

## RECEIVERS

### Administrative Receivers

An administrative receiver is a receiver or manager over the whole or substantially the whole of the company's assets appointed on behalf of the holders of a other floating charge or "debenture". The right to appoint only applies to company floating charges granted before 15th September 2003. For floating charges created after 15th September 2003, there is no entitlement to appoint an administrative receiver. The entitlement still applies in relation to certain capital market arrangements exceeding £50,000,000 in value and certain public finance projects.

Administrative receivers are quick, relatively informal and inexpensive ways of realising assets. The abolition of the entitlement to appoint an administrative receiver after September 2003 has been compensated for, by the new entitlement for "qualifying floating charge" holders, to appoint an out of Court administrator. The administrative receiver is the English equivalent of a receiver with the powers of administration under an Irish floating charge / debenture.

An administrator cannot be appointed if the company is in liquidation. An administrator is an officer of Court who owes duties to the Court and the creditors generally, notwithstanding that the administrator is appointed out of Court by a qualifying charge holder. In contrast, an administrative receiver's primary duty is to realise the charged assets so as to repay the principal and interest to the charge holder appointing him (with a duty to pay preferential creditors in priority to the floating charge holders). He only has a general duty of due diligence to unsecured creditors and guarantors of the company debt.

By appointing an AR, the debenture holder obtains his choice of insolvency practitioner (IP). The floating charge holder still gets his choice of administrator under the new

procedure, but it is easier for the unsecured creditors to secure his removal and replacement by another IP, than would be the case in administrative receiverships.

In an administrative receivership, the charge holder is not constrained by any purpose set down by law. In contrast in administration, the objective is in the first instance to rescue the company, although this can be superseded by more modest objectives.

An AR can veto the appointment of an administrator. An AR has power to obtain a Court order for possession of the company's property, papers and books. He is entitled to obtain the co-operation and to procure examination of officers, debtors and persons who hold the company property.

### **Fixed Charge Receiver**

A fixed charge receiver may be appointed under the Law of Property Act, 1925 or under powers contained in the mortgage deed. They are frequently referred to as "LPA receivers". The party appointed need not be an insolvency practitioner. Chartered Surveyors are commonly appointed as receivers. There is an institution of LPA receivers.

The power to appoint under a legal mortgage arises after the mortgage money has become due and there is an entitlement to exercise the statutory power of sale. The power of sale arises after there has been default in repayment for three months after notice, where interest remains unpaid after becoming due or there is breach of the deed or Act. The power to appoint a fixed charge receiver only applies to a legal mortgage.

Strictly speaking, a LPA receiver's powers are limited to collecting rents and income. He acts as agent of the mortgagor (borrower) when collecting rent. This prevents any tenancy arising between the bank or receiver and the tenant. It is the receiver's power and duty to keep the property in repair and to insure.

The receiver is deemed to be the agent of the mortgagor who is solely responsible for its acts. Receivers are personally liable on contracts entered in the performance of their functions. The receiver would usually seek to exclude liability under its contract. He is generally entitled to an indemnity out of the company's assets.

The powers to appoint a receiver under the Law of Property Act are more limited than ideally required. The powers are therefore usually expanded by the mortgage deed. There may be a provision in the mortgage deed giving the receiver power to take possession and sell the property, to borrow money and to carry out other functions. There may also be powers to manage the company's business. This may be difficult without access to the "floating" and non-fixed assets.

If a mortgagor is in liquidation, the Court's permission is required before a receiver can be appointed. Where a company is in administration, a moratorium provides that existing receivers are required to vacate office and no steps can be taken to enforce any security, except with leave of Court. Existing receivers can be required to vacate office by the administrator.

A fixed charge receiver has duties to return an account of receipts and expenses within one month of the expiration of 12 months from his appointment and every subsequent period of 6 months and within one month after ceasing to act as receiver. A statement must appear in all letters and invoices that a receiver has been appointed.

### **Official Receiver**

The Official Receiver is a public office. If the Court makes a winding up order, the Official Receiver is appointed liquidator unless the winding up follows administration or voluntary arrangements. The Official Receiver also acts in bankruptcy matters. Under both procedures, the Official Receiver may be replaced in the procedure by an insolvency practitioner.

## **Court Receiver**

Courts have the powers to appoint a receiver where it is just and convenient. This may occur where the security agreement does not provide a proper power to appoint or there is some other defect in the mortgage. A receiver may be appointed where the asset is in jeopardy or there is default.

The jurisdiction to appoint a receiver by court is not commonly used. A receiver appointed by court must give security. He has a duty to report back to the court. He may apply to the court for directions on certain matters.

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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.