



ADGM COURTS  
سوق أبوظبي العالمي

26 September 2022 01:30 PM



In the name of  
**His Highness Sheikh Mohamed bin Zayed Al Nahyan**  
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE  
COMMERCIAL AND CIVIL DIVISION**

**IN THE MATTER OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT) AND ASSOCIATED COMPANIES SET OUT IN SCHEDULE 1 TO THE APPLICATION FILED ON 1 SEPTEMBER 2022**

**AND IN THE MATTERS OF NMC HEALTHCARE LTD (IN ADMINISTRATION) (SUBJECT TO A DEED OF COMPANY ARRANGEMENT) AND NMC HOLDING LIMITED (IN ADMINISTRATION)**

**AND IN THE MATTER OF THE INSOLVENCY REGULATIONS 2015**

**JUDGMENT OF JUSTICE SIR ANDREW SMITH**



<b>Neutral Citation:</b>	[2022] ADGMCFI 0006
<b>Before:</b>	Justice Sir Andrew Smith
<b>Decision Date:</b>	15 September 2022
<b>Decision:</b>	<ol style="list-style-type: none"> <li>1. The existing administration of NMC Healthcare Limited (“NMCH”), which commenced on 27 September 2020, shall be extended until 26 September 2025.</li> <li>2. The existing administration of NMC Holding Limited, which commenced on 27 September 2020, shall be extended until 26 September 2024.</li> <li>3. The reporting periods for the progress report in respect of the administration and the progress report in respect of the deed of company arrangement of NMCH are aligned such that the next progress report for NMCH will be for the period 20 August 2022 to 19 February 2023 and cover the reporting obligations of the administration and the deed of company arrangement.</li> </ol>
<b>Hearing Date:</b>	15 September 2022
<b>Date of Order:</b>	15 September 2022
<b>Catchwords:</b>	Application to extend Administrations; whether the purpose of the administrations remain reasonably likely to be achieved; whether any prejudice would be caused to creditors by an extension; relevance of views of creditors
<b>Cases Cited:</b>	In the matter of Lehman Brothers, [2016] EWHC 3379 (Ch) Nortel Networks UK Limited (in Administration) and the Administration of Associated Companies, [2017] EWHC 3299 (Ch)
<b>Legislation Cited:</b>	Insolvency Regulations 2015
<b>Case Number:</b>	ADGMCFI-2020-020
<b>Parties and representation:</b>	Mr Adam Al-Attar, instructed by Quinn Emanuel Urquhart & Sullivan UK LLP for the Applicants

## JUDGMENT

1. I have before me applications by Mr Richard Fleming and Mr Benjamin Cairns, who are the joint administrations of NMC Healthcare Limited, whom I shall call “**Healthcare**”, and NMC Holding Limited, whom I shall call “**Holding**”.
2. The first application is to extend the administrations effectively for a period of three years to 26 September 2025. It is supported by witness statements of Mr Cairns dated 1 and 12 September 2022.



3. Section 110 of the Insolvency Regulations 2015 (the “**Regulations**”) provides that the appointment of an administrator of a company shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect, but the section goes on to provide that on the application of an administrator of a company the court may by order extend his term of office for a specified period and the term of office of an administrator of a company may also be extended for a specified period not exceeding 12 months by consent (the term “consent” being defined).
4. Section 118 of the Regulations contains provisions about how an application for an extension in administration should be made, including that it should be accompanied by a progress report, and it suffices to say that that requirement and other requirements of section 118 have been complied with.
5. The background needs be stated only briefly. The two companies, Healthcare and Holding, were in a group called the NMC Group, which provided healthcare in the United Arab Emirates. Until February 2020, the ultimate parent company, NMC Health PLC, was listed on the London Stock Exchange. The Group, as it appears and as has been supported by evidence, has been the subject of a very substantial fraud, and as a result it became insolvent.
6. On 27 September 2020 the two companies were among 36 companies in the Group that were placed into administration by an order of this court, and Mr Fleming and Mr Cairns were appointed joint administrators of them all. In April 2021 the Joint Administrators held a call for all financial creditors of the 36 companies, the purpose of which was to outline a restructuring proposal. It involved the other 34 companies that had been placed into administration being the subject of a DOCA arrangement and a further DOCA arrangement in different terms for Healthcare. In August 2021 notice was given to the creditors of a meeting, a consolidated meeting of the creditors of the 36 companies, and at the meeting on 1 September 2021 it was resolved that the 34 companies and also Healthcare be placed under the DOCA arrangements proposed. The DOCAs for the 35 companies were duly executed on 21 February 2022. With regard to the 34 companies, that is to say those that were subject to DOCAs other than Healthcare, the restructuring effective date as defined in the relevant documentation has occurred and the administrations have therefore ceased under the terms of the DOCAs. In the case of Healthcare, the administration continues and is not affected by the occurrence of the restructuring effective date: that administration is to continue until 26 September 2022, as is that of Holding. That is why this application to extend the administrations is made in respect of an extension of only these two companies.
7. Two questions arise from for my consideration. First, whether the administrations should continue beyond 26 September 2022, and, secondly, if so for how long.
8. Mr Adam Al-Attar, who appeared for the Joint Administrators, guided me through the relevant authorities, and I am grateful for his assistance. I need refer, I think, to only two of them. The first is the case of: *In the matter of Lehman Brothers*, where a judgment was given by Mr Justice Hilliard: [2016] EWHC 3379 (Ch). In that case the Judge granted applications for extensions of up to six years. He observed (at para 3) that the complexity of the Lehman administrations was obvious and well-known, and he observed that the companies had already been in administration for eight years. He also observed (at para 9) that, once an administration had progressed to distribution, and where the administrators were still to complete their mandate and effect the final distribution, there should be a working assumption at least that, unless good cause is shown by way of some specific advantage of liquidation over administration and distribution thereunder, the implication of an administration order is that administration should be continued for as long as reasonably necessary to complete the distribution; and therefore, if an extension is necessary to enable the administrators' functions to be thus completed, prima facie an application for it should be granted.
9. I refer to that part of Hilliard J's judgment in particular because Mr Al-Attar has explained that, in the case of Holding, which was the focus of discussion at the hearing, effectively and for



