

# 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

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## About this guide

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We have produced this quick guide to explain some of the legal duties of liquidators, receivers and examiners under the Companies Act.

## What are liquidations, receiverships and examinerships?

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**Liquidation** – this process brings a company to a legal end. The company stops all activities, pays off its debts from any available assets and winds up in an orderly way.

**Receivership** – this process is used by banks or other lenders to sell a company asset (such as a property) which was promised to them if the company failed to repay its loan as agreed.

**Examinership** – this process protects a company from its creditors (the people or companies to whom it owes money) while efforts are made to keep it running as a going concern.

## What are liquidators, receivers and examiners?

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**Liquidator** – this is someone appointed by a company, creditor or court to wind up a company.

**Receiver** – this is someone appointed by a bank or lender to take over an asset given by a company as security (a guarantee) for a loan. When the security is the company's entire business, a 'receiver manager' can be appointed to manage the business during the receivership. Once a receiver raises enough money to pay back the debt, their job is finished.

**Examiner** – this is someone appointed by a court to examine the company and see if it can be saved and, if so, to prepare a rescue plan.

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

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People can be appointed as liquidators if they meet one of the following conditions:

- they are a member of an accountancy body approved by the Irish Auditing and Accounting Supervisory Authority (IAASA), and hold an up-to-date practising certificate from that body; or
- they are a practising solicitor and hold an up-to-date practising certificate from the Law Society of Ireland; or
- they are a member of a professional body recognised by the Irish Auditing and Accounting Supervisory Authority (IAASA) and are authorised to act as a liquidator; or
- they are qualified under the laws of another European Economic Area<sup>1</sup> (EEA) state to act as a liquidator in insolvency proceedings in Ireland; or
- they have practical experience and relevant knowledge of winding-up a company and are authorised by IAASA to act as a liquidator.

A person qualified to be a liquidator is also qualified for appointment as a receiver and examiner.

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<sup>1</sup> The EEA includes the European Union, Iceland, Norway and Liechtenstein.

## Who cannot act as liquidators, receivers or examiners?

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Directors, employees and their near relations are not allowed to act as liquidators, receivers and examiners even if they are qualified to do so. This is to protect the independence of their work.

In addition, the following people cannot act as liquidators, receivers or examiners:

- people who are bankrupt until their debts are paid or a court excuses them from paying those debts; or
- a disqualified person – this is someone that a court has found guilty of fraud or serious misconduct and has disqualified from acting as a director for a certain time.

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

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Companies keep their legal status and power when in liquidation, receivership or examinership until the company is dissolved (wound up).

### **Liquidation**

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

## Receivership

When a company is in receivership, its powers and the authority of its directors are suspended in relation to the assets that the company gave as security for loans. The directors can only use those powers with the receiver's permission.

## Examinership

When a company is in examinership, its directors may continue to act as managers unless a court says they cannot. Examinership lasts for about 70 days, and during that period:

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

This period gives the examiner time to see if the company can be saved.

## How are liquidators, receivers or examiners appointed?

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### Liquidators

Liquidators can be appointed by:

- the members (owners);
- creditors; or
- the court.

If the members appoint a liquidator, it is known as a voluntary liquidation. This type of liquidation usually involves a solvent company – one that can pay its debts as they fall due.

If the creditors appoint a liquidator, it is called a creditors' voluntary liquidation and the creditors as a group supervise the liquidation. This type of liquidation involves an insolvent company – one that cannot pay its debts as they fall due.

If a court appoints a liquidator, it is called an official (or compulsory) liquidation. In this type of liquidation, the court supervises the liquidation with the help of a specially appointed court officer. A creditor may ask the court to appoint a liquidator.

### **Receiver**

Most loan agreements allow the lender to appoint a receiver if the company fails to pay back the loan as agreed. The court can also appoint a receiver if asked by a creditor.

### **Examiner**

The court may appoint an examiner if it believes (after listening to each interested creditor) that there is a reasonable chance of saving the company, or part of it. To qualify for examinership, the company must not be:

- in receivership for more than three days; or
- in liquidation.

A company, director or creditor may ask the court to appoint an examiner. The application must contain:

- an independent auditor's report outlining the financial state of the company;
- the results of any investigations carried out on the company's prospects for survival;
- the steps, including arrangements with creditors, that may be needed to make the company viable (able to survive as a going concern);
- details of the funds needed for the company to continue trading during the time it is protected from its creditors; and
- a recommendation as to which of the company's current debts should be paid.

