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SCHEDULES**Forms****FORMS 1-23**

S.I. 8 of 1990

Bankruptcy Act 1979
(1979 no. 16)

Bankruptcy Rules 1990

Commencement: 25th September 1990

In exercise of the powers conferred upon them by sections 15(2), 34, 110 and 111 of the Bankruptcy Act 1979 and of all other powers enabling them in that behalf, the Chief Judge of the Federal High Court and the Minister of Trade and Tourism, with the approval of the National Council of Ministers, hereby make the following Rules:-

PART I - PROCEEDINGS

Commencement of proceedings 1979 No. 16

1. (1) Every proceeding in Court under the Bankruptcy Act 1979 (hereafter in these Rules referred to as "the Act") shall be commenced by an application in writing or printed form, and shall be dated and titled "In Bankruptcy".
- (2) The application shall be titled "Ex-parte" and shall be as nearly as in Form 1 in the Schedule to these Rules.
- (3) The first proceeding in every matter shall have a distinctive number assigned to it by the Registrar and all subsequent proceedings in the same matter shall bear the same number as well as some other distinguishing figure or alphabet.

2 Except where these Rules otherwise provide or the Court otherwise directs, every interlocutory application to the Court shall be made by motion supported by an affidavit.

Interlocutory application.

3. (1) Where any party other than the applicant is affected by the motion, no other shall be made except with the consent of that party, or upon proof that notice of the motion and a copy of the affidavit in support thereof have been duly served upon him:

Notice of motion and ex parte application.

Provided that where the Court is satisfied that serious mischief may result from delay caused by proceedings in the ordinary way, it may make an order Ex-parte upon such terms as to costs and otherwise, and subject to such undertaking, if any, as the Court thinks just.

(2) Any party affected by an order Ex-parte may move to set it aside.

4. Any document or declaration which is required by these Rules to be dated, signed and witnessed shall be sufficiently attested if it is attested in Nigeria by a Solicitor, the Registrar, a Commissioner of Oath or the Official Receiver or if attested abroad, by a Judge, Magistrate, Nigerian Consul or Vice-Consul or a Notary Public.

Attestation.

5. All proceedings of the Court shall be kept and remain or be recorded in the Court and any trustee, debtor or any creditor who has proved, or any person acting on behalf of the trustee, debtor or creditor, may obtain such record on payment of the necessary fees.

Record of proceedings

6. All notices required to be given under the Act or these Rules shall be in writing unless the Act or these Rules otherwise

Notice to be in writing.

provide or the Court otherwise orders.

Advertisement of proceedings

7. (1) A copy of the Gazette which contains the advertisement relating to any matter under the Act shall be supplied to the Registrar who shall file it.

(2) A copy of the advertisement in the newspaper relating to any matter under the Act shall be filed in Court by the person inserting the Advertisement.

(3) The filing of the Gazette and of the newspaper advertisement shall be conclusive evidence that the bankruptcy has been advertised.

PART 11 - WITNESSES AND DEPOSITION

Subpoena

8. (1) The Court shall, at the instance of an Official Receiver, trustee, creditor, debtor or applicant or respondent in any matter, issue a subpoena for the attendance of a witness.

(2) The subpoena may require the witness to produce documents in his possession or conduct.

Order for examination, etc. of any person.

9. (1) The Court may in any matter make an order for the examination upon oath of any person at any place in Nigeria.

(2) The examination may be ordered to take place before the Court, or an officer of the Court, or such other person as the Court may direct.

(3) The deposition shall be taken down in writing and, with leave of the Court, may be used in evidence on such terms, as the Court may direct.

(4) The Court may at any stage of any proceeding order the

attendance of any person for the purpose of producing any document named in the order.

10. A party may, with the leave of the Court, administer interrogatories to or obtain discovery of documents from any other party to the proceeding and the rules of the Court relating to discovery and inspection shall apply with such modification as may be necessary.

Interrogatories and discovery.

11. A request for taking evidence otherwise than before the Court hearing the action may be made by motion.

Evidence other than before the Court

PART III - SALE AND DISPOSAL OF PROCEEDS OF SALE OF MORTGAGED PROPERTY

12. (1) Any person claiming to be the legal or equitable mortgagee of any real or leasehold property of the bankrupt may apply to the Court for an order directing the property to be sold.

Sale of mortgaged property.

(2) On an application, under paragraph (1) of this rule the Court shall if it is satisfied as to the applicant's title, direct accounts to be taken and inquiries made to ascertain-

(a) the principal, interest and costs due under the mortgage; and

(b) if the mortgagee has been in possession of the mortgaged property or any part thereof, the rents and profits, dividends, interest or other proceeds received by him or on his behalf.

(3) If the Court is satisfied that the property ought to be sold, it shall direct a sale, which shall be held by the trustee unless otherwise ordered; and notice of the intended sale shall be inserted in such newspapers as the Court may direct.

(4) The mortgagee may bid for and purchase the mortgaged property at the sale.

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(5) All such parties as the Court shall direct shall join in the conveyance of the property.

Proceeds of sale

13. (1) The proceeds of sale shall be applied-

(a) firstly, in payment of the costs, charges and expenses of the trustee of and occasioned by the application to the Court, and of the sale and attendance thereat;

(b) secondly, in payment of the amount due to the mortgagee, for principal, interest and costs; and the balance, if any, shall be paid to the trustee.

(2) Where the proceeds of the sale are insufficient to pay in full the amount found due to the mortgagee, he shall be entitled to prove as a creditor for any deficiency, and to receive dividends thereon rateably with the other creditors, but not so as to disturb any dividend already declared.

Conveyance of property to purchaser.

14. For the purpose of the inquiry referred to in rule 11 of these Rules and of making title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise and shall produce upon oath before the Court all such documents in their custody or under their control relating to the estate or effects of the bankrupt as the Court shall direct.

PART IV - BANKRUPTCY PETITIONS

Commencement of petition. Form 4 or 8.

15. Every petition shall be in Form 4 or Form 8 in the Schedule to these Rules with such variation as circumstances may require, and shall be dated, signed and witnessed.

Particulars in petition.

16. (1) Where a petition is presented by a debtor, he shall insert

his name and description, his address and the date when the petition is presented, and any address at which he has resided or carried on business and at which he has incurred debts and liabilities remaining unpaid or unsatisfied at the date of the petition.

(2) Where a petition is presented against a debtor who resides or carries on business at an address other than his residence or place of business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor shall describe the debtor as of his present address and description, and as lately residing or carrying on business at his address when the debt or liability was incurred.

17. Where the debtor has for the greater part of the six months immediately preceding the presentation of the petition carried on business in the area of Judicial Division of the Court and resided in the area of another Judicial Division of the Court, the petition shall be filed in the Division for the area in which he has carried on business.

Judicial
Division of
Court to hear
petition.

PART V - BANKRUPTCY (PROCEEDINGS) RULES

18. (1) A creditor shall, when applying in Form 2 in the Schedule to these Rules for the issue of a bankruptcy notice, file with the Registrar-

Documents in
support of
applications.
Form 2.

- (a) a certified copy of the judgement or order; or
- (b) if the judgement or order has been registered in a Court in Nigeria under the Reciprocal Enforcement of Judgements Act, a sealed copy of the certificates produced for the purpose of registering the judgement or order; or
- (c) an office copy of a declaration of inability to pay his debt by

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a debtor; or

(d) an affidavit by the bailiff stating that he has levied execution by seizure of the debtor's goods under process in an action or proceedings in Court and that the goods have either been sold or held by him for 21 days.

(2) The creditor shall further furnish to the Registrar, for signature by the Registrar, such number of copies of the form of bankruptcy notice as are required for service and for annexure to any affidavits of service and additional copy of that form for filing.

(3) Where the creditor files a copy of the certificates referred to in sub-paragraph (b) of paragraph 1 of this rule, the applicant shall also file an affidavit made by the person cognizant of the facts of the case, stating the amount actually due and unpaid under the judgment or order.

(4) Where the Registrar is satisfied that application has been duly made to him for the issue of a bankruptcy notice and that the copies of the form of bankruptcy notice furnished to him in accordance with paragraph 2 of this rule are in order for signature, the Registrar shall sign each of those copies and return them to the applicant.

(5) Where the Registrar issues a bankruptcy notice, the applicant shall file a copy of the notice.

