



A creditor's guide to administrative receivership

March 2023

A licensed insolvency practitioner ('IP') has given you this because you, or your business, may be owed money by a company in administrative receivership ('ADR').

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 England and Wales. 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 IP or solicitor.

We hope that you will read this guide carefully and consider whether taking an active role as a creditor in this case would benefit you or your business.

What is administrative receivership?

Significant reform to the administrative receivership process was introduced in law by the Enterprise Act 2002 following which the scope of administrative receivership has been much diminished. Broadly, an IP can now only be appointed as the administrative receiver in respect of a floating charge that was created prior to 15 September 2003 which, for the purpose of this guide will be referred to as pre-Enterprise Act charges ('pre-EA').

When a company breaches the terms of its borrowing from a creditor with a pre-EA floating charge, or in other circumstances set out in the charge, that creditor may appoint an administrative receiver (who must be a licensed IP) to recover the money it is owed.

What can an administrative receiver do?

An administrative receiver has extensive powers to deal with the charged assets. The administrative 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 administrative receiver pay trade creditors the money they are owed?

No. The administrative receiver does not make payments to unsecured creditors in respect of the money owed to them prior to appointment. An administrative receiver's main function is to recover sufficient funds to pay the costs of the receivership, the preferential creditors and the charge holder. 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 & 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 administrative receiver bound by contracts made by the company prior to the appointment?

Generally, the administrative 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 administrative receiver liable for sums due under contracts made after his appointment?

Administrative receivers are not personally liable where they have disclosed that they are acting as agent for the company and expressly excluded any personal liability.

The administrative 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 administrative receiver normally notifies all known creditors of the appointment within 28 days and must report to creditors within three months of the appointment. The report should provide details relating to their 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.

Can the unsecured creditors form a creditors' committee?

Yes, although in practice, they are rarely established in an administrative receivership.

The report referred to above, should also include a notice inviting creditors to decide if they want to form a committee and invite nominations for the committee to be delivered to the administrative receiver. A creditors' committee may be appointed 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.

Creditors' committee members are not paid.

R3 has produced a separate guide explaining insolvency creditors' committees, which is available [here](#) or from the person who gave you this guide.

Does the appointment of an administrative 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.

Does administrative receivership automatically end when the company goes into liquidation?

No. A company can be in administrative 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 administrative receivership complete?

The administrative receivership is complete when the pre-EA floating charge holder has been paid in full or when the administrative receiver has sold all the assets and distributed the proceeds. They

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 (if there is one).

How is the administrative receiver's fee determined?

The pre-EA floating charge holder agrees the administrative 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 administrative receiver's handling of the case?

You should first contact the administrative receiver to try to resolve the problem. If you are still not satisfied, you can submit a complaint to the IP's regulator via the [Insolvency Service complaints portal](#).

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 Institute of Chartered Accountants in England and Wales

Tel: 01908 248 250 www.icaew.com

The Insolvency Practitioners Association

Tel: 0330 122 5237 www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland

Tel: 0131 347 0100 www.icas.com

Chartered Accountants Ireland (CAI)

Tel: 00 353 1 637 7200 www.charteredaccountants.ie

Disclaimer

Information in this guide is intended to provide an overview only and relates to administrative receivership in England and Wales. It is not a replacement for seeking advice specific to your circumstances