

PROPERTY RECEIVERS – A SURVIVING BREED



You may have thought that receiverships were dead. David Kerr MCICM explains why that thought may be a little premature.

THE old receiver and manager of the Companies Act 1948 morphed into the administrative receiver of the Insolvency Act 1986 and was then killed off by the Enterprise Act 2002. The flavour of the era now is for collective insolvency procedures, theoretically benefiting all creditors, rather than those designed primarily to serve the interests of one secured lender.

And yet whilst administration has become the common 'rescue' procedure, there is a corner of the receivership world where the concept survives, and indeed is gaining a new lease of life. Property receivers operate under the Law of Property Act 1925 or legal instruments invoking similar powers; they have carried on their trade throughout all of the above changes and have been largely untouched by them.

One of the important measures introduced in 1986 was the licensing of insolvency practitioners, and yet for property receivers this too somehow passed them by, so that those acting as receivers of property (and property only – not the whole of a debtor's undertaking) are not subject to any form of statutory regulation. However, that anomaly was remedied to some extent in 1999, when the Insolvency Practitioners Association (IPA), Royal Institution of Chartered Surveyors (RICS), and the Non-Administrative Receivers Association (Nara) led a joint effort to replicate the insolvency practitioners' regulation regime in the property receivership domain.

This extension of regulation involved a voluntary registration process that encompassed a commitment to be subject to monitoring inspections, with reports submitted to a joint committee for review. A directory of registered property receivers, updated and published annually, encouraged lenders to use 'regulated' receivers.

Those arrangements have now been revised and modernised, and a new Memorandum of Understanding has been executed between IPA, RICS and Nara. This provides for some important changes that should increase transparency and reassure

stakeholders. All registered property receivers will be monitored by the IPA, a new website will carry information about the standards applicable to their work (the practice statements developed by Nara) as well as a list of those signed up to the scheme, and there will be a consultation on those standards.

The new scheme will be launched on 1 July and will deliver a more robust regime that is more readily understandable. Some key aspects of the existing scheme are retained, such as the entry examination, requirements for ongoing education, and monitoring. A newly formed Quality Assurance Panel will deal with any cases where monitoring reveals registered receivers are found not to be acting in compliance with the published standards, and complaints about them will be subject to the disciplinary procedures of the receiver's professional body.

SUMMARY OF KEY ASPECTS OF THE REGISTERED PROPERTY RECEIVERS' (RPR) SCHEME

- RICS and IPA will formally endorse Practice Statements for RPRs, thereby ensuring they have full regulatory force. These Practice Statements will be placed in the public domain, and processes for enhanced stakeholder engagement in the change or creation of future standards will be implemented
- A Quality Assurance Panel will review the monitoring outputs from the Scheme against the Practice Statements where compliance issues have been identified as part of the monitoring processes, in order to provide assurance that these standards are being properly applied
- IPA will provide a formalised secretariat function in respect of the Scheme, ensuring a single point of enquiry for Scheme members
- Scheme members will be required to provide an annual confirmation that they subscribe to the application of Practice Statements and the criteria for Scheme membership generally

- All Scheme members will be required to participate in proportionate and risk-based routine monitoring activity of their functions as Registered Property Receivers provided by the IPA on a risk-based and proportionate basis

- A new Scheme-specific website will be established, aimed at informing end users and the public about the Scheme and raising the Scheme's profile

- Nara will continue to produce Practice Statements for scheme members, subject to RICS and IPA review and collaboration and a process of stakeholder engagement, and the Practice Statements will be reinforced by the newly introduced endorsement process

- Nara will continue to provide high quality education and training for Scheme members and prospective scheme members, and promote the benefits of the Scheme

- The requirement that all registrants are members of a relevant professional body will be retained, as will the examination process for new applicants to the Scheme to ensure the current levels of professional education and qualification are maintained

- Scheme members will be subject to the disciplinary processes of the professional body of which they are a member; adverse monitoring outcomes and complaint allegations arising through the Scheme will be referred to the relevant professional body for any disciplinary action as may be necessary

- Registration under the scheme is the sole mechanism entitling the Scheme member to the designation 'Registered Property Receiver'.

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