**INTRIGUING FACTS/QUESTION’S ABOUT RECEIVERSHIP**

Have you ever questioned the meaning of a ‘receivership’ the implications and duties of the receiver/manager? Do you know if the owner’s rights are preserved or not?

Over the years many Companies have entered into receivership and as such the phrase is not new. In 2017one of the Air giants in Nigeria Aviation Industry Ark Air entered into receivership due to its inability to pay workers and creditors.[[1]](#footnote-2)This led to the Nigerian government taking control of the company via the state-owned ‘bad bank’ Asset Management Corporation of Nigeria, known as AMCON.[[2]](#footnote-3) This precarious situation led many then and even now those whose properties and companies have entered into receivership to the question, who is a receiver and what are the limits to a receiver’s power. Below are answers to the intriguing facts/questions about receiver/manager and receivership.

**Who is a "receiver" and under what circumstances are they appointed.**

The concept of receivership is very important in corporate practice. Though not defined in the Companies and Allied Matters Act or AMCON Act**[[3]](#footnote-4)**, it however states in section 650 of CAMA state that “receiver includes manager.” While the Blacks Law Dictionary[[4]](#footnote-5) defines the term receiver to mean person appointed by court for the purpose of preserving properties of a debtor pending an action against him, or applying the property in satisfaction of a creditor’s claim whenever there is danger that in the absence of such appointment, the property will be lost, removed or injured. Simply put a Receiver is a person appointed as custodian of a property, finances, general assets, or business operations.[[5]](#footnote-6)

Receivers may be appointed in two ways; that is by the debenture holders where the debenture provides so[[6]](#footnote-7)or by the court on the application of an interested person.[[7]](#footnote-8) When a receiver is appointed, a company is said to be "in receivership."

**Duties of a Receiver**

1. To realize the debt on behalf of the person who appoints him.[[8]](#footnote-9)
2. To manage the company over which he has been appointed, in the interest of the

company, and for the benefit of all interests concerned.[[9]](#footnote-10)

1. Duty of care and skill.[[10]](#footnote-11)
2. Duty to institute and defend actions.[[11]](#footnote-12)
3. Take possession of the security
4. Receive income, Pay outgoing service, taxes and rates
5. He must act in good faith
6. Must act within his scope of authority
7. Avoid collusion
8. Duty to give account. Etc

Given the duties and powers assigned to a receiver, some intriguing questions as stated below may arise. They are:

**Whether a receiver can be held to be liable for trespass where he deals with the assets of a company not in receivership**

A receiver is merely accountable for assets of the bankrupt debenture holder. As such where he deals with the assets of the company not in receivership he would be liable in trespass. This was illustrated in the case of Re Goldburg[[12]](#footnote-13), it was held that where a receiver is appointed by a debenture holders he and the debenture holders are liable as trespassers if he deals with the assets which are not property of the company because it was through the act of the debenture holder that he came in possession of the assets of the company.

**Whether the directors of a company in receivership have the right to deal with the assets of the company during Receivership?**

The directors of a company are not by virtue of receivership rendered functus officio for all purposes. A company by mere fact of receivership does not loose its identity or its title to her goods in receivership. The right of the directors of the company in receivership to deal with its assets not in receivership and other matters not suspended are not affected by the appointment of a receiver over the assets in receivership. This was the position in *Robinson Printing Co Ltd vs Chic Ltd*,[[13]](#footnote-14) where the court held that the directors of a company are at liberty to deal with the assets of the company not in receivership.

**Whether a company will have the locus standi to sue where it has entered receivership?**

No Company has any locus standi to sue where it has entered receivership. It is the Receiver/Manager, who, by operation of law, should sue on behalf of the Company. Indeed the powers of the Directors of the Company become paralyzed because of the appointment of the Receiver /Manager. The Assets of the Company remain with the Receiver/Manager and he alone has the right to deal with these assets as long as he remains the Receiver Manager.

**Whether a Receiver/Manager can maintain an action in his own name**

In general a Receiver/Manager cannot maintain an action in his own name to recover goods or money to the possession of which he is entitled by virtue of his appointment as a Receiver.[[14]](#footnote-15)

A receiver can only sue in the name of the company under the receivership to recover the property charged.

**Whether a judgment creditor can levy execution against the properties of the judgment debtor already in receivership?**

A judgment creditor cannot levy execution against the properties of the judgment debtor already under receivership.[[15]](#footnote-16)This is so because a debenture holder already exercises her right over such assets/properties.

