

FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL

MALPRACTICES IN BANKS ACT

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#### FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL

#### MALPRACTICES IN BANKS ACT

**An Act to provide for the recovery of debts owed to failed banks and for the Trial of Offences relating to Financial Malpractices in Banks and other Financial Institutions.**

[1994 No. 18.]

[9th November, 1994]

[Commencement. ]

#### PART I

##### *Powers of the Federal High Court under this Act*

**1. Powers of the Court**

(1) The Federal High Court (in this Act referred to as "the Court") shall have power to-

[1999 No. 62.]

(a) recover, in accordance with the provisions of this Act, the debts owed to a failed bank, arising in the ordinary course of business and which remain outstanding as at the date the bank is closed or declared a failed bank by the Central Bank of Nigeria;

(b) try the offences specified in Part III of this Act;

(c) try the offences specified in the Banks and Other Financial Institutions Act and the Nigerian Deposit Insurance Corporation Act; and

[Cap. B3. Cap. N102.]

(d) try other offences relating to the business or operation of a bank under any enactment.

(2) The Court shall exercise exclusive jurisdiction over all ancillary matters, including remand, bail and any other preliminary issues connected with an offence or hearing over which the Court has jurisdiction.

(3) The Court shall, in the exercise of its powers under this Act-

(a) conduct its proceedings in such manner as to avoid undue delay;

(b) lift the corporate veil of a body corporate, where it is necessary for the purpose of revealing its members who may be-

(i) guilty of an offence under this Act; or

(ii) liable, jointly or severally, for the debts owed by the corporate body to a failed bank;

(c) subject to this Act, adopt its own procedure, where expedient, to ensure speedy determination of cases before it.

(4) The Court shall have power to admit and act on any evidence which it considers relevant in any civil or criminal proceedings notwithstanding that the evidence is inadmissible under any other law or enactment.

[1995 No. 18. 1999 No. 62.]

## **2. Power of search, etc.**

Notwithstanding the provisions of any other enactment conferring power to search, if the Court is satisfied that there is a reasonable ground to suspect that there may be found in any building or other place whatsoever, any money or other property or any book, record, account, statement or information in any other form whatsoever which, in its opinion, is or may be material to the subject-matter of any trial under this Act, it may issue a warrant authorising any police officer or any member of the armed forces or of any of the security agencies to-

(a) enter, if necessary by force, the building or other place and every part thereof; and

(b) search for, seize and remove any money, other property, book, record accounts, statement or information found therein.

## **3. Power to control property of debtor or accused**

(1) Where at any stage of a hearing or trial, the Court is satisfied that a *prima facie* case has been made out against a person, the Court may by order and for such time as it may direct or require-

(a) prohibit any disposition of property, movable or immovable, by or on behalf of that person, whether or not the property is owned or held by that person or by any other person on his behalf, except to such extent and in such manner as may be specified in the order;

(b) addressed to the manager of the bank or to the head office of the bank where the person has an account or is believed to have an account, direct the manager or the bank to-

(i) stop all outward payments, operations or transactions (including any bill of exchange) for the time specified in the order;

(ii) supply any information and produce books and documents, in respect of the account of that person; and

(c) where necessary or expedient, vest in the Court or otherwise acquire the custody of any property, movable or immovable, of the person for the preservation of the property pending the determination of the proceedings.

(2) An order under subsection (1) of this section shall have effect as specified therein, but any such order may at any time thereafter be varied or annulled by the Court.

(3) Failure to comply with the requirement of an order under this section shall be an offence punishable on conviction-

(a) in the case of an individual, by imprisonment for a term of not less than two years or more than five years without the option of a fine;

(b) in the case of any group of persons not being a body corporate, by the like punishment of each of such persons as is prescribed in paragraph (a) of this subsection;

(c) in the case of a body corporate by a fine of an amount equal to two times the estimated value of the property affected by the non-compliance or ₦100,000 whichever is higher.

#### **4. Jurisdiction unaffected by separation from service**

The jurisdiction or authority of the Court shall not be affected by the fact that a person charged or

brought before the Court for trial or hearing-

(a) has resigned or retired from the bank; or

(b) has had his appointment terminated in the bank; or

(c) has otherwise left the employment of the bank; or

(d) withdrew his participation from a merger, take-over or the closing of a bank, if the loan, advance, guarantee or any other credit facility, which is the subject matter of the proceeding before the Court is outstanding on the commencement of the merger, take-over or closing of the bank.

## PART II

### *Recovery of debts owed to failed banks*

#### **5. Recovery of debt owed to failed banks**

Notwithstanding anything to the contrary in any law, deed, agreement or memorandum of understanding, the Court shall have exclusive jurisdiction to hear and determine all matters brought before it concerning the recovery from any person of any debt owed to a failed bank, which remains outstanding as at the date of closure of the business of the failed bank.

