SENATE OF THE FEDERAL REPUBLIC OF NIGERIA

VOTES AND PROCEEDINGS

Thursday, 26th May, 2016

1. The Senate met at 10:52 a.m. The Senate President read Prayers.

2. **Votes and Proceedings:**
The Senate examined the Votes and Proceedings of Wednesday, 25th May, 2016.

Question was put and the Votes and Proceedings were approved.

3. **Message from Mr. President:**
The Senate President announced that he had received a letter from Mr. President, Commander-in-Chief of the Armed Forces of the Federation, which he read as follows:

Federal Capital Territory Statutory Appropriation Bill, 2016:

PRESIDENT,
FEDERAL REPUBLIC OF NIGERIA

25th May, 2016

Distinguished Senator Abubakar Bukola Saraki, CON
President of the Senate,
Senate Chambers,
National Assembly Complex,
Three Arms Zone,
Abuja.

Dear Distinguished Senate President,

THE FCT 2016 STATUTORY BUDGET

Pursuant to section 299 of the 1999 Constitution which vests legislative powers over the Federal Capital Territory (FCT) Abuja on the National Assembly. I hereby present the 2016 FCT Budget Proposal to the Distinguished Senate of the Federal Republic of Nigeria.

While hoping that the Budget Proposal will receive the usual expeditious consideration and passage by the Distinguished Senate. Please accept, Mr. Senate President, the assurances of my highest regards.

Yours Sincerely,
(Signed)
Muhammadu Buhari

4. Announcements:

(a) Demise of Senator Abubakar Tanko Ayuba:

The Senate President read a letter from Senator Bala Ibn Na'Allah (*Kebbi South*) as follows:

THE SENATE
FEDERAL REPUBLIC OF NIGERIA

Sen. Bala Ibn N a'Allah
(DEPUTY SENATE LEADER)

May 25, 2016

The Senate President,
National Assembly,
Abuja.

Sir,

RE- DEATH OF SENATOR (GENERAL) ABUBAKAR TANKO AYUBA (mni) (GARKUWAN ZURU) KEBBI SOUTH 2007-2011

This is to sadly announce the death of Distinguished Senator (General) Abubakar Tanko Ayuba who represented Kebbi South from 2007 - 2011.

The Distinguished Senator who was a renowned philanthropist died on Wednesday, 25/05/2016 at Lagos University Teaching Hospital (LUTH), after a brief illness, during his period as Senator he was the Vice Chairman, Senate Committee on Navy.

He was a grassroot politician and very hardworking. His death is a great loss to the good people of Zuru Emirate, Kebbi State and Nigeria in general, he would be buried in his home town in Diri-Daji on Thursday, the 26th day of May, 2016. He is survived by 8 Children.

(Signed)
Sen: Bala Ibn Na'Allah
Deputy Senate Leader

One minute in silence accordingly observed in honour of the deceased.

(b) Acknowledgement:

The Senate President acknowledged the presence of the following who were in the gallery to observe Senate Proceedings:

(*i*) Staff and Students of the Hillside School, Gwarinpa Estate, Abuja;

(*ii*) Staff and Students of Islamic Youth League Nursery/Primary School, Garki, Abuja; and

(*iii*) Staff and Students of Christabel Private School, Wuye District, Abuja.

5. Petitions:

Rising on Rule 41, Senator Mao A. Ohuabunwa *(Abia North)* drew the attention of the Senate to two petitions from:

(a) Mr. Okorie M. Kalu, over allegation of non-regularisation of employment by the Federal Radio Corporation of Nigeria (FRCN); and

(b) Akuoma Ugo-Opurum, over alleged injustice and undue maltreatment by the Nigerian Television Authority (NTA).

He urged the Senate to look into the matters.

Petitions laid and accordingly referred to the Committee on Ethics, Privileges and Public Petitions [Rule 41(3)] to report within two (2) weeks.

6. Presentation of Bills:

(*i*) Nigerian Oil and Gas Industry Content Development Act 2010 (Amendment) Bill, 2016 (HB. 99) — *Read the First Time.*

(*ii*) Federal University of Petroleum Resources, Effurun, Bill, 2016 (HB. 381).

Presentation of Bill deferred to another Legislative Day.

(*iii*) National Lottery Act 2005 (Amendment) Bill, 2016 (HB. 478).

Presentation of Bill deferred to another Legislative Day.

(*iv*) National Council for Research and Development Bill, 2016 (SB. 124) — *Read the First Time.*

(*v*) Nigerian Prisons and Correctional Services Bill, 2016 (SB. 125) — *Read the First Time.*

(*vi*) Labour Standards Bill, 2016 (SB. 160) — *Read the First Time.*

(*vii*) Nigerian Ports and Harbours Authority Bill, 2016 (SB. 243) — *Read the First Time.*

(*viii*) Dietician Council of Nigeria (Establishment, etc.) Bill, 2016 (SB. 251) — *Read the First Time.*

(*ix*) Constitution of the Federal Republic of Nigeria 1999 (Alteration) Bill, 2016 (SB. 287) — *Read the First Time.*

(*x*) Prisons Act CAP P22 LFN 2004 (Repeal and Re-enactment) Bill, 2016 (SB. 288) — *Read the First Time.*

7. Motion:

2016 Children's Day Celebration Theme: Stop Violence against Children:

Motion made: That the Senate is aware and recognizes with delight that Friday, 27th May is Children's day with the theme "Stop Violence against Children";

notes that the 27th of May each year is observed as Children's Day in Nigeria;

recognizes the significant role of the Nigerian child in the nation's development and the need to lay a good foundation for them and secure their future;

appreciates the children of Nigeria through the passage of legislations such as:

The Child Rights Act, 2003, which defines a new child protective system and allows opportunities for the participation of children in matters that concern their rights and welfare which had been adopted and is being implemented in 23 States including the Federal Capital Territory. The Universal Basic Education Act, 2004 which makes the education of the Nigerian child compulsory and enforceable rights, with penalties for parents and guardians who fail or neglect this obligation;

acknowledges that a proper system of education and good health care delivery are indispensable towards making the Nigerian child relevant in the global context;

recognizes under the National Health Act, 2014, all pregnant women, elderly, disabled and children are to be exempted from paying for services in public hospitals;

worried that this is not so in practice, as children and pregnant women still pay for medical services in public hospitals contrary to the expressed provisions of the National Health Act, 2014;

further worried that as a result of insurgency and the general security situation in the country, children and women have been rendered more vulnerable; and

alarmed that over 70% of the people in Internally Displaced Persons (IDPs) Camps are women and children who have been rendered orphans and widows.

Accordingly resolves to:

(*i*) congratulate the Nigerian children on the celebration of the 2016 Children's Day;

(*ii*) mandate the Committee on Women Affairs to (a) further look into the implementation and enforcement of the Child Rights Act in States that are yet to do so (b) the implementation of the Integrated Maternal, Newborn and Child Health under the Federal Ministry of Health (c) The National Strategic Plan of Action on Nutrition (NSPAN, 2014-2019) as presented on the 8th of September, 2015, by the Federal Ministry of Health, and make recommendations to the Senate;

(*iii*) urge the Federal Government not to relent in its effort to bring back home all abducted and missing children safely;

(*iv*) mandate the Joint Committee of Women Affairs; and Health to visit IDPs Camps and look into the health and welfare of the women and children and recommend appropriately to the Senate;

(*v*) commend the initiative by the NYSC that Medical Doctors and other health professionals be deployed to serve in IDPs Camps around the country; and

(*vi*) urge the Federal Government to intensify advocacy to stop violence against Children through the National Orientation Agency (NOA) (*Senator Oluremi S. Tinubu — Lagos Central*).

Debate:

Proposed Resolution (i):

Question: That the Senate do congratulate the Nigerian children on the celebration of the 2016 Children's Day — *Agreed to.*

Proposed Resolution (ii):
Question: That the Senate do mandate the Committee on Women Affairs to (a) further look into the implementation and enforcement of the Child Rights Act in States that are yet to do so (b) the implementation of the Integrated Maternal, Newborn and Child Health under the Federal Ministry of Health (c) The National Strategic Plan of Action on Nutrition (NSPAN, 2014-2019) as presented on the 8th of September, 2015, by the Federal Ministry of Health, and make recommendations to the Senate — *Agreed to.*

Proposed Resolution (iii):
Question: That the Senate do urge the Federal Government not to relent in its effort to bring back home all abducted and missing children safely — *Agreed to.*

Proposed Resolution (iv):
Question: That the Senate do mandate the Joint Committee of Women Affairs; and Health to visit IDPs Camps and look into the health and welfare of the women and children and recommend appropriately to the Senate.

Amendment Proposed:
Immediately after the word "Affairs" in line 1, *insert* the words "Primary Healthcare and Communicable Diseases" (*Senator Mao A. Ohuabunwa — Abia North).*

Question that the amendment be made, put and agreed to

Proposed Resolution (v):
Question: That the Senate do commend the initiative by the NYSC that Medical Doctors and other health professionals be deployed to serve in IDPs Camps around the country — *Agreed to.*

Proposed Resolution (vi):
Question: That the Senate do urge the Federal Government to intensify advocacy to stop violence against Children through the National Orientation Agency (NOA) — *Agreed to.*

Additional Proposed Resolutions:
Insert Additional Proposed Resolutions as follows:
"(i) call on the Nigeria Police to fully investigate and prosecute those involved in the maltreatment of Musa Murtala and other similar incidences all over the country" (*Senator Dino Melaye — Kogi West).*

Question that the amendment be made, put and agreed to.

"(ii) urge the Committee on Education to take up the matter of enforcement of Universal Basic Education Act 2004 which makes the education of the Nigerian child compulsory and enforceable rights, with penalties for parents and guardians who fail or neglect this obligation" (*Senator Bukar Abba Ibrahim — Yobe East).*

Question that the amendment be made, put and agreed to.

Resolved:
That the Senate do:
(*i*) congratulate the Nigerian children on the celebration of the 2016 Children's Day;

(*ii*) mandate the Committee on Women Affairs to (a) further look into the implementation and enforcement of the Child Rights Act in States that are yet to do so (b) the implementation of the Integrated Maternal, Newborn and Child Health under the Federal Ministry of Health (c) The National Strategic Plan of Action on Nutrition (NSPAN, 2014-2019) as presented on the 8th of September, 2015, by the Federal Ministry of Health, and make recommendations to the Senate;

(*iii*) urge the Federal Government not to relent in its effort to bring back home all abducted and missing children safely;

(*iv*) mandate the Joint Committees of Women Affairs; Primary Healthcare and Communicable Diseases; and Health to visit IDPs Camps and look into the health and welfare of the women and children and recommend appropriately to the Senate;

(*v*) commend the initiative by the NYSC that Medical Doctors and other health professionals be deployed to serve in IDPs Camps around the country;

(*vi*) urge the Federal Government to intensify advocacy to stop violence against Children through the National Orientation Agency (NOA);

(*vii*) call on the Nigeria Police to fully investigate and prosecute those involved in the maltreatment of Musa Murtala and other similar incidences all over the country; and

(*viii*) urge the Committee on Education to take up the matter of enforcement of Universal Basic Education Act 2004 which makes the education of the Nigerian child compulsory and enforceable rights, with penalties for parents and guardians who fail or neglect this obligation ***(S/Res/146/01/16)***.

8. Committee on Banking, Insurance and other Financial Institutions:
Report on the Bankruptcy Act CAP B2 LFN 2004 (Repeal and Re-enactment) Bill, 2016 (SB. 09):
Motion made: That the Senate do consider the Report of the Committee on Banking, Insurance and other Financial Institutions on the Bankruptcy Act CAP B2 LFN 2004 (Repeal and Re-enactment) Bill, 2016 (*Senator Ibrahim A. Rafiu — Kwara South*).

Question put and agreed to.

Report presented.

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report *(Senate Leader)*.

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

CONSIDERATION OF A BILL FOR AN ACT TO REPEAL THE BANKRUPTCY ACT, NO. 16 OF 1979 CAP B2, LAWS OF THE FEDERATION OF NIGERIA 2004 AND ENACT THE BANKRUPTCY AND INSOLVENCY ACT 2016 TO MAKE PROVISION FOR CORPORATE AND INDIVIDUAL INSOLVENCY TO PROVIDE FOR THE REHABILITATION OF THE INSOLVENT DEBTOR AND TO CREATE THE OFFICE OF THE SUPERVISOR OF INSOLVENCY; AND FOR OTHER RELATED MATTERS.

PART 1- PRELIMINARY

Clause 1: **Commencement.**
This Act comes into force on such date as is fixed and sign into law by the President of the Federal Republic of Nigeria

Committee's Recommendation:
That the provision in Clause 1 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 1 *do stand part of the Bill, put and agreed to.*

PART II - ACTS OF BANKRUPTCY

Clause 2: **Acts of bankruptcy.**
(1) A debtor commits an act of bankruptcy where the debtor:

(a) either in Nigeria or elsewhere makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;

(b) either in Nigeria or elsewhere makes a fraudulent conveyance, gift, delivery or transfer of his property or of any part of that property;

(c) either in Nigeria or elsewhere makes any conveyance or transfer of his property or any part of the property, or creates any charge on the property that would under this Act be void as a fraudulent preference;

(d) either in Nigeria or elsewhere makes a conveyance, gift, delivery or transfer of his property or any part of that property by the debtor was property without the prior written consent of his creditor or creditors as the case may be

(e) permits any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken in execution to remain unsatisfied for twenty-one days, or if any of the debtor's property has been sold by the Sheriff, or if the execution or other process is returned endorsed to the effect that the Sheriff can find no property on which to levy or to seize or to take;

(f) exhibits to any meeting of his creditors any statement of his assets and liabilities that shows he is insolvent, or presents or causes to be presented to that meeting a written admission of his inability to pay his debts;

(g) assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

(h) gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts;

(i) defaults in any proposal made under this Act; and

(j) ceases to meet his obligation to the creditors generally as they become due for a minimum period of 90 days.

(k) A debtor who disposes of the or any item of plant or machinery funded by the creditor in parts or wholly, where such items are collateral or part thereof without prior notice and expresses agreement of the creditor.

(l) A debtor who relocates his business from a known address to an unknown address without prior notification of the creditor with the intention of avoiding his obligation.

