

Tanzania

Bankruptcy Act

## Bankruptcy Rules, 1931

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# Bankruptcy Rules, 1931

## Contents

Part I – Preliminary provisions (rules 1-4) .....	1
Rule 1. – Short title, commencement and application .....	1
Rule 2. – Interpretation .....	1
Rule 3. – Duties of registrar in subordinate court .....	2
Rule 4. – Computation of time .....	2
Forms (rule 5) .....	2
Rule 5. – Use of forms in Appendix .....	2
Subrule (1) .....	2
Subrule (2) .....	2
Part II – General procedure court and chambers (rules 6-97) .....	2
Rule 6. – Matters to be heard in court .....	2
Subrule (1) .....	2
Paragraph (a) .....	2
Paragraph (b) .....	2
Paragraph (c) .....	2
Paragraph (d) .....	2
Paragraph (e) .....	2
Paragraph (f) .....	2
Subrule (2) .....	2
Rule 7. – Adjournment from chambers into court and vice versa .....	2
Proceedings (rules 8-15) .....	3
Rule 8. – Proceedings, how entitled .....	3
Subrule (1) .....	3
Subrule (2) .....	3
Subrule (3) .....	3
Rule 9. – Written proceedings .....	3
Rule 10. – Records of the court .....	3
Rule 11. – Notices to be in writing .....	3
Rule 12. – Process to be sealed .....	3
Rule 13. – Meetings summoned by court .....	3
Rule 14. – Office copies .....	3
Rule 15. – Filing, gazetting, etc. ....	4
Subrule (1) .....	4
Subrule (2) .....	4

Subrule (3) .....	4
Motions and practice (rules 16-25) .....	4
Rule 16. – Application to be by motion .....	4
Rule 17. – Notice of motion and ex parte application .....	4
Rule 18. – Length of notice .....	4
Rule 19. – Affidavits against motion .....	4
Rule 20. – Notice not served on all proper parties .....	4
Rule 21. – Adjournment .....	4
Rule 22. – Personal service .....	5
Rule 23. – Filing affidavits on motion .....	5
Rule 24. – Indorsement and filing of affidavits .....	5
Rule 25. – Notice of motion to be filed .....	5
Preparation of orders (rule 26) .....	5
Rule 26. – Preparation of orders .....	5
Subrule (1) .....	5
Subrule (2) – Notice of appointment to settle order .....	5
Security in court (rules 27-35) .....	5
Rule 27. – Security by bond .....	5
Rule 28. – Amount of bond .....	6
Rule 29. – Deposit in lieu of bond .....	6
Rule 30. – Money lodged in court .....	6
Rule 31. – Security of guarantee society .....	6
Rule 32. – Notice of sureties .....	6
Rule 33. – Justification by sureties .....	6
Rule 34. – Execution of bond .....	6
Rule 35. – Notice of deposit .....	6
Stamps (rule 36) .....	6
Rule 36. – Defacement of stamp .....	6
Affidavits (rules 37-48) .....	7
Rule 37. – Costs of unnecessary matter .....	7
Rule 38. – Drawing up of affidavits .....	7
Rule 39. – Deponent's description .....	7
Rule 40. – Several deponents .....	7
Rule 41. – Scandalous matter .....	7
Rule 42. – Erasures, etc. ....	7

Rule 43. – Blind or illiterate persons .....	7
Rule 44. – Formal defects .....	7
Rule 45. – Filing office copies, etc. ....	8
Subrule (1) .....	8
Subrule (2) .....	8
Rule 46. – Swearing of affidavit .....	8
Subrule (1) .....	8
Subrule (2) .....	8
Subrule (3) .....	8
Rule 47. – Time for filing .....	8
Subrule (1) .....	8
Subrule (2) – Affidavit in ex parte .....	8
Rule 48. – Proof of service .....	8
Witnesses and depositions (rules 49-59) .....	8
Rule 49. – Subpoena .....	8
Rule 50. – Service of subpoena .....	8
Rule 51. – Proof of service .....	8
Rule 52. – Limit of witnesses' costs .....	9
Rule 53. – Costs of witnesses .....	9
Rule 54. – Depositions, etc. ....	9
Rule 55. – Shorthand notes .....	9
Rule 56. – Form of commission .....	9
Rule 57. – Production of document .....	9
Rule 58. – Disobeying of order .....	9
Rule 59. – Conduct money .....	9
Discovery and examination under section 28 (rules 60-61) .....	10
Rule 60. – Discovery .....	10
Rule 61. – Application under section 28 .....	10
Accounts and sale of mortgaged property (rules 62-66) .....	10
Rule 62. – Inquiry into mortgage, etc. ....	10
Rule 63. – Conveyance .....	10
Rule 64. – Proceeds of sale .....	10
Rule 65. – Proceedings on inquiry .....	10
Rule 66. – Accounts, etc. ....	11
Warrants, arrests, and commitments (rules 67-71) .....	11

Rule 67. – Custody and production of debtor .....	11
Rule 68. – Execution of warrant .....	11
Subrule (1) .....	11
Subrule (2) .....	11
Subrule (3) .....	11
Rule 69. – Applications to commit .....	11
Rule 70. – Notes and hearing of application .....	11
Rule 71. – Suspension of issue of committal order .....	12
Service and execution of process (rules 72-76) .....	12
Rule 72. – Address of advocate for service .....	12
Rule 73. – Hours for service .....	12
Rule 74. – Notices, by whom served .....	12
Rule 75. – Service by post .....	12
Rule 76. – Enforcement of order .....	12
Costs and taxation (rules 77-93) .....	12
Rule 77. – Awarding costs .....	12
Subrule (1) .....	12
Subrule (2) .....	12
Subrule (3) .....	13
Subrule (4) .....	13
Rule 78. – Orders to be sealed, signed and filed .....	13
Rule 79. – Scale of costs and charges .....	13
Subrule (1) .....	13
Subrule (2) .....	13
Rule 80. – Advocate's costs in case of petition by debtor .....	13
Rule 81. – Costs paid otherwise than out of estate .....	13
Rule 82. – Filing bills of costs .....	13
Rule 83. – Certificate of employment .....	13
Rule 84. – Bailiff's costs .....	13
Rule 85. – Taxation of bailiff's costs after deduction .....	14
Subrule (1) .....	14
Subrule (2) .....	14
Rule 86. – Notice of appointment .....	14
Rule 87. – Lodgement of bill .....	14
Rule 88. – Copy of bill .....	14

Rule 89. – Applications for costs .....	14
Paragraph (a) .....	14
Paragraph (b) .....	14
Paragraph (c) .....	14
Rule 90. – Priority of costs and charges payable out of estate .....	14
Paragraph First- .....	14
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Paragraph Next- .....	15
Rule 91. – Disallowance of costs of unnecessary petition .....	15
Rule 92. – Apportionment of costs in case of partnership .....	15
Rule 93. – Costs out of joint or separate estates .....	15
Subrule (1) .....	15
Subrule (2) .....	15
Appeals (rules 94-97) .....	16
Rule 94. – Restriction on appeals .....	16
Paragraph (a) .....	16
Paragraph (b) .....	16
Rule 95. – Time for appeal .....	16
Rule 96. – Security for costs .....	16
Rule 97. – Procedure on appeals .....	16
Part III – Proceedings in bankruptcy (rules 98-324) .....	16
Declaration of inability to pay debts (rule 98) .....	16
Rule 98. – Form of declaration .....	16
Bankruptcy notice (rules 99-105) .....	16

Rule 99. – What court to issue .....	16
Subrule (1) .....	16
Subrule (2) .....	17
Rule 100. – Issue of notice .....	17
Rule 101. – Indorsement of address, etc. ....	17
Subrule (1) .....	17
Subrule (2) .....	17
Subrule (3) .....	17
Rule 102. – Application to set aside .....	17
Rule 103. – Duration of notice .....	17
Rule 104. – Service of notice .....	17
Rule 105. – Setting aside notice .....	17
Bankruptcy petition (rules 106-112) .....	18
Rule 106. – Form of petition .....	18
Rule 107. – Description and address of debtor .....	18
Subrule (1) .....	18
Subrule (2) .....	18
Rule 108. – Place for filing petition .....	18
Rule 109. – Attestation .....	18
Rule 110. – Petition by or against firm .....	18
Subrule (1) .....	18
Subrule (2) .....	18
Rule 111. – Deposit by petitioner .....	19
Subrule (1) .....	19
Paragraph (a) .....	19
Paragraph (b) .....	19
Subrule (2) .....	19
Rule 112. – Debtor's petition .....	19
Creditor's petition (rules 113-117) .....	19
Rule 113. – Security for costs .....	19
Rule 114. – Verification and copies .....	19
Rule 115. – Who to verify .....	19
Rule 116. – Joint petitioners .....	19
Rule 117. – Investigation of petition .....	19
Service of creditor's petition (rules 118-122) .....	20

Rule 118. – Personal service .....	20
Rule 119. – Substituted service .....	20
Rule 120. – Proof of service .....	20
Rule 121. – Service out of jurisdiction .....	20
Rule 122. – Service after death of debtor .....	20
Interim receiver (rules 123-128) .....	20
Rule 123. – Appointment of interim receiver .....	20
Rule 124. – Form and contents of order .....	20
Rule 125. – Deposit .....	21
Rule 126. – Further deposit necessary .....	21
Rule 127. – Repayment of deposit .....	21
Rule 128. – Damages if petition dismissed .....	21
Hearing of petition (rules 129-141) .....	21
Rule 129. – Proceedings on petition .....	21
Subrule (1) .....	21
Subrule (2) .....	21
Rule 130. – Time of hearing .....	21
Rule 131. – Several respondents .....	21
Rule 132. – Debtor intending to show cause .....	22
Rule 133. – Non-appearance of debtor .....	22
Rule 134. – Appearance of debtor to show cause .....	22
Rule 135. – Non-appearance of creditor .....	22
Rule 136. – Personal attendance of creditor, when dispensed with .....	22
Rule 137. – Proceedings after trial of disputed question .....	22
Rule 138. – Application to dismiss .....	22
Rule 139. – Application for extension of time .....	23
Rule 140. – Order for extension of time .....	23
Rule 141. – Adjournments of hearing .....	23
Receiving order (rules 142-152) .....	23
Rule 142. – Contents .....	23
Rule 143. – Preparation .....	23
Rule 144. – Transmission of copy to receiver .....	23
Rule 145. – Service of receiving order .....	23
Rule 146. – Service where debtor abroad .....	23
Rule 147. – Receiving order on bankruptcy notice .....	24



Rule 148. – Stay of proceedings .....	24
Rule 149. – Advertisement .....	24
Rule 150. – Costs of petition, etc. ....	24
Subrule (1) .....	24
Subrule (2) .....	24
Rule 151. – Notice of application to rescind receiving order, etc. ....	24
Rule 152. – Report by receiver where ground of application to rescind receiving order or annul adjudication is debt paid in full .....	24
Subrule (1) .....	24
Subrule (2) .....	25
Statement of affairs (rules 153-154) .....	25
Rule 153. – Statements of affairs: How made out .....	25
Rule 154. – Extension of time .....	25
Public examination (rules 155-163) .....	25
Rule 155. – Time for holding public examination .....	25
Rule 156. – Default by debtor in attending .....	25
Rule 157. – Notice to creditors .....	25
Rule 158. – General proxy-holders may question debtor .....	25
Rule 159. – Adjournments sine die .....	25
Rule 160. – Application to proceed .....	26
Rule 161. – Proceedings after adjournment sine die .....	26
Rule 162. – Notice of proceedings after adjournment sine die .....	26
Rule 163. – Public examination of debtor who is a lunatic, etc. ....	26
Subrule (1) .....	26
Subrule (2) .....	26
Subrule (3) .....	26
Subrule (4) .....	26
Composition or scheme (rules 164-183) .....	26
Rule 164. – Forms where proposal submitted by the debtor .....	26
Rule 165. – Application by debtor or receiver for approval of the court .....	27
Rule 166. – Notice to receiver .....	27
Rule 167. – Notice to creditors .....	27
Rule 168. – Receiver's report to be filed .....	27
Rule 169. – Hearing and appeal .....	27
Rule 170. – Costs of application by debtor .....	27

Rule 171. – Evidence and order .....	27
Subrule (1) .....	27
Subrule (2) .....	27
Rule 172. – Provision in composition or scheme for costs and charges .....	27
Rule 173. – Fee on application .....	28
Rule 174. – Correction of formal slips, etc. ....	28
Rule 175. – Proceedings if scheme approved .....	28
Rule 176. – Cases in which receiver is to be trustee .....	28
Rule 177. – Security by trustee under composition or scheme .....	28
Rule 178. – Default in payment of composition .....	28
Rule 179. – Vesting of property on annulment of composition .....	28
Rule 180. – Annulment of composition or scheme .....	28
Rule 181. – Dividends under composition or scheme .....	28
Rule 182. – Proof of debts in composition or scheme .....	29
Rule 183. – Compositions and schemes under section 18 .....	29
Adjudication (rules 184-189) .....	29
Rule 184. – Adjudication on application of debtor .....	29
Rule 185. – Adjudication on application of other parties .....	29
Rule 186. – Adjudication or failure of composition or scheme .....	29
Rule 187. – Adjudication where public examination adjourned sine die .....	29
Rule 188. – Notice of order of adjudication .....	29
Rule 189. – Order annulling adjudication .....	29
Subrule (1) .....	29
Subrule (2) .....	29
Discharge (rules 190-202) .....	30
Rule 190. – Application .....	30
Rule 191. – Appeals .....	30
Rule 192. – Report of receiver .....	30
Rule 193. – Evidence in answer to report .....	30
Rule 194. – Costs of application .....	30
Rule 195. – Orders conditional consent to judgment .....	30
Subrule (1) .....	30
Subrule (2) .....	30
Subrule (3) .....	30
Rule 196. – Order .....	31

Rule 197. – Gazetting order .....	31
Rule 198. – Execution on judgment in case of conditional discharge .....	31
Subrule (1) .....	31
Subrule (2) .....	31
Rule 199. – Accounts of after-acquired property .....	31
Rule 200. – Verification of statements of after-acquired property .....	31
Rule 201. – Application for modification of order .....	31
Rule 202. – Application for leave to act as director of company .....	31
Subrule (1) .....	31
Subrule (2) .....	31
Subrule (3) .....	32
Subrule (4) .....	32
Subrule (5) .....	32
Meetings of creditors (rules 203-211) .....	32
Rule 203. – Notice to debtor of first meeting .....	32
Rule 204. – Notice to creditors of first meeting .....	32
Rule 205. – Notices of other meetings .....	32
Rule 206. – Non-reception of notice by creditors .....	32
Rule 207. – Notice to receiver .....	32
Rule 208. – Proof of notice .....	32
Rule 209. – Copy of resolution for registrar .....	32
Rule 210. – Adjournment .....	33
Rule 211. – Quorum .....	33
Proof of debts (rules 212-224) .....	33
Rule 212. – Swearing of proof .....	33
Rule 213. – Workmen's wages .....	33
Subrule (1) .....	33
Subrule (2) .....	33
Rule 214. – Production of bills of exchange and promissory notes .....	33
Rule 215. – Time for lodging of proofs .....	33
Rule 216. – Transmission of proofs to trustee .....	33
Rule 217. – Proofs to be sent by receiver to registrar .....	34
Rule 218. – Proofs to be sent by trustee to receiver .....	34
Rule 219. – Procedure when creditor appeals .....	34
Rule 220. – Time for admission or rejection of proofs by receiver .....	34