#### **6. Proof of debt**

In addition to any other primary source of evidence-

- (a) the examination reports and recommendations of the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation or their joint examination reports and recommendations; or
- (b) any report of the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation; or
- (c) the report of a person appointed by the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation,

on the financial condition of a failed bank shall be sufficient proof that a loan or advance is owed to a failed bank and is due for recovery under this Act.

#### **7. Application for recovery of debt**

(1) An application for the recovery of a debt owed to a failed bank shall be brought before the Court by the Receiver or Liquidator of the failed bank and where there is no Receiver or Liquidator, by a person appointed by the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation. [Form A.]

(2) The application referred to in subsection (1) of this section shall contain the following, that is-

- (a) the name and address of the borrower;
- (b) if the borrower is a body corporate, a partnership or a sole trade-
  - (i) the address of its principal place of business;
  - (ii) the names and addresses of its shareholders, directors, proprietors or partners, as the case may be;
- (c) the amount of loan and advance outstanding;
- (d) details of securities pledged, if any; and
- (e) such other information as may be useful to the Court.

(3) An application may be brought against a debtor under this section and the Court shall proceed to hear the application in accordance with the provisions of this Act, notwithstanding that a criminal proceeding is pending against the debtor in respect of the same matter.

**8. Debtor to appear before Court to show cause**

(1) The Court shall on the return date and on receipt of a reply to the notice of an application made under section 11 (1) of this Act, if the debtor admits the debt, enter judgment and ask the debtor or appear before it to show cause why the Court should not invoke its powers under this Act to recover the outstanding debt.

(2) The Court shall, if satisfied with the explanation of the debtor, give the debtor not later than 30 days to pay to the Receiver or Liquidator the outstanding loan and interest thereon.

(3) If a debtor pays the outstanding loan and interest within the period specified under subsection (2) of this section, the Court shall-

(a) issue to the debtor a certificate of clearance; and

[Form F.]

(b) order that all the documents and properties pledged as security for the loan be released to the debtor.

[Form G.]

**9. Hearing and judgment**

(1) If the debtor-

(a) at the expiration of the period specified under section 7 (1) of this Act, fails to repay all the outstanding loan and interest; or

(b) disputes the loan or interest,

the Court shall proceed to hear the case and enter judgment and make such order as it deems appropriate for the purposes of this part of this Act.

(2) Where the Court makes an order for the payment of the loan and interest and the debtor fails to comply within the time specified in the order, the Court shall make an order to levy execution on all the properties of the debtor pledged as security for the loan.

**10. Withdrawal of application**

A Receiver or Liquidator may, with leave of the Court at any time before judgment is entered, withdraw an application made under section 11 (1) of this Act.

[Form H.]

**11. Sale of property**

(1) A property against which an order is made under section 8 (2) of this Act shall, with the concurrence of the Receiver or Liquidator, be sold by auction or by private contract and the money obtained from the sale shall be applied in accordance with the provisions of this section.

(2) Where a property is sold under subsection (1) of this section, the Court shall execute an instrument to transfer, convey or assign the property to the purchaser or in any other way vest the property in the purchaser.

(3) An instrument executed under subsection (2) of this section shall be conclusive proof of title of the purchaser and shall, where necessary, be a registrable instrument under the various registration laws, without the consent required under sections 21, 22 and 26 of the Land Use Act.

[Cap. L5.]

(4) Any money obtained from the sale of properties under subsection (1) of this section shall, within two weeks from the date of sale, be paid to the Receiver or Liquidator of the failed bank after all the recovery expenses have been deducted.

(5) If the money obtained from the sale under subsection (1) of this section is not sufficient to offset the outstanding loan and interest thereon, the Court may, where the debtor-

(a) is an individual, levy execution on the other properties of the debtor;

(b) is a body corporate, partnership or other association of individuals, notwithstanding anything to the contrary in the Companies and Allied Matters Act or any other law for the time being in force, levy execution on the other properties of the body corporate, partnership or association of individuals.

[Cap. C20.]

(6) Where the Court levies execution under subsection (5) of this section, the properties shall be sold as specified in subsection (1) of this section and the provisions of subsections (2), (3) and (4) of this section shall apply to the sale and money obtained from the sale.

(7) If the money obtained from the sale of properties under subsection (6) of this section is still not sufficient to offset the outstanding loan and interest thereon, the Court may, subject to section 290 of the Companies and Allied Matters Act, levy execution on the personal properties of the directors of the body corporate, partners of the partnership or individuals of the as

sociation, as the case may be, which shall be sold and applied in satisfaction of the outstanding debts, in accordance with the provisions of his section.

## **12. Inadequate securities, etc.**

(1) Where-

(a) the information and details on the security pledged for the loan and filed before the Court is impossible to locate; or

(b) no security is pledged at all; or

(c) the identify of the debtor is difficult to locate; or

(d) the debtor is found to be non-existent, fake or fictitious or in any way unidentifiable,

the Court shall hold liable, for the outstanding loan and interest thereon, the directors, shareholders, partners, managers, officers and other employees of the failed bank who in the performance of their duties were found to have been connected in any way with the granting of the loan which has become irrecoverable.

