

Receivership – Scotland

a guide for unsecured creditors

Receivership When a company breaches the terms of its borrowing from a creditor with a floating charge, that creditor may appoint a receiver to recover the money it is owed.

A licensed insolvency practitioner has given you this because you, or your business, may be owed money by a company that is in receivership.

This guide aims to help you understand your rights as a creditor and to describe how best these rights can be exercised. It is intended to relate only to Scotland. It is not an exhaustive statement of the relevant law or a substitute for specific professional or legal advice.

We have made every effort to ensure the guide is accurate, but R3 cannot accept responsibility for the consequences of any action you take in reliance on its contents. If, having read the guide, you remain in any doubt about your rights, you should consult a licensed insolvency practitioner or solicitor.

Depending on the case, creditors who play an active role in an insolvency can make a significant difference to whether a business is rescued and, therefore, how much the insolvency practitioner will be able to recover. We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case could benefit you or your business.

What is receivership?

When a company breaches the terms of its borrowing from a creditor with a floating charge, or in other circumstances set out in the charge, that creditor may appoint a receiver (who must be a licensed insolvency practitioner) to recover the money it is owed. Many companies give such a charge to banks as security for their borrowing.

What can a receiver do?

A receiver has extensive powers to deal with the charged assets. The receiver effectively takes over management of the company's business from the board of directors and can have it continue to trade prior to selling the business and assets.

Does the receiver pay trade creditors the money they are owed?

No. The receiver does not make payments to unsecured creditors in respect of the money owed to them prior to appointment. A receiver's main function is to recover sufficient funds to pay the costs of the receivership, the preferential creditors and the charge holder. (Preferential creditors are a special category of unsecured creditor. They consist mainly of certain debts due to employees and the Redundancy Payments Service.) If the company has more assets than are required to make these payments, the surplus is normally passed to a liquidator, who deals with creditors' claims.

Six months after writing off a debt in your accounts, you can claim VAT bad debt relief from HM Revenue and Customs for the VAT you have paid.

If you believe that you own something in the company's possession, you should contact the administrative receiver as soon as possible with full proof of ownership and be prepared to identify what you are claiming. The receiver will examine your claim carefully before deciding whether to release the goods in question, pay you for them or otherwise.

Is the receiver bound by contracts made by the company prior to the appointment?

Generally, the receiver is not bound by pre-receivership contracts and may choose not to have the company perform them. The other party will then have a claim for breach of contract, which will rank as an unsecured claim. Special provisions apply to employment contracts.

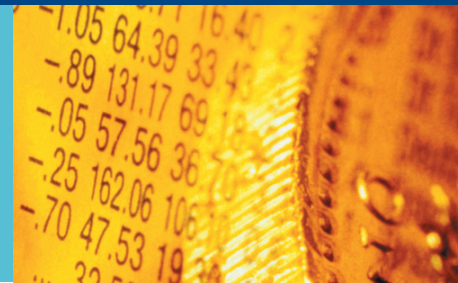
Is the receiver liable for sums due under contracts made after his appointment?

A receiver is not personally liable where he has disclosed that he is acting as agent for the company and expressly excluded any personal liability.

The receiver will usually pay, as a receivership expense, for goods and services supplied after appointment.

As an unsecured creditor, what information rights do I have?

The receiver normally notifies all known creditors of the appointment within 28 days. A meeting of unsecured creditors is held within three months of the appointment, unless the company goes into liquidation



earlier or the court otherwise directs. The administrative receiver gives a report to the meeting on the events leading to the appointment, the carrying on of the business, disposals of assets, what is owed to the various classes of creditor and how much, if anything, is likely to be available to unsecured creditors. A copy of the report is normally sent to all known creditors.

Can the unsecured creditors form a creditors' committee?

Yes. A creditors' committee may be appointed at the meeting of creditors and must consist of at least three and no more than five members.

The creditors' committee may receive reports from the administrative receiver and may meet periodically.

Creditors' committee members are not paid, but will receive their reasonable travelling expenses as a cost of the receivership.

Does the appointment of a receiver prevent a creditor taking legal action against the company?

No. Creditors may continue or begin any legal action against the company, including petitioning for its liquidation, whilst the company is in administrative receivership.

If you are considering this, you should think carefully whether you would benefit from doing so. For example, success in most actions would result in an unsecured claim against the company, which might prove valueless unless there were to be a substantial return to unsecured creditors. Petitioning for the company's liquidation is unlikely to speed up distributions to creditors and may hinder the business or asset sales and reduce the amount available for unsecured creditors.

Creditors should note that lodging a claim in a receivership does not interrupt the possibility of their claim becoming time barred. If creditors have any concerns in this respect they should seek appropriate legal advice.

Does receivership automatically end when the company goes into liquidation?

No. A company can be in receivership and liquidation at the same time. This is more likely once it becomes clear that there are sufficient assets to allow the liquidator to make a distribution to creditors.

When is the receivership complete?

The receivership is complete when the floating charge holder has been paid in full or when the receiver has sold all the assets and distributed the proceeds. He will then cease to act and send a summary of his final receipts and payments to the company, the registrar of companies and the creditors' committee.

How is the receiver's fee determined?

The floating charge holder agrees the receiver's fee. A liquidator, if one is appointed, will review the administrative receiver's fee and could apply to the court to challenge it.

What should I do if I am dissatisfied with the receiver's handling of the case?

You should contact the receiver to try to resolve the problem. If you are still not satisfied, you should bring the matter to the attention of the liquidator, if there is one.

If you think that the receiver is guilty of professional misconduct, you should contact his regulatory body.

R3 is the UK's leading trade association for licensed insolvency practitioners and business recovery professionals. R3 does not license or discipline its members; this is the responsibility of the practitioner's regulatory body. The regulatory bodies are:

The Association of Chartered Certified Accountants

Tel: 020 7396 7000

www.accaglobal.com

The Institute of Chartered Accountants in England and Wales

Tel: 020 7920 8100

www.icaew.co.uk

The Institute of Chartered Accountants in Ireland

Tel: 00 353 1 637 7200

www.icaei.ie

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100

www.icas.org.uk

The Insolvency Practitioners Association

Tel: 020 7623 5108

www.ipa.uk.com

The Law Society of England and Wales

Tel: 020 7242 1222

www.lawsoc.org.uk

The Law Society of Northern Ireland

Tel: 028 9023 1614

www.lawsoc-ni.org

The Law Society of Scotland

Tel: 0131 226 7411

www.lawsocot.org.uk

The Insolvency Service

Tel: 020 7291 6895

www.insolvency.gov.uk

Further advice and information for creditors of failing businesses is contained in R3's *Ostrich's Guide to Business Survival*, which can be downloaded from the R3 website www.r3.org.uk free of charge.

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