

# Receivers and Managers

By Chris Iacovides



Typically, a company receiver and manager, is appointed out of court by a secured creditor under the powers contained in a charge or mortgage. It is the terms of the charge or mortgage, supplemented by the general law that regulate the nature and scope of the appointment.

A company receiver and manager may also be appointed by the court. The court will appoint a receiver and manager under its own legislation where it is “**just or convenient**” to do so or where the court considers it necessary or desirable to do so to protect the interests of persons to whom the company is, or may become liable to pay money.

A court appointed receiver and manager is an officer of the court. It is the terms of the order of the court that govern the nature and scope of that appointment.

This article concentrates on the more common type of appointment – **the out of court or private appointment**. Technically, a person appointed solely as a receiver, is appointed under the fixed element of a charge. Nevertheless, as most security documents widely used in Cyprus, do not contain fixed charges, the types of appointment we are accustomed to, are those taking place pursuant to a floating charge which provide the appointee the ability to manage the business of a debtor company. A fixed charge receiver would not have the power of management as his appointment would be specific over certain property and the receiver’s role will be to act as caretaker of these specific asset(s).

## Privately appointed receivers and managers

The receiver and manager is an agent of the company and he is appointed by the secured creditor for the purpose of recovering the debt due to it by disposing the charged property. Whilst in office, he is an officer of the debtor company.

### The Appointment

It is essential that the charge or mortgage be prepared carefully to ensure that in the event of default the secured creditor can make the appropriate appointment. To this end, consideration needs to be given to the scope of events which may constitute defaults.

Before making any appointment, the secured creditor and the proposed appointee must consider whether the charge or mortgage can be challenged.

Possible grounds of challenge include:

- failure to lodge the charge with the Registrar of Companies within 21 days of its creation or
- If the debtor company is wound up within 12 months of its creation, the charge is void against the liquidator

If a challenge were successful, the receiver might be liable for trespass (and the appointor may be liable under the indemnity it grants the receiver) even where he acted in good faith.

### Powers and Duties

The powers of a receiver are derived from the charge or mortgage under which the appointment was made. They usually include power to: enter into possession and take control of the property charged lease or sell the property charged, initiate legal proceedings, carry on the business of the company make contracts and execute documents on behalf of the company. As with events of default, it is important to ensure that the powers are wide enough for the purposes of the security.

## Receivership –v- Liquidation

Contrary to the views of the Registrar of Companies in Cyprus, which are currently being tested in Court, in the matter of M.E Ostrich farms (Akamas) Ltd, a receivership can run its course in conjunction or parallel with a liquidation of the debtor company or vice versa.

The right of a secured creditor to appoint a receiver and manager is absolute and it stands outside the liquidation. The responsibilities of the receiver are to the secured creditor with respect to the charged assets, he does however owe a duty of care to the guarantors' of the debtor company. The liquidator's primary responsibility is to the unsecured creditors. The liquidator is appointed to, agree creditors' claims, dispose of assets, not subject to the charge, deal with any necessary investigations, including consideration of the receiver's acts and de-register the company.

Once a liquidator is appointed, the receiver ceases to be the agent of the company. Moreover, a receiver is not entitled to continue to carry on the business of the company without the consent of the liquidator or the approval of the court.

Once the receiver has discharged the debt due under the charge or mortgage, the receiver is required to pay any surplus to the liquidator and retire. He should also cease to act, once he disposes of the charged assets and agrees and pays the preferential creditors. If the liquidator is appointed before the receiver and manager then the agreement of claims from the preferential creditors would be the liquidator's responsibility.

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