(2) The Court shall proceed to recover from the person referred to in subsection (1) of this section, jointly and severally the outstanding loan and interest thereon in accordance with the provisions of this Act, unless the Court is satisfied that the debt was incurred with the consent of the director, partner, shareholder, manager, officer or employee and that he exercised all such diligence as he ought to have exercised having regard to the nature of his functions and all the circumstances of the case.

### **13. Exclusion of statutes of limitation**

The provisions of the Limitation Law of a State or Limitation Act of the Federal Capital Territory, Abuja shall not apply to matters brought before the Court under this Part of this Act.

### **14. Rules of procedure, etc.**

The rules of procedure to be adopted in civil matters before the Court under this Act shall be as set out in the Schedule to this Act.

[Schedule.]

## PART III

### *Offences and penalties*

### **15. Offences**

(1) Any director, manager, officer or employee of a bank who-

(a) knowingly, recklessly, negligently, wilfully or otherwise grants, approves the grant, or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility or financial accommodation to any person-

- (i) without adequate security or collateral, contrary to the accepted practice or the bank's regulations; or
- (ii) with no security or collateral where such security or collateral is normally required in accordance with the bank's regulations; or
- (iii) with a defective security or collateral; or
- (iv) without perfecting, through his negligence or otherwise, a security or collateral obtained; or

(b) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility which is above his limit as laid down by law or any regulatory authority or the bank's regulations; or

(c) grants, approves the grant or is otherwise connected with the grant or approval of a loan, an advance, a guarantee or any other credit facility to any person in contravention of any law for the time being in force, any regulation, circular, or procedure as laid down, from time to time, by the regulatory authorities or by the bank; or

(d) receives or participates in sharing, for personal gratification, any money, profit, property or pecuniary benefit towards or after the procurement of a loan, an advance, a guarantee or any other credit facility from any person whether or not that person is a customer of the bank; or

(e) recklessly grants or approves a loan or an interest waiver where the borrower is known to have the ability to repay the loan and interest,

is guilty of an offence under this Act.

(2) A person who, being indebted to or being a customer of a bank, negligently, wilfully or recklessly-

(a) makes a statement, whether written or oral, or gives any information; or

(b) fills any form to a bank,

knowing it to be false, fake, non-existent or fictitious, with intention of concealing his identify from the bank so as to avoid the repayment of a loan, an advance, a guarantee or any other credit facility granted him by the bank, is guilty of an offence under this Act.

(3) Where the person referred to in subsection (2) of this section is a body corporate, any of its directors, managers, officers, employees or partners who is responsible or is in any way connected with the doing of any of the acts referred to in that subsection is guilty of the same offence under this Act and liable on conviction to the same punishment.

(4) A person who fails to comply with an order of the Court under section 9 (2) of this Act for the payment of the loan and interest within the time specified in an order under that section is guilty of an offence.

[1995 No. 18.]

## **16. Penalties**

(1) A person who commits an offence under section 15 of this Act is liable on conviction, subject to subsection (4) of this section, in the case of an offence-

(a) under subsection (1) (a), (b) or (c) of that section, to imprisonment for a term not exceeding five years without an option of a fine;

(b) under subsection (1) (d) or (e) of that section, to imprisonment for a term not exceeding three years without an option of a fine;

(c) under subsection (2) of that section, to imprisonment for a term not exceeding three years without an option of a fine;

(d) under subsection (4) of that section, to imprisonment for a term not exceeding three years without an option of a fine.

[1995 No. 18.]

(2) The Court shall order the refund of the value equal to the amount involved in the offence or of such other value as the Court may deem fair and just in the circumstance or the confiscation of the property, movable or immovable of a person convicted of an offence under this Act.

[1999 No. 11.]

(3) A person convicted of an offence under this Act may voluntarily surrender property, movable or immovable, of the value equal to the amount involved in the offence or such other value as he may decide.

(4) A property confiscated or surrendered under this section shall be forfeited-

- (a) to the bank that suffered the loss; or
- (b) in the case of a failed bank, to the Receiver or Liquidator for the benefit of that bank; or
- (c) to such other person who, in the opinion of the Court, deserves to be compensated for loss suffered.

(5) Where, by reason of the confiscation or voluntary surrender of property, under this section, there is full or substantial recovery of the amount involved in the offence, the Court may, if it deems it equitable, reduce or decline to impose the penalty specified in subsection (1) of this section or in any other enactment.

[1995 No. 18.]

#### **17. Attempt to commit offence, etc.**

(1) A person who attempts to commit any of the offences specified in section 15 of this Act is guilty of an offence and liable on conviction to the same punishment as is prescribed for the full offence under section 16 of this Act.

(2) Where a person is charged with any of the offences specified in this Act, but the evidence establishes an attempt to commit that offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged and shall be liable to the same punishment as is prescribed for the offence under section 16 of this Act.

