

## PART XV

## RECEIVERS AND MANAGERS

Interpretation.

**434.** (1) In this Part of this Act, unless the context otherwise requires—

“creditor” includes a person to whom the grantor owes a debt or is under a liability, whether present or future, certain or contingent and whether an ascertained debt or liability or a liability in damages ;

“grantee” means in relation to an instrument which creates a floating charge, the person entitled to the benefit of the instrument ;

“grantor” means the person in respect of whose property a receiver is or may be appointed ;

“liquidator” means a liquidator appointed under Part XII ;

“mortgage” includes a charge on property for securing money or money’s worth ;

“mortgagee” includes a person from time to time deriving title under the original mortgagee, but does not include a receiver ;

“preferential claims” means the claims referred to in the Ninth Schedule (except paragraph 1 of that Schedule) ;

“property” includes—

(a) movable and immovable property ;

(b) an interest in movable or immovable property ;

- (c) a debt ;
- (d) any thing in action ;
- (e) any other right or interest ;

“property in receivership” means property in respect of which a receiver is appointed ;

“receiver” means a receiver or a manager or a receiver and a manager in respect of any property, appointed—

- (a) under any instrument ; or
- (b) by the court in the exercise of a power conferred on the court by this Act,

whether or not the person appointed is empowered to sell any of the property in receivership, but does not include—

- (c) a mortgagee who, whether personally or through an agent, exercises a power to—
  - (i) receive income from mortgaged property ;
  - (ii) enter into possession or assume control of mortgaged property ; or
  - (iii) sell or otherwise alienate mortgaged property ; or
- (d) an agent of any such mortgagee.

POWER TO APPOINT RECEIVER

**435.** An instrument that creates a floating charge in respect of the whole of the property and undertaking of a company, may confer on the grantee the power to appoint a receiver of the property and undertaking of the company.

Instrument may confer power to appoint receiver.

## QUALIFICATIONS OF RECEIVERS

Qualifications  
of receivers.

**436.** (1) The following persons may not be appointed or act as a receiver :—

- (a) a person who is under eighteen years of age ;
- (b) a creditor of the grantor ;
- (c) a person who is or who has within the period of two years immediately preceding the commencement of the receivership, been—
  - (i) an officer or employee of the grantor; or
  - (ii) an officer or employee of the mortgagee of the property in receivership;
- (d) a person who has or who has had within the period of two years preceding the commencement of the receivership, an interest, whether direct or indirect, in a share issued by the grantor;
- (e) a person who is an undischarged insolvent;
- (f) a person who has been adjudged to be of unsound mind under the Mental Diseases Ordinance (Cap. 227);
- (g) a person in respect of whom an order has been made under subsection (5) of section 468;
- (h) a person who was prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 186 of the Companies Act, No. 17 of 1982, or who would be so prohibited but for the repeal of that Act;

- (i) a person who is prohibited from being a director or promoter of or being concerned or taking part in the management of a company under section 213 or 214;
  - (j) a person who is disqualified from acting as a receiver by the instrument that confers the power to appoint a receiver.
- (2) A body corporate shall not be appointed or act as a receiver.
- (3) A person who contravenes subsection (1) or subsection (2), shall be guilty of an offence and be liable on conviction to a fine not exceeding two hundred thousand rupees.

#### APPOINTMENT OF RECEIVER

**437.** (1) Where an instrument confers on the grantee the power to appoint a receiver of the property and undertaking of a company, the grantee may appoint a receiver by an instrument in writing signed by or on behalf of the grantee.

Appointment of receiver under an instrument.

- (2) A receiver appointed by or under a power conferred by an instrument shall be the agent of the grantor, unless the instrument expressly provides otherwise.
- (3) A receiver may be appointed under this section —
- (a) notwithstanding anything to the contrary contained in any other law; and
  - (b) whether or not the property in respect of which the receiver is appointed includes immovable property.
- (4) For the avoidance of doubt—
- (a) the appointment of a receiver under this section is not a hypothecary action; and

- (b) nothing in section 46 of the Mortgage Act (Cap. 89) shall affect, or shall apply in relation to, the appointment of a receiver under this section.

