

**Supplying a Company that is in Receivership**

What should you do, as a supplier of goods or services where your customer is placed into receivership? How does the receivership affect a landlord which has granted a lease to a company that has gone into receivership?

**Cash on Delivery (COD)**

A supplier's natural response to a customer going into receivership is to insist that all further supplies are made on a cash on delivery basis. This will cure most worries, but two remain:

1. the supplier continues to be exposed to non-payment for goods that have not yet been supplied but for which purchase orders have been received and relied on by the supplier in entering them in its production cycle;
2. a liquidator appointed to the company may seek to clawback payments that have been paid to you in the "specified period" (generally 6 months) preceding liquidation. A liquidator may do so where the payments made to you establish a preference ahead of other creditors.

**Terms of Trade Overcome these Concerns**

A supplier's protection in these respects resides in its terms of trade with the receiver. Specifically, personal liability of the receiver will protect a supplier against:

1. non-payment for goods ordered; and
2. clawback of amounts paid to the supplier at the instigation of a subsequently appointed liquidator to the customer.

A receiver is, by law, personally liable for contracts entered into during the period of receivership. However, many receivers seek to limit their personal liability either altogether or to the available assets of the company as receivers are entitled to do by section 32(2) of the Receiverships Act. A supplier who accepts this is then absolutely exposed where the receiver realises the assets of the company and returns the proceeds to the secured creditor that appointed the receiver. In that case, there will be no assets of the company for you, as an unpaid supplier, to call on, leaving you out of pocket.

For these reasons, it is critical that you as a supplier do not agree to forgo your rights to hold a receiver personally liable to you. A receiver's own protection lies in its indemnity from his or her appointing creditor and this indemnity is what in effect offers you, as a supplier, protection.

Where a receiver refuses to trade with you other than on the basis of no personal liability one option may be for the receiver to put funds in an escrow account with your solicitor and to limit the receiver's liability to the funds in that account. Alternatively, you might agree to limit your liability to the assets of the company but subject to an exception that no reduction in the receiver's liability is to be made for amounts returned to its appointing creditor.

**Position of Landlord**

The position of a landlord is different. Inevitably the lease will have been entered into pre-receivership. The receiver is personally liable for rent and other outgoings under the lease from the date that is 14 days after the receiver's appointment. Where the receiver does not pay the rent the receiver is personally liable. For rental arrears (pre-receivership) the landlord has the usual rights to terminate the lease using the procedures in the Property Law Act, which require a reasonable period of notice to be given.

**Other Factors**

Unlike a voluntary administration, a receivership does not trigger a moratorium of the company's debts. There is therefore the risk that another creditor will pursue the company into liquidation and this will trump any agreement you may have reached with a receiver to continue to supply the company. In that event the risk of a clawback by a liquidator as referred to above is high and you must be sure to circumvent it by enduring that the receiver is personally liable to you in its trading arrangements with you.

A receivership does not automatically cause pre-receivership contracts to end. You may wish to terminate the contract yourself in reliance on any express default provisions for insolvency or you may repudiate it where there are no such express terms. Equally the receiver may elect to do that.

Retention of title and creation of security interests in goods supplied are essential. These permit protection under the PPSA by way of a PMSI and I expect you are fully apprised of them.

As always, feel free to contact me if I can help.