**Difference Between Receivership and Liquidation?**

**Receivership** simply is a debt restructuring process, a process wherein a neutral third-party (professional) is appointed to manage the company's assets in other to repay creditors or debenture holders and for the company to resume profitable operations.[[16]](#footnote-17)

**Liquidation** on the other hand is the process of selling the assets. That is a process in which a liquidator collects and sells the company's assets and then distributes the proceeds among the creditors to pay off debts owed.[[17]](#footnote-18)

**Difference Between Receiver and a Receiver/Manager?**

The only real difference between a receiver and a receiver/manager lies in the extent of their power. Under general law it is when the appointee, whether court-appointed or appointed under an instrument, is given a power to manage the business of the company that the appointee is called a “receiver and manager”. A receiver and manager, who is a receiver with extended power, is to be distinguished from a person called a “manager” who may be appointed by a secured party/debenture holder to act for the secured party when the secured party itself takes possession of the secured property, either because it has the legal title or the security agreement gives power to take possession.[[18]](#footnote-19)

Usually, a receiver is appointed where the loan agreement is secured by a fixed charge; while a receiver/manager is appointed when the loan agreement is secured by charges including a floating charge over a part or the whole of the company’s assets.

**Conclusion**

The work has successfully examined receivership, duties, implications, and took a look at several intriguing questions as it relate to receivership.

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1. # [Uwadiae](https://businessday.ng/author/admin/) A. 2017 Arik: Fixing the wings of a giant bird. Feb 23, 2017 Business day Newsretrievedon August 18, 2017 from https://businessday.ng/opinion/article/arik-fixing-wings-giant-bird/

   [↑](#footnote-ref-2)
2. # Summerfield *R. 2017 Arik Air enters receivership April 207* Financier Worldwide Magazine retrieved from https://www.financierworldwide.com/arik-air-enters-receivership#.XzudqUDgums

   [↑](#footnote-ref-3)
3. See Section 48 of the AMCON Act, 2010 as amended by Section 6 of the AMCON (Amendment) Act, 2015 empowers AMCON to either act as a receiver or appoint a receiver for a debtor company whose assets have been charged, mortgage or pledge as security for an eligible bank asset acquired by the Corporation. [↑](#footnote-ref-4)
4. Bryan A.,G., Blacks Law Dictionary 9th Edition (USA:West Publishing Co.(2009) P.1383 [↑](#footnote-ref-5)
5. UWAKWE v. ODOGWU(1989) 5 NWLRPT.123 AT 562 AT 579 [↑](#footnote-ref-6)
6. See section 209 (1) (b) Companies and Allied Matters Act 2020 (CAMA) [↑](#footnote-ref-7)
7. See section 389 (1) Companies and Allied Matters Act 2020 (CAMA) [↑](#footnote-ref-8)
8. See Section 393 Companies and Allied Matters Act 2020 (CAMA) [↑](#footnote-ref-9)
9. See Section 390 Companies and Allied Matters Act 2020 (CAMA) [↑](#footnote-ref-10)
10. See Section 390(2)Companies and Allied Matters Act 2020 (CAMA) [↑](#footnote-ref-11)
11. See Section 393(3) refers to Schedule 11 to CAMA as indicative of the powers and duties conferred on a receiver. Paragraph 5 of that Schedule provides that the receiver/manager has the power to bring or defend any legal proceedings in the name and on behalf of the company. [↑](#footnote-ref-12)
12. (No.2) Ex parte Page (1912) 1 K.B606 [↑](#footnote-ref-13)
13. (1905) 2 Ch. D 123 [↑](#footnote-ref-14)
14. See In Re Satori's Estate, (1892) 1 Ch. 11 at p.14 and D. Owen & Co. v. Cronk; (1895) Q.B. 265 [↑](#footnote-ref-15)
15. See: Krans v. Bright Oridami, reported in Digest of Supreme Court cases 1956 - 84 Vol.9 pages 474; Lancaster Motor Co. (London) Ltd.v. Bremith Ltd. (1941) 1KB 675, Spence v. Coleman (1901) 2 KB 199. [↑](#footnote-ref-16)
16. https://www.firstreport.co.uk/Difference-Between-Liquidation-and-Receivership.aspx [↑](#footnote-ref-17)
17. https://www.dottoreco.com/blog/what-is-the-difference-between-receivership-liquidation-19813 [↑](#footnote-ref-18)
18. <https://www.navado.com.au/sydney/lawyers-solicitors/bankruptcy-and-insolvency-law/a-receiver-or>

    -manager.htmll [↑](#footnote-ref-19)