

# Legal reform proposals over appointment of receivers

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**Proposal**  
**Concerns**  
**Comment**

In 2016 members of Parliament (MPs) proposed legal reforms with the aim of regulating the procedure for the appointment of receivers by debenture holders. Although debate on the issue stopped for a period, it recently re-emerged in vigorous form following the sale of hotel units by receivers who had been appointed by financial institutions pursuant to a floating charge.

## Proposal

The issues under scrutiny by the MPs were that the borrower had no say during the procedure for the appointment of a receiver, and that issues with the impartiality of the receiver could arise on many occasions, so that intervention to protect the borrowers' interests was considered necessary.

The MPs proposed two alternatives in an attempt to better regulate the appointment of receivers. One option was to make advance court consent necessary for the appointment of a receiver. During the procedure to grant consent, the suitability of the receiver would be examined with regard to the particular case.

The other option proposed was to empower the courts to examine the appointment of a receiver *ex-post*, following an application made by an interested party, and subsequently validate the appointment of a receiver.

## Concerns

The proposal has encountered the resistance of financial institutions, which argue that such an arrangement will cause considerable delays. Regarding the second option of having courts examine the appointment of receivers *ex-post*, financial institutions have also expressed their concerns that between the date of filing for a court order and the date the court order is made, the assets of a company may be alienated to the detriment of the debenture holder. Also, the Financial Ombudsman observed that while we live in an era where out-of-court settlements are gaining ground, this proposal would send more cases before the court.

## Comment

Although the role of receivers is widely recognised, it is also widely accepted that the appointment of receivers requires better regulation and monitoring. However, referring such cases to court would definitely cause delays. Other options could include out-of-court settlement of such cases or the establishment of special courts that would undertake to resolve these issues rapidly.

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