Rule 221. – Time for admission or rejection of proofs by trustee .....	34
Rule 222. – Notice of admission of proof .....	34
Rule 223. – Appeal from rejection of proof .....	34
Rule 224. – Costs of appeal from decision as to proofs .....	35
Proxies and voting letters (rules 225-228) .....	35
Rule 225. – Form and filing of proxies .....	35
Subrule (1) .....	35
Subrule (2) .....	35
Rule 226. – Signature of proxy .....	35
Rule 227. – Filling in when creditor blind, etc. ....	35
Rule 228. – Minors not to be proxies .....	35
Dividends (rules 229-232) .....	35
Rule 229. – Notice of intention to declare dividend .....	35
Subrule (1) .....	35
Subrule (2) .....	35
Subrule (3) .....	35
Subrule (4) .....	36
Rule 230. – Production of bills, notes, etc. ....	36
Rule 231. – Dividend may be sent by post .....	36
Rule 232. – Payment of dividends to a nominee .....	36
Appropriation of pay, salary, pensions, etc. (rules 233-236) .....	36
Rule 233. – Notice to bankrupt of application .....	36
Rule 234. – Notice to head of department .....	36
Rule 235. – Copy of order to department .....	36
Rule 236. – Review of order .....	36
Disclaimer of lease (rules 237-238) .....	37
Rule 237. – Disclaimer of lease .....	37
Subrule (1) .....	37
Paragraph (a) .....	37
Subparagraph (i) .....	37
Subparagraph (ii) .....	37
Subparagraph (iii) .....	37
Paragraph (b) .....	37
Subrule (2) .....	37
Rule 238. – Procedure on disclaimer .....	37

Subrule (1) .....	37
Subrule (2) .....	37
Subrule (3) .....	37
Subrule (4) .....	37
Proceedings by or against firm (rules 239-251) .....	37
Rule 239. – Attestation of firm signature .....	37
Rule 240. – Service on firm .....	38
Rule 241. – Service on individual carrying on business in name or style other than his own .....	38
Rule 242. – Debtor's petition by firm .....	38
Rule 243. – Receiving order against firm .....	38
Rule 244. – Statement of affairs .....	38
Rule 245. – Adjudication against partners .....	38
Rule 246. – First meeting .....	38
Rule 247. – Acceptance of competition, etc., by joint and separate creditors .....	38
Rule 248. – Voting on composition .....	38
Rule 249. – Adjudication trustee .....	39
Rule 250. – Separate firms .....	39
Rule 251. – Apportionment of trustee's remuneration .....	39
Lunatics (rule 252) .....	39
Rule 252. – Lunatics .....	39
Subrule (1) .....	39
Subrule (2) .....	39
Subrule (3) .....	39
Subrule (4) .....	39
Subrule (5) .....	39
Small bankruptcies (rule 253) .....	40
Rule 253. – Summary administration .....	40
Paragraph (a) .....	40
Paragraph (b) .....	40
Paragraph (c) .....	40
Paragraph (d) .....	40
Paragraph (e) .....	40
Paragraph (f) .....	40
Paragraph (g) .....	40
Paragraph (h) .....	40

Paragraph (i) .....	40
Paragraph (j) .....	40
Paragraph (k) .....	40
Paragraph (l) .....	40
Administration of estate of deceased insolvents (rules 254-261) .....	40
Rule 254. – Verification of petition .....	40
Rule 255. – Deposit by legal personal representative on petition .....	41
Rule 256 – Gazetting .....	41
Rule 257. – Service .....	41
Subrule (1) .....	41
Subrule (2) .....	41
Rule 258. – Duties of executor, etc. ....	41
Subrule (1) .....	41
Subrule (2) .....	41
Rule 259. – Executor de son tort .....	41
Rule 260. – Meetings of creditors, trustees, etc. ....	41
Paragraph (a) .....	41
Paragraph (b) .....	41
Rule 261. – Modifications where summary order made .....	42
Paragraph (a) .....	42
Paragraph (b) .....	42
Paragraph (c) .....	42
Paragraph (d) .....	42
Paragraph (e) .....	42
Paragraph (f) .....	42
Paragraph (g) .....	42
Paragraph (h) .....	42
Paragraph (i) .....	42
Paragraph (j) .....	42
Part IV – Receivers, trustees, special managers, security by trustee or special manager, accounts and audit, unclaimed funds (rules 262-317) .....	42
Rule 262. – Duties as to debtor's statement of affairs .....	42
Subrule (1) .....	42
Subrule (2) .....	42
Subrule (3) .....	42

Rule 263. – Subsistence allowance to debtor .....	42
Rule 264. – Special report as to person employed to assist debtor .....	43
Rule 265. – Use of proxies by deputy .....	43
Rule 266. – Personal performance of duties .....	43
Rule 267. – Administrative officer to act in certain cases .....	43
Rule 268. – Removal of special manager .....	43
Rule 269. – Mode of application to court .....	43
Rule 270. – Evidence on application by receiver .....	43
Rule 271. – Application for directions .....	43
Rule 272. – Duties where no assets .....	43
Rule 273. – Accounting by receiver .....	44
Subrule (1) .....	44
Subrule (2) .....	44
Subrule (3) .....	44
Subrule (4) .....	44
Rule 274. – Receiver may act for court when no committee of inspection .....	44
Rule 275. – Trading account of debtor .....	44
Rule 276. – Liability for costs, expenses, and damages .....	44
Paragraph (a) .....	44
Paragraph (b) .....	44
Paragraph (c) .....	44
Paragraph (d) .....	44
Paragraph (e) .....	44
Trustees (rules 277-298) .....	45
Rule 277. – Notice of appointment .....	45
Rule 278. – Notice of objection .....	45
Subrule (1) .....	45
Subrule (2) .....	45
Subrule (3) .....	45
Rule 279. – Trustees not accounting under section 136 .....	45
Rule 280. – Removal of trustee .....	45
Rule 281. – Failing to keep up security .....	45
Rule 282. – Notice of resignation .....	45
Rule 283. – Remuneration of trustee .....	46
Rule 284. – Limit of remuneration .....	46

Rule 285. – Remuneration of trustee appointed by the court .....	46
Rule 286. – Trustee carrying on business .....	46
Subrule (1) .....	46
Subrule (2) .....	46
Rule 287. – Application for release .....	46
Rule 288. – Gazetting of release .....	46
Rule 289. – Delivery of books, etc., on release of trustee .....	46
Rule 290. – Meeting to consider removal of trustee .....	46
Rule 291. – Payments out of Bankruptcy Estates Account .....	47
Rule 292. – Application for directions .....	47
Rule 293. – Copy of trustee's accounts .....	47
Rule 294. – Statements to be furnished to creditors .....	47
Rule 295. – Purchase of part of estate by trustee or committee forbidden .....	47
Rule 296. – Dealings with estate by trustee and committee of inspection .....	47
Subrule (1) .....	47
Subrule (2) .....	47
Subrule (3) .....	47
Subrule (4) .....	48
Rule 297. – Discharge of costs, etc., before estate handed over to trustee .....	48
Subrule (1) .....	48
Subrule (2) .....	48
Subrule (3) .....	48
Rule 298. – Meetings of creditors to consider the conduct of trustee .....	48
Special manager (rules 299-300) .....	48
Rule 299. – Remuneration of special manager .....	48
Rule 300. – Accounts .....	48
Security by trustee or special manager (rule 301) .....	48
Rule 301. – Standing security .....	48
Paragraph (a) .....	48
Paragraph (b) .....	49
Paragraph (c) .....	49
Accounts and audit (rules 302-312) .....	49
Rule 302. – Record .....	49
Rule 303. – Cash book .....	49
Rule 304. – Books to be submitted to committee of inspection .....	49



Rule 305. – Audit of cash book .....	49
Rule 306. – Audit of trustee's accounts .....	49
Subrule (1) .....	49
Subrule (2) .....	49
Subrule (3) .....	49
Rule 307. – Copy of accounts to be filed .....	49
Rule 308. – Affidavit of no receipts .....	50
Rule 309. – Proceedings on resignation, etc., of trustee .....	50
Rule 310. – Joint and separate estates accounts .....	50
Rule 311. – Expenses of sales .....	50
Rule 312. – Allowance to debtor .....	50
Unclaimed funds (rules 313-315) .....	50
Rule 313. – Mode of payment into bank .....	50
Rule 314. – Application for payment out by party entitled .....	50
Rule 315. – Accounts by trustees of unclaimed funds .....	50
Part V – Judgment debtors (rules 316-317) .....	51
Rule 316. – Fees on receiving order .....	51
Subrule (1) .....	51
Subrule (2) .....	51
Rule 317. – Summary administration .....	51
Part VI – Miscellaneous provisions (rules 318-324) .....	51
Rule 318. – Power of receiver to make orders .....	51
Rule 319. – Falsification of documents .....	51
Subrule (1) .....	51
Subrule (2) .....	51
Rule 320. – No lien on debtor's books .....	51
Rule 321. – Disposal of debtor's books .....	51
Rule 322. – Effect of non-compliance with Rules .....	51
Rule 323. – Abridgement or enlargement of time .....	52
Rule 324. – Prescribed bank .....	52



# Tanzania

## Bankruptcy Act

### Bankruptcy Rules, 1931

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**Commenced on 1 December 1931**

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Section 121; G.N.s Nos. 159 of 1931; 7 of 1948; 188 of 1948]*

## Part I – Preliminary provisions (rules 1-4)

### 1. Short title, commencement and application

These Rules may be cited as the Bankruptcy Rules. They shall come into operation on the 1st December, 1931, and shall also apply, as far as practicable and unless otherwise expressly provided, to all matters arising and to all proceedings taken on any matters under the Act, or any Act amending the same, on or after the said day.

### 2. Interpretation

In these Rules unless the context requires otherwise—

"**the Act**" means the Bankruptcy Act; <sup>1</sup>

"**court**" means court as defined in the Act and includes a judge of the High Court or subordinate court exercising jurisdiction in chambers;

"**court of appeal**" means the Court of Appeal of Tanzania;

"**creditor**" includes a corporation and firm of creditors in partnership;

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

"**receiver**" means the official receiver appointed under the Act and includes a deputy official receiver;

"**registrar**" means the registrar of the High Court and includes a deputy registrar and district registrar;

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

"**sealed**" means sealed with the seal of the court;

"**subordinate court**" means a subordinate court to which the Chief Justice has by order delegated jurisdiction in bankruptcy, either generally or for the purpose of any particular case or class of cases; and

"trustee" includes the trustee appointed under a composition or scheme of arrangement, and also includes the receiver when acting as trustee.

### 3. Duties of registrar in subordinate court

Where jurisdiction in bankruptcy has been delegated to a subordinate court, all acts and things directed or allowed to be done by, all documents directed or allowed to be produced to, lodged or filed with, and all communications directed or allowed to be addressed to the registrar under these Rules shall be done by, produced to, lodged or filed with and addressed to the judge of such subordinate court.

### 4. Computation of time

The provisions of section [130](#) of the Act shall apply to these Rules.

## Forms (rule 5)

### 5. Use of forms in Appendix

- (1) The forms in the Appendix, where applicable, and where they are not applicable forms of a like character, with such variations as circumstances may require, shall be used. When such forms are applicable, any costs occasioned by the use of more prolix forms shall be borne by or disallowed to the party using the same, unless the court shall otherwise direct.
- (2) The Chief Justice may from time to time, by notice in the *Gazette*, alter any of said forms or substitute new forms *in lieu* thereof.

## Part II – General procedure court and chambers (rules 6-97)

### 6. Matters to be heard in court

- (1) The following matters and applications shall be heard and determined in open court, namely—
  - (a) the public examination of debtors;
  - (b) applications to approve a composition or scheme of arrangement;
  - (c) applications for orders of discharge or certificates of removal of disqualifications;
  - (d) application to set aside or avoid any settlement, conveyance, transfer, security or payment, or to declare for or against the title of the trustee to any property adversely claimed;
  - (e) applications for the committal of any person to prison for contempt;
  - (f) appeals against the rejection of a proof, or applications to expunge or reduce a proof, when the amount in dispute exceeds four thousand shillings.
- (2) Any other matter or application may be heard and determined in chambers.

### 7. Adjournment from chambers into court and *vice versa*

Subject to the provisions of the Act and these Rules, any matter or application may at any time, if the judge thinks fit, be adjourned from chambers to court or from court to chambers; and if all the contending parties require any matter or application to be adjourned from chambers into court it shall be so adjourned.

## Proceedings (rules 8-15)

### 8. Proceedings, how entitled

- (1) Every proceeding in court under the Act shall be dated and shall be entitled "In Bankruptcy," with the name of the court and of the matter to which it relates. Numbers and dates may be denoted by figures.
- (2) All applications and orders shall be entitled *ex parte* the applicant.
- (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.

### 9. Written proceedings

All proceedings in court shall be written or printed, or partly written and partly printed, on paper of foolscap size; but no objection shall be allowed to any proof, affidavit or proxy on account of its being written or printed on paper of other size.

### 10. Records of the court

All proceedings of the court shall remain on record in the court, so as to form a complete record of each matter, and they shall not be removed for any purpose except for the use of the officers of the court, or by special direction of a judge, but they may at all reasonable times be inspected by the trustee, the debtor and any creditor who has proved, or any person on behalf of the trustee, debtor or any such creditor.

### 11. Notices to be in writing

All notices required by the Act or these Rules shall be in writing, unless these Rules otherwise provide, or the court shall in any particular case order otherwise.

### 12. Process to be sealed

All summonses, petitions, notices, orders, warrants and other process issued by the court shall be sealed.

### 13. Meetings summoned by court

Where the court orders a general meeting of creditors to be summoned under rule 5 of Schedule I to the Act, it shall be summoned as the court directs, and in default of any direction by the court the registrar shall transmit a sealed copy of the order to the trustee (or, as the case may be, the receiver); and the trustee or receiver shall, not less than seven days before such meeting, send a copy of the order to each creditor at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the debtor, or such other address as may be known to the trustee or receiver.

### 14. Office copies

All office copies of petitions, proceedings, affidavits, books, papers and writings, or any parts thereof required by any trustee, or by any debtor, or by any creditor, or by the advocate of any such trustee, debtor, or creditor shall be provided by the registrar; and shall, except as to figures, be fairly written at length and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have spoken.

**15. Filing, gazetting, etc.**

- (1) Whenever the *Gazette* contains any advertisement relating to any matter under the Act the registrar shall file with the proceedings in the matter a memorandum referring to and giving the date of such advertisement.
- (2) The memorandum by the registrar shall be *prima facie* evidence that the advertisement to which it refers was duly inserted in the issue of the *Gazette* mentioned in it.
- (3) Where in the exercise of his functions under the Act or any rules made thereunder the official receiver requires to inspect or use the file of proceedings in any matter, the registrar shall (unless the file is at the time required for use in court or by him) on request transmit the file of proceedings to the official receiver.

**Motions and practice (rules 16-25)****16. Application to be by motion**

Every application to the court shall, unless otherwise provided by these Rules, or the court in any particular case directs otherwise shall be made by motion supported by affidavit.

**17. Notice of motion and *ex parte* application**

Where any party other than the applicant is affected by the motion no order shall be made unless upon the consent of such party duly shown to the court, or upon proof that notice of the intended motion and a copy of the affidavits in support thereof have been duly served upon such party:

Provided that the court, if satisfied that the delay caused by proceedings in the ordinary way would or might entail serious mischief, may make any order *ex parte* upon such terms as to costs and otherwise, and subject to such undertaking, if any, as the court may think just; and any party affected by such order may move to set it aside.

**18. Length of notice**

Unless the court gives leave to the contrary, notice of motion shall be served on any party to be affected thereby not less than eight days before the day named in the notice for hearing the motion. An application for leave to serve short notice of motion shall be made *ex parte*.

**19. Affidavits against motion**

Where a respondent intends to use affidavits in opposition to a motion, he shall deliver copies of such affidavits to the applicant not less than two days before the day appointed for the hearing.

**20. Notice not served on all proper parties**

If on the hearing of any motion or application the court shall be of opinion that any person to whom notice has not been given ought to have, or to have had, such notice, the court may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given, upon such terms as the court thinks fit.

**21. Adjournment**

The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the court shall think fit.

**22. Personal service**

In cases in which personal service of any notice of motion, or of any order of the court, is required, the same shall be effected, in the case of a notice of motion, by delivering to each party to be served a copy of the notice of motion; and in the case of an order, by delivering to each party to be served a sealed copy of the order.

