



audrey.grey

IMPACT OF ADMINISTRATION ON ASSET OWNERS

(MORE ON INSOLVENCY MATTERS)

Excerpt

Does CIRA permit the recovery of possession of property during the pendency of an administration?.

INTRODUCTION

Leasing companies and landlords – most especially, often get jittery when a company is placed in administration. Unlike the creditors who are involved in the administration process, third party services providers especially those providing leasing and rental of properties, and equipment may often not be aware of the pendency of administration up until there is a default, and they make a complaint through their usual channels only to be informed that an administrator has taken over. Eventually, these dissatisfied third-party service providers would threaten to issue writs, demand letters, and in some instances self-help in order to get their equipment and properties back. These may or may not be successful. This Q&A focuses on the placement of a company in administration and the impact that this has on the third-party services providers especially those who provide equipment and assets used by the company in administration.



DOES THE CORPORATE INSOLVENCY AND RESTRUCTURING ACT, 2020 PERMIT THE RECOVERY OF POSSESSION OF PROPERTY DURING THE PENDENCY OF AN ADMINISTRATION?

No. The Corporate Insolvency and Restructuring Act, 2020 (Act 1015) also known as CIRA does not permit the recovery of possession of property during the pendency of an administration. In the absence of clearance from the court, the owner or lessor of a property that is either used by the company, occupied by the company or is in the possession of the company at the time of the administration may not take possession of the property.

Prior to the commencement of the administration, the owner or lessor of the property may take possession of the property without any hindrance. However, the owner's liberty to enforce or take possession of the property is severely curtailed once the company is in administration (in the absence of a court order)



DOES THE LIMITATION ON THE RIGHT OF THE LESSOR OR OWNER TO RECOVER THEIR PROPERTY OR ASSET MEAN THAT THEY ARE WITHOUT A REMEDY?

No. The administrator is liable for rent and other payments accruing as a result of an agreement before the commencement of the administration, and it relates to the use, possession, or occupation of the property by the company.

HOW DOES ONE KNOW THAT THE ADMINISTRATOR DOES NOT INTEND TO USE A PARTICULAR PROPERTY OR ASSET?

The CIRA gives the administrator the discretion to decide on assets that it needs during the period of administration and those that it does not need. If the administrator concludes that he/she does not need the asset, he or she is required to issue what is referred to under the Act as a “Non-Use Notice”. As the name suggests, the non-use notice indicates the administrator has no need for that property or asset.

A non-use notice is revocable. The administrator is required to issue the non-use notice within 14 days of the commencement of the administration. The notice must specify the property to which it relates. The non-use notice must indicate with particularity that the administrator does not intend to use the property.

Please note that the issuance of a non-use notice does not affect the liability of the company in respect of rent and other payments.

CAN AN ADMINISTRATOR VOLUNTARILY RETURN AN ASSET TO THE OWNER WITHOUT THE APPROVAL OF THE COURT AND AFTER THE 14-DAY PERIOD?

An administrator in the performance of his/her duties has the full powers of a director. He or she may acquire and dispose of assets for and on behalf of the company. The administrator is also required to carry on the business of the company and manage the property and affairs of the company in good faith with the object of salvaging the business of the company. All acts of the administrator must be done in the best interests of creditors, employees, and shareholders as well as the company^[1]. The policy rationale for administration is to salvage distressed companies and restore them to solvency where possible.

With this background in mind, an administrator is voluntarily able to transfer possession of an asset back to its owner without the need for a court order. The powers of the administrator are extensive enough to permit it, provided it is done in good faith and in the interest of the creditors.

[1] Act 1015, Section 10(1)(b), (c), (d)

Audrey Grey

LEGAL | TAX | INSOLVENCY



AUDREY NAA DEI KOTÉY

email: audrey@audreygrey.co

Managing Partner



CLARA METTLE-NUNOO

email: clara@audreygrey.co

Associate

Suite 4, Morocco House, No. 195/10 Otinkrang Street, North Kaneshie, Industrial Area, Accra

 audreygrey.co  info@audreygrey.co  [audreygrey](https://www.linkedin.com/company/audreygrey)  [audreygrey_](https://www.instagram.com/audreygrey_)  +233 30 2913 944
+233 24 682 6813