(3) Where a person is charged with an attempt to commit an offence under this Act, but the evidence establishes the commission of the full offence, the person shall not be acquitted but shall be convicted of the offence and be liable to the same punishment as is prescribed for the offence under section 16 of this Act.

(4) Where, in respect of an act which is an offence under this Act, the Court is satisfied that a person, not being a person charged with an offence under this Act-

- (a) acted in concert or conspired with any person; or

- (b) knowingly took part to any extent whatsoever in the commission of an act constituting an offence specified in this Act,

the Court shall have power to treat the person in like manner as a person charged with an offence under this Act and shall proceed against him accordingly notwithstanding anything to the contrary in any other enactment.

#### **18. Offence by bodies corporate**

(1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the connivance of or to be attributable to any neglect on the part of a director, manager, registrar or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, where practicable, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where a body corporate, other than a bank, is convicted of an offence under this Act, the Court may order that the body corporate be wound up and the body corporate shall thereupon and without any further assurance but for that order, be wound up and all its assets, after satisfying all the claims of the Receiver or Liquidator, shall be forfeited to the Federal Government.

#### **19. Evidence of accomplice, etc.**

(1) Notwithstanding anything to the contrary in any law (including any rule of law), no witness shall, in any trial under this Act, be presumed to be unworthy of credit by reason only that he took part in the commission of the offence.

(2) Where a person is charged with an offence but the evidence establishes an attempt to commit the offence he may be convicted of having attempted to commit that offence, although the attempt is not separately charged, and punished as provided under this Act.

(3) Where a person is charged with an offence under this Act, but the evidence establishes the commission of another offence under this Act, the offender shall not be entitled to acquittal but he may be convicted of that other offence and punished as provided under this Act.

(4) Where a person aids, abets, counsels, procures or conspires with any other person to commit any of the offences under this Act, he is guilty of the offence and liable on conviction to the same punishment as prescribed for that offence under this Act.

[1999 No. 62.]

#### **20. Powers of arrest**

A person who commits an offence under this Act may be arrested without warrant by a police officer.

[1999 No. 62.]

#### **21. Bail**

(1) The Court shall have power to grant bail to an accused person charged with an offence under this Act or any other law triable by the Court upon such terms as the Court may deem fit including-

(a) the payment of a deposit of one quarter of the amount of money involved in the offence;

(b) the provision of a surety or such number of sureties who shall deposit adequate security for the balance of the amount involved in the offence; and

(c) the handing over of his passport to the Court for the duration of the bail.

(2) Notwithstanding the provisions of subsection (1) of this section, the police shall, before any person is charged before the Court for an offence under this Act, have power to grant bail to any person who is arrested or detained upon such terms and conditions as are reasonably necessary to ensure compliance with the provisions of subsection (1) (a )-( c) of this section.

[1999 No. 62.]

## PART IV

### *Miscellaneous*

#### **22. Inconsistency**

Where a provision of this Act is inconsistent with that of the Evidence Act or any other enactment or law, the provisions of this Act shall prevail and that other provision shall, to the extent of its inconsistency, not be applicable.

[Cap. EI4.]

#### **23. Interpretation**

In this Act, unless the context otherwise requires-

"**application**" means an application made by a Receiver or Liquidator of a failed bank for the recovery of a debt owed to the failed bank;

"**bank**" has the meaning assigned to it under the Banks and Other Financial Institutions Act and includes-

[Cap. m.]

(a) a financial institution as defined under that Act or under the Nigerian Deposit Insurance Corporation Act; and

[Cap. N102.]

(b) a development bank; and

(c) a mortgage bank or any other bank established by law;

[1995 No. 18.]

"**Court**" means the Federal High Court;

**"debt"** means any loan, advance, credit accommodation, guarantee or any other credit facility, together with the interest thereon, which remain outstanding and unpaid against a customer of a bank in favour of the bank;

[1999 No. 62.]

**"director"** means a director as defined in the Companies and Allied Matters Act and within the meaning of section 20 (5) of the Banks and Other Financial Institutions Act and includes a wife, husband, father, mother, son or daughter of a director;

[1999 No. 62. Cap. C20. Cap. B3.]

**"employee"** means a person who is or has been employed, or connected in any capacity with the affairs of a bank or any person arraigned before the Court under this Act;

**"failed bank"** means a bank or other financial institution whose licence has been revoked or which has been declared closed, placed under receivership or otherwise taken over by the Central Bank of Nigeria or the Nigerian Deposit Insurance Corporation or whose capital to risk weighted assets ratio is below such minimum percentage as may be prescribed from time to time by the Central Bank of Nigeria or such other appropriate regulation or authority and includes a bank which may otherwise be described as failed by the Central Bank of Nigeria, the Nigerian Deposit Insurance Corporation or such other appropriate regulatory authority;

[1995 No. 18.]