**23. Filing affidavits on motion**

Every affidavit to be used in supporting or opposing any opposed motion shall be filed with the registrar, not later than the day before the day appointed for the hearing.

**24. Indorsement and filing of affidavits**

The registrar, upon any affidavit being left with him to be filed, shall indorse the same with the day of the month and year when the same was so left, and forthwith file the same with the proceedings to which the same relates and any affidavit left with the registrar to be filed shall on no account be delivered out to any person, except by order of the court.

**25. Notice of motion to be filed**

A party intending to move shall, previous to the public sitting of the court, deliver to the registrar a copy of the notice of motion. There shall be indorsed on such copy the name of the applicant's advocate (if any) and also, if known, the name of the respondent's advocate (if any).

**Preparation of orders (rule 26)****26. Preparation of orders**

- (1) If within one week from the making of any order of adjudication, order annulling adjudication, order on application to approve a composition or scheme, order annulling a composition or scheme, or order on application for discharge, such order has not been completed, it shall be the duty of the registrar to prepare and complete such order:

Provided that if in any case the court shall be of opinion that the provisions of this rule ought not to apply, it may so order; and provided also that when an order of discharge is granted subject to the condition that judgment shall be entered against the bankrupt, nothing in this rule shall require the registrar to prepare and complete the order until the bankrupt has given a consent to judgment being entered against him.

- (2) **Notice of appointment to settle order**

A person who has the carriage of an order shall obtain from the registrar a appointment to settle the order, and shall give reasonable notice of the appointment to all persons who may be affected by the order or to their advocates.

**Security in court (rules 27-35)****27. Security by bond**

Except where these Rules provide otherwise, where a person is required to give security, such security shall be in the form of a bond with one or more surety or sureties to the person proposed to be secured.

**28. Amount of bond**

The bond shall be taken on a penal sum which shall be not less than the sum for which security is to be given and probable costs, unless the opposite party consents to it being taken for a less sum.

**29. Deposit *in lieu* of bond**

When a person is required to give security he may, *in lieu* thereof, lodge in court a sum equal to the sum in question in respect of which security is to be given and the probable costs of the trial of the question, together with a memorandum to be approved of by the registrar and to be signed by such person or his advocate or agent, setting forth the conditions on which the money is deposited.

**30. Money lodged in court**

The rules for the time being in force in the High Court relating to payment into and out of court of money lodged in court by way of security for costs, shall apply to money lodged in court under these Rules.

**31. Security of guarantee society**

The security of a guarantee association or society approved by the court or the opposite party may be given *in lieu* of a bond or a deposit.

**32. Notice of sureties**

In all cases when a person proposes to give a bond by way of security, he shall serve by post or otherwise on the opposite party and on the registrar, notice of the proposed sureties, and the registrar shall forthwith give notice to both parties of the time and place at which he proposes that the bond shall be executed, and shall state in the notice that, should the proposed obligee have any valid objection to make to the sureties or either of them, it must be made at that time.

**33. Justification by sureties**

The sureties shall make an affidavit of their sufficiency unless the opposite party shall dispense with such affidavit, and such sureties shall attend to be cross-examined, if required.

**34. Execution of bond**

The bond shall be executed and attested in the presence of the registrar or receiver or before a justice of the peace or an advocate.

**35. Notice of deposit**

When a person makes a deposit of money *in lieu* of giving a bond, the registrar shall forthwith give notice to the person to whom the security is to be given of such deposit having been made.

**Stamps (rule 36)****36. Defacement of stamp**

Every officer of the court who receives any document to which an adhesive stamp shall be affixed, shall immediately upon the receipt of such document deface the stamp thereon in the manner for the time being prescribed for the defacement of stamps, or in such other manner as the President may from time to time direct; and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid, and it shall be the duty of the party presenting or receiving such document to see that such defacement has been duly made.



## Affidavits (rules 37-48)

### 37. Costs of unnecessary matter

The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

### 38. Drawing up of affidavits

Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

### 39. Deponent's description

Every affidavit shall state the description and true place of abode of the deponent.

### 40. Several deponents

In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the *jurat*, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the abovenamed deponents.

### 41. Scandalous matter

The court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between advocate and client.

### 42. Erasures, etc.

No affidavit having in the *jurat* or body thereof any interlineation, alteration or erasure shall, without leave of the court, be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer or person taking the affidavit, nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer or person taking it.

### 43. Blind or illiterate persons

Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the person taking the affidavit shall certify in the *jurat* that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of such person. No such affidavit shall be used in evidence in the absence of this certificate, unless the court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

### 44. Formal defects

The court may receive any affidavit sworn for the purpose of being used in any matter notwithstanding any defect by misdescription of parties or otherwise in the title or *jurat* or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

**45. Filing office copies, etc.**

- (1) In cases in which by the present practice an original affidavit is allowed to be used it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered and left in court or in chambers with the proper officer, who shall send it to be filed.
- (2) An office copy of an affidavit may in all cases be used, the original affidavit having been filed, and the copy duly authenticated with the seal of the court.

**46. Swearing of affidavit**

- (1) No affidavit other than a proof of debt shall be sufficient if sworn before the advocate acting for the party on whose behalf the affidavit is to be so used, or before the party himself.
- (2) Any affidavit which would be insufficient if sworn before the advocate himself shall be insufficient if sworn before his clerk or partner.
- (3) An affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

**47. Time for filing**

- (1) Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the court.
- (2) **Affidavit in *ex parte***

Except by leave of the court, no order made *ex parte* in court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

**48. Proof of service**

The court shall take judicial notice of the seal or signature of any person authorised by or under any Act to take affidavits or to certify to such authority.

**Witnesses and depositions (rules 49-59)****49. Subpoena**

A subpoena for the attendance of a witness shall be issued by the court at the instance of the receiver, a trustee, a creditor, a debtor, or any applicant or respondent in any matter, with or without a clause requiring the production of books, deeds, papers, documents, and writings in his possession or control, and in such subpoena the name of several witnesses may be inserted.

**50. Service of subpoena**

A sealed copy of the subpoena shall be served personally on the witness by the person at whose instance the same is issued, or by his advocate, or by an officer of the court, or by some person in their employ, within a reasonable time before the time of the return thereof.

**51. Proof of service**

Service of the subpoena may, where required, be proved by affidavit.

**52. Limit of witnesses' costs**

The court may in any matter limit the number of witnesses to be allowed on taxation of costs, and their allowance for attendance shall in no case exceed the highest rate of the allowance mentioned in the scale of costs.

**53. Costs of witnesses**

The costs of witnesses, whether they have been examined or not, may, in the discretion of the court, be allowed.

**54. Depositions, etc.**

The court may, in any matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the court or any officer of the court or any other person, and at any place, of any witness or person, and may empower any party to any such matter to give such deposition in evidence therein on such terms (if any) as the court may direct.

**55. Shorthand notes**

If the court shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom the examination is taken) should be appointed to take down the evidence of the debtor, or of any witness examined at any public sitting or private meeting under the Act, in shorthand or otherwise, it shall be competent for the court to make such appointment; and every person so appointed shall be paid such sum as the court may direct, and, where the court appoints a shorthand writer, a sum not exceeding one shilling per folio of one hundred words for any transcript of evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the state, as may be directed by the court.

**56. Form of commission**

An order for a commission or letter of request to examine witnesses, and the writ of commission or request shall follow the forms for the time being in use in the High Court, with such variations as circumstances may require.

**57. Production of document**

The court may in any matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order which the court may think fit to be produced.

**58. Disobeying of order**

Any person wilfully disobeying a subpoena or order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.

**59. Conduct money**

Any witness (other than the debtor) required to attend for the purpose of being examined or producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in court.

## Discovery and examination under section 28 (rules 60-61)

### 60. Discovery

Any party to any proceeding in court may, with the leave of the court, administer interrogatories to, or obtain discovery of documents from, any other party to such proceeding. Proceedings under this rule shall be regulated as nearly as may be by the practice of the High Court for the time being in force in relation to discovery and inspection. An application for leave under this rule may be made *ex parte*.

### 61. Application under section 28

Every application to the court under section 28 of the Act shall be in writing and shall state shortly the grounds upon which the application is made. Where the application is made on behalf of the receiver or trustee it need not be verified by affidavit.

## Accounts and sale of mortgaged property (rules 62-66)

### 62. Inquiry into mortgage, etc.

Upon application by motion by any person claiming to be a mortgagee of any part of the bankrupt's real or leasehold estate, and whether such mortgage shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the court shall proceed to inquire whether such person is such mortgagee and for what consideration and under what circumstances; and if it shall be found that such person is such mortgagee, and if no sufficient objection shall appear to the title of such person to the sum claimed by him under such mortgage, the court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon such mortgage, and of the rents and profits, or dividends, interest or other proceeds received by such person, or by any other person by his order of for his use in case he shall have been in possession of the property over which the mortgage shall extend, or any part thereof, and the court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the court shall think fit, when and where, and by whom and in what way the said premises or property or the interest therein so mortgaged, are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

### 63. Conveyance

All proper parties shall join in the conveyance to the purchaser, as the court shall direct.

### 64. Proceeds of sale

The moneys to arise from such sale shall be applied in the first place in payment of the costs, charges and expenses of the trustee, of and occasioned by the application to the court, and of such sale and attendance thereat, and in the next place in payment and satisfaction so far as the same shall extend, of what shall be found due to such mortgagee, for principal, interest and costs and the surplus of the said moneys (if any) shall be paid to the trustee. But in case the moneys to arise from such sale shall be insufficient to pay and satisfy what shall be found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with other creditors, but so as not to disturb any dividend then already declared.

### 65. Proceedings on inquiry

For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the court upon interrogatories or otherwise as the court shall think fit, and shall produce

before the court upon oath all deeds, documents, papers, books and writings in their respective custody or power relating to the estate or effects of the bankrupt, as the court shall direct.

#### **66. Accounts, etc.**

In any proceedings between a mortgagor and a mortgagee, or the trustee of either of them, the court may order all such inquiries and accounts to be taken in like manner as in the High Court.

### **Warrants, arrests, and commitments (rules 67-71)**

#### **67. Custody and production of debtor**

When a debtor is arrested under a warrant issued under section 26 of the Act, he shall be given into the custody of the superintendent of the prison mentioned in the warrant, who shall produce such data before the court as it may from time to time direct, and shall safely keep him until such time as the court shall otherwise order; and any books, papers, moneys, goods and chattels in the possession of the debtor which may be seized shall forthwith be lodged with the receiver or trustee, as the case may be.

#### **68. Execution of warrant**

- (1) When a person is apprehended under a warrant issued under section 28(2) of the Act, the officer apprehending him shall forthwith bring him before the court issuing the warrant to the end that he may be examined, and if he cannot immediately be brought up for examination or examined, the officer shall deliver him into the custody of the superintendent of the prison mentioned in the warrant, who shall receive him into custody and shall produce him before the court as it may from time to time direct or order, and, subject to such direction or order, shall safely keep him.
- (2) The officer executing a warrant issued under section 28(2) of the Act shall forthwith, after apprehending the person named in the warrant and bringing him before the court as in the last preceding rule mentioned, or after delivering him to the superintendent of the prison, as the case may be, report such apprehension or delivery to the court issuing the warrant, and apply to the court appoint a day and time for the examination of the person so apprehended, and the court shall thereupon appoint the earliest practicable day for the examination, and shall issue its direction or order to the said superintendent to produce him for examination at a place and time to be mentioned in such direction or order.
- (3) Notice of any such appointment shall forthwith be given by the registrar to the receiver, trustee or other person who shall have applied for the examination or warrant.

#### **69. Applications to commit**

An application to the court to commit any person for contempt of court shall be supported by affidavit and be filed in court.

#### **70. Notes and hearing of application**

Subject to the provisions of the Act and Rules, upon the filing of any application to commit, the registrar shall fix a time and place for the court to hear the application, notice whereof shall be personally served on the person sought to be committed not less than three days before the day fixed for the hearing of the application:

Provided that in any case in which the court may think fit, the court may allow substituted service of the notice by advertisement or otherwise, or shorten the length of notice to be given.

**71. Suspension of issue of committal order**

Where an order of committal is made against a debtor, or against a trustee, for disobeying any order of the court or of the receiver to do some particular act or thing the court may direct that the order of committal shall not be issued, provided that such debtor or trustee, as the case may be, complies with the previous order within a specified time.

**Service and execution of process (rules 72-76)****72. Address of advocate for service**

Every advocate suing out or serving any petition, notice, summons, order or other document shall indorse thereon his name or firm and place of business, which shall be called his address for service. All notices, orders, documents and other written communications which do not require personal service shall be deemed to be sufficiently served on such advocate if left for him at his address for service.

**73. Hours for service**

Service of notice, orders or other proceedings shall be effected before the hour of four in the afternoon, except on Saturdays when it shall be effected before the hour of one in the afternoon. Service effected after four in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time, be deemed to have been effected on the following day. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

**74. Notices, by whom served**

It shall be the duty of the bailiff to serve such orders, summonses, petitions and notices as the court may require him to serve, to execute warrants and other process, and to do and perform all such things as may be required of him by the court:

Provided that this rule shall not be construed to require any order, summons, petition or notice to be served by the bailiff which is not specifically by the Act or the Rules required to be so served, unless the court shall in any particular proceeding by order specially so direct.

**75. Service by post**

Where notice of an order or other proceeding in court may be served by post it shall be sent by registered letter.

**76. Enforcement of order**

Every order of the court may be enforced as if it were a judgment of the court to the same effect.

**Costs and taxation (rules 77-93)****77. Awarding costs**

- (1) The court in awarding costs may direct that the costs of any matter or application shall be taxed and paid as between party and party or as between advocate and client, or that full costs, charges and expenses shall be allowed, or the court may fix a sum to be paid *in lieu* of taxed costs.
- (2) In the absence of any express direction, costs of an opposed motion shall follow the event and shall be taxed as between party and party.

- (3) When an action is brought against the receiver or trustee as representing the estate of the debtor, or where the receiver or trustee is made a party to a cause or matter, on the application of any other party thereto, he shall not personally be liable for costs unless the court otherwise directs.
- (4) When costs are awarded in any proceedings to the receiver he shall be entitled to costs according to the usual scales whether he has appeared in person or by advocate and the balance (if any) of such costs after deducting any disbursements properly incurred shall be paid to the credit of the Bankruptcy Contingency Fund.

#### **78. Orders to be sealed, signed and filed**

Every order for payment of money and costs, or either of them, shall be sealed and be signed by the registrar and shall be forthwith filed with the proceedings.

#### **79. Scale of costs and charges**

- (1) In all proceedings under the Act and these Rules advocates' costs shall be allowed in accordance with the Advocates' Remuneration and Taxation of Costs Rules, and any rules amending the same.
- (2) Where the estimated assets of the debtor do not exceed the sum of three hundred pounds, a lower scale of advocates' costs shall be allowed in all proceedings under the Act and these Rules in which costs are payable out of the estate, namely, three-fifths of the charges ordinarily allowed, disbursements being added.

#### **80. Advocate's costs in case of petition by debtor**

The advocate in the matter of a bankruptcy petition presented by the debtor against himself shall, in his bill of costs, give credit for such sum or security (if any) as he may have received from the debtor as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition, and the amount of any such deposit shall be noted by the taxing officer on the bill of costs.

#### **81. Costs paid otherwise than out of estate**

When a bill of costs is taxed under any special order of the court, and if it appears by such order that the costs are to be paid otherwise than out of the estate of the bankrupt, the taxing officer shall state at the foot of the bill by whom or the manner in which such costs are to be paid.

#### **82. Filing bills of costs**

Upon the taxation of any bill of costs, charges or expenses being completed, the registrar shall forthwith file such bill with the proceedings in the matter.

