

So You Think You Are Validly Appointed? Then Think Again

Article By:

Linda Mack

Caroline Castle

Did you know that if a company is listed on the ***Interim Permission Consumer Credit Register*** that the directors of the company need the written consent of the FCA before they can file a *notice of intention* to appoint administrators (“NOI”), and failure to obtain FCA consent renders any subsequent appointment invalid?

Most businesses that; offer goods or services on credit, lend money to consumers, or provide debt solutions and advice to consumers will be carrying out consumer credit activities, and may well have an interim permission and be listed on the Consumer Credit Register.

Interim Permission Consumer Credit Register

On 1 April 2014, the FCA took over regulation of consumer credit from the OFT. As a consequence, they created a new Interim Permission Consumer Credit Register. The Register is searchable through the main [FCA website](#). If a company appears on this register then pursuant to Section 362A Financial Services and Markets Act 2000 (“FSMA”) the directors of the Company must obtain the written consent of the FCA before filing a Notice of Intention to appoint Administrators (NOI) at Court.

If there is no Qualifying Floating Charge Holder (QFCH) and therefore no need to file an NOI, then the written consent of the FCA must still be obtained and must be filed at Court at the same time as the Notice of Appointment of Administrators. If there is a QFCH, and it is the charge holder who makes the appointment, no consent of the FCA is required.

The Interim Permission regime is in place until 31 March 2016, and aims to allow firms to adapt to the new FSMA regime before seeking full FCA Register authorisation.

Is the appointment a nullity or is it a curable defect?

According to the case of **Re M.T.B. Motors Ltd (in administration) [2010] EWCH 3751 (Ch)** – the failure to obtain the FCA’s consent renders an administration appointment invalid, however following the case of **Peter Lloyd Bootes and others v Ceart Risk Services Ltd [2012] EWHC 1178 (Ch)**, the courts took the view that this is a curable defect.

It appears that the latter view expressed in ***Re Ceart Risk*** is the one which has gained judicial favour and that the failure to obtain is a “curable defect” and that consent obtained after the event would remedy any problem of this type. The appointment would be deemed to take effect when consent is given and filed at Court but para 104 of Sch B1 provides an avenue to validate the actions of administrators after their initial appointment and before consent was obtained and filed. Arguably, no declaration is needed to bring para 104 into effect but if significant actions were taken prior to consent being obtained and the validity of the actions becomes an issue or possible issue, an application for a declaration under para 104 may give the office holders much needed comfort.

Practical considerations

Whilst it is widely known that FCA consent to a directors administration appointment is needed if a company appears on the FCA Register, the creation or at least the significance of the Interim Permission Consumer Credit Register does not appear to have been advertised in restructuring circles, so be aware.

Furthermore, whilst the FCA say that they will try to turn around requests for consent within 2 working days, in our experience it takes at least a week to obtain FCA consent. Accordingly we recommend that the FCA are contacted sooner rather than later if you are planning a directors appointment of an administrator. If you need to act quickly in order to obtain the protection of a moratorium then you can still file the NOI to obtain protection whilst obtaining FCA consent in the hiatus before formal appointment.

© Copyright 2025 Squire Patton Boggs (US) LLP

National Law Review, Volume V, Number 203

Source URL: <https://natlawreview.com/article/so-you-think-you-are-validly-appointed-then-think-again>