**"Liquidator or Receiver"** includes a person appointed by the Central Bank of Nigeria or the Nigeria Deposit Insurance Corporation under section 7 (1) of this Act;

**"loan"** includes an advance, a guarantee and any other credit facility;

**"unsecured"** means without security or collateral.

#### **24. Short title**

This Act may be cited as the Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act.

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#### SCHEDULE

[Section 14.]

## **1. Interpretation**

In this Schedule, unless the context otherwise requires-

**"Civil Procedure Rules"** means the Federal High Court (Civil Procedure) Rules, or rules of Court amending or replacing those Rules;

**"Court notice board"** means a notice board at the Registry and, where notice of hearing is being or has been given, a notice board at the place of the hearing;

**"registry"** means the registry of the Court.

## **2. Presentation of application**

(1) Application for the recovery of debts owed to a failed bank shall be made by the Receiver or Liquidator in Form A as set out in the Appendix to this Schedule leaving it in person, or by the hand of the solicitor (if any) named at the foot of the application, with the registrar, and the registrar shall (if so required) give a receipt which may be in Form B in the Appendix to this Schedule.

(2) There shall also be left with the registrar a copy of the application for each respondent and seven other copies thereof.

(3) The registrar shall compare each copy of the application left in accordance with sub-paragraph (2) of this paragraph with the original application and shall, upon being satisfied by such comparison that it is a true copy thereof, certify it to be so.

(4) The Receiver or Liquidator shall, at the time of presenting the application, pay the fees for its service and publication, and for certifying the copies; and in default of such a payment, the application shall not be received unless the Court otherwise orders.

## **3. Contents of application**

(1) The application shall contain the particulars set out therein as specified in section 11 (2) of this Act.

(2) There shall be stated at the foot of the application an address for service within five kilometers of a post office in the Judicial Division, and the name of its occupier, at which address documents intended for the Receiver or Liquidator may be left.

(3) If an address for service and its occupier are not stated, the application shall not be filed, unless the Court otherwise orders.

(4) There shall be added at the foot of the application a note signed by the Receiver or Liquidator giving the name of his solicitor, if any, or stating that he acts for himself, as the case may be.

(5) Evidence need not be stated in the application, but the Court may order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual hearing in the same way as in a civil action in the Court, and upon such terms as to costs and otherwise as may be ordered.

## **4. Address for service**

For the purpose of service of the application on the respondent, the Receiver or Liquidator shall furnish the registrar with the address of the respondent's abode or the address of a place where personal service can be effected on the respondent.

#### **5. Action by registrar**

(1) On the presentation of an application and payment of the requisite fees, the registrar shall forthwith-

(a) cause notice in Form C in the Appendix to this Schedule, of the presentation of the application and a certified copy of the application, to be served on the debtor;

(b) post up on the court notice board a certified copy of the application;

(c) send a certified copy of the application by registered post or messenger to the person or authority to whom it is required by law that the determination of the application shall be certified.

(2) In the notice of presentation of the application, the Court shall state a time, not being less than five days or more than fifteen days after the date of service of the notice, within which the debtor is to enter an appearance.

(3) In fixing such time, the court shall have regard to the necessity for securing a speedy hearing of the application, and to the distance from the registrar of the address furnished under paragraph 2 of this Schedule.

#### **6. Service**

(1) Subject to the sub-paragraphs (2) and (3) of this paragraph, service on the respondent of the documents mentioned in sub-paragraph (1) (a) of paragraph 5 of this Schedule and of any other documents required to be served on him before entering an appearance, shall be personal.

(2) Where the Receiver or Liquidator has furnish under paragraph 4 of this Schedule, the address of a place where personal service can be effected on the respondent, and the respondent cannot be found at that place, the Court, on being satisfied, upon an application supported by an affidavit showing what has been done, that all reasonable efforts have been made to effect personal service, may order that service of any document mentioned in sub-paragraph (1) of this paragraph be effected in any of the ways mentioned in the relevant provisions of the Civil Procedure Rules for effecting substituted service in a civil case, and such service shall be deemed to be equivalent to personal service,

(3) The proceedings under the application shall not be vitiated by the fact that the respondent may not have been served personally or that any document of which substituted service has been effected pursuant to an order made under sub-paragraph (2) of this paragraph did not reach the respondent's hands; and in such circumstances as aforesaid the proceedings may be heard and continued as if the respondent had been served personally with the document, and shall be valid and effective for all purposes.

#### **7. Entry of appearance**

(1) The debtor shall-

(a) within such time after being served or deemed to be served with the notice of the application as may be stated in the notice; or

(b) where an order has been made under sub-paragraph (2) of paragraph 6 of this Schedule,

within such other time (if any) as may be stated in that order,

enter an appearance by filing in the registry a memorandum of appearance in Form D in the Appendix to this Schedule stating that he admits the debt or that he intends to oppose the application and giving the name and address of his solicitor, if any, or stating that he acts for himself, as the case may be, and in either case giving an address for service within five kilometers of a post office in the Judicial Division and name of its occupier, at which documents intended for the debtor may be left.