(6) In this rule, a reference to the Court, in relation to a judgment or order, shall be construed as a reference to the Court, by which the judgment was given or the order was made.

(7) For the purposes of section 14 of the Act, a bankruptcy notice shall be in accordance with Form 3 in the Schedule to

Form 3.

these Rules.

19. Every bankruptcy notice shall contain an intimation to the debtor that if he has a counter-claim, set off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not have set up in the action in which the judgment or order was obtained, he may within 14 days to be specified in the notice, file an affidavit to that effect with the Registrar.

Judgment
debtors right
of counter-
claim, set off,
etc.

20. (1) Where a debtor on whom a bankruptcy notice has been served files an affidavit to the effect that he has a counter-claim, set-off or cross-demand of a kind referred to in rule 19 of these Rules, the Court-

Debtor's
counter-claim
effect

(a) shall fix a date, at which the debtor may appear before the Court for the purpose of satisfying the Court that he has the counter-claim, set-off or cross-demand referred to in the affidavit; and

(b) shall serve notice of the date so fixed on the debtor or the judgment creditor or their solicitors as specified in the notice.

(2) The filing of the affidavit referred to in paragraph (1) of this rule shall operate as an application to set aside the bankruptcy notice and the Court shall, if it is satisfied that sufficient cause is shown, fix a time and place for hearing the application and not less than three clear days' notice thereof shall be given to all the parties concerned.

(3) No act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

21. When making an order setting aside bankruptcy notice, the Court may declare that no act of bankruptcy has been committed

Order setting
aside
bankruptcy
notice.

by the debtor under the notice.

PART VI - CREDITOR'S PETITION

Procedure
for
presenting
creditor's
petition

22. (1) A creditor may present a petition seeking the making of a receiving order against the estate of a debtor by filing the petition in the office of a Registrar in bankruptcy.

Form 5.

(2) A petition shall be in accordance with Form 4 in the Schedule to these Rules and shall have attached to it, or written on it, a note for signature and stamp of the Registrar, in accordance with Form 5 in the Schedule to these Rules.

(3) At the time when a petition is filed, the petitioning creditor shall-

(a) furnish to the Registrar for sealing such number of copies of the petition as are required for service and for annexure to any affidavit of service;

Fr. 6

(b) file the affidavit verifying the petition required by paragraph (a) of subsection (1) of section 7 of the Act as in Form 6 in the Schedule to these Rules; and

1979 No. 16.

(c) if an act of bankruptcy on which the petition is founded is that referred to in paragraph (b) of sub-section (1) of section 1 of the Act, file an affidavit by the bailiff of the Court stating that execution relating to the act of bankruptcy has been levied by seizure of the debtor's goods under process in an action, or proceedings in the Court, and the goods have either been sold or held by the bailiff for 21 days.

Service
of
petition.

23. The service of the petition shall be effected in the manner the service of a Writ of Summons is served in accordance with the Rules of the Court, and the notice shall be

served within three months unless extended by the Court.

24. (1) The Court may, upon application made by a debtor on whom a petition has been served, order the petitioning creditor to give security to the Court for the costs of the debtor in and in relation to the proceedings,

Security for costs.

(2) This rule shall apply if and only if-

(a) the petitioning creditor-

(i) is not ordinarily resident in Nigeria; or

(ii) is a bankrupt;

(b) a petition under the Act is pending against the creditor; or

(c) in any other case, if the Court is satisfied that there is a special reason for making the order.

25. (1) Except where the Court otherwise orders, the security required to be given by a person shall be in the form of a bond with one or more sureties and except with the consent of the opposing party, the bond shall be not less than the sum for which security is to be given and probable costs.

Form of Security.

(2) The bond shall be executed and attested in the presence of the Registrar, the Official Receiver or a Notary Public who is not involved in the case or an officer of the Court appointed by the Judge for that purpose.

26. A person required to give security may in lieu thereof, lodge in Court, a sum equal to the sum for which security is to be given and probable costs and upon the lodgment, the Registrar shall forthwith notify the persons for whose protection the security is given that the money has been lodged in Court.

Cash in lieu of Security

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Appointment of interim receiver.

27. (1) After the presentation of a petition, a creditor or the debtor may apply for the appointment of the Official Receiver as Interim Receiver of the debtor's property or any part thereof.

(2) An affidavit in support of an application under section 11 of the Act shall state such particulars of the property of the debtor, its location and its value as are known to the applicant.

Form 8.

(3) An application under section 11 of the Act shall be in accordance with Forms 8 in the Schedule to these Rules.

(4) Upon such application, the Court may, if it is satisfied by affidavit that sufficient grounds are shown for the appointment, make it upon such terms if any, as it thinks fit.

Expenses of Interim Receiver.

28. (1) Before the order to appoint an Interim Receiver is issued, the applicant shall deposit with the Official Receiver, the sum of N20 and such further sum as the Court shall direct for the fees and expenses which may be incurred by the Official Receiver.

(2) Where the Court, on application by a creditor, directs an Official Receiver to take control of the property of a debtor and the amount deposited with the Official Receiver in accordance with paragraph (1) of this rule to meet the fees and expenses of the Official Receiver in taking control of the property of the debtor is insufficient to meet those fees and expenses, the Official Receiver may apply to the Court for an order directing the creditor to deposit with the Official Receiver such additional sum as the Court thinks fit to direct.

(3) Where after the Court has on application made by a creditor directed the Official Receiver to take control of the property of a debtor-

(a) a receiving order is made against the debtor; or
(b) the creditor's petition against the debtor is dismissed; or
(c) a debtor's petition relating to the debtor is accepted by the Registrar, the creditor shall be entitled to a refund of the amount deposited by him in accordance with a direction of the Court to meet the fees and expenses of the Official Receiver in taking control of the property of the debtor or of so much of that amount as has not been duly expended by the Official Receiver.

(4) If a receiving order is made after an Interim Receiver has been appointed on a creditor's application, any money deposited by the creditor shall, unless it is required by reason of insufficiency of assets for payment of the fees chargeable and the expenses incurred by the Interim Receiver, be paid to the creditor out of the proceeds of the estate.

29. (1) Where a petition is dismissed after an order is made appointing an Interim Receiver, application may be made to the Court within 21 days after the period allowed for an appeal to be lodged, and if such an appeal is not lodged application may be made to the Court for an order for the assessment of the amount of any damage resulting from the control of the property of the debtor by the Official Receiver in accordance with the order and for payment by the creditor to the debtor of an amount of that damage.

Application
for damages
where petition
is dismissed.

(2) If an appeal is lodged, an application under paragraph (1) of this rule may be made within 7 days after the date the appeal is dismissed.

PART VII - HEARING PETITION

30. A debtor who intends to deny or dispute a statement in a petition or oppose a petition on any ground shall not less than three days before the hearing date of the petition-

Notice of
opposition to
petition.

Form 9.

(a) file a notice, in accordance with Form 9 in the Schedule to these Rules setting out or referring to the statement in the petition that he intends to deny or dispute or the other grounds on which he intends to oppose the petition; and

(b) serve a copy of the notice on the creditor or his solicitor as the case may be at the address on the petition.

Verifying affidavit.

31. A petitioner shall, before the petition is heard-

(a) file an affidavit made by a person who has searched in the bankruptcy record kept by the Registrar stating whether any bankruptcy proceedings in any jurisdiction of the Court are pending against the debtor or whether the debtor is a bankrupt;

(b) file an affidavit made by a person who has knowledge of the facts stating that the debt or debts on which the petitioning creditor relies is or are still owing;

(c) if the debt specified in the petition is an amount payable to the petitioner under a judgment that ordered that amount to be paid into the Court by which the judgment was given, file an affidavit made by a person who has searched in the proper office of that Court stating whether that amount or any of that amount has been paid into that Court in accordance with the judgment.

Proper order at the end of proceedings.

32. At the hearing of the petition, the Court may make a receiving order on such proof of the statements in the petition as it thinks sufficient; provided that where the debtor appears to show cause against the petition, there shall be proved, the petitioning creditor's debt, the act of bankruptcy or any other matter in respect of which the debtor has given notice of dispute.

PART VIII - NON-APPEARANCE OF CREDITOR

33. If a creditor neglects to appear on his petition no subsequent petition against the same debt or debtors or any of them either alone or jointly with any other person shall be presented by the same creditor in respect of the same act of bankruptcy without the leave of the Court to which the previous petitions was presented.

