

## Receivership

### Overview

Receivership arises when a secured creditor appoints an insolvency practitioner of its own choosing to recover its lending by selling the company's business and assets. It can be a powerful tool to effect a sale of a business as a going concern, ie it has a constructive role, but it does not save the company and shareholder value is normally lost. It is a useful tool to achieve a cost effective winding up when the only likely beneficiaries are the secured and preferential creditors and the chargeholders are not concerned about being seen to enforce the company's demise, even at the directors' invitation. In some cases, particularly with high street banks, the lenders are concerned about the possible profile and management cost implications of appointing and only do so where there is a real benefit.

**NB: Following the Enterprise Act 2002, only floating charges created before 15 September 2003 can contain the power to appoint administrative receivers.**

### How does the procedure work?

A receiver is appointed by a secured creditor to take charge of the charged assets and sell these in order to repay the secured loan. The receiver's primary duty of care is to his appointer. Although a receiver may be appointed over all the company's assets, he is not formally responsible for the company itself, which remains with the directors. However, a receivership can also be a powerful tool to save the business (not the company) by facilitating a sale as a going concern. Although receiverships have been known to lead to the restoration of the company, this is very rare.

Only a creditor with a charge over the company's assets can appoint a receiver. That creditor needs to be owed money that the company cannot repay and the company will need to be in default of its borrowing agreement. Banks typically appoint receivers, as do asset-based lenders.

A charge can be specific over a certain asset such as a property (often called a "fixed charge") or a "floating charge" over classes of assets, such as trading stock. The holder of a floating charge (or fixed and floating charges) over substantially all the company's assets has the power to appoint an administrative receiver. Most banks take fixed and floating charges over all the company's assets.

An administrative receiver has wide powers to control the company's assets, to continue trading and to dispose of the business and assets as a going concern. The receiver would usually control the business personally and not necessarily involve the directors in strategic decisions.

The secured lender does not need approval from either the directors or the shareholders to appoint a receiver, nor is a meeting of creditors required prior to his appointment. However it is common for the lender to ask the directors to invite an appointment so as to avoid unnecessary disputes later. All that is required is for the borrower to be in default of the lending agreement, for the lender to demand immediate repayment and for the borrower to fail to do so. The elapsed time between demand and appointment need only be hours.

If a receiver is able to repay his appointer in full (and in the case of an administrative receiver, pay the preferential creditors the amounts due to them from the floating charge assets), then he merely resigns and returns any surplus to the company. In practice the company then normally enters into liquidation to distribute any funds to the rest of the creditors.

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at [www.portbfs.co.uk](http://www.portbfs.co.uk) to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.

## Receivership

A receiver does not have any powers to investigate the events leading up to the insolvency and if such investigations were required then a liquidator would need to be appointed subsequently. An administrative receiver is however still required to report to the DTI on the directors' conduct.

An administrative receiver is obliged to call a meeting of unsecured creditors within three months to report on the conduct of the receivership.

Advantages	Disadvantages
<ul style="list-style-type: none"> <li>▪ Takes responsibility for an insolvent company and its creditors away from the directors. It avoids further risk of wrongful trading.</li> <li>▪ Immediate appointment means that it can be a quick and efficient way of realising assets for the benefit of creditors.</li> <li>▪ Wide powers to trade on and sell the business as a going concern without encumbrances, which can result in enhanced realisations for the creditors.</li> </ul>	<ul style="list-style-type: none"> <li>▪ A chargeholder is not required to appoint and would only do so if it perceived a benefit for it, eg to ensure a practitioner of its own choosing dealt with its security.</li> <li>▪ The process can be expensive if there is extended trading, because of the close control normally exercised by the receiver during this period, although this is often offset by the enhanced going concern values achieved for the assets.</li> <li>▪ Only normal outcome is a disposal of the business and assets (possibly as a going concern), therefore unlikely to save the company.</li> <li>▪ Liquidation might still be required to distribute funds to creditors, leading to a duplication of cost.</li> </ul>

This document explains the relevant position only in general terms and omits details less commonly experienced for the sake of brevity. It is not intended to be used as formal advice about your actual situation, for which you should consult us specifically and not rely upon this document. Portland would be pleased to advise you formally and you should contact one of the directors listed on the website at [www.portbfs.co.uk](http://www.portbfs.co.uk) to arrange this or telephone our main switchboard on 01489 550440. Portland regrets it is unable to accept any responsibility to anybody who seeks to rely on this document.