(2) If an address for service and its occupier are not stated, the memorandum shall not be filed, unless the Court otherwise orders.

(3) The memorandum of appearance shall be signed by the debtor but may be filed by his solicitor, if any.

(4) At the time of filing the memorandum of appearance the debtor or his solicitor shall leave a duplicate thereof for each other party to the application and three other duplicates thereof and pay the fees for service, and in default of such duplicate being left and such fees being paid at that time, the memorandum shall not be filed, unless the Court otherwise orders.

#### **8. Default of appearance**

If the debtor does not enter an appearance as aforesaid, any document intended for the debtor may be posted on the court notice board and such posting shall be sufficient notice thereof.

#### **9. Notice of appearance**

The registrar shall cause a duplicate of the memorandum of appearance to be served upon, or notice thereof to be given to, the other parties to the application.

#### **10. Filing of reply**

(1) The debtor shall, within six days of entering an appearance, file in the registry his reply specifying therein which of the facts and grounds alleged in the application he admits or denies and setting out any facts and grounds on which he relies in opposition.

(2) The reply may be signed and filed by the debtor's solicitor, if any.

(3) At the time of filing the reply, the debtor or his solicitor shall leave a duplicate thereof for each party to the complaint and three other duplicates thereof and pay the fees for service; and in default of such duplicates being left and such fees being paid at that time, the reply shall not be filed, unless the Court otherwise orders.

(4) The registrar shall cause a duplicate of the reply to be served on each other party to the complaint.

#### **11. Admission of debt**

Where the debtor admits the debt, the Court shall, on receipt of his reply, summon him to appear before the Court as specified in section 12 of this Act.

#### **12. Amendment of application**

The relevant provisions of the Civil Procedure Rules relating to amendment of pleading shall apply to the amendment of an application as if for the words "any proceeding" in those provisions there were substituted the words "the application or the reply, if any".

### **13. Further particulars or direction**

(1) If any party to the application wishes to have further particulars or other directions of the Court, he may, at any time after the entry of appearance, but not later than seven days after the filing of the reply, apply to the Court specifying in his notice of motion the direction for which he prays and the motion shall, unless the Court otherwise orders, be set down for hearing on the first available day.

(2) The party so applying shall give notice of his motion to the other parties, and where he relies on any facts which are not apparent on the face of the documents already filed, he shall support his motion by affidavit.

(3) If a party does not so apply, he shall be taken to require no further particulars or other directions and such party shall be debarred from so applying after the lapse of the period laid down in sub-paragraph (1) of this paragraph except with the leave of the Court, which may be given in a proper case on such terms as to costs and otherwise as the Court may deem fit.

### **14. Open Court**

Every application shall be heard in open Court.

### **15. Time and place of hearing**

(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the time and place of the hearing of an application shall be fixed by the Court and notice of the time and place of the hearing (which may be in Form E in the Appendix to this Schedule) shall be given by the registrar at least 3 days before the day fixed for the hearing-

[Form E.]

- (a) by posting or causing to be posted, the notice on the court notice board;
  - (b) by sending a copy of the notice by registered post or messenger to the Receiver's or Liquidator's address for service;
  - (c) by sending likewise a similar copy to the debtor's address for service, if any.
- (2) The Court shall sit in such place or places as the judge may, from time to time, determine.

### **16. Publication, good notice**

The posting of the notice of hearing on the court notice board shall be deemed and taken to be good notice and such notice shall not be vitiated by any miscarriage of or relating to the copy or copies of the notice sent pursuant to paragraph 15 of this Schedule.

### **17. Continuance day to day**

No formal adjournment of the Court for the hearing of an application shall be necessary, but the hearing is to be deemed adjourned and may be continued from day to day until the case is concluded; and in the event of the judge of the Court who begins the hearing being disabled by illness or otherwise, it may be recommenced and concluded by another judge to be appointed by the Chief Judge of the Federal High Court.

#### **18. Adjournment**

After the hearing has begun, if the case cannot be continued on the ensuing day or, if that day is a Sunday or a public holiday, on the day following the same, the hearing shall not be adjourned sine die, but to a definite day to be announced before the rising of the Court and notice of the day to which the hearing is adjourned shall forthwith be posted by the registrar on the court notice board.

#### **19. Powers of Federal High Court over proceedings**

All interlocutory questions and matters shall be heard and disposed of before the Court which shall have control over the proceedings as a judge in the ordinary proceedings of the Court.

#### **20. Judgement**

At the conclusion of the hearing, the Court shall deliver its judgement and make such order as if deems appropriate for the purposes of Part II of this Act.

#### **21. Appeal**

A judgment of the Court is subject to appeal as specified in section 5 of this Act.

#### **22. Enlargement and abridgement of time**

(1) The Court shall have power to enlarge or abridge the time appointed by this Act or the Rules of Court mentioned in paragraph 27 of this Schedule or fixed by any order enlarging time, for doing any act or taking any proceeding upon such terms (if any) as the justice of the case may require.

