

ADMINISTRATIVE RECEIVERS II

Employees

The appointment of a receiver does not automatically terminate employment contracts. The receiver may dismiss employees and /or retain those crucial to the business. There is no obligation on the receiver to keep employees on. A receiver is liable where he adopts an employee's contract. This liability is limited to payment for work actually carried out during the receivership. These charges will be added as a cost of the receivership. There is no liability to employees during the first 14 days.

A receiver who does not terminate an employee's employment within 14 days may be personally liable for services rendered after the contract is deemed adopted. A receiver is entitled to an indemnity out of the charged assets for this liability which will rank as an expense of the receivership and be paid ahead of the preferential creditors and the debenture holder.

In the case of an LPA receiver, he may be personally liable where, for example he continues to employ hotel employees. Employees have priority for four-months pay with an aggregate maximum of £800.

Other Creditors

Certain creditors may have priority over the receiver. A landlord with rental arrears is allowed recover from the property directly by taking goods under a particular procedure.

Persons enforcing court orders may only keep assets taken from the company under a completed execution. Owners under leasing and hire purchase arrangements can normally retake their goods. Likewise goods to which title has been retained by the seller, may be taken by the sellers.

Suppliers of utilities such as gas and electricity cannot make payment of existing liability, a condition for continued supply to the company in receivership. They may only require receiver's personal liability for new supply.

Duties of Receiver

The administrative receiver's function is, if possible, to realise enough of the assets to pay off the lender. This may involve running the business for a time. It may involve the sale of certain fixed assets to pay off capital and interest or it may involve the sale of the company as a going concern.

A receiver's primary duty is to the debenture holder who appointed him. There is a secondary duty to the company and other parties who are interested in the proceeds of sale. No duty is owed to the directors or shareholders of the company nor to unsecured creditors.

The extent of the receiver's duties depend on the circumstances. The receiver is not obliged to continue carrying on a business. If he does carry on a business, he must take reasonable steps to try to do so profitably. A receiver may sell a business as a going concern, if this is reasonable in the circumstances.

The law on receiver's duties to others, in the context of the sale of assets, has been subject to different opinions. One view is that it is limited to acting in good faith. Another view is that there is an obligation to obtain market value or the best price reasonably available for the assets at the moment the mortgagee chooses to sell. It is clear there is no duty to wait and only sell at the best possible moment. The AR may choose the time of sale.

A mortgagee in possession cannot simply leave the property empty and wait for market conditions to improve. He must account for actual receipts and must take reasonable care to realise value.

Enquiries and Report

Administrative receivers are entitled to obtain statements in relation to the company's affairs from present and previous directors and employees. The receiver must obtain statements, prepare a report and file it with the Registrar of Companies. Unsecured creditors must be sent a copy or be notified as to its publication and how they can access the report.

The report must contain a summary of the statement of affairs and the administrator's comments. It should set out the circumstances of the receivership, the disposals or intended disposals of company assets, the amount owing to the debenture holders and preferential creditors and the amounts, if any, likely to be available to other creditors. The receiver need not include information which would prejudice his functions.

The appointment of a liquidator does not terminate the powers of receiver. However, the receiver ceases to be agent of the company. The receiver may not commit the company to new liability. The receiver may not carry on the business of the company. The receiver is still capable of getting in and realising the secured assets.

Order of Priority

The following is the order of payment, on the sale of floating charge assets;

- ❖ Prior charge holders (if any);
- ❖ administrative receiver's cost expensive and remunerations;
- ❖ fixed charges within the debenture under which the administrative receivers was appointed;
- ❖ debts due to preferential creditors;
- ❖ excess money if any, is due to lower ranking mortgagees.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.