APPOINTMENT, POWERS, DUTIES AND LIABILITIES OF RECEIVERS

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This Project Paper Is Submitted In Partial Fulfillment Of The Requirements For Diploma In Law At MARA Institute Of Technology, Shah Alam

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Oktober 1987

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INTRODUCTION

a) General

Companies may be rescued by formal and informal compromises or arrangements with creditors. Constituent business may be preserved as going concerns by receivers or liquidators through various means including hiving-down. The failure or business and the dissolution of companies is an unevitable part of entrepreneurial activity. Thus one sees large companies such as Rolls Royce, International Harvester, and Carrian going to the wall, and recently in Singapore Lee Wah Cane, Lamipak, Pan Electric and assorted retailers, manufacturers and construction companies.

It may seem odd to regard receivership as a means of avoiding liquidation of the company. It is, after all, procedure for the creditor to take control of the debtors' property which forms the security. When would a receiver play a part in a corporate rescue? Loan agreements where outstandings are secured by fixed or floating charges commonly contain provisions which allow the creditor to take control of the property by appointing a receiver who exercises powers granted to him under the loan agreement or related security documents. These powers generally permit the receiver to protect or realize the security or assets of the company.

A receivership is a form of corporate administration that can be used for insolvent companies. The common object of all receivership is that some independent person should be appointed to safeguard the property of the company for the benefit of all those entitled to it. Whilst receivership is in essence a remedy for a debenture holder, winding up involves the administration of the company's property for the benefit of all the company's creditors. Generally, during the period of any receivership of a company in liquidation, the receivers administration takes precedence and a liquidator has a secondary role.[1]

A receivership like a provisional liquidation serves as a breathing space for creditors to assess whether the company should be wound up or not or to work out a rescue scheme. During the period of receivership or administration, control may be shared between the receiver or administrator and the board of directors though in most cases the board is likely to have a limited role. The director's powers of management of the undertaking are placed in suspense during the period of receivership insofar as their exercise would be inconsistent

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1. This is the case whether the receivers is appointed before or after the commencement of winding up - RE POTTERS OILS LTD (1986) 1 W.L.R. 201.