#### **83. Certificate of employment**

Before the bill of charges of any advocate, manager, accountant, auctioneer, broker or other person employed by the receiver or trustee is taxed, there shall be produced a certificate in writing signed by the receiver or trustee, as the case may be, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of an advocate, a copy of the authority sanctioning the employment.

#### **84. Bailiff's costs**

In any case in which, pursuant to section [46\(1\)](#) of the Act, the bailiff is required to deliver goods to the receiver or trustee, such bailiff shall without delay bring in his bill of costs for taxation, which shall be taxed; and unless such bill of costs is brought in for taxation within one month from the date when the bailiff makes such delivery, the receiver or trustee may decline to pay the same.

**85. Taxation of bailiff's costs after deduction**

- (1) If the receiver or trustee shall, in writing, require any costs which the bailiff has deducted under section [46\(2\)](#) of the Act to be taxed, the bailiff shall, within seven days from the date of the request, bring in such costs for taxation, which shall be taxed; and any amount disallowed on such taxation shall forthwith be paid over by the bailiff to the receiver or trustee as the case may require.
- (2) The receiver or trustee may in writing require any person who has distrained for rent under the powers conferred by section [40](#) of the Act to give an account of the sale of any goods or effects distrained upon and of the costs incurred and if the receiver or trustee shall, in writing, require such costs to be taxed that person shall within seven days from the date of the request, bring in such costs for taxation which shall be taxed; and after such taxation any amount found to be due to the estate shall be forthwith paid over by such person to the receiver or trustee as the case may be.

**86. Notice of appointment**

Every person whose bill or charges is or are to be taxed shall in all cases give not less than three days' notice of the appointment to tax the same to the receiver and to the trustee (if any).

**87. Lodgement of bill**

The bill or charges, if incurred prior to the appointment of a trustee, shall be lodged with the receiver, and if incurred after the appointment of a trustee, shall be lodged with the trustee, three clear days before the application for the appointment to tax the same is made. The receiver or trustee, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the registrar.

**88. Copy of bill**

Every person whose bill or charges is or are to be taxed shall, on application of the receiver or the trustee, furnish a copy of his bill or charges to be so taxed, on payment at the rate of fifty cents per folio, which payment may be charged to the estate. The receiver shall call the attention of the trustee to any items which in his opinion ought to be disallowed or reduced, and may attend or be represented on the taxation.

**89. Applications for costs**

Where any party to, or person affected by any proceeding desires to make an application for an order that he be allowed his costs or any part of them incidental to such proceeding, and such application is not made of the time of the proceeding—

- (a) such party or person shall serve notice of his intended application on the receiver and, if a trustee has been appointed, on the trustee;
- (b) the receiver and trustee may appear on such application and object thereto;
- (c) no costs of or incidental to such application shall be allowed to the applicant unless the court is satisfied that the application could not have been made at the time of the proceeding.

**90. Priority of costs and charges payable out of estate**

The assets in every matter remaining, after payment of the actual expenses incurred in realising any of the assets of the debtor shall, subject to any order of the court, be liable to the following payments, which shall be made in the following order of priority, namely:

First- The actual expenses incurred by the receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;



- Next- The fees, percentages and charges payable to or costs, charges and expenses incurred or authorised by, the receiver;
- Next- The deposit or deposits lodged by the petitioning creditor pursuant to these Rules;
- Next- The deposit or deposits lodged on any application for the appointment of an interim receiver;
- Next- The remuneration of the special manager (if any);
- Next- The taxed costs of the petitioner;
- Next- The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs;
- Next- Any allowance made to the debtor by the receiver;
- Next- The taxed charges of any shorthand writer appointed by the court;
- Next- The Trustee's necessary disbursements other than actual expenses of realisation heretofore provided for;
- Next- The costs of any person properly employed by the trustee with the sanction of the committee of inspection;
- Next- Any allowance made to the debtor by the trustee with the sanction of the committee of inspection;
- Next- The remuneration of the trustee;
- Next- The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the court.

#### **91. Disallowance of costs of unnecessary petition**

In any case in which, after a bankruptcy petition has been presented by a creditor against a debtor, and before the hearing of such petition, the debtor files a petition, and a receiving order is made on the petition of the debtor, unless in the opinion of the court the estate has benefited thereby, or there are special circumstances which make it just that such costs should be allowed, no costs shall be allowed to the debtor or his advocate out of the estate.

#### **92. Apportionment of costs in case of partnership**

In the case of a bankruptcy petition against a partnership, the costs payable out of the estates incurred up to and inclusive of the receiving order shall be apportioned between the joint and separate estates in such proportions as the receiver may in his discretion determine.

#### **93. Costs out of joint or separate estates**

- (1) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred prior to the appointment of the trustee, the receiver may pay or direct the trustee to pay such costs or charges out of the separate estates of such co-debtors, or one or more of them in such proportions as in his discretion the receiver may think fit. The receiver may also, as in his discretion he may think fit, pay or direct the trustee to pay any costs or charges properly incurred, prior to the appointment of the trustee, for any separate estate out of the joint estate or out of any other separate estate, and any part of the costs or charges of the joint estate incurred prior to the appointment of the trustee which affects any separate estate, out of that separate estate.
- (2) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred after the appointment of the trustee, the trustee, with such consent as is hereinafter mentioned, may pay such costs or charges out of the separate estates of such co-debtors or one or more of them. He may also, with the said consent, pay any costs or charges properly incurred, for any separate estate, after his appointment, out of the joint estate and any part of the costs or

charges of the joint estate incurred after his appointment which affects any separate estate out of that separate estate. No payment under this rule shall be made out of a separate estate or joint estate by a trustee without the consent of the committee of inspection of the estate out of which the payment is intended to be made or, if the committee withhold or refuse their consent, without an order of the court.

### **Appeals (rules 94-97)**

#### **94. Restriction on appeals**

No appeal shall be brought—

- (a) without the leave of the court or of the Court of Appeal from any order made by consent or as to costs only, or from any order relating to property when it is apparent from the proceedings that the money or moneys worth involved does not exceed one thousand shillings;
- (b) from an omission by the court to exercise a discretionary power, unless on application made to it the court shall have refused to exercise such power, in which latter case an appeal from the refusal may be brought.

#### **95. Time for appeal**

Subject to the powers of the Court of Appeal to extend the time under special circumstances, no appeal from any order of the court shall be brought after the expiration of three months or after such other period as the Court of Appeal may from time to time prescribe. The period shall be calculated from the time at which the order is signed, entered or otherwise perfected or, in case of the refusal of an application, from the date of such refusal.

#### **96. Security for costs**

Security for costs shall be given in accordance with the Court of Appeal Rules, and any rules amending the same.

#### **97. Procedure on appeals**

Subject to the foregoing rules, appeals to the Court of Appeal shall be regulated by the Court of Appeal Rules, and any rules amending the same.

### **Part III – Proceedings in bankruptcy (rules 98-324)**

#### **Declaration of inability to pay debts (rule 98)**

##### **98. Form of declaration**

A declaration by a debtor of his inability to pay his debts shall be dated, signed and witnessed. The witness shall be an advocate, a justice of the peace, the receiver or registrar.

#### **Bankruptcy notice (rules 99-105)**

##### **99. What court to issue**

- (1) A bankruptcy notice may be issued by any court in which a bankruptcy petition against the debtor might be filed.

- (2) A bankruptcy notice shall not be invalid by reason that it is issued by a wrong court, but in such case the court may, if it thinks fit, on the application of the debtor, order the notice to be set aside on such terms as to costs or otherwise as may be just.

#### **100. Issue of notice**

A creditor desirous that a bankruptcy notice may be issued shall produce to the registrar an office copy of the judgment or order on which the notice is founded and file the notice together with a request for issue. The creditor shall at the same time lodge with the registrar two copies of the bankruptcy notice to be sealed and issued for service.

#### **101. Indorsement of address, etc.**

- (1) Every bankruptcy notice shall be indorsed with the name and place of business of the advocate actually suing out the same, or, if no advocate be employed, with a memorandum that it is sued out by the creditor in person.
- (2) There shall also be indorsed on every bankruptcy notice 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 must within the time specified in the notice file an affidavit to that effect with the registrar.
- (3) In the case of each notice the registrar when issuing the notice shall fix the time referred to in subparagraph (2).

#### **102. Application to set aside**

The filing of such affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the registrar shall fix a day for hearing the application, and not less than three days before the day so fixed shall give notice thereof both to the debtor and the creditor and their respective advocates, if known. If the application cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

#### **103. Duration of notice**

Subject to the power of the court to extend the time, a bankruptcy notice to be served in Tanzania shall be served within one month from the issue thereof.

#### **104. Service of notice**

A bankruptcy notice shall be served and service thereof shall be proved in the like manner as is by these Rules prescribed for the service of a creditor's petition.

#### **105. Setting aside notice**

When the court makes an order setting aside the bankruptcy notice, it may at the same time declare that no act of bankruptcy has been committed by the debtor under such notice.

## **Bankruptcy petition (rules 106-112)**

### **106. Form of petition**

Every petition shall be fairly written or printed, or partly written and partly printed, and no alteration, interlineations, or erasures shall be made without the leave of the registrar except so far as may be necessary to adapt a printed form to the circumstances of the particular case.

### **107. Description and address of debtor**

- (1) Where a petition is presented by a debtor he shall, besides inserting therein his name and description and his address at the date when the petition is presented, further describe himself as lately residing or carrying on business at the address or several addresses, as the case may be, at which he has incurred debts and liabilities which at the date of the petition remain unpaid or unsatisfied.
- (2) Where a petition is presented against a debtor who resides or carries on business at an address other than the address at which the debtor was residing or carrying on business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor, in addition to stating in the petition the description of the debtor, as of his then present address and description, shall in the petition describe the debtor as lately residing or carrying on business at the address at which he was residing or carrying on business when the debt or liability was incurred.

### **108. Place for filing petition**

Where a debtor has for the greater part of six months next preceding the presentation of a bankruptcy petition carried on business within the area of one district registry and resided within the area of another district registry, the petition shall, subject to any order of the Chief Justice, be filed in the registry of the area within which the debtor has carried on business.

### **109. Attestation**

Every bankruptcy petition shall be attested. If it be attested in the United Republic the witness must be an advocate or justice of the peace or the receiver or the registrar. If it be attested out of the United Republic the witness must be a judge or magistrate or a notary public.

### **110. Petition by or against firm**

- (1) When a petition is filed by or against a firm in the firm name the debtors or the petitioning creditor shall, with such petition, file a statement of the names and addresses of the partners as they appear in the register under the Business Names (Registration) Act <sup>2</sup> at the date of presentation of the petition. If such names do not appear in such register the debtors shall state the true names and addresses of all the partners in the firm and the petitioning creditor shall state the names and addresses of such partners to the best of his information, knowledge and belief.
- (2) This Rule shall so far as the nature of the case will admit apply in the case of any person carrying on business in a name or style other than his own.

**111. Deposit by petitioner**

- (1) Upon the presentation of a petition—
  - (a) by the debtor, the petitioner shall deposit with the receiver the sum of four hundred shillings;
  - (b) by a creditor, the petitioner shall deposit with the receiver the sum of four hundred shillings, and in either case the petitioner shall deposit such further sum (if any as the court may from time to time direct, to cover the fees and expenses to be incurred by the receiver; and no petition shall be received unless the receipt of the receiver for the deposit payable on the presentation of the petition is produced to the proper officer of the court.
- (2) The receiver shall account for the money so deposited to the creditor or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor (except and so far such deposit may be required by reason of insufficiency of assets for the payment of the fees of and expenses incurred by the receiver) out of the proceeds of the estate in the priority prescribed by these Rules.

**112. Debtor's petition**

A debtor's petition in bankruptcy shall not be accepted for filing unless the registrar is satisfied that a certificate has been issued by the receiver showing that the debtor has submitted his statement of affairs in accordance with the provisions of section 16 of the Act.

**Creditor's petition (rules 113-117)****113. Security for costs**

A petitioning creditor who is resident abroad, or whose estate is vested in a trustee under any law relating to bankruptcy, or against whom a petition is pending under the Act, or who has made default in payment of any costs ordered by any court to be paid by him to the debtor, may be ordered to give security for costs to the debtor.

**114. Verification and copies**

Every creditor's petition shall be verified by affidavit, and when it is filed there shall be lodged with it two or more copies to be sealed and issued to the petitioner.

**115. Who to verify**

When the petitioning creditor cannot himself verify all the statements contained in his petition, he shall file in support of his petition the affidavit of some person who can depose to them.

**116. Joint petitioners**

Where a petition is presented by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge, but it shall be sufficient that each statement in the petition is deposed to by someone within whose knowledge it is.

**117. Investigation of petition**

After the presentation of a creditor's petition and before sealing the copies of the petition for service, the statements in the petition shall be investigated by the registrar, and where some of the statements in the petition cannot be verified by affidavit, witnesses may be summoned to prove the same.

## **Service of creditor's petition (rules 118-122)**

### **118. Personal service**

A creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition.

### **119. Substituted service**

A petition shall be served upon the debtor by an officer of the court, or by the creditor or his advocate, or by some person in their employ:

Provided that, if personal service cannot be effected, the court may extend the time for hearing the petition, or if the court is satisfied by affidavit or other evidence on oath that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the court may direct, and that such petition shall then be deemed to have been duly served on the debtor.

### **120. Proof of service**

Service of the petition shall be proved by affidavit with a sealed copy of the petition attached, which shall be filed in court forthwith after the service.

### **121. Service out of jurisdiction**

Where a debtor petitioned against is not in the United Republic, the court may order service to be made within such time and in such manner and form as it shall think fit.

### **122. Service after death of debtor**

If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the court may order service thereof to be effected on the personal representative of the debtor, or on such other persons as the court may think fit.

## **Interim receiver (rules 123-128)**

### **123. Appointment of interim receiver**

After the presentation of petition, upon the application of a creditor or of the debtor himself, and upon proof by affidavit of sufficient grounds for the appointment of the receiver as an interim receiver of the property of debtor, or any part thereof, the court may, if it thinks fit, and upon such terms as may be just, make such appointment.

### **124. Form and contents of order**

Where an order is made appointing the receiver to be interim receiver of the property of the debtor, such order shall bear the number of the petition in respect of which it is made, and shall state the locality of the property of which the receiver is ordered to take possession, and may direct him to take immediate possession of all books of accounts and other papers and documents belonging to the debtor and relating to his business.

**125. Deposit**

Before any order is issued, the person who has made the application therefor shall deposit with the receiver the sum of four hundred shillings towards the prescribed fee for the receiver, and such further sum as the court shall direct for the expenses which may be incurred by him.

**126. Further deposit necessary**

If the sum of four hundred shillings, and such further sum so to be deposited for the expenses which may be incurred by the receiver, shall prove to be insufficient, the person on whose application the order has been made shall from time to time deposit with the receiver such additional sum as the court may, on the application of the receiver, from time to time direct; and such sum shall be deposited within twenty-four hours after the making of the order therefor. If such additional sum shall not be so deposited the order appointing the interim receiver may be discharged by the court.

**127. Repayment of deposit**

If an order appointing an interim receiver is followed by a receiving order, the deposits made by the creditor on whose application such interim receiver was appointed shall be repaid to him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the fees chargeable and the expenses incurred by the interim receiver) out of the proceeds of the estate in the order of priority by these Rules.

**128. Damages if petition dismissed**

Where, after an order has been made appointing an interim receiver, the petition is dismissed, the court shall, upon application to be made within twenty-one days from the date of the dismissal thereof, adjudicate with respect to any damage or claim thereto arising out of the appointment, and shall make such order as the court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

**Hearing of petition (rules 129-141)****129. Proceedings on petition**

- (1) Where a petition is filed by a debtor, the court shall, subject to the proviso contained in subsection (1) of section 8 of the Act make a receiving order thereon.
- (2) A creditor's petition shall not be heard until the expiration of eight days from the service thereof:  
Provided that where the act of bankruptcy alleged is that the debtor has filed a declaration of inability to pay his debts, or where it is proved to the satisfaction of the court that the debtor has absconded, or in any other case for good cause shown, the court may, on such terms, if any, as the court may think fit to impose, hear the petition at such earlier date as the court may deem expedient.

