

MODULE 5

BANKRUPTCY LAW

Outline

- Acts of Bankruptcy
- Capacity in Bankruptcy
- Issues in Receiving Orders
- Statements of Affairs
- Meeting of Creditors
- Public Examination of the Debtors
- Adjudication Order
- Official Receivers appointment and powers
- Special managers
- Committee of inspection
- trustee's duties
- Power books
- Remuneration and schemes of arrangement
- The debtors' property
- Disclaimer discharge of bankruptcy
- Creditors' proof of debts
- Mutual dealings
- Creditors
- Special position of landlord
- General debts and deferred debts

Acts of Bankruptcy

A debtor commits an act of bankruptcy in each of the following cases-

(a) if a creditor -

(i) has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has a bankruptcy notice served on him, and

(ii) does not, within fourteen days after service of the notice, comply with the requirements of the notice or satisfy the court that he has a counter-claim, set off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained or the proceedings in which the order was obtained,

and for the purposes of this paragraph and of section 4. any person who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order;

(b) if execution against him has been levied by seizure of his goods under process in an action, or proceedings in the court, and the goods have either been sold or held by the bailiff for twenty-one days:

Provided that, where an inter-pleader summons has been taken out in regard or presents a bankruptcy petition against himself.

Acts of Bankruptcy cont'd

to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled or abandoned shall not be taken into account in calculating such period of twenty-one days;

(c) if he files in the court a declaration of his inability to pay his debts

Receiving Order

- A court order appointing the Director General of Insolvency (DGI) to manage the property of a debtor or bankrupt.
- When a debtor commits an act of bankruptcy and a petition is validly filed in the court, the court will make a receiving order and then appoint an Official Receiver i.e court registrar.
- Receiving Order is order of the court place for the estate of a debtor in order for the debtor not to deal with his property.

Statement of Affairs

The statement of affairs is a long and detailed form which asks for information about the following:

- your personal details
- details of any self-employment or business you run
- information about the things of value you own, including how much they're worth
- who you owe money to
- details of all your bank accounts and credit cards
- your employment and income
- how much money you spend
- any property you own, and any property you've given away or sold in the last five years
- other people who share your home
- why you're having difficulty paying your debts.

The court will use all this information to decide whether your bankruptcy should be granted or not.

Meeting of Creditors

- One of the most commonly asked questions asked about bankruptcy is “Will I have to go to court?” In most bankruptcy cases, the answer is no. However, you will have to attend a hearing conducted by the bankruptcy trustee called the “meeting of creditors”. The primary purpose of this hearing is to give the bankruptcy trustee the opportunity to ask questions and have you confirm under oath the information you provided in your petition, schedules, and other documents. Knowing what to expect at this hearing will make things go smoother and help to ease any anxiety you may be feeling.

Who Attends the Meeting of Creditors?

- Generally, the only people attending the meeting are the trustee, your attorney, and you. Many people are concerned that their creditors will come to this hearing and grill them. Although creditors can attend the meeting and ask questions, it is very unusual for creditors to show up at all. It is simply a waste of their time. On the rare occasion when a creditor does turn up, your attorney can make sure they do nothing inappropriate.

Meeting of Creditors cont'd

occasionally, a representative of the County Trustee (the supervisor of the trustee program) will attend and ask questions. You should answer his or her questions in the same manner you would answer the bankruptcy trustee.

The Setting

The setting is an office with you and your attorney sitting across a desk or table from the trustee. In most cases, this meeting is relatively short (often less than 15 minutes). However, you may have to wait a while before your case is called.

- The creditors meeting is generally less formal than a hearing held before a judge. You should dress neatly, but you do not need to wear a suit and tie.

How the Meeting of Creditors Works

At the beginning of the meeting, the trustee will ask to see your driver's license and Social Security card and swear you in. (You should have your Social Security card and driver's license out and ready when you go in to see the trustee.) He or she will then ask you a series of questions related to the information that you provided in your petition, schedules, and other documents

Public Examination of the Debtors

Public examination of debtor. When a receiving order has been made, the debtor must, within three days, if the order is made on the debtor's petition, or within seven days, if made upon the petition of a creditor, submit a statement of his affairs to the official receiver. As soon as convenient after the expiration of the time for delivery of the statement, the Court shall hold a public sitting for the examination of the debtor. Section 17 of the Bankruptcy Act, 1883, is as follows : " (1) Where the Court makes a receiving order it shall hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

" (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

" (3) The Court may adjourn the examination from time to time.

" (4) Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure.

Public Examination of the Debtors cont'd

" (5) The official receiver shall take part in the examination of the debtor ; and for the purpose thereof, it specially authorized by the Board of Trade, may employ a solicitor with or without counsel.

such order shall not be made until after the day appointed for the first meeting of creditors.

" (6) If a trustee is appointed before the conclusion of the examination he may take part therein.

" (7) The Court may put such questions to the debtor as it may think expedient.

" (S) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him ; they shall also be open to the inspection of any creditor at all reasonable times.