(2) Notwithstanding paragraph (e), where inter-pleaded proceedings have been instituted in respect of the property seized, the time elapsing between the date at which the proceedings were instituted and the date at which the proceedings are finally disposed of settled or abandoned shall not be taken into account in calculating the period of twenty-one days.

(3) Every assignment of his property other than an assignment pursuant to this Act, made by an insolvent debtor for the general benefit of parties other than his creditor, is void

Committee's Recommendation:
That the provision in Clause 2 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 2 do stand part of the Bill, put and agreed to.

PART III - RECEIVING ORDERS, INTERIM RECEIVERS, SECURED CREDITORS AND RECEIVERS

Clause 3: Petition for receiving order Filling of petition.

(1) Subject to this section, one or more creditors may file in Court a petition for a receiving order against a debtor where it is alleged in the petition that—

(a) the debt owing to the petitioning creditor amounts to not less than one million naira; and

(b) the debtor has committed an act of bankruptcy within six months immediately preceding the filing of the petition.

(2) Where the petitioning creditor referred to in subsection (1) is a secured creditor, the petitioning creditor shall in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of a receiving order being made against the debtor or give an estimate of the value of his security.

(3) Where the petitioning creditor gives an estimate of the value of his security, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

(4) The petition shall be verified by affidavit of the petitioner or by someone duly authorised on his behalf having personal knowledge of the facts alleged in the petition.

(5) Where the petition is attested—

(a) in Nigeria, the witness must be an attorney-at-law;

(b) out of Nigeria, the witness must be a Judge, Magistrate, a Consul or Consular Officer, or a Notary Public.

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

(7) 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 and of his then present address and description, shall in the petition, describe the debtor as previously residing or carrying on business at the address at which he was residing or carrying on business when the debt or liability was incurred

(8) A petitioning creditor—

(a) who is resident abroad;

(b) whose estate is vested in a trustee or an assignee under any law relating to bankruptcy;

(c) against whom a petition is pending under the Act; or

(d) 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.

(9) Where two or more petitions are filed against the same debtor or against joint debtors, the Court may consolidate the proceedings or any of them on such terms as the Court thinks fit.

(10) At the hearing of the petition, the Court shall require proof of the facts alleged in the petition and of the service of the petition, and, if satisfied with the proof, may make a receiving order.

(11) Where the Court is not satisfied with the proof of the facts alleged in the petition or of the service of the petition, or is satisfied by the evidence of the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, it shall dismiss the petition.

(12) Where there is more than one respondent to a petition, the Court may dismiss the petition with respect to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

(13) On a receiving order being made, the Court shall appoint a licensed trustee of the property of the bankrupt, having regard as far as the Court deems just, to the wishes of the creditors.

(14) Where the debtor appears at the hearing of the petition and denies the truth of the facts alleged in the petition, the Court may instead of dismissing the petition, stay all proceedings on the petition on such terms as it may see fit to impose on the petitioner as to costs or on the debtor to prevent alienation of his property and for such time as may be required for trial of the issue relating to the disputed facts.

(15) The Court may for other sufficient reason make an order staying the proceedings under a petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

(16) A petitioner who is resident outside Nigeria may be ordered to give security for costs to the debtor, and proceedings under the petition may be stayed until the security is furnished.

(17) Where proceedings on a petition have been stayed or have not been prosecuted with due diligence and effect, the Court may—

(a) if by reason of the delay or for any other cause it is deemed just, substitute or add as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act;

(b) make a receiving order on the petition of the other creditor; and

(c) shall dismiss on such terms as it may deem just the petition in the stayed or non prosecuted proceedings.

(18) Where proceedings on a petition have been stayed for trial on the question of the validity of the creditor's debt, and the 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 certified copy of the judgment shall give notice—

(a) to the petitioner, by post or otherwise, of the time and place fixed for the hearing of the petition;

(b) to the debtor, at the address given in the notice to dispute; and

(c) to the attorneys-at-law, for the creditor and debtor.

(19) A petition shall not be withdrawn without the leave of the Court.

(20) Any creditor whose claim against a partnership is sufficient to entitle him to present a bankruptcy petition may present a petition against anyone or more partners of the firm without including the others.

(21) Where a receiving order has been made against one member of a partnership, and any other petition against a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

(22) Where a debtor against whom a petition has been filed dies, the proceedings shall, unless the Court otherwise orders, be continued as if he were alive.

Committee's Recommendation:
That the provision in Clause 3 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 3 *do stand part of the Bill, put and agreed to.*

Clause 4: **Petition against estate of deceased.**

(1) Subject to section 5, a petition for a receiving order may be filed against the estate of a deceased debtor.

(2) After service of a petition for a receiving order on the legal representative of a deceased debtor, he shall not make payment of any monies or transfer any property of the deceased debtor, except as required for payment of the proper funeral and testamentary expenses, until the petition is disposed of otherwise, in addition to any penalties to which he may be subject, he is personally liable.

(3) Nothing in this section invalidates any payment or transfer of property made or any act or thing done by the legal personal representative in good faith before the service of a petition referred to in subsection (2).

Committee's Recommendation:
That the provision in Clause 4 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 4 *do stand part of the Bill, put and agreed to.*

Clause 5: **Costs of petitioner.**

(1) Where a receiving order is made, the costs of the petitioner shall be taxed and be payable out of the estate unless the Court otherwise orders.

(2) Where the proceeds of the estate are not sufficient for the payment of any costs incurred by the trustee, the Court may order the costs to be paid by the petitioner.

Committee's Recommendation:
That the provision in Clause 5 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 5 *do stand part of the Bill, put and agreed to.*

Clause 6: **Appointment of interim receiver.**

(1) The Court may, if it is shown to be necessary for the protection of the estate of a debtor, at any time after the filing of a petition for a receiving order and before a receiving order is made, appoint a licensed trustee as interim receiver of the property of the debtor or any part of that property and direct the licensed trustee to take immediate possession of the property on such undertaking being given by the petitioner as the Court may impose with respect to interference with the debtor's legal rights and with respect to damages in the event of the petition being dismissed.

(2) The interim receiver appointed under subsection (1) may, under the direction of the Court, take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value and exercise such control over the business of the debtor as the Court deems advisable, but the interim receiver shall not unduly interfere with the debtor in the carrying out of his business except as may be necessary for conservatory purposes or to comply with the order of the Court.

Committee's Recommendation:
That the provision in Clause 6 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 6 do stand part of the Bill, put and agreed to.

Clause 7: Appointment of interim receiver where section 13 notice pending.

(1) Where the Court is satisfied that a notice is about to be sent or has been sent under section 13, the Court may, subject to subsection (3), appoint a trustee as interim receiver of all or any part of the debtor's property that is subject to the security to which the notice relates, for such term as the Court may determine.

(2) The Court may direct an interim receiver appointed under subsection (1) to do any or all of the following—

(a) take possession of all or part of the debtor's property mentioned in the appointment;

(b) exercise such control over that property, and over the debtor's business, as the Court considers advisable; and

(c) take such other action as the Court considers advisable.

(3) An appointment of an interim receiver may be made under subsection (1) only if it is shown to the Court to be necessary for the protection of—

(a) the debtor's estate; or

(b) the interests of the creditor who sent the notice under section 13.

Committee's Recommendation:
That the provision in Clause 7 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Appointment of interim receiver where notice of intention or proposal filed

(1) Where a notice of intention has been filed under section 30 or a proposal has been filed under section 44 (I), the Court may at any time thereafter, subject to subsection (3), appoint as interim receiver of all or part of the debtor's property, for such term as the Court may determine—

(a) the trustee under the notice of intention or proposal;

(b) another trustee; or

(c) the trustee under the notice of intention or proposal and another trustee jointly.

(2) The Court may direct an interim receiver appointed under subsection (1) to—

(a) carry out the duties set out in section 26 (18), in substitution for the trustee referred to in that subsection or jointly with that trustee;

(b) take possession of all or part of the debtor's property mentioned in the order of the Court;

(c) exercise such control over that property, and over the debtor's business, as the Court considers advisable; and

(d) take such other action as the Court considers advisable.

(3) An appointment of an interim receiver may be made under subsection (I) only if it is shown to the Court to be necessary for the protection of—

(a) the debtor's estate; or

(b) the interests of one or more creditors, or of the creditors generally.

Committee's Recommendation:
That the provision in Clause 8 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 8 *do stand part of the Bill, put and agreed to.*

Clause 9: Cost of interim receiver Secured creditors and receivers.

(1) Where an appointment of an interim receiver is made under section 9 or 10, the Court may make such order respecting the payment of fees and disbursements of the interim receiver as it considers proper, including an order giving the interim receiver a charge, ranking head of any or all secured creditors, over any or all of the assets of the debtor in respect of his claim for fees or disbursements; but the Court shall not make such an order unless it is satisfied that all secured creditors who would be materially affected by the order were given reasonable advance notification and an opportunity to make representations to the Court.

(2) With respect to interim receivers appointed under sections 8, 9, or 10—

(a) the form and content of their accounts;

(b) the procedure for the preparation and taxation of those accounts; and

(c) the procedure for the discharge of the interim receiver, shall be as prescribed.

(3) In subsection (1), "disbursements" do not include payments made in operating a business of the debtor.

Committee's Recommendation:
That the provision in Clause 9 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 9 do stand part of the Bill, put and agreed to.

Clause 10: **Who may be a receiver.**
Only a person who is licensed as a trustee under this Act may be appointed a receiver under a security agreement.

Committee's Recommendation:
That the provision in Clause 10 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: **Secured party to provide notice.**
(1) A secured creditor who intends to enforce a security on all or substantially all of—
(a) the inventory;

(b) the accounts receivable; or

(c) the other property, of a debtor that was acquired for, or is used in relation to a business carried on by the debtor, shall send to that debtor in the prescribed form and manner, a notice of that intention.

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the debtor consents to an earlier enforcement of the security.

(3) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

(4) This section does not apply, or ceases to apply—
(a) in respect of a secured creditor:
(i) whose right to realise or otherwise deal with his security is protected by section 55(3) or (4); or

(ii) in respect of whom a stay under section 55 has been lifted pursuant to section 57;

(b) where there is a receiver in respect of the debtor.

Committee's Recommendation:
That the provision in Clause 11 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: **Duties of receiver.**
A receiver shall—
(a) act honestly and in good faith;

(b) deal with the property of the debtor in a commercially reasonable manner;

(c) not later than ten days after becoming a receiver, send a notice of that fact, in the prescribed form and manner—

(i) to the Supervisor, accompanied by the prescribed fee;

(ii) where the debtor is bankrupt, to the trustee; and

(iii) where the debtor is not bankrupt, to the debtor, and to all creditors of the debtor that the receiver, after making reasonable efforts, has ascertained;

(d) send notice of his becoming a receiver to any creditor whose name and address he ascertains after sending the notice referred to in subparagraph (c) (iii);

(e) forthwith after taking possession or control, whichever occurs first, of property of a debtor, prepare a statement containing prescribed information relating to the receivership, and shall forthwith provide a copy of the statement to the Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor of the debtor who requests a copy at any time up to six months after the end of the receivership;

(f) in accordance with the Bankruptcy Rules, prepare interim reports relating to the receivership, and shall provide copies of those reports to the Supervisor, the debtor, the trustee, in the case of a bankrupt, and to any creditor of the debtor who requests a copy at any time up to six months after the end of the receivership; and

(g) prepare, forthwith after the completion of his duties as receiver, a final report and a statement of accounts, in the prescribed form and containing the prescribed information relating to the receivership, and forthwith provide a copy of that Report and statement of accounts to the Supervisor, the debtor, the trustee in the case of a bankrupt, and to any creditor of the debtor or the bankrupt who requests a copy at any time up to six months after the end of the receivership.

Committee's Recommendation:
That the provision in Clause 12 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Required action by receiver.
A receiver must—

(a) if appointed by instrument, act in accordance with the instrument and any directions by the Court;

(b) if appointed by a Court Order, act in accordance with the directions of the Court;

(c) not later than fourteen days after being appointed receiver, publish a notice of his appointment in one issue of a local daily newspaper;

(d) take into his custody or control the collateral in accordance with the security agreement or order providing for his appointment;

(e) deal with any property of the debtor in his possession or control in a commercially reasonable manner;

(f) open and maintain a bank account in his name as receiver for the deposit of all monies coming under his control as receiver;

(g) keep records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving collateral or other property of the debtor;

(h) prepare monthly summaries of accounts of his administration of the collateral and other property of the debtor—

(i) indicate on every business letter, invoice, contract, or similar document used or executed in connection with the receivership, that he is acting as a receiver.

Committee's Recommendation:
That the provision in Clause 13 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Rights of receiver.

A receiver—

(a) may, subject to the rights of secured creditors, receive the income from the property, pay the liability connected with the property, and realize the security interest of those on behalf of whom he is appointed; and

(b) may not, unless appointed a receiver manager or unless the Court orders otherwise, carry on the business of the debtor for more than fourteen days after his appointment.

Committee's Recommendation:
That the provision in Clause 14 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Duties of debtor.

A debtor shall, forthwith after being notified that there is a receiver in respect of any of his property, provide the receiver with the names and addresses of all creditors.

Committee's Recommendation:
That the provision in Clause 15 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 15 do stand part of the Bill, put and agreed to.

Clause 16: Receiver to provide notice of disposition.

(1) A receiver shall, not less than fourteen days before the disposition of the collateral in whole or in part, give notice of disposition in the prescribed form—

(a) to the debtor;

(b) to any person with a charge registered against the collateral;

(c) to any person who, as a creditor of the debtor, has given notice to the receiver of its interest in the collateral; and

(d) if the debtor is a corporation, to a director of the debtor.

(2) The notice under subsection (1) is not required if—

(a) the collateral is money, is perishable or, on reasonable grounds, is expected to decline significantly in value;

(b) the collateral is to be disposed of by sale on an organized market that handles large volumes of transactions between many different sellers and many different buyers; or

(c) the cost and care of storing the collateral is disproportionately large to the collateral's expected value.

Committee's Recommendation:
That the provision in Clause 16 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: **Personal liability of receiver.**
A receiver—

(a) is personally liable on any contract entered into by him in the performance of his functions, except to the extent that the contract otherwise provides; and

(b) is entitled in respect of the liability under paragraph (a), to an indemnity out of the assets of which he was appointed to be receiver.

