

EAST AFR. PROT.

21904

REC'D  
JUL 18 1907

21904

392

RULES OF COURT UNDER  
PROVINCIAL INSOLVENCY ACT OF 1907.

1910

June  
previous Paper

15350

Trs.

Mr. Risley

H. J. R.

18/VI

Library

Please annex the Indian Act III of 1907

XIA 21/7

Mr. Risley

J.R. 2/7

book  
Mr. Risley

I see nothing to object to in these Rules. Probably  
(though we are not told so) they are founded on  
British Acts which have been made in India under the  
Act. They do not require approval or rejection  
by the Govt.

XIA 22/7

Subsequent Paper

32/5/22

C. O.  
21904  
JUN 18 1910

GOVERNMENT HOUSE,

Nairobi,

June 23rd 1910.

EAST AFRICA PROTECTORATE.

No. 392.

My Lord,

I have the honour to transmit herewith  
Rules of Court under the Provincial Insolvency  
Act of 1907, to which I have assented.

I have the honour to be,

Your Lordship's humble,

obedient servant,

*W. H. Hudson*

(In the absence of the Governor).

THE RIGHT HONOURABLE,

THE EARL OF CREWE, K.G.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

R U L E S

Framed under Section 51 Indian Act III of 1907, the Provincial Insolvency Act, by H.M. High Court of East Africa with the previous sanction of His Excellency

C O  
21904  
18 JUL 10

the Governor.

---OXO---

Short Title.

1. These Rules may be cited as Rules of Court (Insolvency) No.2 of 1910.

Forms

2. The forms annexed to these Rules with such variations as circumstances may require shall be used for the matters to which they severally relate.

Definitions.

3. In these Rules, unless there is anything repugnant in the subject or context "the Act" means the Provincial Insolvency Act 1907 as applied to the East Africa Protectorate by the Provincial Insolvency Act 1907 Application Ordinance 1910.

"Receiver" means a Receiver appointed by the Court under Section 18 (1) of the Act.

Registers.

4. Every Insolvency Petition shall be entered in the Register of Insolvency Petitions to be maintained in the Courts exercising Insolvency Jurisdiction and shall be given a serial number in that Register and all subsequent proceedings in that matter shall be entered in the same Register.

Memorandum of  
Notice in  
Official  
Gazette

5. Whenever a matter is referred to by the Act or other enactments, the date of the Gazette, a Memorandum referring to and giving the date that such enactment passed shall be entered on the record.

Advertisement  
service of  
process.

6. Notice of an order fixing the date of the hearing of a petition under Section 12 (1) of the Act shall, in addition to the publication in the Official Gazette required by the Act, be also advertised in such local newspapers as the Court may direct. A copy of the notice shall also be served on each creditor personally or by registered letter to the address given in the petition as the Court may direct. The same procedure shall be followed in respect of notices of the date for the consideration of a proposal for composition or scheme of arrangement under Section 27 (1) of the Act.

Advertisement  
order of  
judication.

7. Notice of an order of adjudication under Section 18 (7) of the Act is required to be published in the Official Gazette.

The Court may also direct that it should be published in such newspapers as it may direct. When the debtor is a Government servant a copy of the order shall be sent to the head of the Office in which he is employed.

The same procedure shall be followed in regard to notices of an adjudication under Section 18 of the Act.

Notice of Final  
Dividend

8. The notice under Section 26 (4) of a final dividend to which creditors have been admitted personally or by proxy of the discharge of the debtor shall be published in such local newspaper as the Court may direct.

Notice of  
discharge  
or discharge

(3)

may direct and copies shall be sent by registered post to or served personally on all creditors whether they have proved or not.

10. Proof of service of notices

A certificate of an Officer of the Court or of the Official Receiver or an affidavit by a Receiver that any of the notices referred to in the preceding rules has been duly posted or personally served together with the Post Office receipt or signature of the person served as the case may be shall be sufficient evidence of such notice having been duly given.

11. Appointment of Receiver

Every appointment of a Receiver shall be by order in writing signed by the Court. Copies of this Order sealed with the seal of the Court should be served on the debtor, and forwarded to the person appointed.

12. Receiver's Remuneration

The remuneration of a Receiver shall, unless the Court otherwise directs, be calculated at 5% on the total amount realised by him less any sums paid to creditors out of the proceeds of their securities.

13. Receiver's accounts

The Receiver shall keep a cash book and such books and other papers as to give a correct view of his administration of the estate and shall submit his accounts at such times and in such form as the Court may direct.

Such accounts shall be audited by such person or persons as the Court may direct.

The costs of the audit shall be Rs.10/- for the first 50 items and 25 cents for each item in excess of 50 and shall be paid out of the estate.

