

Chapter 13

Insolvency

13.5 Petitions for administration orders or compulsory winding up orders: determining which insolvency order to seek

- 13.5.1** An administration order can be made only in relation to *companies* and *partnerships* and only where the court believes that making such an order will achieve one or more of the four purposes set out in section 8 of the 1986 Act. The *FCA* will apply for an administration order only where it considers that doing so will meet or is likely to meet one or more of these purposes.
- 13.5.2** Where it has the option of applying for either an administration order or a compulsory winding up order, the *FCA* will have regard to the purpose to be achieved by the insolvency procedure.
- 13.5.3** In addition, the *FCA* will consider, where relevant, factors including:
- (1) the extent to which the financial difficulties are, or are likely to be attributable to the management of the *company* or *partnership*, or to external factors, for example, market forces;
 - (2) the extent to which it appears to the *FCA* that the *company* or *partnership* may, through an administrator, be able to trade its way out of its financial difficulties;
 - (3) the extent to which the *company* or *partnership* can lawfully and viably continue to carry on *regulated activities* through an administrator;
 - (4) the extent to which the sale of the business in whole or in part as a going concern is likely to be achievable;
 - (5) the complexity of the business of the *company* or *partnership*;
 - (6) whether recourse to one regime or another is likely to result in delays in redress to *consumers* or an additional cost;
 - (7) whether recourse to one regime or another is likely to result in better redress to *consumers*;
 - (8) the adequacy and reliability of the *company* or *partnership's* accounting or administrative records;

- (9) the extent to which the management of the *company* or *partnership* has co- operated with the *FCA*;
- (10) in the case of an unauthorised *company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the scale and importance of the unauthorised activity in relation to the whole of the *company's* or *partnership's* business;
- (11) the extent to which the management of the *company* or *partnership* is likely to cooperate in determining whether one or more of the purposes of an administration order can be met;
- (12) in the case of an unauthorised *company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the extent to which the *company's* or *partnership's* survival can be anticipated without the continuance of the unauthorised *regulated activity*;
- (13) where an administrative receiver is in place, whether the *debenture* holder is likely to agree to an application for an administration order;
- (14) where an administrative receiver is in place, whether the *FCA* has reason to believe that the *debenture* under which the administrative receiver has been appointed is likely to be released, discharged, avoided or challenged.