Extent of power to appoint a receiver.

**438.** (1) A power conferred by an instrument to appoint a receiver includes the power to appoint—

- (a) two or more receivers;
- (b) a receiver additional to one or more presently in office;
- (c) a receiver to succeed a receiver whose office has become vacant,

unless the instrument expressly provides otherwise.

(2) Two or more receivers may act jointly or severally to the extent that they have the same powers, unless the instrument under which or the order of the court by which they are appointed, expressly provides otherwise.

Court may appoint a receiver.

**439.** (1) Without limiting the inherent jurisdiction of the court under any other written law, the court may appoint a receiver of any property which is subject to a fixed security or a floating charge granted by a company, on the application of the grantee of that security or charge, where it is satisfied that—

- (a) the company has failed to pay a debt due to the grantee or has otherwise failed to meet any obligation to the grantee;
- (b) the company proposes to sell or otherwise dispose of the secured property in breach of the terms of any instrument creating the security or charge; or
- (c) it is necessary to do so to ensure the preservation of the secured property for the benefit of the grantee.

(2) A receiver may be appointed under this section—

- (a) notwithstanding anything to the contrary in any other law; and
- (b) whether or not the property in respect of which the receiver is appointed, includes immovable property.

(3) For the avoidance of doubt—

- (a) the appointment of a receiver under this section is not a hypothecary action; and
- (b) nothing in section 46 of the Mortgage Act (Cap. 89) shall affect, or shall apply in relation to the appointment of a receiver under this section.

**440.** (1) A receiver shall forthwith after being appointed and in any event no later than ten working days after being appointed —

Notice of  
appointment of  
receiver.

- (a) give written notice of his or her appointment to the grantor;
- (b) give public notice of his or her appointment, including —
  - (i) the receiver's full name;
  - (ii) the date of the appointment;
  - (iii) the receiver's office address; and
  - (iv) a brief description of the property in receivership ; and
- (c) send a copy of the public notice to the Registrar.

(2) Where the appointment of the receiver is in addition to a receiver who already holds office or is in place of a person who has vacated office as receiver, as the case may be, every notice under this section shall state that fact.

(3) Every receiver who acts in contravention of this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Notice of  
receivership.

**441.** (1) Where a receiver is appointed in respect of the property and undertaking of a company, every agreement entered into and every document issued by or on behalf of the grantor or the receiver and on which the name of the grantor appears, shall state clearly that a receiver has been appointed.

(2) Where a receiver is appointed in relation to a specific asset or assets, every agreement entered into and every document issued by or on behalf of the grantor or the receiver that relates to the asset or assets, and on which the name of the grantor appears, shall state clearly that a receiver has been appointed.

(3) A failure to comply with subsection (1) or subsection (2) shall not affect the validity of the agreement or document.

(4) Every person who—

(a) acts in contravention of subsection (1) or subsection (2); or

(b) knowingly or willfully authorises or permits a contravention of subsection (1) or subsection (2),

shall be guilty of an offence, and be liable on conviction to a fine not exceeding fifty thousand rupees.

Vacancy in  
office of  
receiver.

**442.** (1) The office of receiver shall become vacant if the person holding office resigns, dies, or becomes disqualified under section 436.

(2) A receiver appointed under a power conferred by an instrument, may resign office by giving not less than five working days' written notice of his intention to resign, to the person by whom the receiver was appointed.

(3) If, for any reason other than resignation, a vacancy occurs in the office of receiver, written notice of the vacancy shall forthwith be delivered to the Registrar by the person vacating office or if that person is unable to act, by his legal representative.

(4) A receiver appointed by the court shall not resign office without prior leave of the court.

(5) A person vacating the office of receiver shall where practicable, provide such information and give such assistance in the conduct of the receivership to his or her successor as that person may reasonably require.

(6) On the application of a person appointed to fill a vacancy in the office of receiver, the court may make any order that it considers necessary or desirable to facilitate the performance of the receiver's duties.

(7) Every person who fails without reasonable cause to comply with subsection (3), shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

#### POWERS OF RECEIVERS

**443.** (1) A receiver shall have the powers and authorities expressly or impliedly conferred by the instrument or the order of the court by or under which the appointment was made.