14. Receiver's report

(1) Unless the Court otherwise directs the Receiver shall as soon as may be after his appointment

ment

appointment draw up a report upon the cause of the debtor's insolvency, the conduct of the debtor so far as it may have contributed to his insolvency and also his conduct during the insolvency proceedings in all matters connected with such proceedings, and in particular such report shall state (a) whether the value of the debtor's assets is less than half his unsecured liabilities and, if so, whether that fact is due to circumstances for which the debtor cannot justly be responsible, (b) whether the debtor has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his insolvency, (c) whether the debtor has continued to trade after knowing himself to be insolvent, (d) whether the debtor has contracted any debt provable under the Act without having at the time of contracting if any reasonable or probable ground of expectation that he would be able to pay it, (e) whether the debtor has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities, (f) whether the debtor has brought on, or contributed to, his insolvency by rash and hazardous speculations or by unjustifiable extravagance in living or by gambling or by culpable neglect of his business affairs, (g) whether the debtor has within three months preceding the date of the presentation of the petition when unable to pay his debts as they became due given an undue preference to any of his creditors, (h) whether

the debtor has on any previous occasion been adjudged an insolvent or made a composition or arrangement with his creditors, and (1) whether the debtor has concealed or removed his property or any part of it or has been guilty of any other fraud or fraudulent breach of trust.

(2) If the debtor submits a proposal under Section 27 (1) of the Act, the Receiver shall state in his report whether in his opinion the proposal is reasonable and is likely to benefit the general body of the creditors and shall state the reasons for his opinion.

ees of Re- 15.  
651's  
ounts.

Any creditor who has proved his debt shall be entitled to a copy of the Receiver's accounts or part thereof on payment of the fees provided for copies for the time being in the High Court.

ce for meet- 16.  
of cre-  
ars.

On a debtor proposing a composition or scheme under Section 27 of the Act and whenever the Receiver calls a meeting of creditors, the Receiver shall give 14 days notice to the debtor and to every creditor of the time and place appointed for each meeting. Such notice may be served personally or by registered post.

iver's 17.  
rity

(1) Every Receiver or interim receiver other than an Official Receiver shall give security of such security as the Court may direct.

(2) The Court may direct that the Receiver shall give security of such security as the Court may direct.

cial Re- 18.  
ars.

An Official Receiver shall have power to do all or any of the following things:  
(a) to grant security to the Receiver;  
(b) to approve compositions or schemes of arrangement.



(8)

for wages. 19. In any case in which it shall appear from the debtor's statement 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 by some other person on behalf of all such creditors.

ing of 20. A dividend may be remitted to a creditor by send registered post.

ary admi- 21. When an estate is ordered to be administered in tion a summary manner under Section 42 of the Act, the provisions of the Act and Rules shall, subject to any special direction of the Court, be modified as follows, namely:-

- (1) There shall be no advertisement of any proceedings in a local paper.
- (2) The petition and all subsequent proceedings shall be endorsed 'Summary Case'.
- (3) The Court shall examine the debtor as to his affairs but shall not be bound to call a meeting of creditors, but the creditors shall be heard and to cross examine the debtor.

It shall not be necessary to appoint a Receiver.

entitled  
 procedure on  
 sentencing a  
 debtor.  
 re sentencing a debtor under the powers  
 d by Section 45 (2) of the Act the Court  
 All of the debtor to show cause why an order  
 not be passed against him under that Section.  
 proceedings under the Act down to and in-

the making of an order of adjudication shall  
 the cost of the party prosecuting the same;  
 order of adjudication has been made,  
 the petitioning creditor shall be  
 payable out of the estate.

d by a debtor or or incidental  
 ve of a composition or



(7)

scheme shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

Sd/- R.V. Hamilton.

Sd/- J.W. Barth

JUDGES

H. M. High Court, E. Africa.

Sanctioned.

Sd/- E.P.C. Girouard.

Governor.

Nairobi, 11 of June 1910.

F O R M N<sup>o</sup> 1.

General Title.

EAST AFRICA PROTECTORATE.

In the ..... Court at .....

Insolvency Petition No. of 19 ..

In the matter of

Ex parte (here insert "the Debtor" or A. B. or creditor" or "the Official Receiver" or "the Receiver".)

F O R M N<sup>o</sup> 3.

Notice to creditors of the date of hearing  
of an insolvency petition.

Section 12.

(Title).

Whereas A. B. has applied to this Court, by  
a petition, dated \_\_\_\_\_ of 19\_\_\_\_, to be  
declared an insolvent under the Provincial  
Insolvency Act (III of 1907), and your name  
appears in the list of creditors filed by the  
said debtor, this is to give you notice that the  
Court has fixed the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ for  
the hearing of the \_\_\_\_\_ aforesaid petition  
and the examination of the debtor. If you desire  
to be represented in the matter you should attend  
in person or by duly instructed pleader. The  
particulars of the debt alleged in the petition  
to be due to you, are as follows:-

J U D G E

FORM NO. 3

Notice to creditors of the date of hearing  
of an insolvency petition.

Section 12.

(Title).