**130. Time of hearing**

The registrar shall appoint the time and place at which the petition will be heard, and notice thereof shall be written on the petition and sealed copies, and when the petition has not been served the registrar may from time to time alter the first day so appointed, and appoint another day and hour.

**131. Several respondents**

Where there are more respondents than one to a petition the rules as to service shall be observed with respect to each respondent, but where all the respondents have not been served, the petition may be heard

separately or collectively as to the respondent or such of the respondents as has or have been served, and separately or collectively as to the respondents not then served, according as service upon them is effected.

### **132. Debtor intending to show cause**

When a debtor intends to show cause against a petition he shall file a notice with the registrar specifying the statements in the petition which he intends to deny or dispute, and transmit by post to the petitioning creditor and his advocate, if known, a copy of the notice three days before the day on which the petition is to be heard.

### **133. Non-appearance of debtor**

If the debtor does not appear at the hearing, the court may make a receiving of order on such proof of the statements in the petition as the court shall think sufficient.

### **134. Appearance of debtor to show cause**

On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute, shall be proved, and if any new evidence of those matters or any of them shall be given, or any witness or witnesses to such matters shall not be present for cross-examination, and further time shall be desired to show cause, the court shall, if the application appears to the court to be reasonable, grant such further time as the court may think fit.

### **135. Non-appearance of creditor**

If any creditor neglects to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person, shall be presented by the creditor in respect of the same act of bankruptcy without the leave of the court.

### **136. Personal attendance of creditor, when dispensed with**

The personal attendance of the petitioning creditor and of the witnesses to prove the debt, and act of bankruptcy or other material statements, upon the hearing of the petition may, if the court shall think fit, be dispensed with.

### **137. Proceedings after trial of disputed question**

When proceedings on a petition have been stayed for trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the registrar to fix a day on which further proceedings on the petition may be heard, and the registrar on production of the judgment or an office copy thereof shall give notice to the petitioner by post or otherwise of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute, and also to their respective advocates, if known.

### **138. Application to dismiss**

When proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the registrar to fix a day on which he may apply to the court for the dismissal of the petition with costs, and the registrar, on the production of the judgment or an office copy thereof, shall give notice to both the petitioner and debtor (or to their respective advocates, if known) by post or otherwise of the time and place fixed for the hearing of the application.



**139. Application for extension of time**

An application for an extension of time for hearing a petition shall be in writing, but need not be supported by affidavit unless in any case the court shall otherwise require.

**140. Order for extension of time**

On an application for an extension of time for the hearing of a petition, no order shall be made for an extension beyond fourteen days from the days fixed for the hearing of the petition, unless the court is satisfied that such extension of time will not be prejudicial to the general body of creditors. Any costs occasioned by such application shall not be allowed out of the estate unless so ordered by the court.

**141. Adjournments of hearing**

After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed, except for the reasons set forth in rule 134 of these Rules, or for such other sufficient reason to be stated in the order for adjournment as the court thinks fit; but in every such case, unless an order for adjournment is made, the court shall either make a receiving order or dismiss the petition.

**Receiving order (rules 142-152)****142. Contents**

When a receiving order is made on a creditor's petition there shall be stated in the receiving order the nature and date or dates of the act or acts of bankruptcy upon which the order has been made. Every order shall contain at the foot thereof a notice requiring the debtor to attend on the receiver forthwith on the service thereof at the place mentioned therein.

**143. Preparation**

Every receiving order, and order for the appointment of the receiver as interim receiver of a debtor's property, shall be prepared or, if otherwise prepared, settled by the registrar and, in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. When the petitioner is represented by an advocate the receiving order shall be indorsed with the name and address of such advocate.

**144. Transmission of copy to receiver**

A copy of every receiving order, and order for the appointment of the receiver as interim receiver of the debtor's property, sealed with the seal of the court, shall forthwith be sent by post or otherwise by the registrar to the receiver.

**145. Service of receiving order**

The registrar shall cause a copy of the receiving order sealed with the seal of the court to be served on the debtor.

**146. Service where debtor abroad**

Where a debtor against whom a receiving order has been made is not in Tanzania, the court may order service on the debtor of the receiving order, order of adjudication, order to attend the public examination or any adjournment thereof, or of any other order made against, or summons issued for the attendance of the debtor, to be made within such time and in such manner and form as it shall think fit.

**147. Receiving order on bankruptcy notice**

A receiving order shall not be made against the debtor on a petition in which the act of bankruptcy alleged is non-compliance with a bankruptcy notice within the appointed time, where such debtor has applied to set aside such notice until after the hearing of the application, or where the notice has been set aside, or during a stay of the proceedings thereon; but in such case the petition shall be adjourned or dismissed as the court may think fit.

**148. Stay of proceedings**

There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally.

**149. Advertisement**

Where a receiving order is made the receiver shall forthwith send notice thereof for insertion in the *Gazette* and in one of the local newspapers.

**150. Costs of petition, etc.**

- (1) The costs of all proceedings under the Act, down to and including the making of receiving order, shall be borne by the party prosecuting the same, unless the court shall order that the debtor shall pay the whole or any part of them or, in the case of a receiving order being made on a debtor's petition while a creditor's petition against such debtor is pending, that they shall be paid out of the estate. When a receiving order is made on a creditor's petition the costs of the petitioning creditor (including the costs of the bankruptcy notice (if any) sued out by him) shall be taxed and be payable out of the estate.
- (2) When the proceeds of the estate are not sufficient for the payment of any costs necessarily incurred by the receiver (in excess of the deposit) between the making of a receiving order and the conclusion of the first meeting of creditors, the court may order such costs to be paid by the party prosecuting the proceedings.

**151. Notice of application to rescind receiving order, etc.**

An application to the court to rescind a receiving order or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof, have been duly served upon the receiver. Unless the court gives leave to the contrary, notice of any such application shall be served on the receiver not less than seven days before the day named in the notice for hearing the application. Pending the hearing of the application, the court may make an interim order staying such of the proceedings as it thinks fit.

**152. Report by receiver where ground of application to rescind receiving order or annul adjudication is debt paid in full**

- (1) When an application is made to the court to rescind a receiving order or annul an order of adjudication on the ground that the debts of the debtor have been paid in full, the receiver shall make and file, four days before the day appointed for hearing the application, a report as to the debtor's conduct and affairs (including a report as to his conduct during the proceedings), and the court on the hearing of the application shall hear and consider such report and such further evidence as may be adduced by any party and any objections which may be made by or on behalf of the trustee (if any) or any creditor whom the court may order to be served with notice of the application or may permit to appear thereon. For the purposes of the application the report shall be *prima facie* evidence of the statements therein contained.

- (2) For the purposes of this rule the expression "creditor" includes all creditors mentioned in the debtor's statement of affairs or who have notified to the receiver or trustee that they have, or at the date of the receiving order had, claims against the debtor.

### **Statement of affairs (rules 153-154)**

#### **153. Statements of affairs: How made out**

Every debtor shall be furnished by the receiver with instructions for the preparation of his statement of affairs. The statement of affairs shall be made out in duplicate, and one copy shall be verified. The receiver shall file in court the verified statement of affairs submitted to him by the debtor.

#### **154. Extension of time**

Where any debtor requires any extension of the time for the filing by him of his statement of affairs he shall apply to the receiver, who may, if he thinks fit, give a written certificate extending such time, which certificate shall be filed, and shall render an application to the court under section 16 of the Act unnecessary.

### **Public examination (rules 155-163)**

#### **155. Time for holding public examination**

When a receiving order has been made against a debtor, it shall be the duty of the receiver to make an application to the court to appoint a day and hour for holding the public examination of the debtor and, upon such application being made, the court shall, by an order, appoint the day and hour for such public examination, and shall order the debtor to attend the court upon such day and at such hour.

#### **156. Default by debtor in attending**

If the debtor fails to attend the public examination at the time and place appointed by any order for holding or proceeding with the same, and no good cause is shown by him for such failure, it shall be lawful for the court, upon its being proved to the satisfaction of the court that the order requiring the debtor to attend the public examination was duly served, and without any further notice to the debtor, to issue a warrant for his arrest as provided by section 26(1)(d) of the Act, or to make such other order as the court shall think just.

#### **157. Notice to creditors**

When any order is made appointing the time and place for holding the public examination of a debtor, the registrar shall serve a copy thereof on the debtor, and the receiver shall give to the creditors notice of such order, and of the time and place appointed thereby, and also forward notice of such order to be gazetted and advertised.

#### **158. General proxy-holders may question debtor**

The holder of a general proxy or general power of attorney from a creditor who has tendered a proof may question the at his public examination concerning debtor his affairs and the causes of his failure.

#### **159. Adjournments *sine die***

Where the court is of opinion that a debtor is failing to disclose his affairs, or where the debtor has failed to attend the public examination or any adjournment thereof, or where the debtor has not complied with any order of the court in relation to his accounts, conduct, dealings and property, and no good cause is

shown by him for such failure the court may adjourn the public examination *sine die*, and may make such further or other order as the court shall think fit.

#### 160. Application to proceed

The court may on the application either of the receiver or of the debtor appoint a day for proceeding with a public examination which has been adjourned *sine die*.

#### 161. Proceedings after adjournment *sine die*

Where an examination has been adjourned *sine die*, and the debtor desires to have a day appointed for proceeding with his public examination the expenses of gazetting, advertising and giving notice to creditors of the day to be appointed for proceedings with such examination shall, unless the receiver or trustee, as the case may be, consents to the costs being paid out of the estate, be at the cost of the debtor, who shall before any day is appointed for proceeding with the public examination deposit with the receiver such sum as the receiver shall think sufficient to defray the expenses aforesaid. The balance of the deposit, after defraying the expenses aforesaid, shall be returned to the debtor.

#### 162. Notice of proceedings after adjournment *sine die*

In any case in which a public examination has been adjourned *sine die*, and the court afterwards makes an order for proceedings with such public examination, notice to creditors of the time and place appointed for proceedings with such public examination shall be sent by the receiver, and notice shall also be inserted in the *Gazette* fourteen days before the day appointed.

#### 163. Public examination of debtor who is a lunatic, etc.

- (1) An application for an order dispensing with the public examination of a debtor, or directing that the debtor be examined in some manner or at some place other than is usual, on the ground that the debtor is a lunatic, or suffers from mental or physical affliction or disability rendering him unfit to attend a public examination, may be made by the receiver, or by any person who has been appointed by any court having jurisdiction so to do to manage the affairs of or represent the debtor, or by any relative or friend of the debtor who may appear to the court to be a proper person to make the application.
- (2) Where the application is made by the receiver, it may be made *ex parte*, and the evidence in support of the application may be given by a report of the receiver to the court, the contents of which report shall be received as *prima facie* evidence of the matters therein stated.
- (3) Where the application is made by some person other than the receiver, it shall be made by motion, of which notice shall be given to the receiver and trustee (if any), and shall, except in the case of a lunatic so found by inquisition, be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the debtor.
- (4) Where the order is made on the application of the receiver, the expense of holding the examination shall be deemed to be an expense incurred by the receiver within the meaning of rule 90. Where the application is made by any other person, he shall, before any order is made on the application, deposit with the receiver such sum as the receiver shall certify to be necessary for the expenses of the examination.

### Composition or scheme (rules 164-183)

#### 164. Forms where proposal submitted by the debtor

Where a debtor intends to submit a proposal for a composition or scheme, the prescribed forms of proposal, notice and report shall be used by the receiver for the purpose of the meeting of creditors for consideration of the proposal.

**165. Application by debtor or receiver for approval of the court**

Where the creditors have accepted a composition or scheme, and the public examination of the debtor has been concluded, the receiver or the debtor may forthwith apply to the court to fix a day for the hearing of an application for the approval of such composition or scheme. The receiver shall not, by making such application, be deemed necessarily to approve of the composition or scheme.

**166. Notice to receiver**

Any person other than the receiver who applies to the court to approve a composition or scheme shall, not less than ten days before the day appointed for hearing the application, send notice of the application to the receiver.

**167. Notice to creditors**

Where application is made to the court to approve a composition or scheme, the receiver shall, not less than three days before the day appointed for hearing the application, send notice of the application to every creditor who has proved his debt.

**168. Receiver's report to be filed**

In every case of an application to the court to approve a composition or scheme, the report of the receiver shall be filed not less than four days before the time fixed for hearing the application.

**169. Hearing and appeal**

On the hearing of any application to the court to approve a composition or scheme, the court shall, in addition to considering the report of the receiver, hear the receiver and the trustee (if any) thereon, and an appeal to the Court of Appeal shall lie at the instance of the receiver, or of the trustee (if any) from any order of the court made upon such an application.

**170. Costs of application by debtor**

No costs incurred by a debtor, of or incidental to an application to approve a composition or scheme, shall be allowed out of the estate if the court refuses to approve the composition or scheme.

**171. Evidence and order**

- (1) The court before approving a composition or scheme shall, in addition to investigating the other matters as required by the Act, require proof that the provisions of section [18\(1\)](#) and [\(2\)](#) of the Act have been complied with.
- (2) The registrar shall forthwith cause a notice of every order made on an application to approve a composition or scheme to be gazetted.

**172. Provision in composition or scheme for costs and charges**

Where a composition or scheme has been duly accepted by the creditors, such composition or scheme shall not be approved by the court unless the court is satisfied, on the report of the receiver, that provision is made for payment of all proper costs, charges and expenses of and incidental to the proceedings, and all fees and percentages payable to the receiver under the scale of fees and percentages in force for the time being.

**173. Fee on application**

The fee prescribed to be charged for and in respect of an application to the court to approve a composition or scheme may be allowed and paid out of the estate of the debtor in any case in which there are sufficient funds in the hands of the receiver or trustee, as the case may be, available for the purpose.

**174. Correction of formal slips, etc.**

At the time a composition or scheme is approved, the court may correct or supply any accidental or formal slip, error or omission therein, but no alteration in the substance of the composition or scheme shall be made.

**175. Proceedings if scheme approved**

When a composition or scheme is approved, the receiver shall, on payment of all costs, charges and expenses of and incidental to the proceedings, and all fees and percentages payable to the receiver, forthwith put the debtor (or, as the case may be, the trustee under the composition or scheme, or the other 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. The court shall also discharge the receiving order.

**176. Cases in which receiver is to be trustee**

In every case of a composition or scheme in which a trustee is not appointed, or, if appointed, declines to act, or becomes incapable of acting, or is removed, the receiver shall, unless and until another trustee is appointed by the creditors, be the trustee for the purpose of receiving and distributing the composition, or for the purpose of administering the debtor's property, and carrying out the terms of the composition or scheme, as the case may be.

**177. Security by trustee under composition or scheme**

Where under a composition or scheme a trustee is appointed, he shall, after the composition or scheme has been approved by the court, give security to the satisfaction of the court in like manner as if he were a trustee in bankruptcy. If the trustee fails to give such security within the time required he may be removed by the court.

**178. Default in payment of composition**

Where a composition or scheme has been approved, and default is made in any payment thereunder either by the debtor or the trustee (if any), no action to enforce such payment shall lie, but the remedy of any person aggrieved shall be by application to the court.

**179. Vesting of property on annulment of composition**

Where a composition or scheme is annulled, the property of the debtor shall, unless the court otherwise directs forthwith vest in the receiver without any special order being made or necessary.

**180. Annulment of composition or scheme**

Where a composition or scheme is annulled, the trustee under the composition or scheme shall account to the trustee under the bankruptcy for any money or property of the debtor which has come to his hands, and pay or deliver over to the said trustee any money or property which has not been duly administered.

**181. Dividends under composition or scheme**

Where under any composition or scheme provision is made for the payment of any moneys to creditors entitled thereto, 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 upon such claim, if established, shall be secured in such manner as the court directs, until the determination of the claim so disputed, and on the determination thereof, the sum so secured shall be paid as the court may direct.