Failure to prosecute petition.

PART IX - DEBTOR'S PETITIONS

34. (1) For the purpose of section 8 of the Act-

Presentation of debtor's petition.

(a) a debtor's petition shall be in accordance with Form 10 in the Schedule to these Rules;

Form 10.

(b) an affidavit verifying a statement of affairs shall be in accordance with Form 11 in the Schedule to these Rules; and

Form 11.

(c) a statement of affairs shall be in accordance with Form 12 in the Schedule to these Rules.

Form 12.

(2) After the petition mentioned in paragraph (1) of this rule is filed, the Registrar shall serve on the debtor or his solicitor, as the case may be at the address on the petition, notice of the date, time, and place fixed for the hearing of the petition.

PART X - PROCEEDINGS BY OR AGAINST FIRM

35. Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the name of the firm, the partner signing for the firm shall add his own signature and a statement that he is a partner in the firm.

Attestation of document by a firm.

36. Any notice or petition for which personal service is necessary shall be deemed to be duly served-

Personal service on a firm.

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(a) on all members of a partnership firm, if it is served at the principal place of business of the firm anywhere in Nigeria on any person having, at the time of service, control or management of the partnership business there;

(b) on a person carrying on business in a name or style other than his own, if it is served on any person having at the time of service, control or management of the business in Nigeria.

Declaration of inability of firm to pay debts.

37. A declaration of inability to pay their debts or a bankruptcy petition filed by a firm of debtors shall contain the names in full of the individual partners in the firm and, if signed in the same of the firm, shall be accompanied by an affidavit made by the partner who signs the declaration or petition, showing that all the partners concur in the filing thereof.

Order on firm deemed as order on each partner

38. A receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm.

39. Where a receiving order is made against a firm, the debtors shall submit a joint statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs.

No order against firm.

40. No order of adjudication shall be made against a firm in the name of the firm, but it shall be made against the partners individually.

Joint and separate creditors to attend the first meeting of creditors.

41. Where a receiving order is made against a firm, the joint and separate creditors shall be summoned collectively to the first meeting of creditors.

42. (1) The joint creditors and each set of separate creditors may severally accept composition or schemes of arrangement.

Joint and separate creditors to accept composition or scheme of arrangement.

(2) So far as circumstances will allow, a proposal accepted by joint creditors may be approved notwithstanding that any proposal made by one or more of the debtors to his or their separate creditors may not be accepted.

43. (1) Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposal made to the joint creditors shall be considered and voted upon by them apart from all separate creditors and the proposal made to each set of separate creditors shall be considered and voted upon by that set of separate creditors apart from all other creditors.

Proposal for composition.

(2) Any proposal made under paragraph (1) of this rule may vary in character and amount.

(3) Where a composition or scheme is approved, the receiving order shall be discharged only so far as it relates on an estate the creditors of which have accepted the composition or scheme.

44. (1) In the bankruptcy of a partnership, the trustee appointed by the joint creditors or, in default of such appointment, by the Court, shall be the trustee of the separate, estates of the partners.

Trustees

(2) Each set of separate creditors may appoint its own committee of inspection; provided that the committee (if any) appointed by the joint creditors shall be deemed to have been appointed also by any set of separate creditors who do not appoint a separate committee.

*Bankruptcy Rules 1990***PART XI - RECEIVING ORDERS AND STATEMENT OF AFFAIRS**

45. (1) A receiving order shall state the nature and date of every act of bankruptcy and shall be in accordance with Form 13 in the Schedule to these Rules.

(2) Every receiving order shall contain a notice requiring the debtor forthwith, after service of the order upon him, to attend on the Official Receiver at the place mentioned therein.

46. A receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm.

47. When a receiving order is made, the Registrar shall forthwith give notice thereof to the Ministry for publication in the *Gazette*.

48. (1) After a receiving order has been made the Registrar shall forthwith notify the Chief Lands Officer of the State where the property to which the receiving order relates is situate by sending him a copy of the receiving order and asking him to amend his register accordingly.

(2) The Official Receiver shall cause the receiving order to be advertised in a national newspaper.

49. (1) Subject to the provisions of paragraph (2) and (3) of this rule, the costs of all proceedings under the Act up to and including the making of the receiving order shall be borne by the party taking proceedings.

(2) The Court may at any time order the debtor to pay the whole

Receiving
Order. Form
13.

Receiving
Order against
a firm.

Receiving
orders to be
published in
the *Gazette*.

Notification to
Lands Officer.

Cost of
proceedings.

or any part of the costs.

(3) Where a receiving order is made in the petition of the debtor while a creditor's petition against him is pending, the Court may order that the costs shall be paid out of the estate.

50. For the purpose of subsection (1) of section 16 of the Act, the debtor shall give to the Official Receiver two copies of the statement of affairs, one of which shall be with an affidavit verifying the statement in accordance with Form 11 in the Schedule to these Rules, while the other shall be in Form 12 in the Schedule to these Rules.

Statement of affairs.

51. An application to the Court for an extension of time prescribed by subsection (2) of section 16 of the Act for a person to file statement of affairs shall be on notice and served on the Official Receiver.

Application for extension of time to be on notice to Official Receiver.

PART XII - PUBLIC EXAMINATION

52. (1) When a receiving order has been made, the Official Receiver shall apply to the Court for the appointment of a time and place for the public examination of the debtor.

Application for time, etc. of public examination.

(2) Upon the application, the Court shall make an order appointing a time and place for the examination and ordering the debtor to attend thereat.

53. On the making of the order appointing a time and place for the public examination, the Official Receiver shall-

Service and publication of date of public examination

(a) serve a copy of the order on the debtor;

(b) give notice of the order to the creditor;

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(c) cause the order to be advertised in such newspapers circulating in the locality as the Ministry may direct, or if no direction has been given, as he thinks fit;

(d) send notice of the order to the Ministry for publication in the Gazette.

Failure of debtor to attend public examination.

54. If the debtor, without giving any sufficient reason, fails to attend the public examination or any adjournment thereof, and the Court is satisfied that the order requiring the debtor to attend was duly served, it may forthwith issue a warrant for his arrest in accordance with section 25 (1) (d) of the Act or make such other order as it thinks just.

Adjournment of public examination sine die.

55. The Court may adjourn the public examination sine die and may make such further order as it thinks fit where -

(a) it is of opinion that the debtor is not making a full and true disclosure of his affairs; or

(b) the debtor, without showing any sufficient reason, has failed to attend the public examination or any adjournment thereof, or to comply with any order of the Court in relation to his accounts, conduct, dealings or property.

Recommencement of public examination adjourned sine die.

56. The Court may on application of the Official Receiver or of the debtor appoint a time and place for proceeding with a public examination which has been adjourned sine die.

Expenses of gazetting application.

57. Where application is made by the debtor for the purpose of rule 56 of these Rules, then, unless the Official Receiver or the trustees, as the case may be, consents to payment of the expenses out of the estate -

(a) the expenses of gazetting, advertising and giving notice to the creditors of the date of the adjourned examination shall be

borne by the debtor;

(b) before a time and place is appointed for proceeding with the examination, the debtor shall deposit with the Official Receiver such sum as the Official Receiver considers sufficient to defray the expenses.

58. On making of an order appointing a time and place for proceeding with a public examination adjourned sine die, the Official Receiver shall, unless the Court otherwise orders -

Conditions for recommencement of public examination adjourned sine die.

- (a) serve a copy of the order on the debtor;
- (b) give a notice of the order to the creditor;
- (c) not later than 7 days before the day so appointed, cause the order to be advertised in the newspaper or newspapers in which the order for the public examination was advertised pursuant to rule 53 of these Rules;
- (d) send notice of the order to the Ministry or publication in the *Gazette*.

59. (1) Where a debtor is suffering from mental or physical disability rendering him unfit to attend a public examination, application may be made for an order dispensing with such examination, or directing that the examination shall be conducted in such manner and at such place as the Court thinks fit.

Debtor's inability to attend public examination because of mental or physical disability.

(2) The application shall be made -

- (a) by the Official Receiver; or
- (b) by a person who has been appointed by a Court of competent jurisdiction to manage the affairs of or represent the debtor; or
- (c) by a relative or friend of the debtor whom the Court considers to be a proper person to make the application.