Whereas A. B. has applied to this Court, by  
a petition, dated \_\_\_\_\_ of 19 \_\_, to be  
declared an insolvent under the Provincial  
Insolvency Act (III of 1907), and your name  
appears in the list of creditors filed by <sup>the</sup> afore-  
said debtor, this is to give you notice that the  
Court has fixed the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_ for  
the hearing of the \_\_\_\_\_ aforesaid petition  
and the examination of the debtor. If you desire  
to be represented in the matter you should attend  
in person or by duly instructed pleader. The  
particulars of the debt alleged in the petition  
to be due to you, are as follows:-

J U D G E .

FORM NO. 4

Order of Adjudication. Section 16.

(Title).

Pursuant to a petition dated,  
 against (here insert name, description, and  
 address of debtor) and on the application of  
 (here insert "the Official Receiver" or "the  
 debtor himself" or "A. B. of a creditor"),  
 and on reading and hearing it is  
 ordered that the debtor be and the said debtor is  
 hereby adjudged insolvent.

Dated this            day of            19   .

J U D G E .

FORM NO. 5.

Order appointing a Receiver.

Section 18.

(Title).

Whereas A. B. was adjudicated  
an insolvent by order of this Court, dated  
, and it appears to the Court that the appoint-  
ment of a Receiver for the property of the insolvent  
is necessary.

It is ordered that a receiving order be made  
against the insolvent and a receiving order is  
hereby made against the insolvent and A. B.

(or the Official Receiver) is hereby

of the property of the said

and it is further

being the

to be executed

of

at

FORM N<sup>o</sup>. 6.

Proof of debt.

General Form. Section 35.

(Title).

are insert  
r given in  
office.

address in

In the matter of No. (a)  
of 19

I, of (b) make oath and say (or  
solemnly and sincerely affirm and declare) --

State consti-  
tion and  
ify the  
hers (if any)  
upport of  
claim.

1. That the said was at the date of the  
were  
petition, viz., the day of 19, and  
still is justly and truly indebted to me in  
are  
the sum of Rs. as. p. for (c) as shown  
by the account endorsed hereon (or the follow-  
ing account), viz., for which sum or any part  
thereof I say that I have not, nor hath any  
person by order to my knowledge or belief  
for use had or received any manner of satis-  
faction or security whatsoever save and except

Here details  
curities,  
s or the

the following (d),

Admitted to vote for Rs.

Judge or Official  
Receiver.

} Sworn at (Deponent's  
this day Signature.  
of before  
me



F.C.R.M. N.O. 7

Proof of debt of workmen.

(Title.)

I (a) or (b) make oath and say:— (or solemnly

- a) Fill in full name, address and occupation of deponent.
- b) The above named debtor I. That (c) at the date of the above named debtor or on adjudication, viz., the day of 19 and still justly and truly indebted to the several persons whose names, addresses and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in (d) in respect of services rendered by them respectively to (e) during such periods before the date of the receiving order as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.
- c) "I" or "the said".
- d) "My employ" or "the employ of the above named debtor."
- e) "He" or "the above named debtor".

Admitted to vote for Rs. )	Sworn at	( Deponent's
Judge or Official Receiver )	this day of	signature.
	before me	(

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FORM No. 8.

Notice to creditors of the date of consideration of a composition or scheme of arrangement.

Section 27.  
(Title).

Take notice that the Court Official Receiver has fixed the            day of            19           , for the consideration of a composition (or scheme of arrangement) submitted by A. B., the debtor in the above insolvency petition. No creditor who has not proved his debt before the aforesaid date will be permitted to vote on the consideration of the above matter. If you desire to be represented at the above mentioned hearing you should present in person or by duly instructed pleader with your proofs.

D. G. E.  
Official Receiver

FORM N<sup>o</sup>. 8.

Notice to creditors of the date of consideration  
of a composition or scheme of arrangement.

Section 27.

(Title).

Take notice that the           Court           has  
          Official Receiver          

fixed the            day of            19            ,  
for the consideration of a composition (or scheme  
of arrangement) submitted by A. B., the debtor  
in the above insolvency petition. No creditor

who has not proved his debt before the aforesaid

date will be considered

in the distribution of the assets of the debtor.

If you should object that

the date fixed

          JUDGE            
          Official Receiver

100  
28

27

S. C.

27 July

Sir

I have the honor to

ack. the recd of the Honorable

Secy. to Govt. of the 27th of

June forwarding a copy

of the Rules of Court <sup>made</sup> under

the Indian Provincial Insolvency

Act ~~of 1907~~ 1907 to which

~~you have assented.~~

J. C.

(Signed) GREWE.

DRAFT.

P. P. Post- no. 1157

for P. P. C. forward.

MINUTE.

Mr. Hatcher 25/6

Mr. Butler 26/6

Mr. Fiddes

Mr. Just

Mr. Coz

Sir C. Lucas

Sir P. Hopwood

Col. Seely

Lord Grewe