Powers of receivers.

(2) Subject to the instrument or the order of the court by or under which the appointment was made, a receiver shall have and may exercise the powers specified in the Twelfth Schedule.



Precedence  
among  
receivers.

**444.** (1) Where there are two or more floating charges subsisting over all or any part of the property of the company, a receiver may be appointed under this Part of this Act by virtue of each such charge. A receiver appointed by or on the application of the holder of a floating charge, which has priority over any other floating charge by virtue of which a receiver has been appointed, has the powers conferred on a receiver by this Act, to the exclusion of any other receiver.

(2) Where two or more floating charges rank equally with one another, and two or more receivers have been appointed by virtue of such charges, the receivers so appointed are deemed to have been appointed as joint receivers, and shall act jointly, unless the instrument of appointment or each of the respective instruments of appointment, otherwise provide.

(3) Subject to subsection (4), the powers of a receiver appointed by or on the application of the holder of a floating charge are suspended by, and as from the date of the appointment of a receiver by or on the application of the holder of a floating charge having priority over that charge, to such extent as may be necessary to enable the receiver second mentioned, to exercise his powers under this Act. Any powers so suspended shall take effect again when the prior floating charge ceases to attach to the property subject to the charge, or when the appointment of a receiver under the prior floating charge ceases in respect of that property, whichever occurs first.

(4) The suspension of the powers of a receiver under subsection (3) does not have the effect of requiring him to release any part of the property (including any letters or documents) of the company from his control, until he receives from the receiver superceding him a valid indemnity (subject to the limit of the value of such part of the property as is subject to the charge, by virtue of which he was appointed) in respect of any expenses, charges and liabilities he may have incurred in the performance of his functions as receiver.

(5) The suspension of the powers of a receiver under this section shall not cause the floating charge by virtue of which he was appointed, to cease to attach to the property in respect of which he was appointed.

(6) Nothing in this section shall prevent the same receiver being appointed by virtue of two or more floating charges.

**445.** (1) A receiver has the same powers as the board of a company has or if the company is being wound up, as the board would have had if it was not being wound up, to make calls on the shareholders of the company in respect of uncalled capital that is charged under the instrument by or under which the receiver was appointed, and to charge interest on and enforce payment of calls.

Power to make calls on shares.

(2) For the purposes of subsection (1), the expression “uncalled capital” includes any amount payable in respect of the issue of shares or under the articles of the company.

(3) The making of a call or the exercise of a power under subsection (1) is, as between the shareholders of the company affected and the company, deemed to be a proper call or power made or exercised by the directors of the company.

**446.** (1) A receiver may execute in the name and on behalf of the company, all documents necessary or incidental to the exercise of the receiver’s powers.

Execution of documents.

(2) A document signed on behalf of a company by a receiver, shall be deemed to have been properly signed on behalf of the company for the purposes of section 19.

(3) Notwithstanding anything to the contrary in any other law or the articles of association of a company, where the

instrument under which a receiver is appointed empowers the receiver to execute documents and to use the company's common seal for that purpose, the receiver may execute documents in the name and on behalf of the company by affixing the company's common seal to the documents, and attesting the affixing of the common seal.

(4) Any document which is executed in the manner prescribed in subsection (3), shall be deemed to have been properly executed by the company.

Obligations  
of company  
and  
directors.

**447.** (1) Where a receiver is appointed in respect of the whole or any part of the property of a company, the company and every director of the company shall—

- (a) make available to the receiver all books, documents, and information relating to the property in receivership in the company's possession or under the company's control;
- (b) if required to do so by the receiver, verify by affidavit that the books, documents and information are complete and correct;
- (c) give the receiver such assistance as he or she may reasonably require;
- (d) if the company has a common seal, make the common seal available for use by the receiver.

(2) On the application of the receiver, the court may make an order requiring the company or a director of the company, to comply with the requirements of subsection (1).

Validity of  
acts of  
receivers.

**448.** (1) Subject to subsection (2), no act of a receiver shall be deemed to be invalid merely because the receiver was not validly appointed, or is disqualified from acting as a receiver, or is not authorised to do the act.

