

Privately appointed receivers of property of corporations

What is a Receivership?

A receivership is a form of external administration whereby a creditor who holds security (eg a registered fixed and floating charge) over company assets seeks to enforce their security following the default under a loan contract.

The secured creditor may appoint a receiver who proceeds to realise property subject to the security for the benefit of the secured creditor.

Who can be a Receiver?

The receiver must be a person registered with the Australian Securities & Investments Commission ("ASIC") as a liquidator. The Act provides for a number of further disqualifications including where the person is an auditor, mortgagee or officer of the corporation.

When does a Receivership end?

A receivership will most commonly terminate when the receiver has realised the property subject to the security and distributed that property in accordance with the provisions of the Corporations Act and instrument of appointment.

What are the effects of a Receivership?

Once the receiver is appointed:

- the receiver has a wide range of powers including the power to enter into possession and take control of property (in accordance with the terms of the instrument of appointment), carry on the business of the corporation and dispose of property of the corporation;
- the receiver is personally liable for services rendered to the corporation, goods purchased by him or her, or property hired, leased, used or occupied by the corporation (this liability is typically met from an indemnity provided by the secured creditor);
- the receiver is not bound by pre-appointment contracts;
- the receiver will generally be appointed as agent for the company and will remain an agent until the termination of the receivership or the appointment of a liquidator;
- the receiver must prepare specific reports for ASIC;
- the receiver has a statutory duty to take reasonable care in selling company property at market value or, if there is no market value, the best price reasonably obtainable;
- the receiver is generally granted extensive management powers to the exclusion of the directors; and
- Creditors are not prevented from beginning or proceeding with a proceeding in a court.