Committee's Recommendation:
That the provision in Clause 17 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Clause 18: **Court order in respect of non-performance of duties.**
Where the Court, on the application of the Supervisor, the debtor, the trustee in the case of a bankrupt, a receiver or a creditor, is satisfied that the secured creditor, the receiver or the debtor is failing or has failed to carry out any duty imposed in this Part, the Court may make an order, on such terms as it considers proper—

(a) directing the secured creditor, receiver or debtor, as the case may be, to carry out that duty; or

(b) restraining the secured creditor or receiver, as the case may be, from realising or otherwise dealing with the property of the debtor until that duty has been carried out, or both.

Committee's Recommendation:
That the provision in Clause 18 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: **Court may order statement of accounts to be submitted for review.**
On the application of the Supervisor, the debtor, the trustee (in the case of a bankrupt) or a creditor, made within six months after the statement of accounts was provided to the Supervisor pursuant to section 14, the Court may order the receiver to submit the statement of accounts to the Court for review, and the Court may adjust, in such manner and to such extent as it considers proper, the fees and charges of the receiver as set out in the statement of accounts.

Committee's Recommendation:
That the provision in Clause 19 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 19 do stand part of the Bill, put and agreed to.

Clause 20: **Receiver may apply to Court for directions.**
A receiver may apply to the Court for directions in relation to any provision of this Part, and the Court shall give, in writing, such directions, if any, as it considers proper in the circumstances including—

(a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;

(b) an order determining the notice to be given to any person, or dispensing with notice to any person;

Court order in respect of non-performance of Duties Court may order statement of accounts to be submitted for review Receiver may apply to Court for directions.

(c) an order declaring the rights of persons before the Court or otherwise, or directing any person to do, or abstain from doing, anything;

(d) an order fixing the remuneration of the receiver or receiver-manager;

(e) an order requiring the receiver or receiver manager, or a person by or on behalf of whom he is appointed—

(i) to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the company;

(ii) to relieve any such person from any default on such terms as the Court thinks fit; and

(iii) to confirm any act of the receiver or receiver-manager; and

(f) an order giving direction on any matter in relation to the duties of the receiver or receiver-manager.

Committee's Recommendation:
That the provision in Clause 20 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

Clause 21: Provisions of Companies and Allied Matters Act to apply where debtor is a company.

Where the debtor is a corporation—

(a) the provisions of sections 389 to 400 of the Companies and Allied Matters Act 1990 shall apply in the absence of provisions relating thereto in this Act; and

(b) where the provisions of this Act are inconsistent with the provisions of sections 389 to 400 of the Companies and Allied Matters Act, 1990 this Act shall prevail.

Committee's Recommendation:
That the provision in Clause 21 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 21 do stand part of the Bill, put and agreed to.

Clause 22: Priorities of distribution in a receivership.

Except where the debtor is insolvent or the Court has ratified a proposal made to creditors under this Act, the priorities in receivership, of distribution of the property of a debtor shall be as established by Part 15, Chapter V of the Companies and Allied Matters Act, 1990.

Committee's Recommendation:
That the provision in Clause 22 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

PART IV - ASSIGNMENTS

Clause 23: Who may make an assignment.

(1) A bankcrupt or, if deceased, the insolvent's legal personal representative, may, with the leave of the Court, make an assignment of all his property for the general benefit of his creditors.

(2) The assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing—

(a) the property of the debtor divisible among his creditors;

(b) the names and addresses of all his creditors;

(c) the amounts of their respective claims; and

(d) the nature of the claim, whether secured, preferred or unsecured.

(3) The assignment made under subsection (1) shall be offered to the Supervisor, and it is in operative until filed with the Supervisor, who shall refuse to file the assignment unless it is in the prescribed form and accompanied by the sworn statement required by subsection (2).

(4) Where the Supervisor files the assignment made under subsection (1), the supervisor shall appoint as trustee a licensed trustee whom he shall, as far as possible, select by reference to the wishes of the most interested creditors if ascertainable at the time, and the Supervisor shall complete the assignment by inserting therein as grantee the name of the trustee.

(5) Where the Supervisor is unable to find a licensed trustee who is willing to act, the Supervisor shall, after giving the bankrupt five days notice, cancel the assignment.

(6) Where the bankrupt is not a corporation and in the opinion of the Supervisor the realisable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed ten thousand dollars or such other amount as is prescribed, the provision of this Act relating to the summary administration of estates shall apply.

(7) In the determination of the realisable assets of a bankrupt for the purpose of subsection (6), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt before the bankrupt's discharge.

(8) The Supervisor may direct that subsection (6) shall cease to apply in respect of the bankrupt where the Supervisor determines that—

(a) the realisable assets of the bankrupt, after the claims of secured creditors are deducted, exceed three hundred thousand naira or the amount prescribed, as the case may be; or

(b) the costs of realisation of the assets of the bankrupt are a significant proportion of the realisable value of the assets, and the Supervisor considers that such a direction is appropriate.

Committee's Recommendation:
That the provision in Clause 23 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

PART V - PROPOSALS

Clause 24: Who may make a proposal.

(1) A proposal may be made by—

(a) an insolvent person;

(b) a receiver, but only in relation to an insolvent person;

(c) a liquidator of an insolvent person's property;

(d) a bankrupt; and

(e) a trustee of the estate of a bankrupt.

(2) Subject to subsection (3), a proposal must be made to the creditors generally, either as a group or separated into classes as provided in the proposal, and may also be made to secured creditors in respect of any class of secured claims.

(3) Where a proposal is made to one or more secured creditors in respect of secured claims of a particular class, the proposal must be made to all secured creditors in respect of the secured claims of that class.

(4) Secured claims may be included in the same class where the interests of the creditors holding those claims are sufficiently similar to give them a commonality of interest, taking into account—

(a) the nature of the debts giving rise to the claims;

(b) the nature and priority of the security in respect of the claims;

(c) the remedies available to the creditors in the absence of the proposal, and the extent to which the creditors would recover their claims by exercising those remedies;

(d) the treatment of the claims under the proposal, and the extent to which the claims would be paid under the proposal; and

(e) such further criteria, consistent with those set out in paragraphs (a) to (d), as may be prescribed.

(5) The Court may, on application made at any time after a notice of intention or a proposal is filed, determine in accordance with subsection (4), the classes of secured claims appropriate to a proposal, and the class into which any particular secured claim falls.

(6) Subject to section 27, as regards included secured creditors, any creditor may respond to the proposal as made to the creditors generally, by filing with the trustee a proof of claim in the manner provided for in—

(a) sections 115 to 117, in the case of unsecured creditors; or

(b) sections 115 to 125, in the case of secured creditors.

(7) In the following sections in this Part, a reference to an unsecured creditor shall be deemed to include a secured creditor who has filed a proof of claim under subsection (6), and a reference to an unsecured claim shall be deemed to include that secured creditor's claim.

(8) All questions relating to a proposal, except the question of accepting or refusing the proposal, shall be decided by ordinary resolution of the creditors to whom the proposal was made.

(9) Proceedings for a proposal shall be commenced in the case of an insolvent person by lodging with a licensed trustee, and in the case of a bankrupt by lodging with the trustee of the estate, a copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed, signed by the person making the proposal and the proposed sureties if any, and—

(a) if the person in respect of whom the proposal is made is bankrupt, the statement of affairs referred to in section 149 (e); or

(b) if the person in respect of whom the proposal is made is not bankrupt, a statement showing the financial position of the person at the date of the proposal, verified by affidavit as being correct to the belief and knowledge of the person making the proposal.

(10) A proposal made in respect of a bankrupt shall be approved by the inspectors before any further action is taken on the proposal.

(11) No proposal or any security or guarantee tendered with the proposal may be withdrawn pending the decision of the creditors and the Court.

(12) Subsection (11) shall not be construed as preventing an insolvent person in respect of whom a proposal has been made from subsequently making an assignment.

(13) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable the trustee to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor's financial difficulties or insolvency and report the result of the appraisal and investigation to the meeting of the creditors.

(14) The trustee shall, when filing a proposal under section 44 (1), file with the proposal—

(a) a statement indicating the projected cashflow of the insolvent person for the expected duration of the proposal in this section referred to as them "cash flow statement", prepared by the person making the proposal, reviewed for its reasonableness by the trustee and signed by the trustee and the person making the proposal;

(b) a report on the reasonableness of the cashflow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the person making the proposal regarding the preparation of the cash-flow statement, in the prescribed form, prepared and signed by the person making the proposal.

(15) Subject to subsection (16), any creditor may obtain a copy of the cash flow statement on request made to the trustee.

(16) The Court may order that a cash-flow statement or any part of that statement not be released to some or all of the creditors pursuant to subsection (15) where it is satisfied that—

(a) such release would unduly prejudice the insolvent person; and

(b) non-release would not unduly prejudice the creditor or creditors in question.

(17) If the trustee acts in good faith and takes reasonable care in reviewing the cash flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash flow statement.

(18) Subject to any direction of the Court under section 27 (2) (a), the trustee under a proposal in respect of an insolvent person shall, for the purpose of monitoring the business and financial affairs, have access to and examine the property of the insolvent person, including the premises, books, records and other financial documents, to the extent necessary to adequately assess the business and financial affairs of the insolvent person, from the filing of the proposal until the proposal is approved by the Court or the insolvent person becomes bankrupt, and shall—

(a) file a report on the state of the business and financial affairs of the insolvent person containing any prescribed information:

(i) with the Supervisor forthwith after ascertaining any material adverse change in the insolvent person's projected cash flow or financial circumstances of the insolvent person; and

(ii) with the Court at such other times as the Court may order; and

(b) send a report on the state of the business and financial affairs of the insolvent person, containing any prescribed information, to the creditors and the Supervisor, in the prescribed manner, at least ten days before the meeting of creditors referred to in section 32(1).

(19) An interim receiver who has been directed under section 10 (2) to carry out the duties set out in subsection (18) in substitution for the trustee shall deliver a report on the state of business and financial affairs, of the insolvent person, containing any prescribed information, to the trustee at least three days before the meeting of creditors referred to in section 32(1).

(20) The Court may, on application by the trustee, the interim receiver, if any, appointed under section 10 or a creditor, at any time before the meeting of creditors, declare that the proposal is deemed to have been refused by the creditors if the Court is satisfied that—

(a) the debtor has not acted, or is not acting, in good faith and with due diligence;

(b) the proposal will not likely be accepted by the creditors; or

(c) the creditors as a whole would be materially prejudiced if the application under this subsection is rejected.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

Clause 25: Filing of proof of secured claim.

(1) Subject to subsections (2) to (4), a secured creditor to whom a proposal has been made in respect of a particular secured claim may respond to the proposal by filing with the trustee a proof of secured claim in the prescribed form, and may vote on all questions relating to the proposal, in respect of that entire claim, and sections 115 to 117 apply, in so far as they are applicable, with such modifications as the circumstances require, to proofs of secured claim.

(2) Where a proposal made to a secured creditor in respect of a secured claim includes a proposed assessed value of the security in respect of the claim, the secured creditor may file with the trustee a proof of secured claim in the prescribed form, and may vote as a secured creditor on all questions relating to the proposal in respect of an amount equal to the lesser of—

(a) the amount of the claim; and

(b) the proposed assessed value of the security.

(3) Where the proposed assessed value is less than the amount of the claim of the secured creditor, the secured creditor may file with the trustee a proof of claim in the prescribed form, and may vote as an unsecured creditor on all questions relating to the proposal in respect of an amount equal to the difference between the amount of the claim and the proposed assessed value.

(4) Where a secured creditor is dissatisfied with the proposed assessed value of his security, the secured creditor may apply to the Court within fifteen days after the proposal is sent to the creditors, to have the proposed assessed value revised, and the Court may revise the proposed assessed value, in which case the revised value applies for the purposes of this Part.

(5) Where no secured creditor having a secured claim of a particular class files a proof of secured claim at or before the meeting of creditors, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

Committee's Recommendation:
That the provision in Clause 25 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

Clause 26: **Where secured creditor may not vote.**
A secured creditor who has refused a proposal in respect of a particular secured claim in respect of that claim may not file a proof of secured claim in respect of that claim.

Committee's Recommendation:
That the provision in Clause 26 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: **Secured claims upon bankruptcy.**
On the bankruptcy of an insolvent person who made a proposal to one or more secured creditors in respect of secured claims, any proof of secured claim filed pursuant to section 27 ceases to be valid or effective, and sections 103 and 118 to 135 apply in respect of a proof of claim filed by any secured creditor in the bankruptcy.

Committee's Recommendation:
That the provision in Clause 27 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

Clause 28: Notice of intention.

(1) Before lodging a copy of a proposal with a licensed trustee, an insolvent person may file a notice of intention, in the prescribed form, with the Supervisor stating—

(a) the insolvent person's intention to make a proposal;

(b) the name and address of the licensed trustee who has consented, in writing, to act as the trustee under the proposal; and

(c) the names of the creditors with claims amounting to seven thousand five hundred naira or more and the amounts of their claims as known or shown by the debtor's books, and attaching to the proposal a copy of the consent referred to in paragraph (b).

(2) Within ten days after filing a notice of intention under subsection (1), of this section the insolvent person shall file with the Supervisor—

(a) a statement indicating the project and cash-flow of the insolvent person (in this section referred to as the "cashflow statement"), prepared by the insolvent person, reviewed for its reasonableness by the trustee under the notice of intention, and signed by the trustee and the insolvent person;

(b) a report on the reasonableness of the cash-flow statement, in the prescribed form, prepared and signed by the trustee; and

(c) a report containing prescribed representations by the insolvent person regarding the preparation of the cash flow statement, in the prescribed form, prepared and signed by the insolvent person.

(3) Subject to subsection (4), any creditor may obtain a copy of the cash-flow statement on request made to the trustee.

(4) The Court may order that a cash-flow statement or any part thereof not be released to some or all of the creditors pursuant to subsection (3), where it is satisfied that—

(a) such release would unduly prejudice the insolvent person; and

(b) non-release would not unduly prejudice the creditor or creditors in question.

(5) If the trustee acts in good faith and takes reasonable care in reviewing the cash-flow statement, the trustee is not liable for loss or damage to any person resulting from that person's reliance on the cash-flow statement.