(2) No transaction entered into by a receiver shall be deemed to be invalid merely because the receiver was not validly appointed or is not authorised to enter into the transaction, unless the person dealing with the receiver has or ought to have, by reason of his or her relationship with the receiver or the person by whom the receiver was appointed, knowledge that the receiver was not validly appointed or did not have authority to enter into the transaction.

**449.** (1) Where the consent of a mortgagee is required for the sale of property in receivership and the receiver is unable to obtain that consent, the receiver may apply to the court for an order authorising the sale of the property, either by itself or together with other assets.

Consent of mortgagee to sale of property.

(2) The court may on an application under subsection (1) of this section, make such order as it thinks fit authorising the sale of the property by the receiver, if satisfied that—

- (a) the receiver has made reasonable efforts to obtain the mortgagee's consent; and
- (b) the sale—
  - (i) is in the interests of the grantor and the grantor's creditors; and
  - (ii) will not substantially prejudice the interests of the mortgagee.

(3) An order under this section may be made subject to such terms and conditions as the court thinks fit.

## DUTIES OF RECEIVERS

General duties of receivers.

**450.** (1) A receiver shall exercise his or her powers in good faith.

(2) A receiver shall exercise his or her powers in a manner he or she believes on reasonable grounds to be in the interest of the person in whose interests he or she was appointed.

(3) Without prejudice to the provisions contained in subsections (1) and (2), a receiver shall exercise his or her powers having reasonable regard to the interests of —

- (a) the grantor;
- (b) persons claiming through the grantor, interests in the property in receivership;
- (c) unsecured creditors of the grantor; and
- (d) sureties who may be called upon to fulfil obligations of the grantor.

(4) Where a receiver appointed under an instrument acts or refrains from acting in accordance with any directions given by the person in whose interests he or she was appointed, the receiver shall be deemed not to be in breach of the duty referred to in subsection (2), but shall remain liable for any breach of the duty referred to in subsection (1) or the duty referred to in subsection (3).

(5) Nothing in this section shall limit or affect the application of section 451.

Duty of receiver selling property.

**451.** A receiver who exercises a power of sale of property in receivership, owes a duty to the grantor to obtain the best price reasonably obtainable as at the time of sale.

**452.** Notwithstanding anything to the contrary in any other law or anything contained in the instrument by or under which a receiver is appointed—

No defence or indemnity.

- (a) it shall not be a defence to proceedings against a receiver for a breach of the duty imposed by section 451, that the receiver was acting as the grantor's agent or under a power of attorney from the grantor;
- (b) a receiver shall not be entitled to compensation or indemnity from the property in receivership or the grantor, in respect of any liability incurred by the receiver arising from a breach of the duty imposed by section 451.

**453.** A receiver shall keep money relating to the property in receivership separate from other money received in the course of but not relating to the receivership, and from other money held by or under the control of the receiver.

Duty in relation to money.

**454.** (1) A receiver shall at all times keep accounting records that correctly record and explain all receipts, expenditure, and other transactions relating to the property in receivership.

Accounting records.

(2) The accounting records shall be retained by the receiver for not less than five years after the receivership ends.

#### REPORTS OF RECEIVERS

**455.** (1) A receiver shall, not later than two months after his appointment, prepare a report on the state of affairs with respect to the property in receivership, including —

First report by receivers.

- (a) particulars of the assets comprising the property in receivership;
- (b) particulars of the debts and liabilities to be satisfied from the property in receivership;

- (c) the names and addresses of the creditors with an interest in the property in receivership;
- (d) particulars of any encumbrance over the property in receivership held by any creditor, including the date on which it was created;
- (e) particulars of any default by the grantor in making relevant information available; and
- (f) such other information as may be prescribed.

(2) The report referred to in subsection (1) shall also include details of—

- (a) the events leading up to the appointment of the receiver, so far as the receiver is aware of them ;
- (b) property disposed of and any proposals for the disposal of property in receivership ;
- (c) amounts owing as at the date of appointment, to any person in whose interest the receiver was appointed ;
- (d) amounts owing as at the date of appointment, to creditors of the grantor having preferential claims ; and
- (e) amounts likely to be available for payment to creditors, other than those referred to in paragraph (c) or paragraph (d).

