

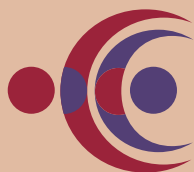


# Liquidators, Receivers and Examiners

Their duties and powers



## A quick guide



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement



**Plain English**

Approved by NALA



## Introduction

We have produced this information booklet to explain the powers, duties and responsibilities of liquidators, receivers and examiners under the Companies Acts.

## What are liquidations, receiverships and examinerships?

The liquidation of a company is also known as ‘winding up’ a company. The process takes the company out of existence in an orderly way by paying debts from any available assets.

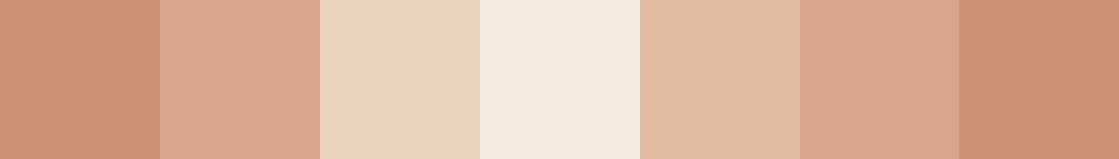
Receivership is used by banks or other lenders to sell a company asset that was promised to them if the company failed to repay its loan as agreed.

Examinership is a process that protects a company from its creditors (the people to whom it owes money) while efforts are being made to keep it running as a going concern.

## What are liquidators, receivers and examiners?

A liquidator is the person who winds up a company.

A receiver is the person who sells particular company assets on behalf of a lender. Where a loan is secured on a company’s entire business, a ‘receiver manager’ can be appointed as manager of the business during the receivership. Once a receiver raises enough money to pay back the debt, their job is finished.



Examiners consider if a company can be saved and, if it can, they prepare the rescue plan.

## Who can act as liquidators, receivers or examiners?

Liquidators, receivers and examiners do not need to have any specific qualifications under the law. However, they are usually practising accountants.

To make sure that liquidators, receivers and examiners work independently of the company, they cannot be:

- a director or employee of the company; or
- a family member, partner or employee of a director.

In addition, bankrupts are prohibited from being liquidators, receivers or examiners until they have repaid their debts or until a court excuses them from paying those debts. People may also be disqualified from acting as liquidators, receivers or examiners for a certain period if a court has found them guilty of fraud or serious misconduct.

## What is the effect of liquidation, receivership and examinership?

Companies keep their legal status when in liquidation, receivership or examinership.

When a company is in liquidation, the liquidator usually takes over the powers of the directors. In practice, the company's activities stop unless it is required to assist in the winding up process.

In receivership, the company's powers and the authority of its directors are suspended in relation to the assets affected by the receivership. The directors can only use those powers with the receiver's permission.

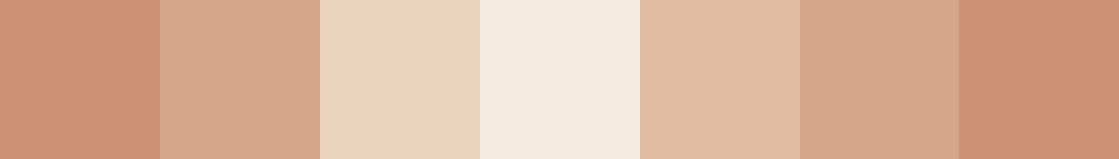
In examinership, the company's directors keep their management functions unless the High Court orders otherwise. However, the main effect of an application for examinership is that, for about 70 days:

- a liquidator or receiver cannot be appointed to the company;
- creditors cannot act to recover their debts without High Court consent; and
- no one can take legal proceedings against the company without the Court's consent.

## How are liquidators, receivers or examiners appointed?

The High Court may order the appointment of a liquidator at the request of a creditor. After that, the Court supervises the liquidation with the help of a court officer called the examiner. This process is generally known as a compulsory liquidation.

In a voluntary liquidation, the members decide to liquidate the company. A members' voluntary liquidation usually occurs in relation to a solvent company – one that can pay its debts as they fall due.



A creditors' voluntary liquidation is supervised by the creditors as a group and applies to an insolvent company – one that cannot pay its debts as they fall due.

A debenture is a written acknowledgement by a company that a debt is owed. Most debentures allow the lender to appoint a receiver if the company fails to pay back the loan as agreed. The High Court can also appoint a receiver if asked by a creditor.

The High Court may appoint an examiner if it is satisfied (after giving each interested creditor an opportunity to be heard) that there is a reasonable chance that the company, or part of it, can survive as a going concern. To qualify, the company must not be in receivership for more than three days or in liquidation.

A company or a person connected with it (such as a director or creditor) may apply to the Court to appoint an examiner.

That application must contain:

- an independent accountant's report outlining the state of the company's affairs;
- the result of any investigations carried out on its prospects for survival;
- the steps, including arrangements with creditors, that may be needed to make the company viable;

- details of the funds needed for the company to continue trading during the period when it is protected from its creditors; and
- recommendations as to which of the company's current debts should be paid.