practical purposes, the overwhelming likelihood is that the company will in due course move to distribution.

10. The other authority to which I should refer is the judgment of Mr Justice Snowden in *Nortel Networks UK Limited (in Administration) and the Administration of Associated Companies* [2017] EWHC 3299 (Ch). In that case Mr Justice Snowden identified (at para 22) three circumstances to which the court should have regard in considering an application of this kind. First, whether the purpose of the administration remains reasonably likely to be achieved. As to that, the purpose of the administration of these and the other 34 companies was to achieve better results for the companies and their creditors than would otherwise be achieved. In my judgment that purpose is still reasonably likely to be achieved in the case of both Healthcare and Holding.
11. The second consideration identified by Mr Justice Snowden was whether any prejudice would be caused to creditors by an extension. In this case, none has been suggested and none appears likely.
12. The third consideration is any views expressed by creditors. Notice of the applications has duly been given to creditors, and no resistance or objection has been raised.
13. Mr Al-Attar identified various reasons that it is appropriate to grant the extension and as to why administrations are more appropriate than liquidation. The essential points are that the administrations are up and running, that they have been recognised elsewhere, both in the United Arab Emirates and abroad, and that it would potentially be de-stabing for the recognised administrations to be ended and liquidations to be started. There would be no advantage to creditors and potentially significant disadvantage.
14. I therefore conclude that the administrations of both Healthcare and Holding should be extended and this leads to the question how long the extensions should be. The Regulations refer to the initial period of an administration being one year and that is the maximum period for which an administration can be extended by consent. It does not seem to me that those provisions fetter the Court's discretion or significantly indicate the appropriate period of an extension. At most they might indicate a "default setting" in certain circumstances. But, as the judgment of Justice Hilliard makes clear, this consideration has little significance to administrations as complex as these.
15. That said, the Joint Administrators have to show a proper reason that extensions for as long as three years are appropriate. In his judgment in the *Lehman* case, Mr Justice Hilliard referred to these considerations as being relevant to the length of an extension. First, that the administrators, being professional insolvency practitioners, have an obligation to consider on a continuing basis whether their functions are either at an end or might efficiently be brought to an end through some other insolvency process. I accept readily the Joint Administrators in this case will maintain that continuous review. The second is that individual creditors are entitled to apply to the court if they consider the administrations are being continued for too long or have no sufficient purpose. And the third is that the functions of an administrator might be discharged sooner than he or she anticipates at the time of the application.
16. All those are proper considerations, but, as Mr Justice Hilliard himself makes clear (loc cit at para 11) it is for the court to make an estimate of the appropriate period of extension, and I must do so on the basis of the evidence presented. In the case of Healthcare, I accept that litigation already afoot justifies the extension of three years for which the Joint Administrators apply. It is highly improbable, I would have thought, that all that litigation will be resolved in any period that is significantly shorter than that. I therefore grant the application in the case of Healthcare.
17. The position seems to be rather different in the case of Holding. Here the justification for the three-year period is said to be that Holding has claims, or potential claims, which are being investigated and that time is needed for that. What Mr Cairns contemplates in his witness



statement of 12 September 2022 is a period of up to two years for investigation and then a decision as to whether to pursue claims through litigation. It seems to me therefore that the appropriate period for the extension is one that allows the two years' investigation. At the end of the investigation the view will be taken as to whether litigation is to be pursued. If it is, it seems highly unlikely to me that the period of three years will be sufficient to pursue it and resolve it. At some point an extension will be required beyond September 2025 if litigation is pursued.

18. To my mind therefore the appropriate period for the extension is two years in order to allow the investigations. At the end of that period, if the Joint Administrators do consider litigation should be pursued in the interests of the creditors, then no doubt they will apply to the court for a further extension of the administration for a period appropriate for such litigation.
19. In other words, it seems to me that the application in the case of Holding really falls between two stools as far as the period of three years is concerned. I am of the view that two years is the appropriate period, and in due course no doubt the Court and the Joint Administrators will be better informed as to whether a further extension is required and appropriate, and if so for how long.
20. The second application concerns the reporting periods. The purpose of that application is to align the reporting periods in respect of Heathcare under the order of September 2020 and the DOCA, and that seems to me entirely sensible and appropriate. I shall grant that application.



Issued by:

**Linda Fitz-Alan**  
**Registrar, ADGM Courts**  
**26 September 2022**