(3) A receiver may omit from the report details of any proposals for disposal of the property in receivership, if he considers that their inclusion would materially prejudice the exercise of his functions.

(4) A receiver who fails to comply with this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

**456.** (1) A receiver or a person who was a receiver at the end of the receivership, as the case may be, shall not later than two months after—

Further reports  
by receiver.

- (a) the end of each period of six months after his appointment as receiver ; and
- (b) the date on which the receivership ends,

prepare a further report summarising the state of affairs with respect to the property in receivership as at those dates, and the conduct of the receivership including all amounts received and paid, during the period to which the report relates.

(2) The report referred to in subsection (1) shall include details of—

- (a) property disposed of since the date of any previous report and any proposals for the disposal of property in receivership ;
- (b) amounts owing as at the date of the report, to any person in whose interest the receiver was appointed ;
- (c) amounts owing as at the date of the report, to creditors of the grantor having preferential claims ; and
- (d) amounts likely to be available as at the date of the report for payment to creditors, other than those referred to in paragraph (b) or paragraph (c).

(3) A receiver may omit from the report required to be prepared in accordance with paragraph (a) of subsection (1),



details of any proposals for disposal of property in receivership, if he or she considers that their inclusion would materially prejudice the exercise of his or her functions.

(4) Every person who fails to comply with the requirements of this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

Extension of  
time for  
preparing  
reports.

**457.** (1) A period of time within which a person is required to prepare a report under section 455 or section 456 may be extended, on the application of that person, by-

- (a) the court, where the person was appointed a receiver by the court ; or
- (b) the Registrar, where the person was appointed a receiver by or under an instrument.

Persons entitled  
to receive  
reports.

**458.** (1) A copy of every report prepared under section 455 or section 456 shall be sent by the person required to prepare it, to —

- (a) the grantor ; and
- (b) every person in whose interest the receiver was appointed.

(2) A person appointed as a receiver by the court shall file a copy of every report prepared under section 455 or section 456 in the office of the court.

(3) Not later than fifteen working days after receiving a written request for a copy of any report prepared under section 455 or section 456 from —

- (a) a creditor, director, or surety of the grantor ; or
- (b) any other person with an interest in any of the property in receivership,

and on payment of the reasonable costs of making and sending the copy, the person who prepared the report shall send a copy of the report to the person who requested for it.

(4) Within ten working days after preparing a report under section 455 or section 456, the person who prepared the report shall send or deliver a copy of the report to the Registrar.

(5) Every person who fails to comply with this section shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

**459.** A person to whom a report must be sent in accordance with the provisions of section 458 is entitled to inspect the report during normal office hours at the office of the person required to send it.

Persons entitled to inspect reports.

**460.** (1) A receiver of a company who considers that the company or any director or officer of the company has committed an offence under this Act or the Securities and Exchange Commission of Sri Lanka Act, No. 36 of 1987, shall report that fact to the Registrar.

Duty to notify breaches of any provisions of this Act.

(2) Nothing in subsection (1) shall impose any duty on a receiver to investigate whether any offence of the kind referred to in that subsection has been committed.

(3) A receiver who fails to comply with the provisions of subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

**461.** (1) Not later than ten working days after the receivership of a company ceases, the person who held office as receiver at the end of the receivership shall send or deliver to the Registrar, notice in writing of the fact that the receivership has ceased.

Notice of end of receivership.

(2) Every person who fails to comply with the requirements of subsection (1) shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

## APPLICATION OF PROPERTY AND LIABILITY FOR COMPANY OBLIGATIONS

Preferential  
claims.

**462.** (1) The provisions of this section applies to a receiver who was appointed under an instrument that created a floating charge.

(2) Subject to the provisions of section 449 and to the rights of any of the persons referred to in subsection (3), a receiver to whom this section applies shall pay moneys received by him to the grantee of the floating charge by virtue of which the receiver was appointed, in or towards satisfaction of the debt secured by the floating charge.