## What are the duties and powers of liquidators?

### Duties

The main duties of liquidators are to:

- take possession of company property, including its books and records;
- list the people who are owed money and how much they're owed;
- list the people who must contribute to the company's assets on its winding up and how much they have to pay;
- investigate the company's affairs;
- sell the company's assets;
- pay the company's debts in the order the law states;
- give any remaining money to the members in line with their entitlements; and
- report any suspected criminal offence by the company, a past or present officer (director, secretary, and so on) or any member to the Office of the Director of Corporate Enforcement (ODCE) and the Director of Public Prosecutions.

If the company is insolvent, liquidators must also:

- apply to the High Court to restrict each of the directors from being involved in certain other companies unless the ODCE tells them not to; and
- within six months of being appointed, give the ODCE a report about the company directors' conduct in the 12 months before the liquidation.

When a voluntary liquidation is completed, the liquidator must:

- write a report on the winding up;
- call a general meeting of the members;
- call a creditors' meeting if it is a creditors' voluntary liquidation; and
- deliver their report to the Companies Registration Office (CRO) ([www.cro.ie](http://www.cro.ie)).

In a voluntary liquidation, the company will no longer exist three months after the final returns are filed.

In a compulsory liquidation, the High Court will order that the company be dissolved after the examiner has certified that the company's affairs have been satisfactorily wound up. The liquidator must file notice of this order with the CRO.

## Powers

In general, liquidators can:

- sell any company property;
- process all necessary documents on the company's behalf;
- mortgage the company's assets; and
- appoint agents to do any work that liquidators cannot do.

Liquidators can also seek High Court orders to have company directors examined, have property returned to the company and take other measures to assist the liquidation. They can also cancel loss-making contracts.

## What are the duties and powers of receivers?

### Duties

The main duties of receivers are to:

- get the best price for the property being sold (if necessary by getting advice from an independent expert on the best sale option); and
- distribute the money raised from the sale of assets. Creditors who are ranked in law as having the highest priority are paid first. Then, if they have not been paid already, the creditor who appointed the receiver is paid. If, however, the asset being sold was reserved for the loan in question, the money need only be given to the creditor who appointed the receiver.



Receivers must also:

- send a report on the progress of the receivership to the CRO every six months; and
- report any suspected criminal offence by the company, a past or present officer or any member to the Director of Public Prosecutions.

## Powers

If the receiver is appointed by the High Court, their powers will be outlined in the Court order. Usually, they are given authority to take control of and sell relevant company assets.

If a receiver is appointed under a loan agreement, their powers are generally set out in the agreement. They are usually given authority to act on behalf of the company to arrange for the sale of the relevant assets.

Receivers can also seek High Court orders to return company property, freeze directors' assets and take other measures to assist the receivership.

## What are the duties and powers of examiners?

### Duties

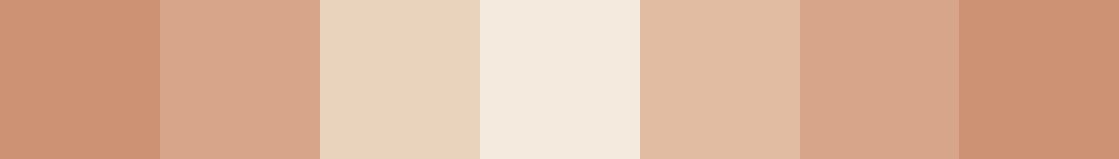
The main duty of examiners is to develop a rescue plan (known as a 'scheme of arrangement') for the company and to carry out any other tasks specified by the High Court.

Within 35 days of their appointment, examiners must tell the Court if they have been able to prepare proposals for the rescue plan. If they haven't been able to do this, the Court may order that the company be wound up or that the examiner be given more time to prepare proposals or seek approval for them.

The proposals in the rescue plan must treat each type of member and creditor equally unless the holder of a particular claim agrees to less favourable treatment. The rescue plan must:

- identify each type of member and creditor and say how the plan will treat them;
- indicate how the plan will be put in place;
- identify positive changes to the company's management or direction;
- identify positive changes to the company's constitution;
- list the company's assets and liabilities;
- estimate the financial outcome for each type of member and creditor if the company were wound up; and
- outline any other matters that the examiner thinks are appropriate.

The examiner seeks approval of the rescue plan at meetings of each type of member and creditor. If at least one type of creditor accepts the plan, the examiner can bring it before the Court. The Court can then confirm it, with or without changes, or reject it after hearing the views of each interested member and creditor. If the Court confirms the plan, the proposals in it are binding on everyone concerned.



The examiner also has a duty to notify the CRO of their appointment and of the Court's confirmation of the proposed rescue plan.

## Powers

In general, examiners have the right to:

- access the company's books and accounts, including those held by its agents (accountants, bankers and so on);
- convene and attend any general meetings or directors' meetings; and
- cancel any decisions or contracts that might lose money for the company or any interested party.

Examiners can also seek High Court orders to have the directors' powers transferred to them, including the power to sell company assets, to retrieve company property and to make decisions relevant to the examinership.

## Conclusion

A more detailed information book on liquidators, receivers and examiners is available under Decision Notice D/2002/1 from [www.odce.ie](http://www.odce.ie). Guidance is also available there on the liquidator's duty to report to the ODCE on the conduct of directors in the 12 months before the liquidation of an insolvent company.

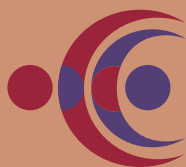


## Notes



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