(6) Within five days after the filing of a notice of intention under subsection (1), the trustee named in the notice shall send to every known creditor, in the prescribed manner, a copy of the notice.

(7) Subject to any direction of the Court under section 10 (2) (a), the trustee, under a notice of intention, in respect of an insolvent person shall—

(a) for the purpose of monitoring the insolvent person's business and financial affairs, have access to and examine the insolvent person's property, including his premises, books, records and other financial documents, to the extent necessary to adequately assess the insolvent person's business and financial affairs, from the filing of the notice of intention until a proposal is filed or the insolvent person becomes bankrupt; and

(b) file a report on the state of the insolvent person's business and financial affairs, containing any prescribed information—

(i) with the Supervisor, forthwith after ascertaining any material adverse change in the insolvent person's projected cash-flow or financial circumstances; and

(ii) with the Court, at or before the hearing by the Court of any application under subsection (9) and at such other times as the Court may order.

(8) Where an insolvent person fails to comply with subsection (2) of this section, or where the trustee fails to file a proposal with the Supervisor under section 44 (1) of this section within a period of thirty days after the day the notice of intention was filed under subsection (1) of this section, or within any extension of that period granted under subsection (9) of this section—

(a) the insolvent person is, on the expiration of that period or that extension, as the case may be, deemed to have made an assignment;

(b) the trustee shall forthwith file a report thereof in the prescribed form with the receiver, who shall issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 25; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph

(b) is issued, send notice of the meeting of creditors under section 93, at which meeting the creditors may by ordinary resolution, notwithstanding section 186, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

(9) The insolvent person may, before the expiration of the thirty-day period mentioned in subsection (8) or any extension thereof granted under this subsection, apply to the Court for an extension, or further extension, as the case may be, of that period, and the Court may grant such extensions, not exceeding forty-five days for any individual extension and not exceeding in the aggregate five months after the expiration of the thirty-day period mentioned in subsection (8), if satisfied on each application that—

(a) the insolvent person has acted, and is acting, in good faith and with due diligence;

(b) the insolvent person would likely be able to make a viable proposal if the extension being applied for was granted; and

(c) no creditor would be materially prejudiced if the extension being applied for was granted.

(10) The Court may, on application by the trustee, the interim receiver, if any, appointed under section 10 (1), or a creditor, declare terminated, before its actual expiration, the thirty-day period mentioned in subsection (8) or any extension thereof granted under subsection (9), if the Court is satisfied that—

(a) the insolvent person has not acted, or is not acting, in good faith and with due diligence;

(b) the insolvent person will not likely be able to make a viable proposal before the expiration of the period in question;

(c) the insolvent person will not likely be able to make a proposal, before the expiration of the period in question, that will be accepted by the creditors, or rejected, and where the Court declares the period in question terminated, subsection 8(a) to (c) thereupon apply as if that period had expired

Committee's Recommendation:
That the provision in Clause 28 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Trustee to assist in preparation of proposal.
The trustee under a notice of intention shall, between the filing of the notice of intention and the filing of a proposal, advise on and participate in the preparation of the proposal, including negotiations thereon.

Committee's Recommendation:
That the provision in Clause 29 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 29 do stand part of the Bill, put and agreed to.

Clause 30: Meeting of creditors.
(1) The trustee shall call a meeting of creditors, to be held within twenty-one days after the filing of the proposal with the Supervisor under section 44(1), by sending in the prescribed manner to every known creditor and to the Supervisor, at least ten days before the meeting—

(a) a notice of the date, time and place of the meeting;

(b) a condensed statement of the assets and liabilities;

(c) a list of the creditors with claims amounting to two hundred and fifty dollars or more and the amounts of their claims as known or shown by the books of the debtor;

(d) a copy of the proposal;

(e) the prescribed forms, in blank, of—
(i) proof of claim;

(ii) in the case of a secured creditor to whom the proposal was made, proof of secured claim; and

(iii) proxy, if not already sent; and

(f) a voting letter as prescribed.

(2) The Supervisor, or the nominee thereof, shall be the Chairman of the meeting referred to in subsection (1) and shall decide any questions or disputes arising at the meeting, and any creditor may appeal any decision of the meeting to the Court.

Committee's Recommendation:
That the provision in Clause 30 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: **Adjournment of meeting.**
Where the creditors by ordinary resolution at the meeting at which a proposal is being considered so require, the meeting shall be adjourned to such time and place as may be fixed by the Chairman.

Committee's Recommendation:
That the provision in Clause 31 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

Clause 32: **Proven creditors may vote prior to meeting.**
Any creditor who has proved a claim, whether secured or unsecured, may indicate assent to or dissent from the proposal by mail, personal delivery, or printed electronic transmission delivered to the trustee prior to the meeting, and any assent or dissent, if received by the trustee at or prior to the meeting, has effect as if the creditor had been present and had voted at the meeting.

Committee's Recommendation:
That the provision in Clause 32 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 32 do stand part of the Bill, put and agreed to.

Clause 33: **Creditors may accept or refuse proposal.**
(1) The creditors may, in accordance with this section, resolve to accept or may refuse the proposal as made or as altered at the meeting or any adjournment of the meeting.

(2) For the purposes of subsection (1)—
(a) the following creditors with proven claims are entitled to vote:
(i) all unsecured creditors; and

(ii) those secured creditors in respect of whose secured claims the proposal was made;

(b) the creditors shall vote by class, according to the class of their respective claims, and for that purpose—

(i) all unsecured claims constitute one class, unless the proposal provides for more than one class of unsecured claims; and

(ii) the classes of secured claims shall be determined as provided by section 26(4);

(c) the votes of the secured creditors do not count for the purpose of this section, but are relevant only for the purpose of section 44 (4); and

(d) the proposal shall be deemed to be accepted by the creditors if, and only if, all classes of unsecured creditors vote for the acceptance of the proposal by a majority in number and two-thirds in value of the unsecured creditors of each class present, personally or by proxy, at the meeting and voting on the resolution.

(3) Where there is no quorum of secured creditors in respect of a particular class of secured claims, the secured creditors having claims of that class shall be deemed to have voted for the refusal of the proposal.

(4) A creditor who is related to the debtor may vote against but not for the acceptance of the proposal.

(5) The trustee, as a creditor, may not vote on the proposal.

Committee's Recommendation:
That the provision in Clause 33 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 33 do stand part of the Bill, put and agreed to.

Clause 34: **Proposal may include terms of supervision.**
At a meeting to consider a proposal, the creditors, with the consent of the debtor, may include such provisions or terms in the proposal with respect to the supervision of the affairs of the debtor as they may deem advisable.

Committee's Recommendation:
That the provision in Clause 34 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 34 do stand part of the Bill, put and agreed to.

Clause 35: **Creditors may appoint inspectors.**
The creditors may appoint one or more, but not exceeding five inspectors of the estate of the debtor, who shall have the powers of an inspector under this Act, subject to any extension or restriction of those powers by the terms of the proposal.

Committee's Recommendation:
That the provision in Clause 35 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 35 do stand part of the Bill, put and agreed to.

Clause 36: Effect of refusal of proposal by creditors.
Where the creditors refuse a proposal in respect of an insolvent person—
(a) the insolvent person is deemed to have made an assignment at the time of the refusal;

(b) the trustee shall forthwith file a report in respect of the refusal of the proposal in the prescribed form with the Supervisor, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 25; and

(c) the trustee shall either—
(i) forthwith call a meeting of creditors present at that time, which meeting shall be deemed to be a meeting called under section 93; or

(ii) if no quorum exists for the purpose of subparagraph (i), send a notice, within five days after the day the certificate mentioned in paragraph (b) is issued, of the meeting of creditors under section 93, and at either meeting the creditors may by ordinary resolution, notwithstanding section 186, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

Committee's Recommendation:
That the provision in Clause 36 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 36 do stand part of the Bill, put and agreed to.

Clause 37: Substitution of trustee by Court order.
Where a declaration has been made under section 26 (20) or 30 (10), the Court may, if it is satisfied that it would be in the best interests of the creditors to do so, appoint a trustee in lieu of the trustee appointed under the notice of intention or proposal that was filed.

Committee's Recommendation:
That the provision in Clause 37 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 37 do stand part of the Bill, put and agreed to.

Clause 38: Trustee to apply to Court for approval of proposal.
On acceptance of a proposal by the creditors, the trustee shall—
(a) within five days after the acceptance, apply to the Court for an appointment for a hearing of the application for the approval by the Court of the proposal;

(b) send a notice of the hearing of the application, in the prescribed manner and at least fifteen days before the date of the hearing, to the debtor, to every creditor who has proved a claim, whether secured or unsecured, to the person making the proposal and to the Supervisor;

(c) forward a copy of the report referred to in paragraph (d) to the Supervisor at least ten days before the date of the hearing; and

(d) at least two days before the date of the hearing, file with the Court, in the prescribed form, a report on the proposal.

Committee's Recommendation:
That the provision in Clause 38 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 38 do stand part of the Bill, put and agreed to.

Clause 39: Trustee to prepare report to Court.

(1) The Court shall, before approving the proposal, hear a report of the trustee in the prescribed form respecting the terms of the proposal and the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, the person making the proposal, any opposing, objecting or dissenting creditor and such further evidence as the Court may require.

(2) Where the Court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(3) Where any of the facts mentioned in section 165 or 169 are proved against the debtor, the Court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than twenty-five cents on the dollar on all the unsecured claims provable against the estate of the debtor or such percentage thereof as the Court may direct.

Committee's Recommendation:
That the provision in Clause 39 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 39 do stand part of the Bill, put and agreed to.

Clause 40: Payment of preferred claims and trustee's costs.

(1) No proposal shall be approved by the Court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

(2) No proposal in respect of an employer shall be approved by the Court unless—

(a) it provides for payment to the employees and former employees, immediately after the Court approval of the proposal of amounts equal to the amounts that they would be qualified to receive under section 127 (1) (c), if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of

intention was filed, as well as wages, salaries, communications or compensation for services rendered after that date and before the Court approval of the proposal, together with, in the case of travelling salesmen, disbursements properly incurred by those salesmen in and about the bankrupt's business during the same period; and

(b) the Court is satisfied that the employer can and will make the payments as required under paragraph (a).

(3) For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in subsection (2) (a).

(4) All monies payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

(5) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner set out in subsection (4).

(6) Section 137 applies to all distributions made to the creditors by the trustee pursuant to subsection (4) or (5).

(7) Subject to subsections (1), (2) and (3), the Court may either approve or refuse to approve the proposal.

Committee's Recommendation:
That the provision in Clause 40 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 40 do stand part of the Bill, put and agreed to.

Clause 41: Where proposal approved by Court made by bankrupt.

(1) The approval by the Court of a proposal made after bankruptcy operates to annul the bankruptcy and to revest in the debtor, or in such other person as the Court may approve, all the right, title and interest of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide.

(2) Where the Court refuses to approve a proposal in respect of an insolvent person, a copy of which has been filed under section 44—

(a) the insolvent person is deemed to have made an assignment at the time of the refusal;

(b) the trustee shall forthwith file a report in respect of the refusal of the proposal in the prescribed form with the Supervisor, who shall then issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 25; and

(c) the trustee shall, within five days after the day the certificate mentioned in paragraph (b) is issued, send notice of the meeting of creditors under section 93, at which meeting the creditors may by ordinary resolution, notwithstanding section 186, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

(3) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the trustee, shall be allowed out of the estate of the debtor if the Court refuses to approve the proposal.

Committee's Recommendation:
That the provision in Clause 41 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 41 do stand part of the Bill, put and agreed to.

Clause 42: Trustee to file proposal with Supervisor.

(1) Where a proposal is made in respect of an insolvent person, the trustee shall file a copy of the proposal with the Supervisor.

(2) Except in respect of claims referred to in section 192 (11), where a proposal is made in respect of an insolvent person, the time with respect to which the claims of creditors shall be determined is the time of the filing of—

(a) the notice of intention; or

(b) the proposal, if no notice of intention was filed.

(3) Except in respect of claims referred to in section 192 (11), where a proposal is made in respect of a bankrupt, the time with respect to which the claims of creditors shall be determined is the date on which the debtor became bankrupt.

(4) A proposal accepted by the creditors and approved by the Court is binding on the creditors in respect of—

(a) all unsecured claims; and

(b) the secured claims in respect of which the proposal was made and that were in classes in which the secured creditors voted for the acceptance of the proposal by a majority in number and two-thirds in value of the secured creditors present, personally or by proxy, at the meeting and voting on the resolution to accept the proposal, but does not release the insolvent person from the debts and liabilities referred to in section 170, unless the creditor assents to so releasing the insolvent person.(5) The acceptance of a proposal by a creditor does not release any person who would not be released under this Act by the discharge of the debtor.

Committee's Recommendation:
That the provision in Clause 42 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43: Default in performance of proposal.

Where—

(a) default is made in the performance of any provision in a proposal;

(b) the default is not waived—

(i) by the inspectors; or

(ii) if there are no inspectors, by the creditors; and

(c) the default is not remedied by the insolvent person within the prescribed time, the trustee shall, within such time and in such form and manner as are prescribed, so inform all the creditors and the Supervisor.

Committee's Recommendation:

That the provision in Clause 43 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 43 do stand part of the Bill, put and agreed to.

Clause 44: Court may annul the proposal.

(1) Where default is made in the performance of any provision in a proposal, or where it appears to the Court that the proposal cannot continue without injustice or undue delay or that the approval of the Court was obtained by fraud, the Court may, on application with such notice as the Court may direct to the debtor, and if applicable to the trustee and to the creditors, annul the proposal.

(2) An order made under subsection (1) shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything done under or in pursuance of the proposal, and notwithstanding the annulment of the proposal, a guarantee given pursuant to the proposal remains in full force and effect in accordance with its terms.

(3) A proposal, although accepted or approved, may be annulled by order of the Court at the request of the trustee or of any creditor whenever the debtor is afterwards convicted of any offence under this Act.

(4) On the annulment of a proposal, the debtor shall be deemed to have made an assignment and the order annulling the proposal shall so state.

(5) Where an order annulling a proposal has been made, the trustee shall, within five days after the order is made, send notice of the meeting of creditors under section 93, at which meeting the creditors may by ordinary resolution, notwithstanding section 186, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

(6) Where an order annulling the proposal described in subsection (5) has been made, the trustee shall file a report thereof in the prescribed form with the Supervisor, who shall then issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 25.

