

A guide to Administrative Receivership



Administrative receivership (England, Wales and Northern Ireland)

Administrative receivers are normally appointed by a bank or other lending institution which has security for a loan (under an instrument called a floating charge) for the whole, or substantially the whole of a company's property. The lender is often known as the debenture holder. Administrative receivership is often abbreviated to receivership.

It is longer possible to appoint an administrative receiver under a security instrument created after 15 September 2003. Instead, creditors with floating charge security can appoint an administrator.

The administrative receivers have powers similar to administrators. They can continue to operate the business, and often do, whilst trying to sell it as a going concern. If they manage to do this they will usually achieve a higher price than if the company's assets were disposed of on a break-up basis.

An administrative receiver has no authority to deal with the claims of unsecured creditors (e.g. trade creditors). If sufficient funds become available for distribution to the general body of creditors they must be dealt with by a separately appointed liquidator.

Procedure for administrative receivership

1. Only available to a lender with a floating charge security (usually a bank)

2. When to appoint

When the borrower is in default or in breach of terms of the security document. Usually follows a demand for repayment, frequently at request of directors (although only the lender can actually appoint a receiver).

3. Appointment

Made by the secured lender. A receiver may be appointed with maximum speed and minimum formality. The appointer notifies Companies House, the receiver notifies the company and creditors. The receiver also advertises the appointment in the London Gazette and an appropriate newspaper.

4. Powers and capacity of receiver

Depend on the security document, but will normally enable the receiver to carry on a company's business and realise its assets. The receiver acts as the agent of the company unless and until it goes into liquidation.

5. Information to creditors

Within three months of appointment, the receiver must send a report to the creditors and convene a creditors' meeting to receive the report (unless a liquidator has been appointed in the meantime, in which case the report goes only to the liquidator). The meeting may also appoint a creditors' committee.

6. Conclusion of Receivership

The receiver ceases to act when they have realised the security or repaid their appointer and notifies Companies House accordingly.

Receivership (Scotland)

Whereas the process has only a slightly different name in England and Wales (administrative receivership as opposed to receivership in Scotland), there are a number of important differences in procedure and terminology between the two. As with the rest of the UK the appointment of a receiver is at the insistence of a bank or other lending institution which has as security for a loan (under a floating charge) for the whole or substantially the whole of the company's property. A receiver's appointment may also be by the court on application from the holder.

It is not possible for the holder of what is termed a *Standard Security* (a fixed charge over a heritable property) to appoint a receiver, unless they also hold a floating charge. A floating charge can be granted over any of the assets of a company, not just the heritable assets. The property owned by the debtor at the time the receiver is appointed determines what is subject to the floating charge.

The instrument creating the floating charge will usually specify the events which give rise to the right to appoint. If not specified in the charge document, the following circumstances also enable appointment to be made:

- the expiry of a period of 21 days or as defined within the floating charge, failing which after the making of a demand for payment of the whole or any part of the principal sum secured by the charge, without payment having been made
- the expiry of a period of two months during the whole of which interest due and payable under that charge has been in arrears
- the making of an order or the passing of a resolution to wind up the company
- the appointment of a receiver by virtue of any other floating charge created by the company.

The Scottish receiver has similar powers to the administrative receiver described above. Generally, their powers are as wide as those given to the board of directors, enabling them to carry on the company's business, to raise money using the company's assets as security and to sell those assets covered by the charge.

As in the case of an administrative receiver, a Scottish receiver will often continue to operate the business as a going concern in order to achieve the best outcome.

As with the rest of the UK It is no longer be possible to appoint a receiver under a security instrument created after 15 September 2003. Instead, creditors with floating charge security can appoint an administrator.

Procedure for receivership

1. Only available to a lender with a floating charge security (usually a bank)

2. When to Appoint

When the borrower is in default or in breach of terms of the security document. Usually follows a demand for repayment, frequently at request of directors (although only the lender can actually “call in the receivers”).

3. Appointment

Made by the floating charge lender. A receiver may be appointed with maximum speed and minimum formality. The appointer notifies the Registrar of Companies, the receiver notifies the company and creditors. The receiver also advertises the appointment in the Edinburgh Gazette (if a Scottish registered company) and an appropriate newspaper.

4. Powers and capacity of receive

Depend on the security document, but will normally enable the receiver to carry on a company’s business and realise its assets. The receiver acts as the agent of the company.

5. Information to creditors

Within three months of appointment, the receiver must send a report to the creditors and convene a creditors’ meeting to receive the report (unless a liquidator has been appointed in the meantime, in which case the report goes only to the liquidator). The meeting may also appoint a creditors’ committee.

6. Conclusion of receivership

The receiver ceases to act when they have realised the security or repaid their appointer and notify the Registrar of Companies accordingly.