

# **An Overview of Receiverships**

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## **AN OVERVIEW OF RECEIVERSHIPS**

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### **INTRODUCTION**

In light of continuing economic uncertainty, combined with the frequent use of secured credit, companies and their stakeholders are increasingly finding themselves immersed in and affected by insolvency proceedings, and in particular, receiverships. As a result, legal counsel are being called upon to provide advice to receivers, debtors, employees and pension beneficiaries, suppliers, landlords, and secured and unsecured creditors impacted by the commencement of receivership proceedings.

Although the range of potential issues facing stakeholders in a receivership context are difficult to capture in a summary fashion, this paper will canvass some of the fundamentals of receiverships, including the common law and statutory sources of receiverships, the differences between a privately-appointed receiver and a court appointed receiver, and the role of receivers. It will also address the rights of certain stakeholders in a receivership, such as landlords and unpaid suppliers. Finally, it will provide some tips and tools for practitioners acting as counsel to one of the various stakeholders in a receivership.

### **RECEIVERSHIPS – OVERVIEW AND BACKGROUND**

Receivership law has been historically divided between the law governing court-appointed receivers and privately appointed receivers. Private appointments arose as a more expedient and less expensive procedure by which secured creditors could enforce their security. The receiver acted as an agent for the secured creditor to collect outstanding debts, and was not required to consider the interests of other stakeholders of the debtor. Although private receiverships continue to occur, recent legislative amendments have resulted in, courts playing a more active role in regulating both types of receiverships and balancing the interests of multiple parties. In that regard, receivership proceedings have become more akin to other collective insolvency proceedings.

One of the challenges of receivership law, unlike bankruptcy or restructuring under the *Companies' Creditors Arrangement Act*<sup>1</sup> or the *Bankruptcy and Insolvency Act*<sup>2</sup>, are the various and sometimes

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<sup>1</sup> R.S.C. 1985, c. C-36 [CCAA].

<sup>2</sup> R.S.C. 1985, c. B-3, s. 244(1) [BIA].

overlapping layers of governing statutes. In Alberta, a receiver may be appointed pursuant to the *Judicature Act*<sup>3</sup>, the *Business Corporations Act*<sup>4</sup>, the *Personal Property Security Act*<sup>5</sup> and the *Bankruptcy and Insolvency Act*<sup>6</sup>. Some elements of receivership are not addressed in the applicable legislation; therefore, reference must be made to applicable case law, the terms of the security agreement (in the case of a privately appointed receiver) or court orders made in the course of receivership (in the case of a court-appointed receiver).

Receiverships may be commenced by creditors for a variety of reasons, such as a desire to replace ineffective management, enforcing a security interest through the services of an experienced insolvency professional, or facilitating a sale of the business as a going concern rather than on a piecemeal basis.

Before commencing any receivership proceedings, a secured creditor must give notice of its intention to enforce its security pursuant to s. 244(1) of the BIA. The secured creditor is not permitted to enforce the security until the expiry of ten days after the notice is sent, unless the debtor consents to an earlier enforcement of the security.<sup>7</sup> After receiving the notice, the debtor may respond by commencing restructuring proceedings under the CCAA or the BIA.

Only trustees licensed by the Office of the Superintendent of Bankruptcy may be appointed as receivers, whether court-appointed or privately appointed.

Both court-appointed and privately appointed receivers are under an obligation to report on its activities and provide information to various stakeholders.

## **COURT-APPOINTED RECEIVER VS. PRIVATELY APPOINTED RECEIVER**

### **Court-Appointed Receiver**

A creditor may apply to a court for the appointment of a receiver. A creditor may also apply to a court to have a privately appointed receiver converted to a court-appointed receiver. The moving creditor must determine under which statute to seek the appointment. As discussed above, in Alberta a

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<sup>3</sup> R.S.A. 2000, c. J-2.

<sup>4</sup> R.S.A. 2000, c. B-9, s. 99.

<sup>5</sup> R.S.A. 2000, c. P-7, s. 65(7).

<sup>6</sup> R.S.C. 1985, c. B-3, s. 244(1) [BIA].

<sup>7</sup> BIA, ss. 244(2) and 244(2.1).