Committee's Recommendation:
That the provision in Clause 44 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 44 do stand part of the Bill, put and agreed to.

Clause 45: **Date of assignment where Court approval not obtained.**
For greater certainty, where an insolvent person in respect of whom a proposal has been filed under section 44 makes an assignment at any time before the Court has approved the proposal, the date of the bankruptcy is the date of the filing of the assignment.

Committee's Recommendation:
That the provision in Clause 45 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 45 do stand part of the Bill, put and agreed to.

Clause 46: **Court to value claims where creditor participation required.**
A proposal made conditional on the purchase of shares or securities or on any other payment or contribution by the creditors shall provide that the claim of any creditor who elects not to participate in the proposal shall be valued by the Court and shall be paid in cash on approval of the proposal.

Committee's Recommendation:
That the provision in Clause 46 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 46 do stand part of the Bill, put and agreed to.

Clause 47: **Agreement not to be terminated or altered.**
(1) Where a notice of intention or a proposal has been filed in respect of an insolvent person, no person may terminate or amend any agreement with the insolvent person, or claim an accelerated payment under any agreement with the insolvent person by reason only that—
(a) the insolvent person is insolvent; or

(b) a notice of intention or a proposal has been filed in respect of the insolvent person.

(2) Where the agreement referred to in subsection (1) is a lease or a licensing agreement, subsection (1) shall be read as including the following paragraph:
"(c) the insolvent person has not paid rent or royalties, as the case may be, or other payments of a similar nature, in respect of a period preceding the filing of—
(i) the notice of intention, if one was filed; or

(ii) the proposal, if no notice of intention was filed".

(3) Where a notice of intention or a proposal has been filed in respect of an insolvent person, no service provider may discontinue service to that insolvent person by reason only that—
(a) the insolvent person is insolvent;

(b) a notice of intention or a proposal has been filed in respect of the insolvent person; or

(c) the insolvent person has not paid for services rendered, or material provided, before the filing of the proposal.

(4) Nothing in subsections (1) to (3) shall be construed—

(a) as prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after—

(i) the notice of intention, if one was filed; or

(ii) the proposal, if no notice of intention was filed; or

(b) as requiring the further advance of money or credit.

(5) Any provision in an agreement that has the effect of providing for or permitting anything that in substance, is contrary to subsections (1) to (3) is of no force or effect.

(6) The Court may, on application by a party to an agreement or by a service provider, declare that subsections (1) to (3) do not apply or apply only to the extent declared by the Court, where the applicant satisfies the Court that the operation of those subsections would be likely to cause significant financial hardship.

(7) Subsection (1) does not apply—

(a) in respect of an eligible financial contract; or

(b) to prevent a Nigeria clearing agent or group clearer from ceasing to act as such for an insolvent person.

(8) In subsections (7) and (9), "eligible financial contract" means—

(a) a currency or interest rate swap agreement;

(b) a basis swap agreement;

(c) a spot, future, forward, or other foreign exchange agreement;

(d) a cap, collar or floor transaction;

(e) a commodity swap;

(f) a forward rate agreement;

(g) a repurchase or reverse repurchase agreement;

(h) a spot, future, forward or other commodity contract—

(i) an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities;

(j) any derivative, combination or option in respect of, or agreement similar to, an agreement or contract referred to in paragraphs (a) to (i);

(k) any master agreement in respect of any agreement or contract referred to in paragraphs (a) to 0);

(l) any master agreement in respect of a master agreement referred to in paragraph (k);

(m) a guarantee of the liabilities under an agreement or contract referred to in paragraphs (a) to (I); or

(n) any agreement of a kind prescribed.

(9) For greater certainty, where an eligible financial contract entered into before the filing in respect of an insolvent person of—

(a) a notice of intention; or

(b) a proposal, where no notice of intention was filed, is terminated on or after that filing, the setting off of the obligations between the insolvent person and the other parties to the eligible financial contract, in accordance with its provisions, shall be permitted; and if net termination values determined in accordance with the eligible financial contract are owed by the insolvent person to another party to the eligible financial contract, that other party shall be deemed, for the purposes of section 55, to be a creditor of the insolvent person with a claim provable in bankruptcy in respect of those net termination values.

(10) In this section—

"basis swap agreement" means an interest rate swap in which contracting parties exchange obligations to make interest rate payments;

"cap transaction" means an agreement providing the right to benefit from changes in interest or currency rate involving the setting of a maximum or upper limit;

"collar transaction" means an agreement providing the right to benefit from changes in interest or currency rate involving the setting of both a minimum or lower limit and a maximum or upper limit;

"commodity swap" means a lending arrangement in which repayment is in a commodity or is based on a commodity price;

"currency swap agreement" means a transaction in which two counter-parties exchange specific amounts of two different currencies at the outset and repay over time in accordance with a predetermined rule that reflects interest payments and possible amortization of principal;

"floor transaction" means an agreement providing the right to benefit from changes in interest or currency rate involving the setting of a maximum or upper limit;

"forward agreement" means a cash contract in which two parties agree to the exchange of an asset to be delivered by the seller to the buyer at a specific future date;

"future contract" means a contract under which one party agrees to deliver to the other party on a specified future date, a specified asset at a price agreed at the time of the contract and payable on the future date;

"interest rate swap agreement" means an agreement between two parties to exchange series payments based on an agreed principal amount;

"master agreement" means a standard agreement that covers all transactions between the parties;

"net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions;

"repurchase agreement" means a financial agreement in which a dealer or other holder of government securities sells the securities to a lender and agrees to repurchase them at an agreed future date at an agreed price;

"reverse purchase agreement" means an overnight or similar term cash equivalent investment that is collaterised by transfer of ownership in a security;

"spot agreement" means an arrangement for expected annual immediate delivery of a currency commodity at a stated rate of exchange or price.

Committee's Recommendation:
That the provision in Clause 47 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 47 do stand part of the Bill, put and agreed to.

Clause 48: **Certificate of performance.**
Where a proposal is fully performed, the trustee shall give a certificate to that effect, in the prescribed form, to the debtor and to the Supervisor.

Committee's Recommendation:
That the provision in Clause 48 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 48 do stand part of the Bill, put and agreed to.

Clause 49: **Mutatis mutandis provisions.**
All the provisions of this Act, in so far as they are applicable, apply, with such modifications as the circumstances require, to proposals made under this Part.

Committee's Recommendation:
That the provision in Clause 49 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 49 do stand part of the Bill, put and agreed to.

PART VI - PROPERTY OF THE BANKRUPT

Clause 50: **Property of a bankrupt.**
The property of a bankrupt divisible among his creditors shall not comprise—

(a) property held by the bankrupt in trust for any other person; or

(b) any property that as against the bankrupt is prescribed to be exempt from execution or seizure, but it shall comprise:

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before the discharge of the bankrupt; and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for the benefit of the bankrupt.

Committee's Recommendation:
That the provision in Clause 50 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 50 do stand part of the Bill, put and agreed to.

Clause 51: Excess income of individual bankrupts to be as prescribed.

(1) Standards for determining the portion of the total income of an individual bankrupt that exceed that which is necessary to enable the bankrupt to maintain a reasonable standard of living shall be as prescribed.

(2) The trustee shall:

(a) having regard to the Bankruptcy Rules and to the personal and family situation of the bankrupt, fix the amount that the bankrupt is required to pay to the estate of the bankrupt;

(b) inform the Supervisor in writing of the amount fixed under paragraph (a); and

(c) take reasonable measures to ensure that the bankrupt complies with the requirement to pay.

(3) The trustee may, at any time, amend an amount fixed under subsection (2), to take into account:

(a) material changes that have occurred in the personal or family situation of the bankrupt; or

(b) a recommendation made by the Supervisor under subsection (4)

(4) Where the Supervisor determines that the amount required to be paid by the bankrupt under subsection (2) or (3) is substantially not in accordance with the applicable standards established under subsection (1), the Supervisor shall recommend to the trustee and to the bankrupt an amount required to be paid that the Supervisor determined is in accordance with the applicable standards.

(5) Where the trustee and the bankrupt are not in agreement with the amount that the bankrupt is required to pay under subsection (2) or (3), the trustee shall, forthwith, in the prescribed form, send to the Supervisor a request that the matter be determined by mediation and send a copy of the request to the bankrupt.

(6) On the request in writing of a creditor made within thirty days after the date of bankruptcy or an amendment referred to in subsection (3), the trustee shall, within the five days following the thirty-day period, send to the Supervisor a request in the prescribed form that the matter of the amount the bankrupt is required to pay under subsection (2) or (3) be determined by mediation and send a copy of the request to the bankrupt and the creditor.

(7) A mediation shall be in accordance with prescribed procedures.

(8) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in section 178 (2).

(9) Where:

(a) the trustee has not implemented a recommendation made by the Supervisor under subsection (4);

(b) the issue submitted to mediation requested under subsection (5) or (6) is not resolved; or

(c) the bankrupt fails to comply with the requirement to pay as determined under this section, the trustee may, on the request of the inspectors, any of the creditors or the Supervisor, apply to the Court for the hearing of the matter, and the Court may, on the hearing, in accordance with the standards established under subsection (1) and having regard to the personal and family situation of the bankrupt, by order, fix the amount that the bankrupt is required to pay to the estate of the bankrupt.

(10) The Court may fix an amount that is fair and reasonable:

(a) as salary, wages or other remuneration for the services being performed by a bankrupt for a person employing the bankrupt; or

(b) as payment for or commission in respect of any services being performed by a bankrupt for a person, where the person is related to the bankrupt, and the Court may, by order, determine the part of the salary, wages or other remuneration, or the part of payment or commission, that shall be paid to the trustee on the basis of the amount so fixed by the Court, unless it appears to the Court that the services have been performed for the benefit of the bankrupt and are not of any substantial benefit to the person for whom they were performed.

(11) On the application of any interested person, the Court may, at any time, amend an order made under this section to take into account material changes that have occurred in the personal or family situation of the bankrupt.

(12) An order of the Court made under this section may be served on a person from whom the bankrupt is entitled to receive money and in such case:

(a) the order binds the person to pay to the estate of the bankrupt the amount fixed by the order; and

(b) if the person fails to comply with the terms of the order, the Court may, on the application of the trustee, order the person to pay the trustee the amount of money that the estate of the bankrupt would have received had the person complied with the terms of the order.

(13) For the purposes of section 221, an application referred to in subsection (9) is deemed to be a proceeding for the benefit of the estate.

(14) For the purposes of this section:

(a) "total income" referred to in subsection (1) includes, notwithstanding section 52(b), all revenues of a bankrupt of whatever nature or source; and

(b) a requirement that a bankrupt pay an amount to the estate of the bankrupt that is enforceable against all property of the bankrupt, other than property referred to in section 52(b).

Committee's Recommendation:
That the provision in Clause 52 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 52 do stand part of the Bill, put and agreed to.

Clause 53: Where assignment of certain payments ineffectual Stay of proceedings.

(1) An assignment of existing or future wages made by a debtor before the debtor became bankrupt is of no effect in respect of wages earned after the bankruptcy.

(2) An assignment made by a debtor of existing or future amounts receivable as payment for or commission or professional fees in respect of services rendered by a debtor who is a natural person before the debtor became bankrupt is of no effect in respect of such amounts earned or generated after the bankruptcy.

Committee's Recommendation:
That the provision in Clause 53 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 53 do stand part of the Bill, put and agreed to.

Clause 54: Stay of proceedings upon filling of notice of intention or proposal.

(1) Subject to subsections (2) to (4) and section 57, on the filing of a notice of intention under section 30 (1) in respect of an insolvent person-

(a) no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged or the insolvent person becomes bankrupt; and

(b) no provision of a security agreement between the insolvent person and a secured creditor that provides, in substance, that on:

(i) the insolvent person's insolvency;

(ii) the default by the insolvent person of an obligation under the security agreement; or

(iii) the filing by the insolvent person of a notice of intention under section 30 (1) in respect of the insolvent person, the insolvent person ceases to have such rights to use or deal with assets secured under the agreement as the insolvent person would otherwise have, has any force or effect until the trustee has been discharged or the insolvent person becomes bankrupt.

(2) The stays provided by subsection (1) do not apply:

(a) to prevent a secured creditor who took possession of secured assets of the insolvent person for the purpose of realization before the notice of intention under section 30 was filed from dealing with those assets;

(b) unless the secured creditor otherwise agrees, to prevent a secured creditor who gave notice of intention under section 13 (1), to enforce that creditor's security against the insolvent person more than ten days before:

(i) a notice of intention was filed in respect of the insolvent person under section 30; or

(ii) the proposal was filed, if no notice of intention under section 30 was filed from enforcing that security; or

(c) to prevent a secured creditor who gave notice of intention under section 13(1) to enforce that creditor's security from enforcing the security if the insolvent person has, under section 13(2), consented to the enforcement action.

(3) Subject to sections 20, 69 and 118 to 125, the filing of a proposal under section 44(1) does not prevent a secured creditor to whom the proposal has not been made in respect of a particular security from realizing or otherwise dealing with that security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

(4) Subject to sections 20, 69 and 118 to 125 where secured creditors holding a particular class of secured claim voted for the refusal of a proposal, a secured creditor holding a secured claim of that class may henceforth realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Committee's Recommendation:
That the provision in Clause 54 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 54 do stand part of the Bill, put and agreed to.

Clause 55: Stay of proceedings upon bankrupt.

(1) Subject to subsection (2) and section 57, on the bankruptcy of any debtor, no creditor has any remedy against the debtor or the debtor's property or shall commence or continue any action, execution or other proceedings, for the recovery of a claim provable in bankruptcy, until the trustee has been discharged.

(2) Subject to sections 20, 69 and 118 to 125, the bankruptcy of a debtor does not prevent a secured creditor from realizing or otherwise dealing with his 70 security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed, unless the Court otherwise orders, but in so ordering the Court shall not postpone the right of the secured creditor to realize or otherwise deal with his security, except as follows:

(a) in the case of a security for a debt that is due at the date the bankrupt became bankrupt or that becomes due not later than six months thereafter, that right shall not be postponed for more than six months from that date; and

(b) in the case of a security for a debt that does not become due until more than six months after the date the bankrupt became bankrupt, that right shall not be postponed for more than six months from that date, unless all instalments of interest that are more than six months in arrears are paid and all other defaults of more than six months standing are cured, and then only so long as no instalment of interest remains in arrears or defaults remain unsecured for more than six months, but, in any event, not beyond the date at which the debt secured by the security becomes payable under the instrument or law creating the security.