(3) The following persons shall be entitled to payment out of the property of a company subject to a floating charge, in priority to the grantee of the charge, and in the following order of priority :—

- (a) first, the holder of any fixed security, over any part of the property that ranks prior to the floating charge ;
- (b) second, the receiver, for his expenses and remuneration and any indemnity to which he is entitled out of the property of the company ; and
- (c) third, persons entitled to preferential claims, to the extent and in the order of priority specified in the Ninth Schedule (except paragraphs 1 and subparagraph (b) of paragraph 7).

(4) In the application of the provisions of the Ninth Schedule in accordance with the provisions of subsection (3) —

- (a) references to a “liquidator” shall be read as references to a “receiver” ;
- (b) references to the “commencement of the winding up” shall be read as references to the “appointment of the receiver” ;

- (c) references to “company being ordered to be wound up” or to the “winding up of the company” shall be read as references to the “company being put into or being in receivership”.

**463.** (1) Subject to the provisions of subsection (2), a receiver may be appointed or continue to act as a receiver and exercise all the powers of a receiver in respect of property of a company that is being wound up, unless the court orders otherwise.

Powers of receiver on liquidation.

(2) A receiver holding office in respect of property referred to in subsection (1) may act as the agent of the grantor, only with the approval of the court or with the written consent of the liquidator.

(3) A receiver who by reason of subsection (2) is not able to act as the agent of the grantor, does not by reason only of that fact, become the agent of a person by whom or in whose interests the receiver was appointed.

(4) A debt or liability incurred by a grantor through the acts of a receiver who is acting as the agent of the grantor in accordance with subsection (2), is not a cost, charge or expense of the liquidation.

**464.** (1) Subject to the provisions of subsections (2) and (3), a receiver is personally liable –

Liability of receiver.

- (a) on a contract entered into by the receiver in the exercise of any of the receiver’s powers ; and
- (b) for payment of wages or salary that during the receivership, accrue under a contract of employment relating to the property in receivership and entered into before his appointment, if notice of the termination of the contract is not lawfully given within ten working days after the date of appointment.

(2) The terms of a contract referred to in paragraph (a) of subsection (1) may exclude or limit the personal liability of a receiver, other than a receiver appointed by the court.

(3) The court may on the application of a receiver, extend the period within which notice of the termination of a contract is required to be given under paragraph (b) of subsection (1), and may extend that period on such terms and conditions as the court thinks fit.

(4) Every application under subsection (3) shall be made before the expiry of the period referred to.

(5) Subject to the provisions of subsection (7), a receiver is personally liable, to the extent specified in subsection (6), for rent and any other payments becoming due under an agreement subsisting at the date of his appointment, relating to the use, possession, or occupation by the grantor of property in receivership.

(6) The liability of a receiver under subsection (5), is limited to that portion of the rent or other payments which is attributable to the period commencing ten working days after the date of the appointment of the receiver, and ending on the date on which the receivership ends or the date on which the grantor ceases to use, possess, or occupy the property, whichever is the earlier.

(7) The court may on the application of a receiver —

- (a) limit the liability of the receiver to a greater extent than that specified in subsection (6) ; or
- (b) exempt the receiver from liability under subsection (5).

(8) Nothing contained in subsection (5) or subsection (6) shall —

- (a) be taken as giving rise to an adoption by a receiver of an agreement referred to in subsection (5) ; or

- (b) render a receiver liable to perform any other obligation under the agreement.

(9) A receiver is entitled to an indemnity out of the property in receivership, in respect of his personal liability under this section.

(10) Nothing contained in this section shall —

- (a) limit any other right of indemnity to which a receiver may be entitled ;
- (b) limit the liability of a receiver on a contract entered into without authority ; or
- (c) confer on a receiver a right to an indemnity in respect of liability on a contract entered into without authority.

**465.** (1) The court may relieve a person who has acted as a receiver from all or any personal liability incurred in the course of the receivership, if it is satisfied that :—

Relief from liability.

- (a) the liability was incurred solely by reason of a defect in the appointment of the receiver, or in the instrument or order of the court by or under which the receiver was appointed ; and
- (b) the receiver acted honestly and reasonably and ought in the circumstances to be exempted from liability.

(2) The court may exercise its powers under subsection (1) subject to such terms and conditions as it thinks fit.

