



## **Non-Liquidating Receivership Option for Rhode Island Businesses During the COVID-19 Pandemic**

*Hinckley Allen Corporate & Business*

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On March 31, 2020, Presiding Justice Alice B. Gibney of the Rhode Island Superior Court promulgated Administrative Order No. 2020-04, which authorized the Superior Court to implement the COVID-19 Non-Liquidating Receivership Program. The program is intended to help Rhode Island businesses through the economic disruption caused by the COVID-19 pandemic. Under the program, the Superior Court will supervise struggling entities that were paying their debts as they became due in the usual course of business before the pandemic. Such an entity, termed a “receivership business” by the administrative order, will be protected by an injunction, which will prevent any action to enforce an interest, collect, or otherwise attempt to recover against them for matters that arose before the receivership commenced. This enables the debtor entities to resume and/or continue operations in accordance with a court-approved operating plan.

Eligible businesses may voluntarily seek to participate in the program by filing a petition. To demonstrate eligibility, a business must show that it was not in default of its financial obligations as of January 15, 2020, and one of the following:

- the business experienced a reduction in gross revenue of at least 20% during any 60-day period beginning January 15, 2020, as compared to a similar operational period before January 15, 2020;
- the business was forced to cease a substantial portion of its operations due to a governmental or regulatory order at some time after January 15, 2020; or
- the business can certify or otherwise demonstrate to the court’s satisfaction that the COVID-19 pandemic created (i) an adverse impact on its operations resulting from either a government mandated partial or complete closure, or (ii) a substantial interruption of cash flow occurring after January 15, 2020.

Assuming that the petitioning business meets the eligibility requirements imposed by the administrative order, the court will issue an order appointing a temporary non-liquidating receiver for the receivership business. This order will also set forth the operating protocols for, and any restrictions on, the receivership business applicable between the time a temporary receiver is appointed and the Superior Court’s approval of an operating plan. Within 10 days of the temporary receiver’s appointment, the receivership business must present a “recommended operating plan” to the temporary receiver, who must then review and revise the plan, as necessary, and submit the recommended operating plan to the Superior Court for approval.

Thereafter, the temporary receiver serves the recommended operating plan on all known creditors and claimants by electronic mail, where possible, or by first-class mail. The creditors and potential claimants then have 10 days in which to comment on, or object to, the recommended operating plan. Next, the court will either approve or reject the recommended operating plan. If the court approves the plan, the temporary receiver will be appointed as the receiver for the duration of the non-liquidating receivership. Within 3 business days after the court approves the recommended operating plan, the receiver must serve that approved plan on all known creditors and potential claimants.

The approved operating plan must address the receivership business’s plan and protocols to operate and pay its debts as

they become due during the non-liquidating receivership, to pay its prepetition debts, and the receivership business's operating plan to successfully exit the non-liquidating receivership. The receiver must provide the Superior Court with monthly status reports regarding the approved operating plan.

The receivership business may continue to operate on a day-to-day basis in accordance with the approved operating plan. It cannot make expenditures or dispose of assets outside the ordinary course of business without notice to and approval by the Superior Court.

The receiver has the authority to take control of day-to-day business operations to ensure that the receivership business is complying with approved operating plan. The receiver can also take control of all operations and assets of the receivership business if the receiver determines that attempts are being made to remove receivership business assets from Superior Court supervision. In either situation, the receiver must petition the court for further instructions. Should the receivership business default under the approved operating plan, the Superior Court may order the receiver to take control and secure all operations and assets of the receivership business for the benefit of the creditors until further order of the court.

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