

## Administration Extensions: Key Considerations for UK Practitioners

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In *Lehman Brothers (PTG) Ltd (In Administration)*, the court considered whether to grant an order extending the administration of Lehman Brothers (PTG) Ltd (the “**Company**”) for a further two years and in doing so, provided some useful observations about when a court will grant an extension where a company is in distribution mode.

It is often more beneficial to creditors that an administration is extended (rather than for the company to be placed into liquidation) when the company is in distribution mode. This is because liquidation may offer no advantage. In fact, it could be disadvantageous given the change of form and personnel and potentially result in additional costs as well as the loss of other advantages – such as the ability to claim tax and other financial reliefs.

The court held that the questions posed by the court in *Re TPS Investment (UK) Ltd (In Administration)* should be considered in light of this “gloss”

*TPS* sets out four questions the court will consider when deciding

whether to extend, namely:

- Why has the administration not yet been completed?
- Is there any alternative more suitable insolvency regime?
- Is the extension thought likely to achieve the purpose of administration?
- If an extension is appropriate, for how long should it be granted?

Having considered those questions, the court granted a further two-year extension in *Lehman Brothers* but in doing so emphasised the importance of administrators demonstrating to the court that the expected recoveries outweigh the continuing cost of remaining in administration.

In *Lehman Brothers* the court was concerned that the quantification of recoveries was “somewhat sketchy” and recommended that in future if it is possible that

~~and the effect of the extension should be presented to the court in the form of a written statement of the administrator's views on the likely recoveries and the likely costs of continuing the administration.~~

The case is helpful because it reminds practitioners of the need to present the court with clear evidence which answers the questions posed in *TPS*. It also supports that in cases where a company is in distribution mode an extension is likely, albeit subject to the qualification that the court will wish to be satisfied that there is a cost benefit to that.

This is an unusual case in that the Company has been in administration since 2008 with a series of extensions. Although it is unlikely that many practitioners will be involved in administrations lasting for more than 15 years, it is not unusual for administrations to be extended beyond one year and in some cases for there to be multiple extensions.

It is therefore perhaps also helpful to note the judge's observations that the length of time a company has been in administration is not a reason to deny an extension. As noted by the judge in this case, "it encourages a careful review" but was not a reason to deny the relief.

With that in mind, practitioners applying for an extension should be encouraged that several previous extensions will not prevent a further one, but they will need to satisfy the court of the points noted in *TPS* and the longer that the company has been in administration the more likely that this will come under "careful review".

It was also helpful when considering the period of further extension that creditors in this case had been notified of the application and there had been no objections. It is not strictly necessary to notify creditors of a proposed extension but in cases where there have been several extensions practitioners might consider adopting a similar approach because this did influence the judge's decision to grant the extension.

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