Committee's Recommendation:
That the provision in Clause 55 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 55 do stand part of the Bill, put and agreed to.

Clause 56: Aggrieved creditor may apply to Court for removal of stay.
A creditor who is affected by the operation of section 55 or 56 may apply to the Court for a declaration that those sections no longer operate in respect of that creditor, and the Court may make such a declaration, subject to any qualifications that the Court considers proper, if it is satisfied:

(a) that the creditor or person is likely to be materially prejudiced by the continued operation of those sections; or

(b) that it is equitable on other grounds to make such a declaration.

Committee's Recommendation:
That the provision in Clause 56 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 56 do stand part of the Bill, put and agreed to.

Clause 57: Stay effectual against certain parties and claims.

(1) Sections 55 and 56 do not apply in respect of a claim referred to in section 112 (4).

(2) Notwithstanding subsection (1), no creditor with a claim referred to in section 112(4) has any remedy, or shall commence or continue any action, execution or other proceeding, against:

(a) property of a bankrupt that has vested in the trustee; or

(b) amounts that are payable to the estate of the bankrupt under section 53.

Committee's Recommendation:
That the provision in Clause 57 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 57 do stand part of the Bill, put and agreed to.

GENERAL PROVISIONS

Clause 58: Precedence of bankruptcy over certain creditors unless process Completed.

(1) Every receiving order and every assignment made in pursuance of this Act takes precedence over all judicial and other attachments, garnishments, certificates of judgment, judgments operating as executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditors or his agent, and except the rights of a secured creditor.

(2) An execution levied by seizure and sale of the property of a bankrupt is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the Marshall acquires a good title against the trustee.

Committee's Recommendation:
That the provision in Clause 58 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 58 do stand part of the Bill, put and agreed to.

Clause 59: Property bankrupt to vest in trustee.

(1) On a receiving order being made or an assignment being filed with the Supervisor, a bankrupt ceases to have any capacity to dispose or otherwise deal with his property, which shall, subject to this Act and to the rights of secured creditors, pass to and vest in the trustee named in the receiving order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer.

(2) Subject to section 213 (1), the trustee may exercise the right to transfer the property of the bankrupt to the same extent as the bankrupt might have exercised that right if he had not become bankrupt.

Committee's Recommendation:
That the provision in Clause 59 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 59 do stand part of the Bill, put and agreed to.

Clause 60: Trustee to avail himself of other rights.

The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

Committee's Recommendation:
That the provision in Clause 60 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 60 do stand part of the Bill, put and agreed to.

Clause 61: Delivery of seized property to trustee.

(1) Where an assignment or a receiving order has been made, the Marshal or other officer of any Court or other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the receiving order certified by the trustee as a true copy, forthwith deliver to the trustee all that property.

(2) Where the Sheriff has sold the property of a bankrupt or any part of that property, he shall deliver to the trustee the money so realized.

(3) Any property of a bankrupt under seizure for rent or taxes shall, on production of a copy of the receiving order or the assignment certified by the trustee as a true copy, be delivered forthwith to the trustee, but the costs of distress are a first charge on the property, and, if the property or any part thereof has been sold, the money realized from the sale less the costs of distress and sale be paid to the trustee.

Committee's Recommendation:
That the provision in Clause 61 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 61 do stand part of the Bill, put and agreed to.

Clause 62: Trustee may surrender lease or deal with leasehold interests.

(1) Where the bankrupt is a lessee of premises, the trustee, notwithstanding a condition, covenant or agreement in the lease, has the right to hold and retain the leased premises until the expiration of the tenancy on the same terms and conditions as the lessee might have held the premises, had no bankruptcy occurred.

(2) The tenancy of the leased premises shall terminate upon the trustee disclaiming the lease, but nothing shall prevent the trustee from transferring or disposing of a lease, leasehold property, or any interest of the lessee for the unexpired term to as full an extent as could have been done by the lessee had the bankruptcy not occurred.

(3) If the lease contains a covenant, condition or agreement that the lessee may not assign or sublet the premises without the leave or consent of the landlord or other person, the covenant, condition or agreement shall be of no effect in the case of such a transfer or disposition of the lease or leasehold property if the Court, on the application of the trustee and after notice of the application to the landlord, approves the transfer or disposition proposed to be made of the lease or leasehold property .

(4) The entry of the trustee into possession of the leased premises and the occupation of the premises by the trustee, while required for the purposes of the administration by the trustee, shall not be evidence of an intention on the part of the trustee to elect to retain the premises, nor effect the trustee's right to disclaim the lease.

(5) If the trustee elects to retain the benefits of the lease and after assigns the lease to a person approved by the Court, the liability of the trustee and of the estate of the debtor is, subject to the provisions of subsection (6), limited to the payment of rent for the period of time during which the trustee remains in possession of the leased premises.

(6) The landlord has a preferred claim for any costs of distress and arrears of rent not exceeding three months' rent accrued and due prior to the date of bankruptcy and not exceeding the realization by the trustee from the property on the premises under lease.

(7) The landlord may prove as a general creditor for all rent accrued and due at the date of bankruptcy plus any accelerated rent, not exceeding three months, that may be claimed under the lease, less the amount in subsection (6).

(8) Except as referred to in subsection (7), the landlord is not entitled to prove as a creditor for rent for any portion of the unexpired term of the lease, but the trustee shall pay to the landlord for the period during which the trustee actually occupies and uses the premises from and after the date of bankruptcy a rental calculated on the basis of the lease and payable in accordance with its terms, but any payment already made to the landlord as rent in advance in respect of that period, and any payment to be made to the landlord in respect of accelerated rent, shall be credited against the amount payable by the trustee for that period.

(9) Nothing in this section shall render the trustee personally liable beyond the assets of the debtor in possession of the trustee.

Committee's Recommendation:
That the provision in Clause 62 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 62 do stand part of the Bill, put and agreed to.

Clause 63: Receiving order and assignment may be registered.

(1) Every true copy of a receiving order certified by the Registrar or other officer of the Court that made it, and every true copy of an assignment certified by the Supervisor, may be registered by or on behalf of the trustee in respect of the whole or any part of real property that the bankrupt owns or in which he has any interest or estate in the appropriate registry in accordance with laws regarding same.

(2) Where the bankrupt is the registered owner of any land or charge, the trustee, on registration of the documents referred to in subsection (1), is entitled to be registered as owner of the land or charge charges mentioned in section 59 (1).

(3) Where a bankrupt owns any land or charge registered under any Act, or has or is believed to have Receiving order and assignment may be registered any interest or estate in that land or charge, and for any reason a copy of the receiving order or assignment has not been registered under subsection (1), a caveat or caution may be lodged with the official in charge of the appropriate registry by the trustee, and any registration

thereafter made in respect of the land or charge is subject to the caveat or caution unless it has been removed or cancelled under the provisions of the relevant statute.

(4) The person to whom a trustee tenders or causes to be tendered for registration any receiving order, assignment or other document shall register it according to the ordinary procedure for registering documents relating to real property.

(5) In the conveyance of real estate purchased from the trustee it shall not be necessary to join as parties with the trustee persons in whom the legal estate in any mortgage in fee or the legal interest in any mortgage term of years or any other legal or equitable lien or security is vested, but such conveyance when executed by the trustee shall be effectual to vest in the purchase the real estate purported to be conveyed as if the person having lien or security, whether the same come within the purchase money or not, had been made parties to and had executed the said conveyance and had thereby granted, transferred, surrendered or released the same.

(6) Every deed, conveyance, assignment, surrender or other assurance relating solely to freehold or leasehold property or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in, any real or personal property which is part of the estate of the bankrupt and which after the execution of the deed, conveyance, assignment, surrender or other assurance, either at law or in equity, is or remains the estate of the bankrupt or the trustee, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of the bankrupt or to any proceeding under the bankruptcy shall be exempt from stamp duty and property transfer tax.

Committee's Recommendation:
That the provision in Clause 63 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 63 do stand part of the Bill, put and agreed to.

Clause 64: Joint tenancy to revert to tenants in common.

(1) Where any interest of the bankrupt in any property at the date of bankruptcy was held in joint tenancy, the bankruptcy shall operate as a severance of the joint tenancy and a reversion to tenancy in common.

(2) Where a debtor:

(a) who is married is at the date of bankruptcy, the sole registered owner of the matrimonial home and any immediately related real property not exceeding one acre;

(b) is in a co-habitational relationship and is at the date of the bankruptcy, the sole registered owner of a dwelling house in which the other cohabiting partner resides and any immediately related real property not exceeding one acre, the spouse or co-habitant of the debtor shall be entitled, within ten days following the bankruptcy, to claim in the prescribed form a one-half interest in any net proceeds from a sale or disposition by the trustee of the property after satisfaction of any valid and enforceable charges registered in the appropriate registry.

Committee's Recommendation:
That the provision in Clause 64 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 64 do stand part of the Bill, put and agreed to.

Clause 65: Transactions valid unless prior registration.

Notwithstanding anything in this Act, a deed, conveyance, transfer, agreement for sale, mortgage, or charge made to or in favour of a bona fide purchaser or mortgagee for adequate valuable consideration and covering any real property affected by a receiving order or an assignment under this Act is valid and effectual according to the tenor thereof as fully and effectually and to all intents and purposes as if no receiving order or assignment had been made under this Act, unless the receiving order or assignment, or notice, or caution, has been registered against the property in the appropriate registry prior to the registration of the deed, conveyance, transfer, agreement for sale, mortgage, or charge in accordance with the relevant laws.

Committee's Recommendation:
That the provision in Clause 65 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 65 do stand part of the Bill, put and agreed to.

Clause 66: Where contributory indebted to bankrupt.

(1) Every shareholder or member of a bankrupt corporation is liable to contribute the amount unpaid on his shares of the capital or on his liability to the corporation, its members or creditors, as the case may be, made under the Act, charter, or instrument of incorporation of the company or otherwise.

(2) The amount that the contributor is liable to contribute under subsection (1) shall be deemed an asset of the corporation and a debt payable to the trustee forthwith on the bankruptcy of the corporation.

Committee's Recommendation:
That the provision in Clause 66 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 66 do stand part of the Bill, put and agreed to.

Clause 67: Banker to advise trustee of existence of account.

(1) Where a banker has ascertained that a person having an account with the banker is an undischarged bankrupt, it is his duty to inform the trustee of the existence of the account, and the banker shall not make any payment out of the account, except under an order of the Court or in accordance with instructions from the trustee, unless on the expiration of one month from the date of giving the information no instructions have been received from the trustee.

(2) Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a receiving order is made under this Act and any other person proving or claiming to prove a debt under such order, an account shall be taken of what is due from the one party to

the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid either side respectively.

(3) A person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit too the debtor notice on an act of bankruptcy committed by the debtor and available against him.

Committee's Recommendation:
That the provision in Clause 67 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 67 do stand part of the Bill, put and agreed to.

Clause 68: **Trustee may inspect property.**
Where property of a bankrupt is held as a pledge, pawn or other security, the trustee may give notice in writing of the trustee's intention to inspect the property, and the person so notified is not thereafter entitled to realize the security until the person has given the trustee a reasonable opportunity of inspecting the property and of exercising the trustee's right of redemption.

Committee's Recommendation:
That the provision in Clause 68 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 68 do stand part of the Bill, put and agreed to.

Clause 69: **Where trustee disposes property subject to an encumbrance.**
Where the trustee has seized or disposed of property in the possession or on the premises of a bankrupt without notice of any claim in respect of the property and it is made to appear that the property was not at the date of the bankruptcy the property of the bankrupt or was subject to an unregistered lien, a right of retention, a pledge or a charge, the trustee is not personally liable for any loss or damage arising from the seizure or disposal sustained by any person claiming the property or an interest in the property or for the costs of proceedings taken to establish a claim to the property, unless the Court is of the opinion that the trustee has been guilty of negligence with respect to the duties of the trustee in relation to the property.

Committee's Recommendation:
That the provision in Clause 69 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 69 do stand part of the Bill, put and agreed to.

Clause 70: **Persons claiming ownership interest in property of the bankrupt.**
(1) Where a person claims any property, or interest in property, in the possession of a bankrupt at the time of the bankruptcy, that person shall file with the trustee a proof of claim verified by affidavit giving the grounds on which the claim is based and sufficient particulars to enable the property to be identified.

(2) The trustee with whom a proof of claim is filed under subsection (1), shall within fifteen days after the filing of the claim or within thirty days after the first meeting of creditors, whichever is the later, either admit the claim and deliver possession of the property to the claimant or give notice in writing to the claimant that the claim is disputed with his reasons and, unless the claimant appeals to the Court within fifteen days after the mailing of the notice of dispute, the claimant shall be deemed to have abandoned or relinquished all his right to or interest in the property to the trustee who may sell or dispose of the property free of any lien, right, title or interest of the claimant.

(3) The onus of establishing a claim to or interest in property under this section is on the claimant.

(4) The trustee may give notice in writing to any person to prove his claim to or interest in property under this section, and, unless that person files with the trustee a proof of a claim in the prescribed form within fifteen days after the mailing of the notice, the trustee may with the leave of the Court sell or dispose of the property free of any lien, right, title or interest of that person.

(5) No proceedings shall be instituted to establish a claim to, or to recover any right or interest in any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section.

(6) Nothing in this section shall be construed as extending the rights of any person other than the trustee.

Committee's Recommendation:
That the provision in Clause 70 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 70 do stand part of the Bill, put and agreed to.

Clause 71: Unpaid suppliers may prove for certain goods.