(3) A person in whose interest a receiver was appointed is liable, subject to such terms and conditions as the court thinks fit, to the extent to which the receiver is relieved from liability under subsection (1).

## COURT SUPERVISION OF RECEIVERS

Court  
supervision of  
receivers.

**466.** The court may on the application of a receiver —

- (a) give directions in relation to any matter arising in connection with the performance of the functions of the receiver ;
- (b) revoke or vary, any such directions.

(2) The court may, on the application of any of the persons referred to in subsection (3) —

- (a) in respect of any period, review or fix the remuneration of a receiver at a level which is reasonable in the circumstances ;
- (b) to the extent that an amount retained by a receiver as remuneration is found by the court to be unreasonable in the circumstances, order the receiver to refund the amount ;
- (c) declare whether or not a receiver was validly appointed in respect of any property or validly entered into possession or assumed control of any property.

(3) Any of the following person may make an application to the court under subsection (2) :—

- (a) the receiver ;
- (b) the grantor ;
- (c) a creditor of the grantor ;
- (d) a person claiming through the grantor an interest in the property in receivership ;
- (e) a liquidator.

(4) The powers conferred under subsections (1) and (2) shall be —

- (a) in addition to any other powers the court may exercise under this Act, any other enactment or in exercising its inherent jurisdiction ; and
- (b) exercised whether or not the receiver has ceased to act as receiver, when the application is made.

(5) The court may, on the application of a person referred to in subsection (3), revoke or vary an order made under subsection (2).

(6) Subject to the provisions of subsection (7), it would be a defence to a claim against a receiver in relation to any act or omission by the receiver, that such act or omission was done or omitted to be done in compliance with a direction given under subsection (1).

(7) The court may on the application of a person referred to in subsection (3), order that by reason of the circumstances in which a direction was obtained under subsection (1), a receiver is not entitled to the protection given by subsection (6).

**467.** (1) The court may subject to the provisions of subsection (2), on the application of the grantor or a liquidator of the grantor —

Court may terminate or limit receivership.

- (a) order that a receiver shall cease to act as such as from a specified date and prohibit the appointment of any other receiver in respect of the property in receivership ;
- (b) order that a receiver shall as from a specified date, act only in respect of specified assets forming part of the property in receivership.



(2) An order under subsection (1) may be made only where the court is satisfied that —

- (a) the purpose of the receivership has been satisfied so far as possible ; or
- (b) circumstances no longer justify its continuation.

(3) Unless the court orders otherwise, a copy of an application under this section shall be served on the receiver not less than five working days before the hearing of the application, and the receiver may appear and be heard at the hearing.

(4) An order under subsection (1) may be made on such terms and conditions as the court thinks fit.

(5) An order under this section shall not affect a security or charge over the property, in respect of which the order is made.

(6) The court may on the application of any person who applied for or is affected by the order, rescind or amend an order made under this section.

Orders to enforce  
receiver's duties.

**468.** (1) An application for an order under this section may be made by —

- (a) the registrar ;
- (b) a receiver ;
- (c) a person seeking appointment as a receiver ;
- (d) the grantor ;
- (e) the grantee,
- (f) a person with an interest in the property in receivership ;

- (g) a creditor of the grantor ;
- (h) a guarantor of an obligation of the grantor ;
- (i) a liquidator of the grantor;
- (j) a receiver of the property of a grantor, in relation to a failure to comply by another receiver of the property of the grantor.

(2) No application may be made to the court under paragraph (j) of subsection (1) in relation to a failure to comply, unless notice of such failure to comply has been served on the receiver not less than five working days before the date of the application and , as at the date of the application, there is a continuing failure to comply.

(3) Where the court is satisfied that there is or has been a failure to comply, the court may —

- (a) relieve the receiver of the duty to comply, wholly or in part ; or
- (b) without prejudice to any other remedy that may be available in relation to a breach of duty by the receiver, order the receiver to comply to the extent specified in the order.

(4) The court may in respect of a person who fails to comply with an order made under paragraph (b) of subsection (3), or is or becomes disqualified under section 436 to become or remain a receiver —

- (a) remove the receiver from office ; or
- (b) order that the person may be appointed to act or may continue to act as a receiver, notwithstanding the provisions of section 436.