(2) Enlargement may be ordered although the application for the enlargement is not made until after the expiration of the time appointed or allowed.

(3) When the time for delivering any pleading or document of filing any affidavit, answer or document, or doing any act is or has been fixed or limited by any of the paragraphs or rules referred to in paragraph 1 of this rule, or by direction or order of the Court, the costs of any application to extend such time and of any order made thereon, shall be borne by the party making the application, unless the Court shall otherwise order.

(4) An application for enlargement or abridgement of time shall be supported by affidavit.

(5) An application for abridgement of time may be made ex parte, but the Court may require notice thereof to be given to the other party.

(6) An application for enlargement of time shall be made by motion after notice to the other party but the Court may, for good cause shown by affidavit or otherwise, dispose with such notice.

(7) A copy of an order made for enlargement or abridgement of time shall be filed or delivered together with any document filed or delivered by virtue of the order.

### **23. Service of notice**

(1) Where any summons, notice or document, other than a notice or document mentioned in paragraph 5 (1) of this Schedule, is required to be served on any person for a purpose connected with an application, the same may be served either by delivering it to such person or by leaving it at his last known place of abode with any person there found who is a resident thereof and appears to be eighteen years of age or more.

(2) After a party has given an address for service, it shall be sufficient if, in lieu of serving him personally with any document intended for him, such document is served-

(a) on the person appearing on the paper last filed on his behalf as his solicitor, wherever such person may be found or, if such person is not found at his office, on the clerk there apparently in charge; or

(b) on the person named as occupier in his address for service, wherever such person may be found or, if such person is not found at such address on-

(i) the person there found apparently in charge, if such address is a place of business; or

(ii) any person other than a domestic servant there found who is a resident thereof and appears to be eighteen years of age or more.

(3) A party may change his address for service by giving notice of his new address for service and its occupier to the registrar and to each other party; but until such notice is received by the registrar, his old address for service shall continue to be his address for service.

(4) Where service in one of the foregoing modes has proved impracticable, the Court, on being satisfied, upon an application supported by an affidavit showing what has been done, that all reasonable effort has been made to effect service, may order that service be effected in any of the ways mentioned in the provisions of the Civil Procedure Rules relating to substituted service shall be sufficient, or may dispense with service or notice, as the Court may think fit.

### **24. Duplicate of documents**

In the absence of express provision for the furnishing of copies of duplicates of documents filed or used in connection with any step taken in the proceedings, the party taking such steps shall, unless the registrar otherwise directs, leave with the registrar a duplicate of every such document for each other party and three other duplicates.

### **25. Non-compliance with rules, etc.**

(1) Non-compliance with any of the provisions of this Schedule, 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 shall think fit to ensure substantial justice.

(2) No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, or if the party applying has taken any fresh step after knowledge of the irregularity.

(3) Where an application is made to set aside proceedings for irregularity the several objectives intended to be insisted upon shall be stated in the notice of motion.

(4) No objection shall be made that a certified copy has been used instead of a duplicate or a duplicate instead of a certified copy.

(5) An application shall not be defeated by any objection merely as to form.

## **26. Forms**

(1) The forms contained in the Appendix to these Rules may, in accordance with any instructions contained in the said forms, and with such variation as the circumstances of the particular case may require, be used for the matter to which they apply, and when so used, shall be good and sufficient in law.

(2) Where no form has been prescribed in this Schedule for a particular matter, the forms as contained in the Civil Procedure Rules of the Court may, with such modifications as the circumstances may require, be used for the matter.

## **27. Application of Rules of Court**

Where these Rules contain no provision in respect of any matter relating to or connected with the hearing of a case under this Act, the provisions of the Civil Procedure Rules of the Court shall, with such modifications as may be necessary to render them conveniently applicable, apply as if the applicant and the respondent were respectively the plaintiff and the defendant in a civil action.

## **APPENDIX**

[Paragraph 26.]

## **FORMA**

[Section 7 and paragraphs 2 and 26.]

IN THE FEDERAL HIGH COURT

*Application for the recovery of debt*

Between

A.B ..... Applicant

(Receiver/Liquidator of .....)

C.D.....

(Receiver/Liquidator of .....).

and

E.F.....Respondent(s)

(Debtor)

G.H.....

(Debtor)

The application of A.B. of.....(or of A.B. of)  
.....and C.D. of  
.....(as the case may be) whose names are subscribed. State here  
contents of your application as set out in section 7 (1) of the Failed Banks (Recovery of Debts) and Financial  
Malpractices in Banks Act-

- (a) the name and address of the borrower;
- (b) if the borrower is a body corporate, a partnership or sole trader-
  - (i) the address of its principal place of business;
  - (ii) the names and addresses of its shareholders, directors, proprietors or partners as the case maybe;
- (c) the amount of loan and advance outstanding;
- (d) details of securities pledged, if any; and
- (e) such other information as may be useful to the Court.

Address for service.....

Occupier .....