(1) Subject to this section, where a person, in this section referred to as the "supplier", has sold and delivered goods to another person, in this section referred to as the "purchaser", for use in relation to the business of the purchaser, and the purchaser has not fully paid for the goods, the supplier may have access to and repossess the goods at the expense of the supplier, and the purchaser, trustee or receiver shall release the goods, if:

(a) the supplier presents a written demand for repossession to the purchaser, trustee or receiver, in the prescribed form and containing the details of the transaction, within a period of thirty days after the delivery of the goods to the purchaser;

(b) at the time when the demand referred to in paragraph (a) is presented:

(i) the purchaser is bankrupt, or

(ii) there is a receiver in relation to the purchaser;

(c) at the time when the demand referred to in paragraph (a) is presented, the goods:

(i) are in the possession of the purchaser, trustee or receiver;

(ii) are identifiable as the goods delivered by the supplier and are not fully paid for;

(iii) are in the same state as they were on delivery;

(iv) have not been resold at arm's length; and

(v) are not subject to any agreement for sale at arm's length; and

(d) the purchaser, trustee or receiver does not, after the demand referred to in paragraph (a) is presented, pay to the supplier the entire balance owing.

(2) Where, at the time when the demand referred to in paragraph (a) is presented, the goods have been partly paid for, the right of the supplier to repossess under subsection (1) shall be read as a right:

(a) to repossess a portion of the goods proportional to the unpaid amount; or

(b) to repossess all of the goods on paying to the purchaser, trustee or receiver an amount equal to the partial payment previously made to the supplier.

(3) For the purpose of subsection (l)(b)(i), section 47 shall be disregarded and sections 38 (a) and 43(2)(a) shall both be read as follows:

(a) the insolvent person shall at the time of the refusal be deemed to have made an assignment; ".

(4) Where a notice of intention under section 30 or a proposal was filed in respect of the purchaser after the delivery of the goods to the purchaser and before there was a receiver in relation to the purchaser or the purchaser became bankrupt, the period between:

(a) the earlier of the filing of the notice of intention or proposal; and

(b) the earlier of the first day there was a receiver in relation to the purchaser or the day the purchaser became bankrupt, shall not be counted in determining the end of the thirty-day period referred to in subsection (1)(a).

(5) A supplier's right to repossess goods pursuant to this section expires if not exercised within ten days after the purchaser, trustee or receiver presents the supplier with a written notice admitting that right, unless the ten-day period is extended by mutual agreement.

(6) Notwithstanding any other Act or law, the right of the supplier to repossess goods pursuant to this section ranks above every other claim or right against the purchaser in respect of those goods, other than the right of a bona fide subsequent purchaser of the goods for value without notice that the supplier had demanded repossession of the goods.

(7) The purchaser, trustee or receiver may apply to the Court for directions in relation to any matter relating to this section, and the Court shall give, in writing, such directions, if any, as it considers proper in the circumstances.

(8) Where a supplier is aggrieved by an act, omission or decision of the purchaser, trustee or receiver, the supplier may apply to the Court and the Court may make such order as it considers proper in the circumstances.

(9) Nothing in subsection (7) or (8) precludes a person from exercising any right that the person may have under section 217(1) or 220.

(10) A supplier who repossess goods pursuant to this section is not entitled to be paid for those goods.

Committee's Recommendation:
That the provision in Clause 71 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 71 do stand part of the Bill, put and agreed to.

Clause 72: Claim of farmer or fisherman.

(1) Where:

(a) a farmer has sold and delivered products of agriculture, or a fisherman has sold and delivered products of the sea, to another person, in this section referred to as the "purchaser", for use in relation to the business of the purchaser;

(b) the products were delivered to the purchaser within the fifteen-day period preceding-

(i) the day on which the purchaser became bankrupt; or(ii) the first day on which there was a receiver in relation to the purchaser;

(c) as of the day referred to in subparagraph (b)(i) or (ii), the farmer or fisherman has not been fully paid for the products; and

(d) the farmer or fisherman files a proof of claim in the prescribed form in respect of the unpaid amount with the trustee or receiver, as the case may be, within thirty days after the day referred to in subparagraph (b)(i) or (ii), the claim of the farmer or fisherman for the unpaid amount in respect of the products is secured by a charge on all the inventory of or held by the purchaser as of the day referred to in subparagraph (b) (i) or (ii).

(2) The charge ranks above every other claim, right or charge against that inventory, regardless of when that other claim, right or charge arose, except a supplier's right to repossess goods pursuant to section 72, notwithstanding any other law.

(3) Where the trustee or receiver, as the case may be, takes possession of or in any way disposes of an inventory covered by the charge referred to in subsection (1), the trustee or receiver is liable for the claim of the farmer or fisherman to the extent of the net amount realized on the disposition of that inventory, after deducting the cost of realization; and is subrogated in and to all rights of the farmer or fisherman to the extent of the amounts paid to them by the trustee or receiver.

(4) In this section:
"aquatic plants and animals" means plants and animals that, at most stages of their development or life cycle, live in an aquatic environment;

"farm" means land in Nigeria used for the purpose of farming, livestock raising, dairying, bee-keeping, fruit growing, the growing of trees and all tillage of the soil;

"farmer" includes the owner, occupier, landlord and tenant of a farm;
"fish" includes shellfish, crustaceans and marine animals;

"fisherman" means a person whose business consists in whole or in part of fishing;

"fishing" means fishing for or catching fish by any method;

"products of agriculture" includes:
(a) vegetables, fruits and all other direct products of the soil; and

(b) honey, livestock, dairy products, eggs and all other indirect products of the soil; and

"products of the sea" includes fish of all kinds, marine organic and inorganic life and any substances extracted or derived from the sea.

(5) For the purposes of this section, each thing included in the following terms as defined in subsection (4), namely:
(a) "products of agriculture"; and

(b) "products of the sea"

comprises that thing in any form or state and any part thereof and any product or by-product thereof or derived therefrom.

(6) For the avoidance of doubt, "goods" in section 72 includes products of agriculture and products of the sea.

(7) Nothing in this section precludes a farmer or fisherman from exercising the right that that person may have under section 72 to repossess products of agriculture or products of the sea.

Committee's Recommendation:
That the provision in Clause 72 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 72 do stand part of the Bill, put and agreed to.

Clause 73: Sale of patented articles by trustee.
(1) Where any property of a bankrupt vesting in a trustee consists of patented articles that were sold to the bankrupt subject to any restrictions or limitations, the trustee is not bound by the restrictions or limitations but may sell and dispose of the patented articles free of the restrictions or limitations.

(2) Where the manufacturer or vendor of the patented articles referred to in subsection (1) objects to the disposition of them by the trustee as provided by this section and gives the trustee notice in writing of the objection before the sale or disposition of the patented articles, that manufacturer or vendor has the right to purchase the patented articles at the invoice prices of those articles, subject to any reasonable deduction for depreciation or deterioration.

Committee's Recommendation:

That the provision in Clause 73 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 73 do stand part of the Bill, put and agreed to.

Clause 74: Copyright works dealt with by bankrupt.

(1) Notwithstanding anything in this Act or in any other statute, the author's manuscripts and any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt shall, where-

(a) the work covered by the copyright has not been published and put on the market at the time of the bankruptcy and no expense has been incurred in connection with the work, revert and be delivered to the author or his heirs, and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void;

(b) the work covered by the copyright has in whole or in part been put into type and expenses have been incurred by the bankrupt, revert and be delivered to the author on payment of the expenses so incurred and the product of those expenses shall also be delivered to the author or his heirs and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void, but if the author does not exercise his rights under this paragraph within six months of the date of bankruptcy, the trustee may carry out the original contract; or

(c) the trustee at the expiration of six months from the date of the bankruptcy decides not to carry out the contract, revert without expenses to the author and any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void.

(2) Where, at the time of the bankruptcy referred to in subsection (1), the work was published and put on the market, the trustee is entitled to sell, or authorize the sale or reproduction of, any copies of the published work, or to perform or authorize the performance of the work, but:

(a) there shall be paid to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the bankrupt;

(b) the trustee is not, without the written consent of the author or his heirs, entitled to assign the copyright or transfer the interest or to grant any interest in the copyright by licence or otherwise, except on terms that will guarantee to the author or his heirs payment by way of royalties or share of the profits at a rate not less than the rate the bankrupt was liable to pay; and

(c) any contract or agreement between the author or his heirs and the bankrupt shall then terminate and be void, except with respect to the disposal, under this subsection, of copies of the work published and put on the market before the bankruptcy.

(3) The trustee shall offer in writing to the author or his heirs the right to purchase the manufactured or marketable copies of the copyright work comprised in the estate of the bankrupt at such price and on such terms and conditions as the trustee may deem fair and proper before disposing of the manufactured and marketable copies in the manner set out in this section.

Committee's Recommendation:
That the provision in Clause 74 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 74 do stand part of the Bill, put and agreed to.

Clause 75: Bankrupt's interest vests in purchaser upon sale by trustee Partnership property.
All sales of property made by a trustee vest in the purchaser all the legal and equitable estate of the bankrupt in the property.

Committee's Recommendation:
That the provision in Clause 75 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 75 do stand part of the Bill, put and agreed to.

Clause 76: Limited partnerships state interests.

(1) This Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

(2) Where a member of a partnership becomes bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, and any release by the partner of the debt or demand to which the action relates is void.

(3) Notice of the application for authority to commence an action under subsection (2) shall be given to the bankrupt's partner, who may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit from his share, he shall be indemnified against costs in respect of the action the Court directs.

Committee's Recommendation:
That the provision in Clause 76 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 76 do stand part of the Bill, put and agreed to.

Clause 77: State claims are unsecured.

(1) Notwithstanding any other law in relation to a bankruptcy or proposal, all provable claims, including secured claims of the State, rank as unsecured claims.

(2) Subsection (1) does not apply to claims that are secured by a security or privilege of a kind that can be obtained by persons other than the State pursuant to any law.

Committee's Recommendation:
That the provision in Clause 77 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 77 do stand part of the Bill, put and agreed to.

Clause 78: State security to be registered to be enforceable Settlements and Preferences.

(1) A security provided for in legislation for the sole or principal purpose of securing a claim of the State is valid in relation to a bankruptcy or proposal only if the security is registered, before the earliest date of:

(a) the date a petition is filed against the debtor;

(b) the date the debtor makes an assignment; and

(c) the date the debtor commences proceedings for a proposal pursuant to a prescribed system of registration.

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection is valid only in respect of amounts owing to the State at the time of that registration, plus any interest subsequently accruing on those amounts.

Committee's Recommendation:
That the provision in Clause 78 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 78 do stand part of the Bill, put and agreed to.

Clause 79: Settlements within one year void.

(1) Any settlement of property made within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the settlor and ending on the date that the settlor became bankrupt, both dates included, is void against the trustee.

(2) Any settlement of property made within the period beginning on the day that is five years before the date of the initial bankruptcy event in respect of the settlor and ending on the date that the settlor became bankrupt, both dates included, is void against the trustee if the trustee can prove that the settlor was, at the time of making the settlement, unable to pay all the

settlor's debts without the aid of the property comprised in the settlement or that the interest of the settlor in the . property did not pass on the executions thereof.

(3) This section does not extend to any settlement made:

(a) before and in consideration of marriage or in respect of a cohabitational relationship;

(b) in favour of a purchaser or encumbrancer in good faith and for valuable consideration; or

(c) on or for the spouse, cohabitant, or children of the settlor of property that has accrued to the settlor after the marriage or commencement of the cohabitational relationship in right of the settlor's spouse, cohabitant, or children.

Committee's Recommendation:
That the provision in Clause 79 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 79 do stand part of the Bill, put and agreed to.

Clause 80: Contracts in consideration of marriage.

(1) Any covenant or contract made by any person, hereinafter called "the settlor", in consideration of the settlor's marriage or cohabitational relationship either for the future payment of money for the benefit of the settlor's spouse, cohabitant or children, or for the future settlement on or for the settlor's spouse, cohabitant or children, of property wherein the settlor had not at the date of the marriage or the date of entering into such cohabitational relationship, any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's spouse or cohabitant is, if the settlor becomes bankrupt and the covenant or contract has not been executed at the date of the initial bankruptcy event in respect of the settlor, void against the trustee.

(2) Notwithstanding subsection (1), as far as it enables the persons entitled under the covenant or contract to claim a dividend in the settlor's bankruptcy proceedings under or in respect of the covenant or contract, but any such claim to a dividend shall be postponed until all claims of the other creditors have been satisfied.

Committee's Recommendation:
That the provision in Clause 80 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 80 do stand part of the Bill, put and agreed to.

Clause 81: Payments void subject to proof of certain facts.

(1) Any payment of money, not being payment of premiums on a policy of life insurance in favour of the spouse, child or children of the settlor, or any transfer of property made by the settlor in pursuance of a covenant or contract mentioned in section 81, is void against the trustee unless the person to whom the payment or transfer was made proves that:

(a) the payment or transfer was made more than six months before the date of the initial bankruptcy event in respect of the settlor;

(b) at the date of payment or transfer, the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) the payment or transfer was made in pursuance of a covenant or contract to payor transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract and was made within three months after the money or property came into the possession or under the control of the settlor.

(2) Where any payment or transfer mentioned in subsection (1) is declared void, the persons to whom it was made are entitled to claim for dividend under or in respect of the covenant or contract in like manner as it had not been executed at the date of the initial bankruptcy event

Committee's Recommendation:
That the provision in Clause 81 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 81 do stand part of the Bill, put and agreed to.

Clause 82: Assignment of book debts void.

(1) Where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part thereof and subsequently becomes bankrupt, the assignment of book debts is void against the trustee with respect to any book debts that have not been paid at the date of bankruptcy.

(2) This section does not apply to an assignment of book debts that is registered pursuant to any statute providing for the registration thereof if the assignment is valid in accordance with the statute.

(3) Nothing in this section renders void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made in good faith and for valuable consideration.

(4) For the purposes of this section, "assignment" includes assignment by way of security and other charges on book debts.

Committee's Recommendation:
That the provision in Clause 82 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 82 do stand part of the Bill, put and agreed to.

Clause 83: Preference voidable if made within three months.

(1) Every conveyance or transfer of property or charge made on the property, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any insolvent person in favour of any

creditor or of any person in trust for any creditor with a view to giving such creditor or any surety or guarantor for the debt due to such creditor a preference over the other creditors is, where it is made, incurred, taken or suffered within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date the insolvent person became bankrupt, both dates included, deemed fraudulent and void as against the trustee in the bankruptcy.