(3) Where the application is made by the Official Receiver -

(a) it may be made ex-parte, and be supported by evidence in the form of a report by the Official Receiver setting out any other matters that the Official Receiver wishes the Court to consider in connection with the application;

(b) it shall be supported by an affidavit of a registered, qualified medical practitioner, giving particulars of the debtor's mental or physical disability.

(4) Where the application is made by any person other than the Official Receiver -

(a) it shall be made by Motion on Notice, supported by an affidavit of a registered, qualified medical practitioner as to the debtor's mental and physical disability.

(b) Notice of the Motion shall be given to the Official Receiver and trustee, if any.

PART XIII - COMPOSITION OR SCHEME

60. (1) After the public examination has been concluded, the Official Receiver or the debtor may, where the creditors have accepted a composition or scheme, apply to the Court in accordance with subsection (5) of section 18 of the Act, for hearing of an application for the approval of the composition or scheme.

(2) The application would be in Form 14 in the Schedule to these Rules.

(3) The making of an application shall not be deemed to imply approval of the composition or scheme.

Application
for approval
of composi-
tion or
scheme.

Form 14.

61. Any person other than the Official Receiver who applies to the Court to approve a composition or scheme shall send a notice of the application to the Official Receiver or special Manager if any, and if the Official Receiver is not the trustee of the debtors, to the trustee of the debtor or to the creditor as the case may be.
62. Upon the making of an order approving a composition or scheme, the Registrar shall forthwith send notice thereof to the Ministry for publication in the Gazette.
63. The fee payable on an application to approve a composition or scheme may be allowed and paid out of the estate of the debtor where there are funds available for that purpose in the hands of the Official Receiver or trustee, as the case may be.
64. When a composition or scheme is approved, the Official Receiver shall, on payment of all proper costs, charges and expenses of and incidental to the proceedings, and all fees and percentage payable to the Official Receiver and the Ministry, forthwith put the debtor, or the person or persons to whom under the composition or scheme the property of the debtor is to be assigned, into possession of the debtor's property.
65. If under a composition or scheme, a trustee is not appointed or if a trustee so appointed declines to act or becomes incapable of acting or is removed, the Official Receiver shall, unless and until another person is appointed trustee by the creditors, be the trustee for the purpose of the composition or scheme.
66. (1) When a composition or scheme is approved, the trustee appointed under it shall give security to the satisfaction of the Court in like manner as a trustee in bankruptcy.

Application for approval of composition or scheme to be on notice.

Order of composition or scheme to be gazetted.

Expenses of application payable out of the estate.

Proceedings if scheme is approved.

Official Receiver to be trustee before appointment of one.

Trustee to give security

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(2) If the trustee fails to give the security within the time required, he may be removed on application to the Court.

Remedy for non-payment under a composition or scheme.

67. Where default is made by a debtor or trustee in any payment under a composition or scheme, the only remedy of any person aggrieved shall be by application to the Court under section 18 (15) and (16) and section 23 (3) of the Act

Effect of annulment of composition or scheme.

68. Upon the annulment of a composition or scheme-
(a) the property of the debtor shall, unless the Court otherwise directs forthwith revert to the Official Receiver to whom the estate was originally assigned; and

(b) the trustee under the composition or scheme shall account to the trustee in the bankruptcy for any money or property of the debtor which has come to his hands, and hand over to the trustee in bankruptcy any money or property which has not been duly administered.

Disputed claim.

69. (1) Where, under a composition or scheme, provision is made for the payment of any money to the creditors and any claim in respect of which proof has been lodged is disputed, the Court may, if it thinks fit, direct that the amount which would be payable if the claim were established shall be secured in such manner as the Court may direct.

(2) On the determination of the dispute, the sum so secured shall be paid as the Court may direct.

Proof of debt in a composition or scheme

70. (1) A person claiming to be a creditor under a composition or scheme who has not proved his debt before the approval of the composition or scheme shall lodge his proof with the trustee thereunder, or, if there is no trustee, with the

(2) The trustee or Official Receiver shall admit or reject the proof.

(3) No creditor shall be entitled to enforce payment or any sum payable under a composition or scheme unless he has proved his debt and his proof has been admitted.

71. The provisions of these Rules relating to compositions or scheme shall apply to compositions or schemes under section 18 of the Act and so far as applicable, to those under section 23 of the Act.

Application of Rules to composition or scheme.

PART XIV - PROOF OF DEBTS

72. (1) Debt shall be proved in the manner laid down in this rule and the mode of proving debt under rules 73 to 90 of these Rules.

Mode of proving debt.

(2) Every creditor shall prove his debt as soon as he may after the making of a receiving order but not later than the time mentioned for that purpose in the notice convening the meeting of creditors.

(3) A proof intended to be used at an adjournment of the first meeting (if not lodged in time for the first meeting) shall be lodged not less than twenty-four hours before the time fixed for the adjourned meeting.

73. (1) A debt may be proved by delivering or sending through the post in a prepared letter to the Official Receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

Affidavit verifying debt.

(2) The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor; and if

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made by a person so authorized it shall state his authority and means of knowledge.

(3) The affidavit shall contain or refer to a statement of account showing the particulars of debt, and shall specify receipts, agreement or any document, if any, by which the same can be substantiated.

(4) The Official Receiver or trustee may at any time call for the production of the receipts, agreements or any document specified in an affidavit under paragraph (3) of this Rule.

(5) The affidavit shall state whether the creditor is or is not a secured creditor; and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the Official Receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence.

(6) Where an omission has arisen as specified in paragraph (5) of this rule, the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.

Creditor to bear cost of proving debt.

74. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

Creditor lodging a proof entitled to examine other proofs.

75. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

Deductible discount.

76. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of

his claim, which he might have agreed to allow for payment.

77. (1) If a secured creditor realizes his security, he may prove for the balance due to him after deducting the net amount realized.

Proof of
balance
outstanding
after security.

(2) If a secured creditor surrenders his security to the Official Receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

(3) If a secured creditor does not realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

(4) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(5) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale of such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct; and if the sale is by public auction, the creditor or the trustee on behalf of the estate, may bid for purchase of the security.

(6) Notwithstanding the provisions of paragraphs (4) and (5) of this rule, the creditor may at any time, by notice in writing require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his

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election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

Amendment
of valuation.

78. (1) Where a creditor has so valued his security under rule 77 (3) of these Rules, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made bona fide on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor and upon such terms as the Court shall order, unless the trustee shall annul the amendment without application to the Court.

(2) Where a valuation has been amended in accordance with paragraph (1) of this rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

(3) If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 77 (4)-(6) of these Rules, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

79. If a secured creditor does not comply with the foregoing rules he shall be excluded from all shares in any dividend.

Failure of creditor to comply with these Rules.

80. Subject to the provisions of rule 77 (4) to (6) of these Rules, a creditor shall in no case receive more than 20k in the Naira, and interest as provided by the law.

Amount due to creditor.

81. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, the fact that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contractors, against the properties respectively liable on the contracts.

Proof in respect of distinct contracts.

82. (1) Where it appears from the debtor's statement of affairs that there are numerous claims for wages by persons employed by him, a combined proof for all such claims made by the debtor, or his foreman or some other person on behalf of a such creditor, shall have the same effect as if such separate proofs have been made by each of such creditors.

Workmen's wages.

(2) A schedule setting out the names of the creditors and the amounts severally due to them, shall be annexed to the combined proof.

Periodical payments.

83. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than in one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

84. On any debt or sum payable at a certain time or

Interest.

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otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable
at a future
date.

85. A creditor may prove for a debt not payable when the debtor commits an act of bankruptcy as if it were payable, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of forty naira per centum per annum computed from the declaration of a term on which it was contracted.

Admission or
rejection of
proofs.

86. (1) A trustee other than the Official Receiver shall, within 21 days after receiving a proof which has not previously been dealt with by the Official Receiver, in writing either admit or reject it, wholly or in part, or require further evidence in support thereof.

(2) The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it; and if he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

Power of
Court to
amend proof.

87. (1) If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

(2) If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

(3) The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

88. (1) Where, under a composition or scheme, provision is made for the payment of any money to the creditors and any claim in respect of which a proof has been lodged is disputed, the Court may, if it thinks fit, direct that the amount which would be payable if the claim were established shall be secured in such manner as the Court may direct.

Disputed claim.

(2) On the determination of the dispute, the sum so secured shall be paid as the Court may direct.