The name of my (or our) solicitor is.....or I (or we) am (or are)  
acting for myself (or ourselves.)

Signed.....A.B .

..... C.D.

SIGNED before me.....this.....day of.....20.....

.....  
Registrar

FORM B

[Paragraph 2 and 26.]

IN THE FEDERAL HIGH COURT

*Receipt of application for the recovery of debt*

Received on the.....day of.....20.....at the registry of the Federal High Court an application for the recovery of debt owed to .....

DATED this .....day of.....20.....

.....  
Registrar

FORMC

[Paragraph 5 and 26.]

IN THE FEDERAL HIGH COURT

*Notice of presentation of application for the recovery of debts*

Between

A.B.....Applicant

(Receiver/Liquidator of.....)

C.D.....

(Receiver/Liquidator of .....) )

and

E.F.....Respondent(s)

(Debtor)

G.H.....

(Debtor)

The application of AB. Of.....(or of AB. of).....and C.D. of .....*(as the case may be)* whose names are subscribed. Take Notice that an application, a duplicate whereof is attached hereto, has this day been presented in the registry of the Court named above and that you are to enter an appearance to the application in the said registry within.....days of the date when this notice was presented thereof, or within .....days of the date when this notice was left at your address set out below, or as the Court may direct by order under paragraph 6 of Schedule I to the Failed Bank (Recovery of Debts) and Financial Malpractices in Banks Act, otherwise proceedings upon the application may be continued and determined in default of your appearance, and any document relating to such proceedings and intended for you may be posted up on the court notice board, which shall be sufficient notice thereof.

DATED this.....day of .....20.....

.....  
Registrar

E.F. of.....

G.H. of .....

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FORM D

[Paragraphs 7 and 26.]

IN THE FEDERAL HIGH COURT

*Memorandum of appearance*

Between

A.B .....Applicant

(Receiver/Liquidator of .....)

C.D. ....

(Receiver/Liquidator of .....)

and

E.F.....Respondent(s)

(Debtor)

G.H .....

(Debtor)

The application of AB. Of.....(or of AB. of) .....and C.D. of  
..... (*as the case may be*) whose names are subscribed.

Please enter an appearance for.....

*(Give full name of Respondent wishing to appear)*

Address for service.....

The name of my (or our) solicitor is .....or I (or we) am (or are) I (or we) am  
(or are) acting for myself (or ourselves).

DATED the.....day of.....20.....

Signed .....E.F

..... G.H.

FORM E

[Paragraphs 15 and 26.]

IN THE FEDERAL HIGH COURT

*Notice of hearing*

Between

A.B .....Applicant

*(Receiver/Liquidator of .....)*

C.D. ....

*(Receiver/Liquidator of .....)*

and

E.F.....Respondent(s)

(Debtor)

G.H .....

(*Debtor*)

The application of A.B. of.....(or of A.B. of).....and C.D. of  
..... (*as the case may be*) whose names are subscribed.

TAKE NOTICE that the above application will be heard at.....on the day of  
.....20.....and on such other subsequent days as may be useful.

DATED this.....day of.....20.....

.....  
Registrar

FORM F

[Paragraphs 12 and 26.]

IN THE FEDERAL HIGH COURT

*Certificate of clearance*

I certify that the debtor..... of.....having paid to the  
Receiver/Liquidator of....., the outstanding loan of ₦.....plus interest thereon of  
₦.....is hereby cleared of the debt the subject matter of the application.

DATED this.....day of.....20.....

.....  
*Judge of the Federal High Court*

FORM G

[Paragraphs 18 and 26.]

IN THE FEDERAL HIGH COURT

*Order for the release of security*

It is ordered that all documents and properties namely.....  
.....

*(list documents and properties here)*

pledged as security for the loan, the subject matter of the application, be released to the debtor. And it is ordered that all parties be at liberty to apply to the Court as they may be advised.

DATED this.....day of.....20.....

.....  
*Judge of the Federal High Court*

#### FORM H

[Paragraphs 14 and 26.]

IN THE FEDERAL HIGH COURT

*Notice of motion to withdraw application*

Between

A.B.....Applicant

*(Receiver/Liquidator of.....)*

C.D .....

*(Receiver/Liquidator of .....,)*

and

E.F.....Respondent(s)

*(Debtor)*

G.H .....

*(Debtor)*

The application of A.B. of ..... (or of A.B. of ..... and C.D. of .....)  
..... (*as the case may be*) whose names are subscribed.

Write out the Notice of Motion in the manner usual in civil proceeding and conclude as follows-

The applicant proposes to apply to withdraw his application on the following grounds-

.....  
.....

*(Here state the grounds)*

Signed ..... E.F.

or

..... Solicitor

SIGNED before me this ..... day of ..... 20.....

.....

Registrar

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FAILED BANKS (RECOVERY OF DEBTS) AND FINANCIAL

MALPRACTICES IN BANKS ACT

**SUBSIDIARY LEGISLATION**

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No Subsidiary Legislation

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