## What duties and powers do liquidators have?

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### Duties

The main duties of liquidators are to:

- take possession of company property including its financial 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 (see page 9);

- give any remaining money to the members in line with their entitlements;
- report any suspected criminal offence by the company, a past or present director or company secretary, 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:

- give the ODCE – within six months – a report about the company directors’ conduct in the period leading up to the liquidation, and
- ask the Court to restrict the directors for a certain time from being involved in other companies.

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
- give a report to the Companies Registration Office (CRO) ([www.cro.ie](http://www.cro.ie)).

In a voluntary liquidation, the company will cease to exist three months after the final documents are filed with the CRO.

In a compulsory liquidation, the court will order that the company be dissolved (shut down) after the court-appointed official has certified that the company’s affairs have been satisfactorily wound up. The liquidator must give a copy of this order to the CRO.

## Powers

In general, liquidators can:

- sell any company property;
- process all necessary documents on the company's behalf;
- mortgage (loan secured against company property) the company's assets;
- appoint agents to do any work the liquidators cannot do;
- ask the court to have company directors examined (questioned before the court about the affairs of the company), property returned to the company and any other necessary measures taken to help the liquidation; and
- cancel loss-making contracts.

## What duties and powers do receivers have?

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### Duties

The main duties of receivers are to:

- get the best price for the property or other assets being sold (if necessary, they should get advice from an independent expert on the best sale option);
- share out the money raised from the sale of assets **in the order the law specifies**:
  - money goes first to a person who has security over the asset,
  - any remaining money goes to the creditors who are ranked in law as having the highest priority, and
  - the creditor who appointed the receiver is paid – if they haven't already been paid;

- 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 director or company secretary, or any member to both the ODCE and the Director of Public Prosecutions.

### **Powers**

If the receiver is appointed by the court, the court will decide their powers. Usually, receivers are given the power to take control of and sell relevant company assets.

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

Receivers can also ask for court orders to return company property, freeze directors' assets and take any other measures needed to assist the receivership.

## **What duties and powers do examiners have?**

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### **Duties**

The main duty of examiners is to put together a rescue plan (known as a 'scheme of arrangement') for the company.

Within 35 days of their appointment, examiners must tell the court if they have been able to prepare proposals for a rescue plan.

If they haven't been able to do this, the court may order that:

- the company be wound up; or
- 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 either agrees to less favourable treatment.

The rescue plan must:

- list each type of member and creditor of the company;
- list any class of members and creditors whose interest or claim will be reduced;
- list any class of members and creditors whose interest or claim will not be reduced;
- describe how the plan will be put in place;
- specify what changes should be made to the management or direction of the company;
- specify any changes needed to the company's constitution;
- specify the company's assets and liabilities;
- estimate the financial outcome for each type of member and creditor if the company is wound up; and
- outline any other matters that the examiner thinks are relevant.

The examiner must hold meetings of each type of member and creditor to get approval of the rescue plan. If at least one type of creditor accepts the plan, the examiner can bring the plan before the court. The court will give each member and creditor an opportunity to give their views, and then the court will:

- confirm the plan; or
- make changes to the plan; or
- reject the plan.

If the court confirms the plan, everyone involved must accept it.

The examiner must also:

- tell the CRO of their appointment;
- tell the CRO the status of the rescue plan; and
- send a copy of the plan to the ODCE.

## **Powers**

In general, examiners have the right to:

- access the company's financial records and accounts including those held by the company's agents (such as accountants, bankers, and so on);
- call and attend any general meetings or directors' meetings;
- cancel any decisions or contracts which might lose money for the company, its creditors or its members; and
- ask the court to transfer the directors' powers to them, including the power to sell company assets, take back company property, and make decisions relevant to the examinership.

## **Where can I get more information?**

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You can find more detailed information on liquidators, receivers and examiners on our website, [www.odce.ie](http://www.odce.ie).

If you are a business and are unsure about the procedures for liquidators, receivers and examiners and what you need to do under the law, you should get independent professional advice.

## **Disclaimer**

This Quick Guide sets out some of the basic legal duties of liquidators, receivers and examiners. It is not a legal interpretation of any part of the Companies Act. The Director of Corporate Enforcement accepts no responsibility or liability for any errors, inaccuracies or omissions in this guide.



Oifig an Stiúirthóra um  
Fhorfheidhmiú Corparáideach

Office of the Director  
of Corporate Enforcement

*For Further Information contact:*

✉ Office of the Director  
of Corporate Enforcement  
16 Parnell Square  
Dublin 1  
Ireland

☎ 01 858 5800  
Lo-call 1890 315 015

☎ 01 858 5801

@ info@odce.ie

🌐 www.odce.ie

*Tá leagan Gaeilge den leabhrán seo ar fáil  
An Irish version of this booklet is available*