PART 49 Court’s Power To Appoint A Receiver

PART 49

Scope of this Part and interpretation 49.1 - 49.2

49.1

This Part contains provisions about the Court’s power to appoint a receiver .

49.2

In this Part ‘receiver’ includes a manager.

Court’s power to appoint receiver 49.3 - 49.7

49.3

The Court’s powers to appoint a receiver are set out in:

(1) Article 25 of the Court Law 2004;

(2) Article 92(3) of the Regulatory Law 2004;

(3) Article 136 of the Companies Law (Amended and Restated) 2006;

(4) Article 12.8 of the Companies Regulations; and

(5) Articles 42(1) and 46 of the Law of Damages and Remedies 2005.

49.4

The Court may appoint a receiver :

(1) before proceedings have started;

(2) in existing proceedings; or

(3) on or after judgment .

49.5

The Court will normally only consider an application for the appointment of a receiver before proceedings are started after notice of the application has been served.

49.6

Where a judgment creditor applies for the appointment of a receiver as a method of enforcing a judgment , in considering whether to make the appointment the Court will have regard at all times to:

(1) the sum owed;

(2) the likelihood of making a substantial recovery; and

(3) the cost of appointing the receiver .

49.7

The Court may at any time:

(1) terminate the appointment of a receiver ; and

(2) appoint another receiver in his place.

How to apply for the appointment of a receiver 49.8 - 49.13

49.8

An application for the appointment of a receiver :

(1) may be made without notice; and

(2) must be supported by written evidence.

49.9

If a person applies at the same time for:

(1) the appointment of a receiver ; and

(2) a related injunction ,

he must use the same claim form or application notice for both applications.

49.10

The written evidence in support of an application for the appointment of a receiver must:

(1) explain the reasons why the appointment is required;

(2) give details of the property which it is proposed that the receiver should get in or manage, including estimates of:

(a) the value of the property; and

(b) the amount of income it is likely to produce;

(3) if the application is to appoint a receiver by way of equitable execution, give details of:

(a) the judgment which the applicant is seeking to enforce;

(b) the extent to which the debtor has failed to comply with the judgment ;

(c) the result of any steps already taken to enforce the judgment ; and

(d) why the judgment cannot be enforced by any other method; and

(4) if the applicant is asking the Court to allow the receiver to act:

(a) without giving security; or

(b) before he has given security or satisfied the Court that he has security in place;

explain the reasons why that is necessary.

49.11

In addition, the written evidence should normally identify an individual whom the Court is to be asked to appoint as receiver (‘the nominee’), and should:

(1) state the name, address and position of the nominee;

(2) include written evidence by a person who knows the nominee, stating that he believes the nominee is a suitable person to be appointed as receiver , and the basis of that belief; and

(3) be accompanied by written consent, signed by the nominee, to act as receiver if appointed.

49.12

If the applicant does not nominate a person to be appointed as receiver , or if the Court decides not to appoint the nominee, the Court may:

(1) order that a suitable person be appointed as receiver ; and

(2) direct any party to nominate a suitable individual to be appointed.

49.13

A party directed to nominate a person to be appointed as receiver must file written evidence containing the information required by Rule 49.11 and accompanied by the written consent of the nominee.

Service of order appointing receiver 49.14

49.14

An order appointing a receiver must be served by the party who applied for it on:

(1) the person appointed as receiver ;

(2) unless the Court orders otherwise, every other party to the proceedings; and

(3) such other persons as the Court may direct.

Court’s directions 49.15 - 49.17

49.15

The Court may give directions to the receiver when it appoints him or at any time afterwards.

49.16

The Court will normally, when it appoints a receiver , give directions in relation to security.

49.17

Other matters about which the Court may give directions include:

(1) whether, and on what basis, the receiver is to be remunerated for carrying out his functions;

(2) the preparation and service of accounts;

(3) the payment of money into Court ; and

(4) authorising the receiver to carry on an activity or incur an expense.

Security 49.18 - 49.22

49.18

The Court may direct that before a receiver begins to act or within a specified time he must either:

(1) give such security as the Court may determine; or

(2) file and serve on all parties to the proceedings evidence that he already has in force sufficient security;

to cover his liability for his acts and omissions as a receiver .

49.19

An order appointing a receiver will normally specify the date by which the receiver must:

(1) give security; or

(2) file and serve evidence to satisfy the Court that he already has security in force.

49.20

Unless the Court directs otherwise, security will be given by a guarantee.

49.21

Where the Court has given directions about giving security, then a guarantee should be prepared in a form, and entered into with a bank or insurance company, approved by the Court .

49.22

The Court may terminate the appointment of the receiver if he fails to:

(1) give the security; or

(2) satisfy the Court as to the security he has in force, and

(3) by the date specified.

Receiver’s application for directions 49.23 - 49.27

49.23

The receiver may apply to the Court at any time for directions to assist him in carrying out his function as a receiver .

49.24

The Court , when it gives directions, may also direct the receiver to serve on any person:

(1) the directions; and

(2) the application for directions.

49.25

An application by a receiver for directions may be made by filing an application notice in accordance with Part 23.