89. (1) A person, claiming to be a creditor under a composition or scheme who has not proved his debt before the approval of the composition or scheme, shall lodge his proof with the trustee thereunder, or, if there is no trustee, with the Official Receiver.

Proof of debt in a composition or scheme.

(2) The trustee or Official Receiver shall admit or reject the proof.

(3) No creditor shall be entitled to enforce payment of any sum payable under a composition or scheme unless he has proved his debt and his proof has been admitted.

90. A certificate by the Accountant-General of the Federation signed by his own hand in case of a debt owing to the Government of the Federation; and a certificate by the

Proof of Government debt.

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Accountant-General of a State to which a debt is owed signed by the Account-General of that State, shall be a sufficient proof of the owing to the Government of the Federation or of the State, as the case may be.

Official Receiver to have power of trustees in dealing with evidence.

91. The Official Receiver shall, before the appointment of a trustee have all the powers of a trustee with respect to the examination, admission, and rejection of proofs; and any act or decision of his in relation thereto shall be subject to appeal.

Disclaimer of one's property. Form 15.

92. (1) A disclaimer under section 56 of the Act shall be in accordance with Form 15 in the Schedule to these Rules.

(2) A trustee who files a disclaimer in respect of any property in accordance with subsection (2) of section 56 of the Act shall forthwith give notice of the filing of the disclaimer to each person who, to his knowledge, has an interest in the property.

Sale of mortgaged property.

93. (1) Any person claiming to be the legal or equitable mortgagee of any real or leasehold property of the bankrupt may apply to the Court for an order directing the property to be sold.

(2) On the application, the Court, if it is satisfied as to the applicant's title, shall ascertain through affidavit or via evidence-

- (a) the principal interest and costs due the mortgagee, and
- (b) if the mortgagee has been in possession of the mortgaged property or any part thereof, the rents and profits, dividends, interest or other proceeds received by him or on his behalf.

(3) If the Court is satisfied that the property ought to be sold, it shall direct a sale which shall be held by the trustee unless otherwise ordered and notice of the intended sale shall be inserted in such newspaper as the Court may direct.

(4) The mortgagee may bid for and purchase the mortgaged property at the sale.

94. The proceeds of sale shall be applied in payment of the costs, charges and expenses of the trustee, and other expenses occasioned by the application to the Court and of the sale and attendance thereat.

Proceeds of
sales.

PART XV - ADJUDICATION

95. (1) At the time of making a receiving order or at any time thereafter, the Court may, on the application of the debtor, adjudge him bankrupt.

Application by
debtor.

(2) The application may be made orally and without notice or by petition on notice.

96. (1) When a receiving order has been made, any creditor or the Official Receiver may apply to the Court to adjudge the debtor bankrupt.

Application by
creditor.

(2) On the application the Court may forthwith make an order of adjudication if-

- (a) a quorum of creditors has not attended the first meeting of creditors or one adjournment thereof; or
- (b) it is satisfied that the debtor has absconded or does not intend to propose a composition or scheme; or
- (c) any of the other events specified in the Act have occurred.

97. Where a composition or scheme is not accepted by the creditors at the first meeting or at one adjournment thereof, the Court may on the application of the Official Receiver or of any person interested, adjudge the debtor bankrupt.

Rejection of
composition

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Order when
public
examination is
adjourned *sine*
die.

98. Where the public examination of a debtor is adjourned *sine die*, the Court may forthwith adjudge him bankrupt.

Order when
debtor is
adjudged
bankrupt.

99. (1) Where the debtor is adjudged bankrupt the Registrar shall forthwith give notice thereof to the Official Receiver and to the Ministry.

(2) Notice of the adjudication shall be advertised in a national newspaper and published in the Gazette in the same manner as notice of a receiving order.

Annulment of
adjudication.

100. The annulment of an adjudication shall not relieve a trustee from the duty imposed on him by the Act and these Rules to account to the Ministry for all his transaction in connection with the estate.

Vacation of
registration.

101. When an adjudication is annulled, the Court may at the same time make an order permitting vacation of the registration of the petition as a pending action, and of the receiving order in the register of writs and orders affecting land.

PART XVI - DISCHARGES

Application by
bankrupt
Form 16.

102. (1) An application by a bankrupt under subsection (1) of section 28 of the Act shall be in accordance with Form 16 in the Schedule to these Rules and shall have attached to it a list, certified by the trustee, setting out the names and addresses of the bankrupt's creditors, whether they have proved the debt or not.

(2) Where an application as mentioned in paragraph (1) of the rule is filed, the Registrar shall -

(a) not less than 21 days before the hearing date of the

application, serve notice of the date, time and place fixed for the hearing on the trustee and on the Official Receiver, if the Official Receiver is not the trustee; and

(b) not less than 14 days before that hearing date, serve notice of the date, time and place fixed for the hearing of the application on each creditor specified in the list attached to the application.

(3) The notice referred to in the Schedule to these Rules shall be in accordance with Form 15 in paragraph (2) of this rule.

Form 15.

103. An application by a bankrupt for his discharge shall be deemed to be an opposed application for the purpose of section 28 (3) of the Act if the Official Receiver reports to the Court any fact, matter or circumstances which would, under the Act, justify the Court in refusing an unconditional order of discharge.

Application by bankrupt for release.

104. (1) A report to the Court required to be made under subsection (3) of section 28 of the Act, shall be filed not less than 10 days before the hearing date of the application.

Report to be filed in Court.

(2) The person who files a report referred to in paragraph (1) of this rule shall, on the day on which the report is filed, post a copy of the report by registered post to the bankrupt's address for service.

105. Where a bankrupt intends to deny or dispute a statement in a report referred to in subsection (3) of section 28 of the Act, the bankrupt shall, not less than 3 days before the hearing date of his application for discharge, give to the trustee or to the Official Receiver as the case may be, notice in writing of his intention together with particulars of the statements in the report that he intends to deny or dispute.

Disputed Report.

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Opposition of application by creditors.

106. Where a creditor whose debt has been proved intends to oppose an application under section 28 of the Act, the creditor shall, not less than 3 days before the hearing date of the application -

Form 18.

(a) file a notice, in accordance with Form 18 in the Schedule to these Rules setting out the grounds on which he intends to oppose the application; and

(b) cause a copy of the notice to be served on the bankrupt and the trustee on the Official Receiver, if the Official Receiver is not the trustee.

Application to specify grounds.

107. (1) An application for annulment of adjudication under section 30 of the Act shall specify the grounds on which the application is made.

(2) Service of such an application shall be effected on-

(a) the Official Receiver;

(b) if the Official Receiver is not the trustee of the bankrupt's estate, the trustee of his estate; and

(c) each of the creditors of the bankrupt whose address is known to the applicant.

Costs of bankrupt's application or discharge.

108. The costs of the bankrupt of or incidental to his application for discharge shall not be allowed out of his estate.

PART XVII - DISCHARGE OF TRUSTEE

Application by trustee.

109. (1) An application by a trustee of a bankrupt for an order of release under subsection (1) of section 91 of the Act shall be served on-

(a) the Official Receiver;

- (b) the bankrupt; and
- (c) each creditor of the bankrupt whose name and address are known to the trustee.

(2) A trustee who files an application referred to in paragraph (1) of this rule shall, at the same time, file a statement in accordance with Forms 20 and 21 in the Schedule to these Rules of his realization and distribution of the estate of the bankrupt.

Form 20.
Form 21

110. Where an order of release of a trustee from the trusteeship of an estate is made under section 91 of the Act or his office is vacated by insolvency under section 92 of the Act or he is removed by resolution of the creditors under section 93 of the Act, the trustee shall deliver -

Order of
release of
trustee

- (a) if a new trustee has been appointed, to the new trustee; or
- (b) in any other case, to the Official Receiver; all books, document, papers and accounts in his possession in connection with the estate.

111. Where a trustee is released under section 91 of the Act or his office is vacated under section 92 of the Act or he is removed under section 93 of the Act, the Registrar shall forthwith -

Service of
notice of
removal of
trustee.

- (a) serve notice of that fact on the Official Receiver; and
- (b) cause notice of that fact to be published in the Gazette, in either case giving the appropriate section of the Act under which the release, the vacation or the removal was effected.

112. Application for directions required under subsection (3) of section 79 of the Act shall be in accordance with Form 19 in the Schedule to these Rules.

Application
for direction
Form 19.