### **182. Proof of debts in composition or scheme**

Every person claiming to be a creditor under any composition or scheme, who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any, or, if there is no such trustee, with the receiver, who shall admit or reject the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt and his proof has been admitted.

### **183. Compositions and schemes under section 18**

All rules relating to compositions or schemes shall apply to compositions or schemes under section 18 of the Act, and so far as applicable, also to compositions or schemes under section 23 of the Act.

## **Adjudication (rules 184-189)**

### **184. Adjudication on application of debtor**

At the time of making a receiving order, or at any time thereafter, the court may, on the application of the debtor himself, adjudge him a bankrupt. Such application may be made orally and without notice.

### **185. Adjudication on application of other parties**

When a receiving order has been made, and a quorum of creditors do not attend at the time and place appointed for the first meeting, or one adjournment thereof, or where the receiver satisfies the court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or in any of the other cases mentioned in the Act, the court may, either on the application of a creditor or of the receiver, forthwith adjudge the debtor bankrupt.

### **186. Adjudication on failure of composition or scheme**

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 receiver or of any person interested, adjudge the debtor bankrupt.

### **187. Adjudication where public examination adjourned *sine die***

Where the public examination of a debtor is adjourned *sine die* and the debtor has not previously been adjudged bankrupt, the court may forthwith, and without any notice to the debtor, adjudge him bankrupt.

### **188. Notice of order of adjudication**

When a debtor is adjudged bankrupt, notice thereof shall be advertised and gazetted, in the like manner as is provided in the case of a receiving order.

### **189. Order annulling adjudication**

- (1) When an adjudication is annulled the registrar shall forthwith cause the annulment to be gazetted.
- (2) The order of the court annulling an adjudication shall not relieve a trustee from the liability imposed on trustees by the Act and Rules to account to the court for all transactions of such trustee in connection with the estate.

## Discharge (rules 190-202)

### 190. Application

A bankrupt intending to apply for his discharge shall produce to the registrar a certificate from the receiver specifying the number of his creditors of whom the receiver has notice (whether they have proved or not). The registrar shall, not less than twenty-eight days before the day appointed for hearing the application, give notice of the time and place of the hearing of the application to the receiver and trustee. The registrar shall forthwith cause a copy of such notice to be gazetted, and the receiver shall send a copy of such notice to each creditor not less than fourteen days before the day so appointed.

### 191. Appeals

An appeal to the Court of Appeal shall lie at the instance of the receiver, and at the instance of the trustee (if any) from any order of the court made upon such an application.

### 192. Report of receiver

In every case of an application by a bankrupt for his discharge, the receiver shall file his report and send a copy thereof to the bankrupt by registered post or otherwise not less than fourteen days before the time fixed for hearing the application.

### 193. Evidence in answer to report

When a bankruptcy intends to dispute any statement with regard to his conduct and affairs contained in the receiver's report, he shall, not less than two days before the hearing of the application for discharge, file in court a notice in writing, specifying the statements in the report, if any, which he proposes at the hearing to dispute and serve a copy of the notice upon the receiver. Any creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the receiver's report, shall, not less than two days before the hearing of the application, file in court a notice in writing of the intended opposition stating the grounds thereof and serve a copy of the notice upon the receiver and upon the bankrupt.

### 194. Costs of application

A bankrupt shall not be entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate. This rule shall not apply to costs of a successful appeal from a refusal to grant a discharge.

### 195. Orders conditional consent to judgment

- (1) When the court grants an order of discharge conditionally upon the bankrupt consenting to judgment being entered against him by the receiver or trustee for the balance or any part of the balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge, the order of discharge shall not be signed, completed, or delivered out until the bankrupt has given the required consent. The judgment shall be entered in the court having jurisdiction in the bankruptcy in which the order of discharge is granted.
- (2) A return shall be made forthwith to the registrar of any judgment so entered in a subordinate court.
- (3) If the bankrupt does not give the required consent within one month of the making of the conditional order, the court may, on the application of the receiver or trustee, revoke the order or make such other order as the court may think fit.



**196. Order**

The order of the court made on an application for discharge shall be dated on the day on which it is made, and shall take effect from the day on which the order is drawn up and signed; but such order shall not be delivered out or gazetted until after the expiration of the time allowed for appeal, or, if an appeal be entered, until after the decision of the Court of Appeal thereon.

**197. Gazetting order**

When the time for appeal has expired or, as the case may be, when the appeal has been decided by the Court of Appeal, the registrar shall forthwith cause a notice of the order to be gazetted.

**198. Execution on judgment in case of conditional discharge**

- (1) An application by the receiver or trustee for leave to issue execution on a judgment entered pursuant to a conditional order of discharge shall be in writing and shall state shortly the grounds on which the application is made. When the application is lodged, the registrar shall fix a day for the hearing.
- (2) The receiver or trustee shall give notice of the application to the debtor not less than eight days before the day appointed for the hearing and shall at the same time furnish him with a copy of the application.

**199. Accounts of after-acquired property**

When a bankrupt is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty until such judgment or condition is satisfied, from time to time to give the receiver such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the court a nil return or a statement showing the particulars of any property or income he may have acquired subsequent to his discharge, as the case may be.

**200. Verification of statements of after-acquired property**

Any nil return or statement of after-acquired property or income filed by a bankrupt whose discharge has been granted subject to conditions, shall be verified by affidavit, and the receiver or trustee may require the bankrupt to attend before the court to be examined on oath with reference to the statements contained in such affidavit as to his earnings income, after-acquired property, or dealings. Where a bankrupt neglects to file such affidavit or to attend the court for examination when required so to do, or properly to answer all such questions as the court may put or allow to be put to him, the court may, on the application of the receiver or trustee, rescind the order of discharge.

**201. Application for modification of order**

Where, after the expiration of two years from the date of any order made upon a bankrupt's application for discharge, the bankrupt applies to the court to modify the terms of the order on the ground that there is no reasonable probability of his being in a position to comply with the terms of such order, he shall give fourteen day's notice of the day fixed for hearing the application to the receiver and to all his creditors.

**202. Application for leave to act as director of company**

- (1) Where a bankrupt intends to apply 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, and shall apply to the court to fix a day for the hearing of the motion.
- (2) The registrar shall, not less than twenty-eight days before the day fixed for the hearing, give notice to the official receiver 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 date fixed for the hearing.
- (4) The bankrupt shall, not less than two days before the day fixed for the hearing, file in court a notice in writing specifying what statements (if any) in the report he intends to dispute, and serve a copy of the notice (if any) upon the official receiver.
- (5) An appeal to the Court of Appeal from an order made on the motion shall lie at the instance of the bankrupt or of the official receiver.

### **Meetings of creditors (rules 203-211)**

#### **203. Notice to debtor of first meeting**

The receiver shall give three days' notice to the debtor of the time and place appointed for the first meeting of creditors. The notice may be either delivered to him personally or sent to him by prepaid post letter, as may be convenient. It shall nevertheless be the duty of the debtor to attend such first meeting although the notice is not sent to or does not reach him.

#### **204. Notice to creditors of first meeting**

The receiver shall fix the day for the first meeting and shall forthwith cause the same to be gazetted, and shall also give notice to the creditors.

#### **205. Notices of other meetings**

The notices of subsequent meetings shall be issued to creditors by the receiver or trustee. Where no special time is prescribed the notices shall be sent off not less than three days before the day appointed for the meeting.

#### **206. Non-reception of notice by creditors**

Where a meeting of creditors is called by notice, the proceedings had and resolutions passed at such meeting shall, unless the court otherwise orders, be valid, notwithstanding that some creditors shall not have received the notice sent to them.

#### **207. Notice to receiver**

Where a trustee summons a meeting of creditors he shall send the receiver a copy of the notice convening the meeting.

#### **208. Proof of notice**

A certificate by the receiver or other officer of the court or by the clerk of any such person, or an affidavit by the trustee or his advocate or by the clerk of either such persons, that the notice of any meeting of creditors or sitting of the court has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

#### **209. Copy of resolution for registrar**

The receiver or, as the case may be, the trustee, shall send to the registrar a copy, certified by him of every resolution of a meeting of creditors.

**210. Adjournment**

Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified.

**211. Quorum**

In calculating a quorum of creditors present at a meeting, those persons only who are entitled to vote at the meeting shall be reckoned.

**Proof of debts (rules 212-224)****212. Swearing of proof**

An affidavit of proof of debt may be sworn before the receiver or any clerk of the receiver duly authorised by the court in that behalf.

**213. Workmen's wages**

- (1) In any case in which it shall appear from the debtor's statement of affairs that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or his foreman, or some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.
- (2) The provisions of part (1) of this rule shall also apply, *mutatis mutandis*, to the case of claims in respect of money deposited by natives with the debtor for safe custody, whether the debtor held himself out as a banker or not.

**214. Production of bills of exchange and promissory notes**

Where a creditor seeks to prove in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the debtor is liable, such bill of exchange, note, instrument or security must, subject to any special order of the court made to the contrary be produced to the receiver, chairman of a meeting, or trustee, as the case may be, before the proof can be admitted either for voting or for dividend.

**215. Time for lodging of proofs**

A proof intended to be used at the first meeting of creditors shall be lodged with the receiver not later than the time mentioned for that purpose in the notice convening the meeting, which time shall not be earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before, the day appointed for such meeting. A proof intended to be used at an adjournment of the first meeting (if not lodged in time for the first meeting) must be lodged not less than twenty-four hours before the time fixed for holding the adjourned meeting.

**216. Transmission of proofs to trustee**

Where a trustee is appointed in any matter, all proofs of debts that have been received by the receiver shall be handed over to the trustee, but the receiver shall first make a list of such proofs, and take a receipt thereon from the trustee for such proofs.

**217. Proofs to be sent by receiver to registrar**

The receiver, when no other trustee is appointed, shall forthwith after the final payment has been made in a composition or scheme of arrangement duly approved by the court, and in a bankruptcy after a final dividend has been declared, sent to the registrar all proofs tendered in the proceedings, with a list thereof certified to be correct, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

**218. Proofs to be sent by trustee to receiver**

Every trustee in bankruptcy, other than the receiver, shall, on the first day of every month, send to the receiver a certified list of all proofs, if any, received by him from the receiver, or otherwise tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and in the case of proofs admitted or rejected, he shall transmit to the receiver the proofs themselves for the purpose of being filed when called upon to do so.

**219. Procedure when creditor appeals**

The receiver or, as the case may be, the trustee, shall within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the registrar with a memorandum thereon of his disallowance thereof. After the appeal has been heard by the court, the proof, unless wholly disallowed, shall be given back to the receiver or trustee, as the case may be.

**220. Time for admission or rejection of proofs by receiver**

Subject to the power of the court to extend the time, the receiver, as trustee, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend, as the same time within which such proofs must be lodged, shall, in writing, either admit or reject wholly or in part every proof lodged by him, or require further evidence in support thereof.

**221. Time for admission or rejection of proofs by trustee**

Subject to the power of the court to extend the time, the trustee, other than the receiver, within twenty-eight days after receiving a proof which has not been previously dealt with by the receiver shall, in writing, either admit or reject it wholly or in part, or require further evidence in support thereof:

Provided that where the trustee has given notice of his intention to declare a dividend, he shall, within fourteen days after the date mentioned in such notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already admitted or rejected, and given notice of his decision rejecting a proof wholly or in part to the creditor affected thereby.

**222. Notice of admission of proof**

Where a creditor's proof has been admitted, the notice of dividend shall be sufficient notification to such creditor of such admission.

**223. Appeal from rejection of proof**

Subject to the power of the court to extend the time, no application to reserve or vary the decision of the receiver or trustee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of.

**224. Costs of appeal from decision as to proofs**

The receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

**Proxies and voting letters (rules 225-228)****225. Form and filing of proxies**

- (1) A proxy shall be lodged with the receiver or trustee not later than four o'clock on the day before the meeting or adjourned meeting at which it is to be used.
- (2) As soon as a proxy or voting letter has been used it shall be filed with the proceedings in the matter.

**226. Signature of proxy**

A proxy given by a creditor shall be deemed to be sufficiently executed if it is signed by any person in the employ of the creditor having a general authority to sign for such creditor, or by the authorised agent for such creditor if resident abroad; such authority shall be in writing, and shall be produced to the receiver, if required.

**227. Filling in when creditor blind, etc.**

The proxy of a creditor who is blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; and provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

**228. Minors not to be proxies**

No person shall be appointed a general or special proxy who is a minor.

**Dividends (rules 229-232)****229. Notice of intention to declare dividend**

- (1) Not more than two months before declaring a dividend, the trustee shall give notice of his intention to do so to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall be not less than fourteen days from the date of such notice. The trustee shall also cause such notice to be gazetted.
- (2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proof may be lodged, appeals against the decision of the receiver or trustee rejecting a proof, such appeal shall, subject to the power of the court to extend the time in special cases, be commenced, and notice thereof given to the receiver or trustee within seven days from the date of the notice of the decision against which the appeal is made, and the receiver or trustee shall in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no appeal has been commenced within the time specified in this rule, the trustee shall exclude all proofs which have been rejected from participation in the dividend.
- (3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the receiver or trustee, the trustee shall proceed to declare a dividend, and shall cause the same

to be gazetted, and shall also send a notice of dividend to each creditor whose proof has been admitted, accompanied by a statement showing the position of the estate.

- (4) If it becomes necessary, in the opinion of the trustee and the committee of inspection, to postpone the declaration of the dividend beyond the prescribed limit of two months, the trustee shall cause a fresh notice of his intention to declare a dividend to be forthwith gazetted; but it shall not be necessary for such trustee to give a fresh notice to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

### **230. Production of bills, notes, etc.**

Subject to the provisions of section 70 of the Bills of Exchange Act <sup>3</sup>, or of any enactment amending or substituted for the same, and subject to the power of the court in any case on special grounds to allow production to be dispensed with, every bill of exchange, promissory note or other negotiable instrument or security, upon which proof has been made, shall be exhibited to the trustee before payment of dividend thereon, and the amount of dividend paid shall be indorsed on the instrument.

### **231. Dividend may be sent by post**

The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by post.

### **232. Payment of dividends to a nominee**

If a person to whom dividends are payable desires that they be paid to some other person, he may lodge with the trustee a request to that effect which shall be a sufficient authority for payment of the dividend to the person therein named.

## **Appropriation of pay, salary, pensions, etc. (rules 233-236)**

### **233. Notice to bankrupt of application**

When a trustee intends to apply to the court for an appropriation order under section 55 of the Act, he shall give to the bankrupt notice of his intention so to do. Such notice shall specify the time and place fixed for hearing the application, and shall state that the bankrupt is at liberty to show cause against such order being made.

### **234. Notice to head of department**

When the application is made under section 55(1) of the Act, a copy of the proposed order shall be sent by the registrar to the head of the department under which the pay or salary is enjoyed, and the application shall stand adjourned until the consent of such head of department is obtained as required by the Act.

### **235. Copy of order to department**

Where an order is made under section 55(2) of the Act, the registrar shall give to the trustee a sealed copy of the order, who shall communicate the same to the head of the department or other person under whom the pay, half-pay, salary, income, emolument, pension or compensation is enjoyed.

### **236. Review of order**

Where an order has been made for the payment by a bankrupt, or by his employer for the time being, of a portion of his income or salary, the bankrupt may, upon his ceasing to receive a salary or income of the

amount he received when the order was made, apply to the court to rescind the order or to reduce the amount ordered to be paid by him to the trustee.

