

Canada

Appointment

It is not essential that a privately or court appointed receiver is an IP. In bankruptcy however, the Trustee would have to be a qualified IP.

Although privately appointed receivers do not have to be qualified IPs, they are still required to follow the provisions of the Bankruptcy and Insolvency Act (BIA). Where a receiver is appointed by court, the insolvency procedure is administered by court.

A court appointed receiver would normally be a Chartered Insolvency and Restructuring Professional (Formerly CIP now CIRP) or a Licensed Trustee in Bankruptcy. An interim receiver would also be a Chartered Insolvency and Restructuring Professional (Formerly CIP now CIRP) or a Licensed Trustee in Bankruptcy. In the case of bankruptcy, the office holder must be a Licensed Trustee in Bankruptcy.

Qualifications

To obtain a CIRP, candidates must complete three modules of study and three examinations covering:

- Receiverships
- Bankruptcy
- Advanced Topics.

Candidates must also pass an oral examination by a board of usually three IPs; one of who will represent the Superintendent of Bankruptcy (SOB). Candidates passing the above mentioned examinations will obtain membership of the Canadian Association of Insolvency and Restructuring Professionals and will be granted a licence by the SOB. The licence granted by the SOB may be limited if the candidate is deficient in experience in certain areas, or simply has not accumulated sufficient experience in the eyes of the SOB.

Selection

Where a receiver is privately appointed, the person entitled to make the appointment is the party holding the security document. It is possible for other creditors to challenge the appointment and, in such event, the appointment may be changed into a court proceeding.

In the case of a court appointed receiver, the court would do so usually with the consent of one or more of the parties who petition for the appointment. If there were more than one IP being proposed for the assignment, the court would determine the most suitable person.

In a bankruptcy petition, the court will appoint the trustee but usually the creditors would select the Trustee. In a bankruptcy assignment the Official Receiver will approve the appointment of a Trustee and the Trustee is usually selected by the debtor/bankrupt. The creditors have to approve the Trustee at the first meeting of creditors and they can also substitute their own Trustee at this meeting.

Supervision

A private receiver is only responsible to the appointing party, being in effect agent for that party. The BIA however has provisions that all receivers need to comply with in respect of certain administrative matters. Court appointed receivers and interim receivers are supervised by the court. In the case of bankruptcy, supervision may take place by the Superintendent of Bankruptcy, Official Receiver and inspectors appointed by the first meeting of creditors.

Canada continued

A creditor can request an examination of an IP in certain circumstances. If the receiver were an IP, then it would be possible to bring the IP's conduct to the attention of the CAIRP professional conduct committee. Where the receiver is an officer of the court, any request for examination of the receiver's conduct would be made to the court. This would apply to interim receivers as well. If the IP were a bankruptcy Trustee, supervision of the office-holder would be by the Superintendent of Bankruptcy.

Remuneration

Normal hourly professional rates. The accounts of the IP will have to be approved by the court and any of the parties to an action will have an opportunity to make comments on the fee application. In some cases the court will refer the accounts of the IP to a Master for Taxation. The Inspectors who are normally appointed over the debtor's estate must approve the fees and disbursements of the Trustee. Any unresolved matters can be referred to the court for resolution.

Regulation

The Superintendent of Bankruptcy is the primary external regulatory body for IPs that are also Licensed Trustees. In practice however, any IP acting under a court appointment is an officer of the court and subject to the protection and discipline of the court.

From the small number of cases where an IP's conduct is called into question, it may be concluded that the regulatory systems in place provide a reasonable framework within which the IPs can conduct their business. The major abuses of the system occur when receivers are appointed who are not qualified IPs, but this practice is diminishing due to the number of successful legal actions against secured creditors who have made poor choices in their appointment of agents [private receiver] pursuant to their security.