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PART XVIII - APPEALS AND EXECUTION

Order of discharge not to be Gazette until expiration of time

113. (1) The order on an application for discharge shall not be delivered or gazetted until the time allowed for appealing has expired or, if an appeal is entered, until the appeal has been determined.

(2) When the time for appealing has expired or, as the case may be, when the appeal has been decided, the Registrar shall forthwith send notice of the order to the Ministry for publication in the Gazette.

Appeal.

114. An appeal to the Court of Appeal shall lie at the instance of the Ministry or the trustee from any order of the Court made upon an application for discharge or upon an application for recession of a receiving order or for annulment of adjudication on the ground that the debt of the debtor have been paid in full.

Official Receiver may apply for leave to levy execution.

115. (1) An application by the Official Receiver or trustee for leave to levy execution on a judgment entered pursuant to a conditional order of discharge shall be in writing, and shall state briefly the grounds on which the application is made.

(2) Not less than eight days before the day appointed for the hearing, the Official Receiver or trustee shall give notice thereof to the debtor and send him a copy of the application.

PART XIX – ACCOUNTS

Deductions allowable.

116. (1) Any allowance made by the trustee to the bankrupt out of bankrupt's property under the provisions of section 60 of the Act shall, unless the Committee of Inspection otherwise

determines, be in money and the amount allowed shall be entered in the trustee's accounts.

(2) For the purpose of subsection (2) of section 90 of the Act, the account shall be in accordance with Forms 20 and 21 in the Schedule to these rules.

Form 20.
Form 21

117. (1) Where a bankrupt is discharged conditionally upon consenting to judgment being entered against him, or upon payments being made out of his future earning or after-acquired property, he shall, until the judgment or condition is satisfied, give the Official Receiver such information as he may, from time to time, require with respect to his earnings and after acquired property and income, and not less than once a year, file in Court a statement, verified by affidavit, showing particulars of any property or income acquired by him after his discharge.

Undischarged
bankrupt to
file informa-
tion with
Official
Receiver.

(2) The Official Receiver or trustee may require the bankrupt to attend before the Court to be examined on oath as to his statement or as to his earnings, income, after-acquired property, or dealings.

(3) Where a bankrupt neglects to file a verified statement or to attend the Court for examination when required so to do, or failed properly to answer any proper questions put to him, the Court may, on the application of the Official Receiver or trustee, rescind the, order of discharge.

PART XX - ACTING AS DIRECTOR

118. (1) Where a bankrupt intends to apply to the Court for leave to act as director or take part in the management of a company, he shall serve upon the Official Receiver notice of the intended motion and a copy of the affidavit in support thereof.

Bankrupt to
serve notice of
intention to
act as director

Bankruptcy Rules 1990

(2) The Registrar shall give to the Official Receiver not less than twenty eight days, notice of the time and place fixed for the hearing.

(3) The Official Receiver shall make a report to the Court and send a copy thereof to the bankrupt by registered post not less than seven days before the day fixed for the hearing.

(4) Where the bankrupt intends to dispute any statement in this report he shall, not less than two days before the day fixed for the hearing, file in Court a notice specifying the statements which he intends to dispute, and serve a copy of the notice on the Official Receiver.

PART XXI - MEETING OF CREDITORS

Official Receiver to summon meeting of creditors.

119. The first meeting of creditors required under subsection (1) of section 15 of the Act shall, unless otherwise ordered by the Court, be summoned by the Official Receiver for a day not later than 14 days after the date of the receiving order, unless the Court shall for any special reason deem it expedient that it be summoned for a later day.

Time and place of meeting of creditors.

120. The Official Receiver shall -

(a) as soon as practicable, appoint a date, time and place considered to be most convenient for the majority of the creditors, and cause such date, time and place to be published in the Gazette and in such newspaper or newspapers as he thinks appropriate; provided that such publication shall not be less than 7 clear days to the date of the meeting;

Form 22.

(b) cause notice of the meeting, in accordance with Form 22, in the Schedule to these Rules, to be delivered or posted to the bankrupt and to each of the bankrupt's creditors at the address

given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs or at such other address as may be known to the Official Receiver;

(c) if the bankrupt has lodged his statement of affairs, cause to be delivered or posted at the same time and address as the notice of the meeting, but in any case not later than 7 clear days before the date of the meeting, summary of the statement of affairs, including the cause of his failure and any observations thereon which the Official Receiver may think fit to make;

(d) cause a proxy form as in Form 23 in the Schedule to these Rules to be sent to all the creditors at the same address and by the same method as the notice of the meeting.

Form 23.

121. The Official Receiver or the trustee may at any time summon a meeting of creditors and shall do so whenever so directed by the Court or so requested by a creditor in accordance with the provisions of the Act.

Time for
summoning
meeting of
creditors.

122. Where a meeting of creditors of a bankrupt, not being the first meeting of the creditors, is convened by the Official Receiver or by the trustee, where the Official Receiver is not the trustee, he shall cause notice of the date, time and place appointed for the holding of the meeting to be delivered or posted, not less than 7 days before the date of the meeting-

Notice of
meeting to be
sent to each
creditor, etc.

(a) to each creditor of the bankrupt whose business, or residential or other address is known to him;

(b) to the trustee, where the Official Receiver is not the trustee.

123. The Official Receiver, or some person nominated by him shall be the Chairman at the first meeting and the Chairman at subsequent meetings shall be such person as the majority in

Official
Receiver to
preside at 1st
meeting.

Bankruptcy Rules 1990

number of the creditors present and entitled to vote at the meeting may appoint by a resolution of the meeting.

Creditors to vote.

124. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

Creditor of unliquidated debt not to vote.

125. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained.

Secured creditor may not vote.

126. (1) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security.

(2) If a creditor votes in contravention of paragraph (1) of this rule he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

Creditor covering a current bill of exchange may not vote

127. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat the liability to him thereon of every person, who is liable thereupon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands and to estimate the value thereof, and for the purposes of voting but not for the purposes of dividend, to deduct it from his proof.

128. The trustee or the Official Receiver may within 21 days after proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of 20 per cent: provided that where a creditor has put a value on such security, he may, at any time before he has been required to give such security as aforesaid, correct such valuation by new proof, and deduct such new value from his debt, but in that case the addition of 20 per cent shall not be made if the trustee requires the security to be given up.

Trustees may require creditor to give up security.

129. If a receiving order is made against a partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm or any of them may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

Receiving order against partner.

130. (1) A creditor may vote either in person or by proxy.

Vote may be in person or by proxy.

(2) A proxy shall be lodged with the Official Receiver or trustee not later than mid-day on the day before the meeting or adjourned meeting at which it is to be used.

(3) As soon as a proxy has been used it shall be filed with the proceedings.

(4) An infant shall not be appointed as a proxy.

131. Every instrument of proxy shall be in accordance with Form 23 in the Schedule to these Rules and if the creditor is an illiterate, or blind, it must contain a Jurat in accordance with the Illiterates Protection Act.

Instrument of proxy.

Bankruptcy Rules 1990

General or
special proxy.

132. A creditor may give a general or special proxy to any person (including the Official Receiver) but the proxy must state the relation in which the person to act thereunder stands to the creditor.

Conditions of
a proxy.

133. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters, that is -

(a) for or against any specific proposal for a composition or scheme of arrangement;

(b) for or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or members of a committee of inspection;

(c) on all questions relating to any matter, other than those referred to in sub-paragraphs (a) and (b) of this rule, arising at any specified meeting or adjournment thereof.

Adjournment
of meetings.

134. The Chairman of a meeting may, with the consent of creditors at the meeting adjourn the meeting from time to time and from place to place.

Quorum at
meetings.

135. A meeting shall not be competent to act for any purpose, except the election of a Chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

Adjournment
due to absence
of quorum.

136. If within half an hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following

week at the same time and place, or such other day, time and place as the Chairman may appoint, not being less than 7 or more than 21 days.

137. The Chairman at every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for the purpose, and the minute shall be signed by him or by the Chairman of the next ensuing meeting.

Minutes of meetings.

138. Where the creditors pass a resolution to remove a trustee under subsection (1) of section 93 of the Act, the Chairman at the meeting shall, forthwith cause a copy of the resolution to be sent to the Registrar who shall on receipt thereof give such notice as is required under rule 11 of these Rules to the Official Receiver.

Resolution to be served on Official Receiver.

