Administration - 5

*After 19 June 2019 (2<sup>nd</sup> Watershed Meeting)*

- Administrator is still dealing with the RSA group to finalize the move of the sophisticated AR & VR equipment to Johannesburg

THANK YOU