49.26

If the directions sought by the receiver are unlikely to be contentious or important to the parties, he may make the application by letter, and the Court may reply by letter. In such cases the receiver need not serve his letter or the Court’s reply on the parties, unless the Court orders him to do so.

49.27

Where a receiver applies for directions by letter, the Court may direct him to file and serve an application notice .

Receiver’s remuneration 49.28 - 49.35

49.28

A receiver may only charge for his services if the Court:

(1) so directs; and

(2) specifies the basis on which the receiver is to be remunerated.

49.29

The Court may specify:

(1) who is to be responsible for paying the receiver ; and

(2) the fund or property from which the receiver is to recover his remuneration.

49.30

If the Court directs that the amount of a receiver’s remuneration is to be determined by the Court:

(1) the receiver may not recover any remuneration for his services without a determination by the Court ; and

(2) the receiver or any party may apply at any time for such a determination to take place.

49.31

Unless the Court orders otherwise, in determining the remuneration of a receiver the Court shall award such sum as is reasonable and proportionate in all the circumstances and which takes into account:

(1) the time properly given by him and his staff to the receivership;

(2) the complexity of the receivership;

(3) any responsibility of an exceptional kind or degree which falls on the receiver in consequence of the receivership;

(4) the effectiveness with which the receiver appears to be carrying out, or to have carried out, his duties; and

(5) the value and nature of the subject matter of the receivership.

49.32

An application by a receiver for the amount of his remuneration to be determined must be supported by:

(1) written evidence showing:

(a) on what basis the remuneration is claimed; and

(b) that it is justified and in accordance with this Part; and

(2) a certificate signed by the receiver that he considers that the remuneration he claims is reasonable and proportionate.

49.33

The Court may, before determining the amount of a receiver’s remuneration:

(1) require the receiver to provide further information in support of his claim; and

(2) appoint an assessor under Part 31 to assist the Court .

49.34

The Court may refer the determination of a receiver’s remuneration to the Registrar.

49.35

Rules 49.28 to 49.34 do not apply to expenses incurred by a receiver in carrying out his functions. These are accounted for as part of his account for the assets he has recovered, and not dealt with as part of the determination of his remuneration.

Accounts 49.36 - 49.45

49.36

The Court may order a receiver to prepare and serve accounts.

49.37

A party served with such accounts may apply for an order permitting him to inspect any document in the possession of the receiver relevant to those accounts.

49.38

A party should not apply for an order under Rule 49.37 without first asking the receiver to permit inspection without an order.

49.39

Where the Court makes an order under Rule 49.37, it will normally direct that the receiver must:

(1) permit inspection within 7 days after being served with the order; and

(2) provide a copy of any documents the subject of the order within 7 days after receiving a request for a copy from the party permitted to inspect them, provided that party has undertaken to pay the reasonable cost of making and providing the copy.

49.40

Any party may, within 14 days of being served with the accounts, serve notice on the receiver :

(1) specifying any item in the accounts to which he objects;

(2) giving the reason for such objection; and

(3) requiring the receiver , within 14 days of receipt of the notice, either:

(a) to notify all the parties who were served with the accounts that he accepts the objection; or

(b) if he does not accept the objection, to apply for an examination of the accounts in relation to the contested item.

49.41

When the receiver applies for the examination of the accounts he must at the same time file:

(1) the accounts; and

(2) a copy of the notice served on him under Rule 49.40.

49.42

If the receiver fails to comply with Rule 49.40(3), any party may apply to the Court for an examination of the accounts in relation to the contested item.

49.43

At the conclusion of its examination of the accounts the Court will certify the result.

49.44

When the Court gives directions under Rule 49.36 for the receiver to prepare and serve accounts, it may:

(1) direct the receiver to prepare and serve accounts either by a specified date or at specified intervals; and

(2) specify the persons on whom he must serve the accounts.

49.45

A party should not apply for an order under Rule 49.37 permitting him to inspect documents in the possession of the receiver , without first asking the receiver to permit such inspection without an order.

Non-Compliance by receiver 49.46 - 49.48

49.46

If a receiver fails to comply with any Rule, Practice Direction or direction of the Court the Court may order him to attend a hearing to explain his non-compliance.

49.47

At the hearing the Court may make any order it considers appropriate, including:

(1) terminating the appointment of the receiver ;

(2) reducing the receiver’s remuneration or disallowing it altogether; and

(3) ordering the receiver to pay the costs of any party.

49.48

Where:

(1) the Court has ordered a receiver to pay a sum of money into Court ; and

(2) the receiver has failed to do so;

the Court may order him to pay interest on that sum for the time he is in default at such rate as it considers appropriate.

Application for discharge of receiver 49.49 - 49.50

49.49

A receiver or any party may apply for the receiver to be discharged on completion of his duties.

49.50

The application notice must be served on the persons who were required under Rule 49.14 to be served with the order appointing the receiver .

Order discharging or terminating appointment of receiver 49.51 - 49.52

49.51

An order discharging or terminating the appointment of a receiver may:

(1) require him to pay into Court any money held by him; or

(2) specify the person to whom he must pay any money or transfer any assets still in his possession; and

(3) make provision for the discharge or cancellation of any guarantee given by the receiver as security.

49.52

The order must be served on the persons who were required under Rule 49.14 to be served with the order appointing the receiver .