" (9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but

Adjudication Order

- Adjudication Order is the judgment or decree of a court having jurisdiction, that a person against whom a petition in bankruptcy has been filed or who has filed his voluntary petition be ordered and adjudged to be a bankrupt.

powers of the official receiver

On the making of a bankruptcy order the official receiver is under a duty to act as receiver and manager until such time as the bankrupt's estate vests in a trustee. The principal aim of the official receiver is to protect the bankrupt's estate until a trustee is appointed. The legal powers of the official receiver when acting as receiver and manager are outlined below, whilst the practical application of these powers are explained in parts 3 to 10. In particular it should be noted that generally assets should only be realised where they are perishable or likely to decrease in value.

The official receiver has the same powers as if he/she were a receiver or manager appointed by the High Court

Appointment of Official Receiver

- The High Court may appoint a receiver or manager where it appears just and equitable to do so. on the application to protect an interest in property for the benefit of those entitled to it. An appointment is made to:
 - enable persons who possess rights over property to obtain the benefit of those rights over property pending realisation, where ordinary legal remedies are defective; or
 - to preserve property from some danger which threatens it.

Special Manager

- The express powers of a receiver and manager are set out in the order appointing him, for example, allowing him/her to “collect, get in and receive” the property in question. The express power implicitly authorises acts incidental to, or consequential to, the carrying out of the object encompassed by the express powers. The receiver and manager has the power to insure property subject to his appointment against damage by fire and collect any rental income. He/she may also pay out small sums of money in respect of repairs or may allow such to a tenant. The receiver and manager does not have the power of sale of the property and/or chattels subject to his/her appointment or to borrow money without leave of the court.

Appointment of Official Receiver

The creditors qualified to vote may, at their first or any subsequent meeting by resolution appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications, that is-

a. that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

b. that of being a person to whom a creditor intends to give a general proxy or general power of attorney, provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

The committee of inspection shall meet at such times as it shall from time to time appoint and failing such appointment, at least once a month, and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

Appointment of Official Receiver

The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee is present at the meeting.

Any member of the committee may resign his office by notice in writing signed by him and delivered to the trustee.

If a member of the committee becomes bankrupt, or compound or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

The continuing members of the committee, provided there be not less than three such continuing members, may act notwithstanding any vacancy therein and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

If there be no committee of inspection any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the court on the application of the trustee.

Trustee's Duties

- The overarching duty of the trustee is to collect and liquidate the property of the estate and to distribute the proceeds to creditors. The trustee's specific statutory duties, as set forth in Bankruptcy Code, include the following:
- To collect and reduce to money the property of the estate and close the estate as expeditiously as compatible with the best interests of the parties in interest;
- To be accountable for all property received;
- To ensure that the debtor performs his or her intention as to retaining or surrendering property of the estate that secures consumer debt;
- To investigate the financial affairs of the debtor;
- If a purpose would be served, to examine proofs of claims and object to any that are improper;
- If advisable, to oppose the discharge of the debtor;
- Unless the court orders otherwise, to furnish information concerning the estate and the estate's administration as requested by a party in interest;
- If the debtor's business is authorized to continue operating, to file with the court appropriate reports and summaries, including a statement of receipts and disbursements; and
- To file a final account of the administration of the estate with the NigeriaTrustee and the court.

Remuneration and schemes of arrangement

- Where the creditors appoint any person to be trustee of a debtor's estate his remuneration (if any) shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend. Such percentage shall be as the court may approve or as may be prescribed from time to time.
- The remuneration shall cover all expenses except actual out of pocket expenses properly incurred and no liability shall attach to the bankrupt's estate or to the creditors in respect of any other expenses.
- Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the court may approve.
- A trustee shall not under any circumstances whatever make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer or any other person who may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond his said remuneration payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, whether as receiver, manager or trustee, to the bankrupt or any solicitor or other person who may be employed about a bankruptcy.

The debtors' property

- The debtors' property is created when the debtor files the [bankruptcy petition](#). The debtors' property is all of the property and income of the debtor that is subject to the bankruptcy, and includes all legal or equitable interests of the debtor in property as of the commencement of the case—pre-petition property. Other property that may be included are the debtor's interest in community property, certain bequests received within 180 days of the filing date, and any income earned or property acquired by the bankruptcy estate.

Creditors' proof of debt

- The first thing a creditor to do is to present his/her proof of debt. The proof of debt is the evidence that the creditor is entitled to his claim that the debtor is owing him the stated amount. It is a statement accompanied by evidence of transaction the fact that the stated amount is outstanding.
- The proof of debt must be authenticated by the creditor or a person authorized in that regard . The Insolvency Rules 2010 introduced the concept of 'authentication' of documents to facilitate electronic delivery. Rule 12A.9 provides that a paper document is sufficiently authenticated if it is signed by the person sending or supplying the information. A document in an electronic format is sufficiently authenticated if the identity of the sender is confirmed in a way specified by the recipient. If the recipient has not specified how the sender's identity should be confirmed, the communication is sufficiently authenticated if it is accompanied by a statement of the identity of the sender and the recipient has no reason to doubt the truth of that statement

Creditors

- **Creditor** are People (or some entity) that has a right to payment or other remedy against/from the debtor who is the subject of the **bankruptcy** filing
- In bankruptcy proceedings, a debt that by statute is not paid until all other debts have been paid in full.

Review Questions

1. Write short note on the following:
 - Discharge order
 - Receiving Order
2. Highlight the Act of Bankruptcy
3. What do you understand by statement of affairs?
4. What are the issues in receiving order?

Reference

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<http://thismatter.com>

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