

Light Touch Administration

Low Cost Strategy, Maximum Control

Paul Zalkin Moorfields explains, how the principles of Receivership can be combined with the extensive powers of Administration to deliver better outcomes when dealing with impaired property assets.

Faced with a potential shortfall, lenders holding impaired security over corporate property assets will seek to maximise recoveries at minimum cost within an acceptable timeframe.

The appointment of a Fixed Charge Receiver ("FCR") or Law of Property Act Receiver ("LPA") can provide a simple means of achieving these objectives. However, a Receiver has no statutory power to take control of books and records or to force cooperation from the directors and employees of the asset owning company.

These issues may compromise the effective management and sale of more complex portfolios so, where full control is required, the appointment of an Administrator will be a more robust tool.

Not only can an Administrator use their statutory powers to assume control of a company and its assets, records, employees and directors (forcing cooperation if need be), they enjoy a wider range of additional powers not within a Receiver's remit:

- the ability to enter into agreements (as agent of a company) for management of its assets;
- the power to retain or dismiss employees involved in the management and running of property portfolios;
- the power to take full control of a company's tax and VAT affairs;
- the power to pursue rights of action in respect of prior transactions such as preference payments or sales at an undervalue.

There is no question as to which process involves a heavier regulatory burden - an Administrator is obliged to comply with a range of statutory duties not required of a Receiver.

So how does a lender secure a low cost strategy whilst maximising control?

The answer has emerged in recent years in the form of the Light Touch Administration ("LTA") - a process which engenders all the benefits of the appointment of an Administrator whilst allowing the delegation of operational and, to an extent, strategic control to property professionals.

With LTA comes an implicit assumption that the benefits of control over the assets will be reflected in an uplift in their realisable value. In other words, the cost differential between LTA and FCR/LPA is eliminated, thus dealing with any concerns lenders may have in that regard.

An LTA is generally able to secure recovery of VAT, which is not always possible in LPA/FCR, at times making the LTA more cost effective than LPA/FCR, whilst also securing and realising floating charge assets to improve creditor returns.

The Administrator will delegate property and asset management to a agent (who may, in fact, be appointed as LPA or FCR) or to their appointing secured creditor, particular in cases where sophisticated distressed property investors hold the senior debt. Day-to-day responsibility for marketing strategy, negotiation and sales completion will be handed to the investment agents so the Administrator's job will largely be limited to a final review and then execution of the sale and purchase agreements. Tax and legal services will be dealt with by the appropriate professionals.

Whilst at all times the Administrator will oversee the project to ensure the interests' of creditors as a whole are treated appropriately, the primary driver of the LTA model is for the Administrator to use their powers and status - as an agent of the company and officer of the court - to pave the way for an appropriate team of professionals to deliver the best outcome at least cost. In short, The LTA Administrator is a project manager with teeth, coordinating and deploying resources to ensure the best outcome.

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The Moorfield's team has a wealth of practical LTA experience and an impressive range of contacts across the property sector, and with this comes an unrivalled ability to deploy the right LTA team tailored to each individual project.

We take a simple approach to each LTA assignment:

- Detailed strategic review in partnership with the appointing lender
- Selection of property and other professionals
- Detailed strategic planning (including financial and tax planning)
- Agreement of reporting formats and timescales
- Documentation of the division of duties
- Project execution
- Ongoing monitoring and review

We have been achieving impressive results for our clients using LTA, as evidenced by the case studies set out below.

Want to find out more?

To find out more about Moorfields Property Solutions team contact Paul Zalkin on 0207 186 1143

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