139. If the Chairman dies without having complied with a preceding provision of these Rules or becomes incapable whether through illness or other cause of complying with such a provision, the trustee of the bankrupt or the person who called the meeting, if he attended the meeting, or a creditor who attended the meeting, may comply with the provisions in the place of the Chairman.

Death of Chairman.

140. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner, or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor; provided that where any person holds a special proxy to vote for the appointment of himself as trustee he may use the said proxy and vote accordingly.

Unfair use of proxies.

Bankruptcy Rules 1990

Vote of trustee.

141. The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Validity of meetings of creditors.

142. The proceedings at a meeting of creditors shall, unless the Court otherwise orders be valid, notwithstanding that some creditors have not received the notice summoning the meeting.

PART XXII - OFFENCES

Institution of trial.

143. The trial of any offence under the Act shall be instituted by filing an information with the Registrar.

Information to be on oath.

144. An information shall be on oath sworn before the Registrar.

Registrar to issue summons.

145. Where an information is filed in the office of the Registrar, the Registrar shall issue a summons requiring the defendant to appear before the Court on a day and at a time and place specified in the summons.

Copy of information to be attached to summons.

146. The summons issued under rule 145 of these Rules shall have a copy of the information to which it relates indorsed to it or attached to it .

PART XXIII - MISCELLANEOUS

Official Receiver

Representation of Official Receiver in Court.

147. Where the Official Receiver is entitled to be heard on the hearing of an application or an examination under the Act, or to present evidence or examine or cross-examine during the hearing and is for any reason unable or incapable to be present in person at the hearing, the Court may permit an officer or counsel who assists the Official Receiver in the performance of

his functions and is authorized in writing by the Official Receiver to do so and appear on behalf of the Official Receiver and take such part in the hearing of the application or examination as the Official Receiver could have taken if he had taken part in person.

148. An instrument appointing an Official Receiver to vote at a meeting of creditors as the proxy of a creditor shall, unless the contrary intention appears, be taken to authorize an officer appointed by the Official Receiver to vote, as proxy of the creditor, at the meeting of creditors if the Official Receiver is unable to be present, but such instrument shall not be taken to authorize a person other than the Official Receiver to vote at a first meeting of creditors as the proxy of a creditor.

Representatio
n of Official
Receiver at
meeting of
creditors

Trustee's Remuneration

149. For the purposes of section 82 of the Act, the Court shall determine the remuneration of a trustee taking into consideration the moneys realized by the trustee and expenses reasonably incurred by him; provided that on no account shall the remuneration exceed ten per centum of the total moneys realized by him.

Remuneration
of trustee.

Persons under Disability

150. (1) Where an infant desires to institute a proceeding, a person may institute the proceedings as the next friend of the infant.

Infants

(2) Except in a case where the Court has appointed a person to be the next friend of an infant for the purpose of instituting a proceeding, a person shall not be named as next friend of an infant in connection with a proceeding by an infant, unless such person has consented, in writing, to act as next friend of the

Bankruptcy Rules 1990

infant in the proceeding, and such consent shall be filed in the office of the Registrar of the appropriate judicial Division.

(3) Where an infant is a party to a proceeding, other than the party who instituted the proceeding, the infant may take part in the proceeding by his guardian ad litem.

(4) An infant may consent, in writing, to a person being appointed to be his guardian ad litem for the purpose of a proceeding.

(5) The person so appointed by an infant shall make an application ex parte to take part in the proceeding.

(6) The application shall be supported by the infant's letter of his appointment and an affidavit by a credible person deposing to the fitness of the applicant to act as guardian ad litem of the infant.

Service of
document on
infants.

151. (1) Where a document is required to be served on an infant in connection with a proceeding, due service of the document on the infant shall be service of the document on the infant personally and a copy of the document shall also be served on the father, or guardian of the infant or on a person over the age of twenty-one years with whom the infant is residing or in whose care he is.

(2) Where a party to a proceeding who is an infant has an address for service for the purpose of the proceeding, a document not being a document that is required to be served on the party personally, may be served on the party at the address for service in a manner specified in the rules of the Court.

Persons of
unsound mind.

152. (1) A person of unsound mind may institute a proceeding by the committee (if any) of his person or estate or, if there is no

committee able and willing to act for him in the proceeding, by his guardian ad litem.

(2) Except in a case where the Court has appointed a person to be the guardian ad litem of a person of unsound mind for the purpose of instituting a proceeding, a person shall not be named as the guardian ad litem of a person of unsound mind in connection with the institution of a proceeding by the person of unsound mind, unless such person has consented, in writing to act as a guardian ad litem of the person of unsound mind in the proceeding, and such consent shall be filed in the office of the Registrar of the appropriate judicial Division.

(3) Where a person of unsound mind is a party to a proceeding, other than the party who instituted the proceeding, a committee of his person or estate, or if there is no committee able and willing to act for him in the proceeding, a guardian ad litem of the person of unsound mind, may take such action in and in relation to the proceeding on behalf of the person of unsound mind as the committee or guardian thinks fit as the person might have taken if he had not been of unsound mind.

(4) For the purposes of this rule and rule 149 of these Rules, a committee that institutes a proceeding or takes any other action in or in relation to a proceeding on behalf of a person of unsound mind shall be deemed to be the guardian ad litem of the person of unsound mind for the purpose of the proceeding.

153. (1) Where a document is required to be served on a person of unsound mind, due service of the document on he person of unsound mind shall be service of the document on a committee of his person or committee of his estate if any, or if not such committee is appointed or in any other case, on a person with whom the person of unsound mind is residing or the person in whose care he is.

Service of
document on
persons of
unsound mind.

Bankruptcy Rules 1990

(2) Where a party to a proceeding who is a person of unsound mind has an address for service for the purpose of the proceedings, a document, not being a document that is required to be served on the party personally, may be served on the party at the address for service in a manner specified in the rules of the Court.

Committee of persons of unsound mind may institute proceedings.

154. (1) Where a committee of the person or estate of a person of unsound mind desires to institute a proceeding or take any part in a proceeding on behalf of the person of unsound mind, the committee shall consent to act on behalf of the person of unsound mind in the proceeding.

(2) Where no committee has been appointed or the committee appointed is unable or unwilling to act a fit and proper person may apply by ex parte motion to be appointed to be guardian ad litem of the party for the purpose of the proceeding.

(3) For the purpose of ex-parte motion mentioned in paragraph (2) of this rule, the motion shall be supported by an affidavit of a credible person deposing to the fitness of the applicant to act as guardian ad litem of the person of unsound mind.

Arrest of Debtor

Arrest of debtor.

155. When the debtor is arrested under a warrant issued under section 25 of the Act-

(a) the officer apprehending him shall give him into the custody of the Superintendent of the prison mentioned in the warrant, who shall keep him in custody until such time as the Court shall otherwise order and shall produce him before the Court as it may, from time to time, direct; and

(b) any books, papers, monies, goods and chattels in the

possession of the debtor which may be seized shall forthwith be lodged with the Registrar.

156. (1) When a person is apprehended under a warrant issued under section 27 (2) of the Act, the officer apprehending him shall forthwith bring him before the Court issuing the warrant in order that he may be examined, and if he cannot immediately be brought up for examination, the officer shall deliver him into the custody of the Superintendent of the prison mentioned in the warrant, who shall receive and keep him and shall produce him before the Court as the Court may, from time to time, direct.

Production of an arrested person before the Court.

(2) After apprehending the person named in the warrant, the officer shall forthwith report to the Court the apprehension or delivery into custody, as the case may be, and the Court shall appoint the earliest practicable day for the examination, and shall direct the Superintendent of the prison to produce him for examination at the place and time appointed.

(3) Notice of the place and time appointed shall forthwith be given by the Registrar to the person who applied for the examination or warrant.

Non-Compliance with Rules

157. (1) Subject to the provisions of this rule non-compliance with any of the Rules does not render a proceeding void unless the Court so directs.

Non-compliance with Rule.

(2) Where the provisions of any of these Rules have not been complied with in relation to any proceedings-

(a) the proceeding may be set aside either wholly or in part, as irregular, or may be amended or otherwise dealt with in such

Bankruptcy Rules 1990

manner and upon such terms as the Court thinks fit; or

(b) the Court may, upon such terms as the Court thinks fit, relieve a party from the consequences of non-compliance with the Rules.

