

THE BANKING (LIQUIDATION OF INSTITUTIONS) REGULATIONS

ARRANGEMENT OF REGULATIONS

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THE BANKING (LIQUIDATION OF INSTITUTIONS) REGULATIONS

[Legal Notice 402 of 1992]

1. Citation

These Regulations may be cited as the Banking (Liquidation of Institutions) Regulations.

2. Notice of appointment and security

(1) Where the Board is appointed as a liquidator of an institution it shall, as soon as practicable thereafter, cause notice of its appointment to be published in the *Gazette* and at least one daily newspaper of general circulation in Kenya.

(2) The Board shall not be required to give any security by reason of its appointment as liquidator and upon appointment shall be deemed to have given security for the purposes of the Companies (Winding-up) Rules (Cap. 486, Sub. Leg.).

3. Meeting of creditors

Where the Board has been appointed as liquidator of an institution, it shall not, unless the court otherwise directs, be necessary for the liquidator to convene a meeting of creditors and contributories under the provisions of section 236 of the Companies Act (Cap. 486).

4. Power to waive proof of debt

(1) Where the Board has been appointed as liquidator of an institution, it may, if it deems fit, admit the claim of any depositor or class of depositors without submission of formal proof of debt and shall notify the depositor or depositors concerned accordingly.

(2) Any depositor who is dissatisfied with the decision of the Board may apply to the Court in the same manner as a dissatisfied creditor under the provisions of the Companies (Winding-up) Rules (Cap. 486, Sub. Leg.).

5. Power of High Court to decide all claims

The High Court shall, except as otherwise expressly provided in regulation 6, have exclusive jurisdiction to entertain and decide any claim made by or against an institution which, is being wound-up or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of an institution.

6. Transfer of pending proceeding

(1) Where an institution is being wound-up, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under the Act or these Regulations and which is pending in any other court immediately before the commencement of the Act or the commencement of the winding-up of the institution, whichever is later, shall be proceeded with except in the manner provided under these Regulations.

(2) The liquidator shall, within three months from the commencement of the winding-up or the commencement of the Act, whichever is later, or such further time as the High Court may allow, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under subregulation (2), the High Court may give the parties concerned an opportunity to show cause why the proceedings should not be transferred to the Court and it shall make such order as it deems fit transferring all or such of the pending proceedings as may be specified in the order to the Court and such proceedings shall thereafter be disposed of by the Court.

(4) If any proceeding pending in a Court is not transferred to the High Court under subregulation (3), the proceedings shall be continued in the Court in which the proceedings were pending.

[Subsidiary]

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Court of Appeal or the High Court.

7. Public examination of officers and others

(1) In the winding-up of an institution, the liquidator shall determine whether, in his opinion, any loss has been caused to the institution since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of a person in the promotion or formation of the institution or of any officer or auditor of the institution.

(2) If the liquidator determines that a loss has been caused by an act or omission referred to in subregulation (1), he may apply to the High Court for an order that any officer or auditor of an institution or any person who has taken part in the promotion or formation of the institution shall be publicly examined and the Court shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the institution or as to his conduct and dealings in so far as they relate to the affairs of the institution.

(3) The liquidator shall take part in the examination and for that purpose may employ a legal representative of his own choice.

(4) Any creditor or contributor may also take part in the examination either personally or by an advocate.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this regulation may, at his own cost, employ an advocate who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges made against him, the High Court may allow such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined.

(9) References in this regulation to an officer or auditor of an institution shall include a former officer or auditor of that institution.

8. Special provisions affecting examinations

(1) This regulation shall apply to any examination under regulation 7 and also to any examination under section 263 or section 265 of the Companies Act (Cap. 486) which is conducted in the course of the winding-up of any institution whether such winding-up commenced before or after the commencement of the Act.

(2) No person shall be excused from examination by reason of the fact that any other proceedings, whether criminal or civil, are in progress or contemplated against him.

(3) The official record of the evidence taken on any such examination may thereafter be used in evidence against any person examined in any civil proceedings and shall be open to the inspection of any creditor or contributory at all reasonable times.

9. Special provisions for assessing damages

(1) Where an application is made to the High Court under section 323 of the Companies Act (Cap. 486) against any person for repayment or restoration of any money or property of an institution and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under section 323 of the Companies Act (Cap. 486) and the High Court has reason to believe that any property belongs to any promoter, officer, manager or liquidator of the institution, whether the property stands in the name of such person or any other person as an ostensible owner, then the High Court may, at any time, whether before or after making an order under subregulation (1) direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Civil Procedure Act (Cap. 21) relating to attachment of property shall, as far as may be, apply to such attachment.

10. Resignation of Board

The Board may, at any time, resign as liquidator of an institution upon giving written notice to the Official Receiver whereupon the Official Receiver shall become the liquidator of the institution unless and until another liquidator is appointed by the Court in accordance with the provisions of the Companies Act (Cap. 486).