(5) If it is shown to the satisfaction of the court that a person is unfit to act as a receiver by reason of —

- (a) persistent failures to comply ; or
- (b) the seriousness of a failure to comply,

the court shall make in relation to that person, a prohibition order for a period not exceeding five years.

(6) A person to whom a prohibition order applies shall not—

- (a) act as a receiver in any receivership ;
- (b) act as a liquidator in any winding up ; or
- (c) act as an administrator under Part XIII.

(7) In making an order under this section, the court may, if it thinks fit —

- (a) make an order extending the time for compliance ;
- (b) impose any term or condition ;
- (c) make any other ancillary order.

(8) A copy of every order made under subsection (5) shall, within ten working days of the order being made, be delivered by the applicant to the Registrar who shall keep it on a public file indexed by reference to the name of the receiver concerned.

(9) Evidence that on two or more occasions within the preceding five years —

- (a) a court has made an order to comply under this section in respect of the same person ; or

- (b) an application for an order to comply under this section has been made in respect of the same person, and that in each case the person has complied after the making of the application and before the hearing,

is, in the absence of special reasons to the contrary, evidence of persistent failures to comply for the purposes of this section.

(10) For the purpose of this section, “failure to comply” in relation to a receiver means, a failure by a receiver to comply with a relevant duty, arising—

- (a) under the instrument or the order of the court by or under which the receiver was appointed ; or
- (b) under this or any other Act or rule of law or Rules of Court ; or
- (c) under any order or direction of the court, other than an order to comply made under that section,

and “comply”, “compliance”, and “failed to comply” shall have corresponding meanings.

**469.** The court may on making an order that removes or has the effect of removing a receiver from office, make such orders as it thinks fit —

Orders  
protecting  
property in  
receivership.

- (a) for preserving the property in receivership ;
- (b) requiring the receiver for that purpose to make available to any person specified in the order, any information and documents in the possession or under the control of the receiver.

## REFUSAL TO SUPPLY ESSENTIAL SERVICES

Refusal to  
supply essential  
services  
prohibited.

**470.** (1) For the purposes of this section, an “essential service” means —

- (a) the retail supply of electricity ;
- (b) the supply of water ; and
- (c) telecommunications services.

(2) Notwithstanding the provisions of any other written law to the contrary or any contract, a supplier of an essential service shall not —

- (a) refuse to supply the service to a receiver or to the owner of property in receivership, by reason of the grantor’s default in paying charges due for the service in relation to a period before the date of the appointment of the receiver ; or
- (b) make it a condition of the further supply of the service to a receiver or to the owner of property in receivership, that payment be made of outstanding charges due for the service in relation to a period before the date of the appointment of the receiver.

(3) For the avoidance of doubt, nothing in this section shall prevent the supplier of an essential service from exercising any right or power under any contract or under any written law, in respect of a failure by a company to pay charges due for the service in relation to any period, after the commencement of the liquidation.

PART XVI

REGISTRAR-GENERAL OF COMPANIES AND REGISTRATION

APPOINTMENT OF OFFICERS

**471.** (1) There may be appointed—

Appointment of  
officers.

- (a) a person by name or by office, to be or to act as the Registrar-General of Companies ;
- (b) persons by name or by office, to be or to act as Deputy Registrar-Generals of Companies ;
- (c) persons by name or by office, to be or to act as Assistant Registrar-Generals of Companies ; and
- (d) such other officers and servants as may from time to time be required for the purposes of this Act.

(2) Any person appointed under subsection (1) as a Deputy Registrar-General of Companies or an Assistant Registrar-General of Companies may, subject to the general directions of the Registrar, exercise all the powers, perform all the duties and discharge all the functions of the Registrar under this Act.

**472.** (1) A person who is aggrieved by an act or decision of the Registrar may appeal to the court within fifteen working days after the date of receiving notice of the act or decision, or such further time as the court may allow.

Appeals from  
Registrar's  
decisions.

(2) The court may on an appeal made under this section, confirm, revise, modify or set aside the act or decision against which the appeal is made and make any order as the interest of justice may require.