(3) An application to set aside a proceeding as irregular shall not be allowed-

(a) unless the application is made within a reasonable time after the irregularity came to the knowledge of the applicant; or

(b) if the applicant has taken a fresh step after knowledge of the irregularity.

(4) An application to set aside a proceeding as irregular shall specify the irregularity intended to be relied on in support of the application.

Application of Rules of Court

Federal High Court Rules to apply in case of *lacunae*.

158. If no provision is made for any Rules or procedure to be followed in bankruptcy proceedings in these Rules, the Rules of the Court shall be followed with such modification as to bring it into conformity with the provisions of the Act.

Forms

Forms to be used in proceedings.

159. The Forms in the Schedule to these Rules with such modification as circumstances may require, shall wherever applicable be used in proceedings under the Act.

Amendment of Forms

160. (1) The Chief Judge may alter any form which relates to matters of an administrative and not a judicial character, or may substitute new forms in lieu thereof or introduce new ones

(2) Where the Chief Judge alters any form or substitutes or introduces any new form, the altered or substituted or introduced form shall be published in the Gazette.

Interpretation

161. (1) In these Rules, unless the context otherwise requires;

Interpretation

"Act" - means the Bankruptcy Act 1979;

"Chief Judge" - means the Chief Judge of the Federal High Court;

"Court" - means Federal High Court established by the Constitution of the Federal Republic of Nigeria 1979, as amended,

"creditor" includes a corporation, a firm of creditors in partnership and the official petitioner;

"debtor" includes any debtor proceeded against under the Act whether adjudged bankrupt or not, and also includes a firm of debtors in partnership;

"Gazette" means the Federal Republic of Nigeria Official Gazette;

"Minister" means the Federal Minister charged with the responsibility for bankruptcy administration and "Ministry" shall be construed accordingly;

"Registrar" includes the Chief Registrar and all other Registrars of the Federal High Court;

"Rules of the Court" means Federal High Court (Civil Procedure) Rules 1976 or any other Rules amending or replacing them;

"scheme" means a scheme of arrangement pursuant to the Act;

"sealed" means sealed with the seal of the Court;

"trustee" includes the trustee appointed under a composition or scheme and also includes an Official Receiver when acting as

Bankruptcy Rules 1990

trustee.

No of 1964.

(2) The Interpretation Act 1964 shall apply to the interpretation of these Rules as it applied to the interpretation of the Act and any word used in these Rules shall have the same meaning as in the Act.

Citation

162. These Rules may be cited as the Bankruptcy Rules 1990.

SCHEDULE

FORMS FOR USE IN PROCEEDINGS UNDER THE BANKRUPTANCY ACT

FORM I

IN THE FEDERAL HIGH COURT
IN THE FEDERAL HIGH COURT BANKRUPTCY
DIVISION

HOLDEN AT
..... SUIT

NO.....
Re: (Name)
Ex-parte - (insert the debtor of the Creditor or the Official Receiver or the Trustee).

FORM 2

Rule 18

IN THE FEDERAL HIGH COURT BANKRUPTCY DIVISION APPLICATION FOR ISSUE BANKRUPTCY NOTICE (title)

1. I (Full name and address of Judgment Creditor)

request the Registrar to issue a bankruptcy notice addressed to

(name and address and occupation of debtor) (hereinafter referred to as the "the Judgment Debtor").

I produce (here state an office copy of the final judgment)

or otherwise describe the document to be filed in accordance with Rule 118(I) of the Bankruptcy Rules 1990 against the Judgment Debtor obtained by

in the Court of on the day of 19.....

3. Execution of the final judgment (or order) has not been stayed at the time of the making of this application.

Bankruptcy Rules 1990

DATE this day of
19.....

the judgment Creditor

Solicitor for

FORM 3

Rule 18(7)

IN THE FEDERAL HIGH COURT BANKRUPTCY DIVISION BANKRUPTCY NOTICE

(Title)

To:

Name:.....

(Address)

and

.....

(Occupation of Judgment Debtor)

WHEREAS (Name and Address of Judgment Creditor) (hereinafter referred to as "the Judgment Creditor") has claimed that the sum of N.....is due by you to him under a final judgment (or order) obtained by him against you in the

.....

...

Court ofon the day of

..... 19being judgment (or an order)

The execution of which has not been stayed.

THEREFORE TAKE NOTICE that withindays after service of this notice on you, excluding the day which this notice is served on you, you are required :-

- (a) to pay the sum N..... so claimed by the Judgment Creditor to (here insert "..... the Judgment Creditor or if the judgment requires payment to be made to a court or a person other than the judgment creditor, the name and address of the court or the other person to whom payment is required to be made), or

Bankruptcy Rules

(b) to secure or compound the payment of the sum referred to in the last preceding paragraph to the satisfaction of the (name of the Court) or the Judgment Creditor (or his agent whose name and address are)

.....
or compound the sum so specified to the satisfaction of the Judgment Creditor (or his agent).

AND FURTHER TAKE NOTICE that if within the period set out above, you fail either to comply with either of the above mentioned requirements of this notice or to satisfy (here insert the name of the court) that you have a counter-claim, set off or cross demand equal to or exceeding the sum specified in paragraph (a) of this notice, being a counter claim, set off or cross demand that you could not have set up in the action (or proceeding) in which the judgment (or order) was obtained you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

DATED thisday of
19.....

.....

Registrar

This notice was issued on the application of
.....
.....name of the
Solicitor for the Judgment Creditor or the name of the Judgment
Creditor as the case may be) whose address for service is
.....

.....
.....

FORM 4

Rules 15 and 22

IN THE FEDERAL HIGH COURT BANKRUPTCY DIVISION CREDITOR'S PETITION (Title)

... (Full name)

... (Address)

... (Occupation of Petitioning Creditor) petition the Court for a Receiving Order against the estate of

... (Full Name of Debtor) who at... resides (and carries on business at occupation) and whose is

hereinafter referred to as the "the debtor".

1. The debtor was at the date of the commission of the act of bankruptcy specified in paragraph 4 of this petition personally resident in Nigeria (or ordinarily resident in Nigeria, as the case may be).

Bankruptcy Rules

2. The debtor is justly and truly indebted to me in the sum of N..... for (consideration for debt to be shown).

3. I do not, nor does any person on my behalf, hold any security over the property of the debtor or any part of it for the payment of the amount specified in the last preceding paragraph.

Or

I hold security over the property or part of the property of the debtor, being here specified particulars of the security is valued at N.....leaving an unsettled balance to me of N.....

4. I hold security over the property (or part of the property) of the debtor for payment of the amount specified in the last preceding paragraph, being (here specify particulars of the security) but I am willing to surrender the security for benefit of the creditors generally in the event of a receiving order being made against the estate of the debtor.

5. the debtor, within six months before presentation of this petition, committed the following act (or acts) of bankruptcy (her set out nature and date or dates of the act or acts of bankruptcy relied on).

DATED thisday of.....19.....

..... Signed by the Petitioner in my presence

..... Signature, address and occupation of witness

This Petitions filed by of on behalf service whose address for

is.....

.....

FORM 5

Rule 22 (2)

IN THE FEDERAL HIGH COURT BANKRUPTCY DIVISION

NOTICE TO BE ATTACHED TO CREDITOR'S PETITION

To:.....

...

TAKE NOTICE that the attached petition has been presented to the court and will be heard on the sitting of the court of the Day of 19 at O, clock in the noon at if you wish to deny or dispute any statement in that petition or to oppose the petition on any other grounds you should:

(a) file in my office at a notice setting out or referring to the statements that you intend to deny or dispute or other grounds on which you intend to oppose the petition;

(b) serve a copy of that notice on the petitioner or his solicitor at the address indicated in the petition not less than 3 days before the days specified above as the day fixed for the hearing of that petition; and

(c) attend before the Court upon the hearing of the petition on the day and at the time and place mentioned above.

DATED this day of 19.....

Registrar

FORM 6

Rule 22 (3) (b)

IN THE FEDERAL HIGH COURT BANKRUPTCY DIVISION
AFFIDAVIT OF TRUTH OF STATEMENTS IN PETITION
(Title)

I, the Petitioner named in the petition hereunto annexed (or, I

of.....

being a person having knowledge of the facts to which the petition hereunto relates) make Oath and say:-

That the several statements in the said petition are to the best of my knowledge, information and belief true.

Deponent

Sworn at

etc.