### **Disclaimer of lease (rules 237-238)**

#### **237. Disclaimer of lease**

- (1) A lease may be disclaimed without the leave of the court in any of the following cases:
  - (a) when the bankrupt has not sub-let the demised premises or any part thereof or created a mortgage or charge thereon; and—
    - (i) the rent reserved and real value of the property leased are less than four hundred shillings per annum; or
    - (ii) the estate is administered under the provisions of section [119](#) of the Act; or
    - (iii) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not, within seven days after the receipt of such notice, give notice to the trustee requiring the matter to be brought before the court;
  - (b) where the bankrupt has sub-let the demised premises or created a mortgage or charge upon the lease, and the trustee serves the lessor and the sub-lessee or the mortgagees with a notice of his intention to disclaim, and neither the lessor nor the sub-lessee nor the mortgagees, or any of them, within fourteen days after the receipt of such notice requires or require the matter to be brought before the court.
- (2) Except as provided by this rule the disclaimer of a lease without the leave of the court shall be void.

#### **238. Procedure on disclaimer**

- (1) Where the trustee disclaims a leasehold interest, he shall forthwith file the disclaimer with the proceedings in the court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of disclaimer has been given. Until the disclaimer is filed by the trustee the disclaimer shall be inoperative.
- (2) Where, in pursuance of notice by the trustee of his intention to disclaim a leasehold interest, the lessor, sub-lessee or mortgagee requires the trustee to apply to the court for leave to disclaim, the costs of the lessor, sub-lessee or mortgagee shall not be allowed out of the estate of the bankrupt, except in cases in which the court is satisfied that such application was necessary in order to do justice between the parties.
- (3) A disclaimer made without leave of the court under the preceding rule shall not be void or otherwise affected on the ground only that the notice required by such rule has not been given to some person who claims to be interested in the demised property.
- (4) Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants, he shall, at the request of the receiver or trustee, furnish a statement of the interest claimed by him.

### **Proceedings by or against firm (rules 239-251)**

#### **239. Attestation of firm signature**

Where any notice, declaration, petition or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall add also his own signature, for example "Brown and Co., by James Green, a partner in the said firm".

**240. Service on firm**

Any notice or petition for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm in the United Republic, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

**241. Service on individual carrying on business in name or style other than his own**

The provisions of the last preceding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own.

**242. Debtor's petition by firm**

Where a firm of debtors file a declaration of inability to pay their debts or a bankruptcy petition, it shall contain the names in full of the individual partners, and if such declaration or petition is signed in the firm name the declaration or petition shall be accompanied by an affidavit made by the partner who signs the declaration or petition, showing that all the partners concur in its filing.

**243. Receiving order against firm**

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.

**244. Statement of affairs**

In cases of partnership the debtors shall submit a statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs.

**245. Adjudication against partners**

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

**246. First meeting**

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

**247. Acceptance of competition, etc., by joint and separate creditors**

The joint creditors, and each set of separate creditors, may severally accept compositions of schemes of arrangement. So far as circumstances will allow, a proposal accepted by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

**248. Voting on composition**

Where proposals for composition 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 every set of separate creditors; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors, apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the receiving order shall be discharged only so far as it relates to the estate, the creditors of which have accepted the composition or scheme.



**249. Adjudication trustee**

On the adjudication in bankruptcy of a partnership, the trustee appointed by the joint creditors, or by the court under section 21(5) or section 80(3) of the Act, as the case may be, shall be the trustee of the separate estates. Each set of creditors may appoint its own committee of inspection, but if any set of separate creditors do not appoint a separate committee, the committee (if any) appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors.

**250. Separate firms**

If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last-mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And where any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

**251. Apportionment of trustee's remuneration**

Where joint and separate estates are being administered, the remuneration of the trustee in respect to the administration of the joint estate may be fixed by the creditors, or (if duly authorised) by the committee of inspection of such joint estate, and the remuneration of the trustee in respect of the administration of any separate estate may be fixed by the creditors, or (if duly authorised) by the committee of inspection of such separate estate.

**Lunatics (rule 252)****252. Lunatics**

- (1) Where it appears to the court that any debtor or creditor or other person who may be affected by any proceeding under the Act or Rules is a lunatic not so found by inquisition (hereinafter called "the lunatic"), the court may appoint such person as it may think fit to appear for, represent, or act for, and in the name of the lunatic, either generally, or in and for the purpose of any particular application or proceeding, or the exercise of any particular rights or powers which under the Act and Rules the lunatic might have exercised if he had been sound mind. The appointment may be made by the court either on an application made as hereinafter mentioned, or, if the court thinks fit to do so, without any previous application.
- (2) An application to the court to make an appointment under this rule may be made by any person who has been appointed by any court having jurisdiction so to do, to manage the affairs or property of or to represent the lunatic, or by any relative or friend of the lunatic who may appear to the court to be a proper person to make the application, or by the receiver.
- (3) The application may be made *ex parte* and without notice, but in any case in which the court shall think it desirable the court may require such notice of the application as it shall think necessary to be given to the receiver or trustee (if any) or to the petitioning creditor, or to the person alleged to be a lunatic, or to any other person, and for that purpose may adjourn the hearing of the application.
- (4) Where the application is made by some person other than the receiver, it shall be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the lunatic. Where the application is made by the receiver, it may be supported by a report of the receiver, the contents of which shall be received as *prima facie* evidence of the facts therein stated.
- (5) When a person has been appointed under this rule, any notice under the Act and Rules served on or given to such a person shall have the same effect as if the notice had been served on or given to the lunatic.

## Small bankruptcies (rule 253)

### 253. Summary administration

Where an estate is ordered to be administered in a summary manner under section 119 of the Act, the provisions of the Act and Rules shall, subject to any special direction of the court, be modified as follows, namely:

- (a) the title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case";
- (b) if no proposal for a composition or scheme is lodged with the receiver within the time specified for that purpose in section 18 of the Act, or within such time thereafter as the receiver may fix, or if the receiver satisfies the court that the debtor has absconded or that the debtor does not intend to propose a composition or scheme, or that the composition or scheme proposed is not reasonable or calculated to benefit the general body of creditors, the court may forthwith adjudge the debtor bankrupt. A report by the receiver under this paragraph shall be *prima facie* evidence of the facts therein stated;
- (c) if during or at the conclusion of the public examination of the debtor it appears to the court that a composition or scheme ought not to be sanctioned by reason of the conduct of the debtor, the court may forthwith adjudge the debtor bankrupt;
- (d) all payments shall, unless the court otherwise orders, be made into and out of the prescribed bank;
- (e) the first meeting of creditors may, where it is expedient, be held on the day appointed for the public examination, or on any other day fixed by the receiver. If a quorum of creditors be not present, it shall not be necessary to adjourn the meeting;
- (f) meetings of creditors shall, unless the receiver for special reasons otherwise determines, be held in the office of the receiver;
- (g) on an application by a bankrupt for his discharge the certificate of the receiver shall not include, nor shall notices be sent to, creditors whose debts do not exceed forty shillings;
- (h) *in lieu* of the copy of the account to be filed with the court, as prescribed by section 93(4) of the Act, a statement showing the position of the estate analogous, as nearly as may be, to that prescribed by Form 150 shall be filed;
- (i) notices of meetings, other than of first meetings, or of sittings of the court shall only be sent to creditors whose debts or claims exceed the sum of forty shillings;
- (j) the time mentioned in section 66(2) of the Act shall be extended to six months;
- (k) the estate shall be realised with all reasonable despatch and, where practicable, distributed in a single dividend when realised;
- (l) the costs or charges payable out of the debtor's estate of any person other than of an advocate may be paid and allowed without taxation where such costs or charges are within the prescribed scale:

Provided that the receiver may require such costs or charges to be taxed.

## Administration of estate of deceased insolvents (rules 254-261)

### 254. Verification of petition

A creditor's petition and a petition by the legal personal representative of the deceased under section 120 of the Act shall be verified by affidavit.

**255. Deposit by legal personal representative on petition**

The provisions of rule 111 as to deposit on presentation of a petition by a creditor and by a debtor shall apply respectively to petitions presented by a creditor and by a legal personal representative under section [120](#) of the Act.

**256. Gazetting**

Where an administration order under section [120](#) of the Act is made, such order shall be gazetted in the same manner in all respects as an order of adjudication is gazetted.

**257. Service**

- (1) The petition shall, unless the court otherwise directs, be served on each executor who has proved the will, or as the case may be, on each person who has taken out letters of administration. The court may also, if the court thinks fit, order the petition to be served on any other person.
- (2) Service shall be proved in the same way as is provided in the case of an ordinary creditor's petition, and the petition shall be heard in the like manner.

**258. Duties of executor, etc.**

- (1) When an administration order under section [120](#) of the Act has been made, it shall be the duty of the executor or legal personal representative of the deceased debtor to lodge with the receiver forthwith (in duplicate) an account of the dealings with, and administration of (if any) the deceased's estate by such executor or legal personal representative, and such executor or legal personal representative shall also furnish forthwith in duplicate a list of the creditors, and a statement of the assets and liabilities, and such other particulars of the affairs of the deceased as may be required by the receiver. Every account, list and statement to be made under this rule shall be made and verified as nearly as may be in accordance with the practice for the time being of the High Court in suits for the administration of the estates of deceased persons.
- (2) The expenses of preparing, making, verifying and lodging any account, list and statement under this rule shall, after being taxed, be allowed out of the estate upon production of an office copy of the taxed bill.

**259. *Executor de son tort***

In any case in which an administration order under section [120](#) of the Act has been made, and it appears to the court, on the report of the receiver, that no executor or legal personal representative exists, the account, list and statement mentioned in the last preceding rule shall be made, verified and lodged by such person as in the opinion of the court, upon such report, may have taken upon himself the administration of, or may otherwise have intermeddled with, the property of the deceased, or any part thereof.

**260. Meetings of creditors, trustees, etc.**

In proceedings under an order for the administration of the estate of a person dying insolvent, where a meeting of creditors is summoned for the appointment of a trustee—

- (a) the provisions of the First Schedule to the Act, relating to the mode of summoning a meeting of creditors and to the persons entitled to a vote at a meeting;
- (b) the provisions of these Rules, which refer to creditors, meetings of creditors, trustee and committees of inspection,

shall so far as applicable, apply as if the proceedings were under a receiving order and order of adjudication.

## 261. Modifications where summary order made

Where under an administration order under section 120 of the Act the estate is ordered to be administered in a summary way, the modifications imposed by section 119 and rule 253 shall not apply, but *in lieu* thereof the modifications following shall apply—

- (a) the receiver shall be trustee under the order unless the creditors at any time by special resolution resolve that some person other than the receiver shall be appointed trustee, in which case the administration shall proceed as if an order for summary administration had not been made;
- (b) there shall be no committee of inspection, but the court shall exercise the powers of a committee of inspection;
- (c) the title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case";
- (d) all payments shall, unless the court otherwise orders, be made into and out of the prescribed bank;
- (e) meetings of creditors shall, unless the receiver for special reasons otherwise determines, be held in the office of the receiver;
- (f) *in lieu* of the copy of the account to be filed with court, as prescribed by section 93(4) of the Act, a statement showing the position of the estate analogous, as nearly as may be, to that prescribed by Form 150 shall be filed;
- (g) notices of meetings, other than of first meetings, or of sittings of the court, shall only be sent to creditors whose debts or claims exceed the sum of forty shillings;
- (h) the time mentioned in section 66(2) of the Act shall be extended to six months;
- (i) the estate shall be realised with all reasonable despatch and, where practicable, distributed in a single dividend when realised;
- (j) the costs or charges, payable out of the debtor's estate, of any person other than of an advocate may be paid and allowed without taxation where such costs or charges are within the prescribed scale:

Provided that the receiver may require such costs or charges to be taxed.

## Part IV – Receivers, trustees, special managers, security by trustee or special manager, accounts and audit, unclaimed funds (rules 262-317)

### 262. Duties as to debtor's statement of affairs

- (1) As soon as the receiver receives notice that he has been appointed to the receivership of an estate, he shall furnish the debtor with a copy of instructions for the preparation of his statement of affairs.
- (2) The receiver or some person deputed by him shall also forthwith hold a personal interview with the debtor for the purpose of investigating his affairs and determining whether the estate should be administered under section 119 of the Act.
- (3) It shall be the duty of the debtor to attend at such time and place as the receiver may appoint.

### 263. Subsistence allowance to debtor

Subject to any general or special directions of the court, the receiver, while in the possession of the property of a debtor, may make him such allowance out of his property for the support of himself and his family as may be just. In fixing the amount of such allowance the assistance rendered by the debtor in the management of his business or affairs may be taken into account.

**264. Special report as to person employed to assist debtor**

Whenever, under the powers given by section 77 of the Act, the receiver employs any person to assist the debtor in the preparation of his statement of affairs, he shall forthwith report the matter to the court in writing, justifying his action therein, and specifying the remuneration (if any) to be allowed to such person.

**265. Use of proxies by deputy**

Where the receiver holds any proxies and cannot conveniently attend any meeting of creditors, at which such proxy or proxies might be used, he may depute some person in his employment or under his official control, or some Government officer, by writing under his hand, to attend such meeting and use such proxies on his behalf and in such manner as he may direct.

**266. Personal performance of duties**

The court may, by general or special directions, determine what acts or duties shall be performed by the receiver in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ or under his official control.

**267. Administrative officer to act in certain cases**

When the receiver is unable to act in person, any act or thing required or authorised to be done by the receiver may be done by an administrative officer at the request of the receiver.

**268. Removal of special manager**

Where the receiver appoints a special manager he may at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he shall remove him, if so required by a special resolution of the creditors.

**269. Mode of application to court**

Applications by the receiver to the court may be made personally, and without notice of other formality; but the court may in any case order that an application be renewed in a formal manner, and that such notice thereof be given to any person likely to be affected thereby as the court may direct.

**270. Evidence on application by receiver**

Where for the purposes of any application to the court by the receiver for directions, or to adjudge a debtor bankrupt, or for leave to disclaim a lease, or for an extension of time to apply for leave to disclaim a lease, or for an order to take criminal proceedings against a bankrupt, or to commit a bankrupt, it is necessary that evidence be given by him in support of such application, such evidence may be given by a report of the receiver to the court, and need not be given by affidavit, and any such report of the receiver to the court shall be received by the court as *prima facie* evidence of the matters reported upon.

**271. Application for directions**

In any case of doubt or difficulty or in any matter not provided for by the Act or these Rules relating to any proceeding in court, the receiver may apply to the court for directions.

**272. Duties where no assets**

Where a debtor against whom a receiving order has been made has no available assets, the receiver shall not be required to incur any expenses in relation to his estate without the express directions of the court.

**273. Accounting by receiver**

- (1) Where a composition or scheme is sanctioned by the court, the receiver shall account to the debtor or, as the case may be, to the trustee under the composition or scheme.
- (2) Where a debtor is adjudged bankrupt, and a trustee is appointed, the receiver shall account to the trustee in the bankruptcy.
- (3) If the debtor or, as the case may be, the trustee, is dissatisfied with the account, or any part thereof, he may report the matter to the court, which shall take such action (if any) thereon as it may deem expedient.
- (4) The provisions of this part of these Rules as to trustees and their accounts shall not apply to the receiver when acting as trustee, but he shall account in such manner as the court may from time to time direct.

**274. Receiver may act for court when no committee of inspection**

When there is no committee of inspection any functions of the committee of inspection which devolve on the court may, subject to the directions of the court, be exercised by the receiver.

**275. Trading account of debtor**

The debtor shall, on the request of the receiver, furnish him with trading and profit and loss accounts, and a cash and goods account for such period not exceeding two years prior to the date of the receiving order as the receiver shall specify:

Provided that the debtor shall, if ordered by the court so to do, furnish such accounts as the court may order for any longer period. If the debtor fails to comply with the requirements of this rule the receiver shall report such failure to the court, and the court shall take such action on such report as the court shall think just.

**276. Liability for costs, expenses, and damages**

The following provisions shall apply to every case in which proceedings are taken either by action, motion or in any other manner, against the receiver in respect of anything done or default made by him, when acting, or in the *bona fide* and reasonable belief that he is acting, in pursuance of the Act or in execution of the powers given to a receiver by the Act—

- (a) subject to the provisions of the next following subsection, the costs, damages and expenses which the receiver may have to pay, or to which he may be put under such proceedings, shall be paid out of the estate of the debtor;
- (b) as soon as any such proceedings are commenced it shall be the duty of the receiver to report the same to the Attorney-General, who shall determine whether or not such proceedings shall be resisted or defended;
- (c) the receiver shall not, unless the court shall otherwise order, be entitled to be paid out of the estate any costs or expenses which he may have to pay or bear in consequence of resisting or defending any such proceedings, unless the Attorney-General shall have determined that such proceedings shall be resisted or defended;
- (d) the receiver shall, if necessary, apply to the court for any reasonable adjournment of any motion or other summary proceedings before it, pending the determination of the Attorney-General upon the question whether such motion or proceedings should be resisted or defended. And the court may grant an adjournment upon such terms as it shall think fit;
- (e) if such proceedings are commenced before the appointment of a trustee by the creditors, or before the approval of a composition or scheme, the receiver may, before putting the trustee appointed

by the creditors, or in the case of a composition the debtor himself, into possession of the debtor's property, retain the whole or some part of the debtor's estate according as the Attorney-General shall in each case direct, to meet the damages, costs or expenses which the receiver may have to pay or bear in consequence of the said proceedings. If such proceedings are commenced after the appointment of a trustee by the creditors, or after the approval of a composition or scheme, the receiver shall forthwith give notice of such proceedings to the trustee or other person in whom the estate of the debtor may be vested (including where necessary the debtor himself), and the estate of debtor shall, as from the date of such notice, be deemed to be charged with the payment of the said damages, costs and expenses.

### **Trustees (rules 277-298)**

#### **277. Notice of appointment**

Where the appointment of a trustee is certified, the trustee shall forthwith insert notice of his appointment in the *Gazette*. The expense of gazetting shall be borne by the trustee, and may be charged by him to the estate.

#### **278. Notice of objection**

- (1) When the receiver objects to the appointment of trustee, and is required by a majority in value of the creditors to notify the objection to the court, the receiver on receipt of the requisition shall forthwith transmit a copy thereof to the registrar, who shall fix a time for the hearing of the matter. The receiver may also, with a copy of the requisition, communicate to the court the grounds of his objections. Any report made by the receiver shall be *prima facie* evidence of the statements therein contained.
- (2) Notice of the time fixed for hearing the matter shall be given to the receiver, to the person objected to and to the person objecting.
- (3) At the hearing the person objected to, the receiver and every creditor shall be entitled to be heard.

#### **279. Trustees not accounting under section 136**

It shall be sufficient objection to the appointment of a trustee that he has not complied with the requirements of section 136 of the Act, or of any order of the court made thereunder in respect of any matter as to which he was under an obligation to comply.

#### **280. Removal of trustee**

It shall be a sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Act such person has either been removed under section 96(2) of the Act from the office of trustee, or has failed or neglected, without good cause shown by him, to render his accounts for audit for two months after the date by which the same should have been rendered.

#### **281. Failing to keep up security**

Where a trustee or special manager has given security in the prescribed manner, but fails to keep up such security, or if called upon to do so, to increase such security, the court may, if it thinks fit, remove him from his office and cause notice of such removal to be gazetted.

#### **282. Notice of resignation**

A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the receiver.

**283. Remuneration of trustee**

The creditors or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or percentage payable on the amount realised, and the commission or percentage payable on the amount distributed is dividend.

**284. Limit of remuneration**

Except as provided by the Act or Rules, no trustee shall be entitled to receive out of the estate any remuneration for services rendered to the estate, except the remuneration to which under the Act and Rules he is entitled to as trustee.

**285. Remuneration of trustee appointed by the court**

In any case in which, under the provisions of section [21\(5\)](#) or section [80\(3\)](#) of the Act, the court appoints a trustee, the trustee shall receive out of the estate such remuneration as the court shall determine.

**286. Trustee carrying on business**

- (1) Where the trustee carries on the business of the debtor he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.
- (2) The trading account shall from time to time, and not less than once every month, be verified by affidavit, and the trustee shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

**287. Application for release**

A trustee, before making application to the court for his release, shall give notice of his intention so to do to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee:

Provided that where such application is made upon the trustee ceasing to act by reason of a composition having been approved under section [23](#) of the Act, such notice and summary shall be sent to the debtor only.

**288. Gazetting of release**

Where the court has granted to a trustee his release, a notice of the order granting such release shall be gazetted. The trustee shall be required to provide the requisite stamp fee, which may be charged to the estate.

**289. Delivery of books, etc., on release of trustee**

The release of a trustee shall not take effect unless and until he has delivered over to the receiver or new trustee, as the case may be, all the books, papers, documents and accounts which, by the Rules, he is required to deliver over on his release.

**290. Meeting to consider removal of trustee**

Where one-sixth in value of the creditors desire that a general meeting of the creditors may be summoned to consider the propriety of removing the trustee, such meeting may be summoned by a member of the committee of inspection, or by the receiver, on the deposit of a sum sufficient to defray the expenses of summoning such meeting.



**291. Payments out of Bankruptcy Estates Account**

All payments out of the Bankruptcy Estates Account shall be made in such manner as the receiver may from time to time direct.

**292. Application for directions**

Where a trustee desires to apply to the court for directions in any matter, he shall file an application, and the court shall then hear the application or fix a day for hearing it and direct the trustee to apply by motion.

**293. Copy of trustee's accounts**

Any creditor who has proved his debt may apply to the trustee for a copy of the accounts (or any part thereof) relating to the estate as shown by the cash books up to date, and on paying for the same at the rate of fifty cents per folio he shall be entitled to have such copy accordingly.

**294. Statements to be furnished to creditors**

Where in pursuance of section 87 of the Act the receiver or trustee is required to transmit to creditors a statement of the accounts, the cost of furnishing and transmitting such statement shall be calculated at the rate of fifty cents per folio for each statement where the creditors do not exceed ten, and where the creditors exceed ten, one shilling per folio, for the preparation of the statement and the actual cost of printing.

**295. Purchase of part of estate by trustee or committee forbidden**

Neither the trustee nor any member of the committee of inspection of an estate shall, while acting as trustee or member of such committee, except by leave of the court, either directly or indirectly, by himself or any partner, clerk, agent or servant become purchaser of any part of the estate. Any such purchase made contrary to the provisions of this rule may be set aside by the court on the application of the receiver or any creditor.

**296. Dealings with estate by trustee and committee of inspection**

- (1) Where the trustee carries on the business of the debtor, he shall not without the express sanction of the court, purchase goods for the carrying on of such business from his employer (if any), or from any person whose connection with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction.
- (2) No member of a committee of inspection of an estate shall, except under and with the sanction of the court, directly or indirectly, by himself or any employer, partner, clerk, agent or servant, be entitled to derive any profit from any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. If it appears to the court that any profit or payment has been made contrary to the provisions of this rule, the court may direct the receiver to disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account.

***Sanction of payments to members of committee of inspection***

- (3) Where the sanction of the court under this rule to a payment to a member of a committee of inspection for services rendered by him in connection with the administration of the estate is obtained, the order shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall, under any circumstances, be allowed to a member of a committee for services rendered by him in the discharge of his duties attaching to his office as a member of such committee.

- (4) In any case in which the sanction of the court is obtained under this rule or under rule 295, the costs of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the debtor's estate.

### **297. Discharge of costs, etc., before estate handed over to trustee**

- (1) Where a debtor is adjudged bankrupt, and a trustee is appointed, the receiver shall forthwith put the trustee in possession of all the property of the bankrupt of which the receiver may be possessed:

Provided that such trustee shall have, before the estate is handed over to him by the receiver, discharged any balance due to the receiver on account of fees, costs and charges, properly incurred by him and payable under the Act, and on account of all advances properly made by him in respect of the estate, together with interest on such advances at the rate of six *per centum* per annum and shall have discharged or undertaken to discharge all guarantees which have been properly given by the receiver for the benefit of the estate; and the trustee shall pay all fees, costs and charges of the receiver which may not have been discharged by the trustee before being put into possession of the property of the bankrupt, and whether incurred before or after he has been put into such possession.

- (2) The receiver shall be deemed to have a *lien* on the estate until such balance shall have been paid, and such guarantees and other liabilities have been discharged.
- (3) It shall be the duty of the receiver, if so requested by the trustee, to communicate to the trustee all such information respecting the bankrupt and his estate and affairs as may be necessary or conducive to the due discharge of the duties of the trustee.

### **298. Meetings of creditors to consider the conduct of trustee**

Where the receiver is of opinion that any act done by the trustee or any resolution passed by a committee of inspection should be brought to the notice of the creditors, for the purpose of being reviewed or otherwise, the receiver may summon a meeting of creditors accordingly to consider the same, and the expenses of summoning such meeting shall be paid by the trustee out of any available assets under his control.

## **Special manager (rules 299-300)**

### **299. Remuneration of special manager**

Where a special manager is appointed, and his remuneration is not fixed by the creditors, he shall be paid such remuneration as the court shall think fit.

### **300. Accounts**

Every special manager shall account to the receiver, and the special manager's accounts shall be verified by affidavit in the prescribed form, and, when approved by the receiver, the totals of the receipts and payments shall be added to the receiver's accounts.

## **Security by trustee or special manager (rule 301)**

### **301. Standing security**

In the case of a trustee or special manager the following rules as to security shall be observed, namely:

- (a) the security shall be given to such officers or persons and in such manner as the court may from time to time direct;

- (b) it shall be necessary that security shall be given in each separate matter; but security may be given either specially in a particular matter or generally to be available for any matter in which the person giving security may be appointed either as trustee or special manager;
- (c) the court shall fix the amount and nature of such security, and may from time to time, as it thinks fit, either increase or diminish the amount of special or general security which any person has given.

## **Accounts and audit (rules 302-312)**

### **302. Record**

The receiver, until a trustee is appointed, and thereafter the trustee, shall keep a record of all minutes, all proceedings had, the resolutions passed at any meeting of creditors, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the estate, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such document to any person other than a member of the committee of inspection.

### **303. Cash book**

The receiver, until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Cash Book", which shall be in such form as the receiver may from time to time direct, in which he shall (subject to the provisions of these Rules as to trading accounts) enter from day to day the receipts and payments made by him.

### **304. Books to be submitted to committee of inspection**

The trustee shall submit the record and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

### **305. Audit of cash book**

The committee of inspection shall, not less than once every three months, audit the cash book and certify therein under their hands the day on which the said book was audited.

### **306. Audit of trustee's accounts**

- (1) Every trustee, other than the receiver, shall, at the expiration of six months from the date of the receiving order, and at the expiration of every succeeding six months, thereafter until his release, transmit to the receiver a copy of the cash book in duplicate for such period, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the debtor's statement of affairs, in such form as the receiver may direct, showing thereon in red ink the amounts realised, and explaining the cause of non-realisation of such assets as may be unrealised.
- (2) When the estate has been fully realised and distributed, or if the adjudication is annulled, the trustee shall forthwith send in his accounts to the receiver, although the six months may not have expired.
- (3) The accounts sent in by the trustee shall be certified and verified by him.

### **307. Copy of accounts to be filed**

When the trustee's account has been audited, the receiver shall certify that the account has been duly passed, and thereupon the duplicate copy, bearing a like certificate, shall be transmitted to the registrar, who shall file the same with the proceedings in the bankruptcy.

**308. Affidavit of no receipts**

Where a trustee has not, since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the debtor's estate, he shall, at the period when he is required to transmit his estate account to the receiver, forward to the receiver an affidavit of no receipts or payments.

**309. Proceedings on resignation, etc., of trustee**

Upon the trustee resigning or being released or removed from his office, he shall deliver over to the receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, paper and accounts in his possession relating to the office of trustee.

**310. Joint and separate estates accounts**

Where a receiving order has been made against debtors in partnership, distinct accounts shall be kept of the joint estate and of the separate estate or estates, and no transfer of a surplus from a separate estate to the joint estate, on the ground that there are no creditors under such separate estate, shall be made until notice of the intention to make such transfer has been gazetted.

**311. Expenses of sales**

Where property forming part of a debtor's estate is sold by the trustee through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent on the production of his taxed bill of charges. Every trustee by whom such auctioneer or agent is employed shall be accountable for the proceeds of every such sale, unless the court otherwise orders.

**312. Allowance to debtor**

In any case in which, under the provisions of section 62 of the Act, the trustee makes an allowance to a bankrupt out of his property, such allowance, unless the creditors by special resolution determine otherwise, shall be in money, and the amount allowed shall be duly entered in the trustee's accounts.

**Unclaimed funds (rules 313-315)****313. Mode of payment into bank**

Any person whose duty it is, pursuant to section 136 of the Act, to pay into the Bankruptcy Estates Account any unclaimed funds or dividends, shall first apply to the receiver for a paying-in order. The paying-in order shall be an authority to the bank to receive the payment.

**314. Application for payment out by party entitled**

An application under section 136 of the Act for payment out of the Bankruptcy Estates Account or the Bankruptcy Contingency Fund of any sum to which any person claims to be entitled shall be made in such form and manner as the court may from time to time direct, and shall (unless the court dispenses therewith) be supported by the affidavit of the claimant and such further evidence as the court may require.

**315. Accounts by trustees of unclaimed funds**

For the purposes of section 136(1) of the Act, the court may at any time order the trustee under any bankruptcy, composition or scheme, to submit to the court an account verified by affidavit of the sums received and paid by him under or in pursuance of any such bankruptcy, composition or scheme, and may

direct and enforce an audit of the account, and payment of any unclaimed or undistributed moneys arising from the property of the debtor in the hands or under the control of such trustee into the Bankruptcy Estates Account in accordance with the terms of the said subsection.

## **Part V – Judgment debtors (rules 316-317)**

### **316. Fees on receiving order**

- (1) When a receiving order is made under section [102](#) of the Act, the creditor shall pay the like fee and deposit as are prescribed in the case of a bankruptcy petition.
- (2) Where the court is of opinion that a receiving order ought to be made *in lieu* of committal, and the judgment creditors does not consent to pay the required fee and deposit, the court may dismiss the application or adjourn it on such terms, as to costs and otherwise, as may be just.

### **317. Summary administration**

When a receiving order is made under section [102](#) of the Act, the court may, if satisfied by affidavit or otherwise, or by the report of the receiver, that the property of the debtor (after deduction of any property in the hands of secured creditors, debts enforceable by distraint, the costs of execution under section [46\(1\)](#) of the Act, and all debts which under the Act are directed to be paid in priority to other debts) is not likely to exceed in value six thousand shillings, make an order that the debtor's estate be administered in a summary manner pursuant to section [119](#) of the Act and these Rules.

## **Part VI – Miscellaneous provisions (rules 318-324)**

### **318. Power of receiver to make orders**

The receiver may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or these Rules, which are of an administrative and not of a judicial character. All such orders and regulations shall be gazetted and shall be judicially noticed.

### **319. Falsification of documents**

- (1) Any person who knowingly falsifies or fraudulently alters any document in or incidental to any proceedings under the Act or these Rules shall be deemed to be guilty of contempt of court and shall be liable to be punished accordingly.
- (2) The penalty imposed by this rule shall be in addition to, and not in substitution for, any other penalty, punishment, or proceeding to which such person may be liable.

### **320. No *lien* on debtor's books**

No person shall, as against the receiver or trustee, be entitled to withhold possession of the books of accounts belonging to the debtor, or to set up a *lien* thereon.

### **321. Disposal of debtor's books**

The court may, on the application of the receiver, direct that the debtor's books of accounts and other documents given up by him may be sold, destroyed or otherwise disposed of.

### **322. Effect of non-compliance with Rules**

Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void unless the court shall so direct, but such proceeding may be set aside, either

wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the court may think fit.

**323. Abridgement or enlargement of time**

The court may, under special circumstances and for good cause shown, extend or abridge the time appointed by these Rules or fixed by any order of the court for doing any act or taking any proceeding.

**324. Prescribed bank**

The prescribed bank shall be the National Bank of Commerce.