(2) Where any conveyance, transfer, charge, payment, obligation, or judicial proceeding mentioned in subsection (1) has the effect of giving any creditor a preference over other creditors, or over anyone or more of them, it shall be presumed, in the absence of evidence to the contrary, to have been made, incurred, taken, paid or suffered with a view to giving the creditor a preference over other creditors, whether or not it was made voluntarily or under pressure and evidence of pressure shall not be admissible to support the transaction.

(3) Subsection (2) does not apply in respect of a margin deposit made by a clearing member with a clearing house.

(4) In this section:
"clearing house" means a body that acts as an intermediary for its clearing members in effecting securities transactions;

"clearing member" means a person engaged in the business of effecting securities transactions who uses a clearing house as intermediary;

"creditor" includes a surety or guarantor for the debt due to the creditor;

"margin deposit" means a payment, deposit or transfer to a clearing house under the rules of the clearing house to assure the performance of the obligations of a clearing member in connection with security transactions, including, without limiting the generality of the foregoing, transactions respecting futures, options or other derivatives or to fulfil any of those obligations.

Committee's Recommendation:
That the provision in Clause 83 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 83 do stand part of the Bill, put and agreed to.

Clause 84: Preference to related party voidable if made within twelve months.

Where the conveyance, transfer, charge, payment, obligation or judicial proceeding mentioned in section 84 (1) is in favour of a person related to the insolvent person, the period referred to in section 84(1) shall be one year instead of three months.

Committee's Recommendation:
That the provision in Clause 84 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 84 do stand part of the Bill, put and agreed to.

Clause 85: Transaction between initial bankruptcy event and bankruptcy.

(1) No payment, delivery, conveyance, transfer, contract, dealing or transaction to, by or with a bankrupt made between the date of the initial bankruptcy event and the date of the bankruptcy is valid, except the following, which are valid if made in good faith, subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution, attachment or other process against property, and subject to the provisions of this Act respecting settlements, preferences and reviewable transactions:

(a) a payment by the bankrupt to any of the creditors of the bankrupt;

(b) a payment or delivery to the bankrupt;

(c) a conveyance or transfer by the bankrupt for adequate valuable consideration; and

(d) a contract, dealing or transaction, including any giving of security, by or with the bankrupt for adequate valuable consideration.

(2) The expression "adequate valuable consideration" in paragraph (l)(c) means a consideration of fair and reasonable money value with relation to that of the property conveyed, assigned or transferred, and in paragraph (1)(d) means a consideration of fair and reasonable money value with relation to the known or reasonably to be anticipated benefits of the contract, dealing or transaction.

(3) Where there have been mutual credit, mutual debts or other mutual dealings between a bankrupt and any other person proving or claiming to prove a debt in the bankruptcy, an account may be taken of what is due from one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

Committee's Recommendation:
That the provision in Clause 85 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 85 do stand part of the Bill, put and agreed to.

Clause 86: Proceeds from dealing with property obtained in voidable transaction.

(1) Where a person has acquired the property of a bankrupt under a transaction that is void or under a voidable transaction that is set aside and has sold, disposed of, realized or collected the property or any part thereof, the money or other proceeds, whether further disposed of or not, shall be deemed the property of the trustee.

(2) The trustee may recover the property or the value of the property or the money or proceeds from the property from the person who acquired it from the bankrupt or from any other person to whom he may have resold, transferred or paid over the proceeds of the property as fully and effectually as the trustee could have recovered the property if it had not been sold, disposed of, realized or collected.

(3) Notwithstanding subsection (1), where any person to whom the property has been sold or disposed of has paid or given in good faith adequate valuable consideration for the property, that person is not subject to the operation of this section but the trustee's recourse shall be solely against the person entering into the transaction with the bankrupt for recovery of the consideration so paid or given or the value of the property.

(4) Where the consideration payable for or on any sale or resale of the property or any part of the property remains unsatisfied, the trustee is subrogated to the rights of the vendor to compel payment or satisfaction.

Committee's Recommendation:
That the provision in Clause 86 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 86 do stand part of the Bill, put and agreed to.

Clause 87: Good faith transactions with bankrupts protected.

(1) All transactions by a bankrupt with any person dealing with the bankrupt in good faith and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate or interest in the property that by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to the transaction.

(2) For the purposes of this section, the receipt of any money, security or negotiable instrument for or by the order or direction of a bankrupt by his banker and any payment and any delivery of any security or negotiable instrument made to or by the order or direction of a bankrupt by his banker shall be deemed to be a transaction by the bankrupt with his banker dealing with him for value.

Committee's Recommendation:
That the provision in Clause 87 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 87 do stand part of the Bill, put and agreed to.

Clause 88: Reviewable transactions in year prior to initial bankruptcy event.

(1) Where a bankrupt sold, purchased, leased, hired, supplied or received property or services in a reviewable transaction within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, the Court may, on the application of the trustee, inquire into whether the bankrupt gave or received, as the case may be, fair market value in consideration for the property or services concerned in the transaction.

(2) Where the Court in proceedings under this section finds that the consideration given or received by the bankrupt in the reviewable transaction was conspicuously greater or less than the fair market value of the property or services concerned in the transaction, the Court may give judgment to the trustee against the other party to the transaction, against any other person being privy to the transaction with the bankrupt or against

all those persons for the difference between the actual consideration given or received by the bankrupt and the fair market value, as determined by the Court, of the property or services concerned in the transaction.

(3) In making an application under this section, the trustee shall state what in his opinion was the fair market value of the property or services concerned in the transaction and what in his opinion was the value of the actual consideration given or received by the bankrupt in the transaction, and the values on which the Court makes any finding pursuant to this section shall be the values so stated by the trustee unless other values are proven.

Committee's Recommendation:
That the provision in Clause 88 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 88 do stand part of the Bill, put and agreed to.

Clause 89: Where dividend paid by a company.

(1) Where a corporation that is bankrupt has paid a dividend, other than a stock dividend, or redeemed or purchased for cancellation any of the shares of the capital stock of the corporation within the period beginning on the day that is one year before the date of the initial bankruptcy event and ending on the date of the bankruptcy, the Court may, on the application of the trustee, inquire into the transaction to ascertain whether it occurred at a time when the corporation was insolvent or whether it rendered the corporation insolvent.

(2) Where a transaction referred to in subsection (1) has occurred, the Court may give judgment to the trustee against the directors of the corporation, jointly and severally, in the amount of the dividend or redemption or purchase price, with interest on the dividend, redemption or purchase price, that has not been paid to the corporation where the Court finds that:

(a) the transaction occurred at a time when the corporation was insolvent or the transaction rendered the corporation insolvent; and

(b) the directors did not have reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or the transaction would not render the corporation insolvent

(3) In making a determination under subsection (2)(b), the Court shall consider whether the directors acted as prudent and diligent persons would have acted in the same circumstances and whether the directors in good faith relied on:

(a) financial or other statements of the corporation represented to them by officers of the corporation or the auditor of the corporation, as the case may be, or by written reports of the auditor to fairly reflect the financial condition of the corporation; or

(b) a report relating to the corporation I s affairs prepared pursuant to a contract with the corporation by an attorney-at-law, notary public, accountant, engineer, appraiser or other person whose profession gave credibility to the statements made in the report.

(4) Where a transaction referred to in subsection (1) has occurred and the Court makes a finding referred to in subsection (2)(a), the Court may give judgment to the trustee against a shareholder who is related to one or more directors or to the corporation or who is a director not liable by reason of subsection (2)(b) or (5), in the amount of the dividend or redemption or purchase price referred to in subsection (1) and the interest on the dividend, redemption or purchase price, that was received by the shareholder and not repaid to the corporation.

(5) A judgment pursuant to subsection (2) shall not be entered against or be binding on a director who had, in accordance with any applicable law governing the operation of the corporation, protested against the payment of the dividend or the redemption or purchase for cancellation of the shares of the capital stock of the corporation and had thereby exonerated himself under that law from any liability.

(6) Nothing in this section shall be construed to affect any right, under any applicable law governing the operation of the corporation, of the directors to recover from a shareholder the whole or any part of any dividend, or any redemption or purchase price, made or paid to the shareholder when the corporation was insolvent or that rendered the corporation insolvent.

(7) For the purposes of subsection (2), the onus of proving:

(a) that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent; or

(b) that the directors had reasonable grounds to believe that the transaction was occurring at a time when the corporation was not insolvent or that the transaction would not render the corporation insolvent, lies on the directors.

(8) For the purposes of subsection (4), the onus of proving that the corporation was not insolvent at the time the transaction occurred and that the transaction did not render the corporation insolvent lies on the shareholder.

Committee's Recommendation:
That the provision in Clause 89 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 89 do stand part of the Bill, put and agreed to.

Clause 90: Mutatis mutandis.

(1) Where a proposal is made under Part V, sections 80 to 90 apply to the proposal, with such modifications as the circumstances require, except where the proposal otherwise provides.

(2) For the purposes of subsection (1), any reference in sections 80 to 90 to "becomes bankrupt" shall be construed as a reference to "files a proposal", and any reference in those sections to a bankrupt shall be construed as a reference to the debtor in respect of whom the proposal is filed.

Committee's Recommendation:
That the provision in Clause 90 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 90 do stand part of the Bill, put and agreed to.

Clause 91: **Where proposal followed by bankruptcy.**
Sections 80 to 90 apply as though the debtor became bankrupt on the date of the initial bankruptcy event where the proposal is annulled either by the Court pursuant to section 46(1) or as a result of a receiving order or assignment.

Committee's Recommendation:
That the provision in Clause 91 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 91 do stand part of the Bill, put and agreed to.

PART VII - ADMINISTRATION OF ESTATES

Meetings of Creditors.

Clause 92: **Trustee to send notice to creditors of first meeting.**
(1) Subject to subsection (2), it is the duty of the trustee:
(a) to inquire as to the names and addresses of the creditors of a bankrupt; and

(b) within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Supervisor a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period following the day of the trustee's appointment, at the office of the Supervisor; but the Supervisor may, when he deems it expedient, authorise the meeting to be held at such other place as he may fix.

(b) within five days after the date of the trustee's appointment, to send in the prescribed manner to the bankrupt, to every known creditor and to the Supervisor a notice in the prescribed form of the bankruptcy and of the first meeting of creditors, to be held within the twenty-one day period following the day of the trustee's appointment, at the office of the Supervisor; but the Supervisor may, when he deems it expedient, authorise the meeting to be held at such other place as he may fix.

(2) Where the Supervisor is satisfied that the extension of the period during which the first meeting of creditors must be held will not be detrimental to the creditors and is in the general interest of the administration of the estate, the Supervisor may extend the period:
(a) by ten days; or

(b) where the Supervisor is satisfied that special circumstances exist, by up to thirty days.

(3) The trustee shall include with the notice referred to in subsection (1), a list of the creditors with claims amounting to three thousandnaira or more and the amount of claims together with a proof of claim and proxy in the prescribed form but no name shall be inserted in the proxy before it is so sent.

(4) In the case of the bankruptcy of an individual, the trustee shall:

(a) set out in the notice, in the prescribed form, information concerning the financial situation of the bankrupt and the obligation of the bankrupt to make payments required under section 53 to the estate of the bankrupt; and

(b) forthwith advise the Supervisor, and any creditors who have requested such information, of:

(i) any material change relating to the financial situation of the bankrupt; and

(ii) any amendment made under section 53(3) to the amount that the bankrupt is required to pay to the estate of the bankrupt.

(5) A notice in the prescribed form shall, as soon as possible after the bankruptcy and not later than five days before the first meeting of creditors, be published in at least three national dailies by the trustee.

(6) The purpose of the first meeting of creditors shall be to:

(a) consider the affairs of the bankrupt;

(b) affirm the appointment of the trustee or substitute another in place of the trustee;

(c) appoint inspectors; and

(d) give such directions to the trustee as the creditors may see fit with reference to the administration of the estate.

Committee's Recommendation:
That the provision in Clause 92 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 92 do stand part of the Bill, put and agreed to.

Clause 93: Trustee may call meeting.

(1) The trustee may at any time call a meeting of creditors and he shall do so when directed by the Court and whenever requested in writing by a majority of the inspectors or by any creditor with the concurrence of one-sixth in value of the unsecured creditors holding one-sixth in number of the proved unsecured claims.

(2) A meeting of the creditors may be convened by a majority of the inspectors at any time when a trustee is not available to call a meeting or has neglected or failed to do so when so directed by the inspectors.

Committee's Recommendation:
That the provision in Clause 93 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 93 do stand part of the Bill, put and agreed to.

Clause 94: Notice regarding subsequent meetings.

(1) Meetings of creditors other than the first shall be called by sending a notice of the time and place of the meeting not less than five days before the time of each meeting to each creditor at the address given in the creditor's proof of claim.

(2) After the first meeting of creditors, notice of any meeting or of any proceeding need not be given to any creditors other than those who have proved their claims.

Committee's Recommendation:
That the provision in Clause 94 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 94 do stand part of the Bill, put and agreed to.

Procedure at Meetings

Clause 95: Chairman of first meeting.

(1) The Supervisor or the nominee of the Supervisor shall be the Chairman of the first meeting of creditors and shall decide any questions or disputes arising at the meeting; and any creditor may appeal to the Court from any decision arising from the meeting.

(2) At all meetings of creditors other than the first, the trustee shall be the Chairman unless by resolution at the meeting some other person is appointed.

(3) The Chairman of any meeting of creditors shall, in the case of a tie, have a second or casting vote.

(4) The Chairman of any meeting of creditors shall cause minutes of the proceedings at the meeting to be drawn up and entered in a book kept for that purpose, and the minutes shall be signed by that Chairman or by the Chairman of the next ensuing meeting.

(5) Where a meeting of creditors is called, the proceedings and resolutions passed at the meeting, unless the Court otherwise orders, are valid, notwithstanding that some creditors had not received notice.

Committee's Recommendation:
That the provision in Clause 95 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 95 do stand part of the Bill, put and agreed to.

Clause 96: Quorum at meetings.

(1) One creditor entitled to vote, or the representative of that creditor, constitutes a quorum for a meeting of creditors.

(2) Where there is no quorum at the first meeting of creditors:

(a) the appointment of the trustee shall be deemed to be confirmed; and

(b) the Chairman shall adjourn the meeting:

(i) to such time and place as the Chairman fixes; or

(ii) without fixing a time or place for a future meeting.

(3) Where there is no quorum at any meeting of creditors other than the first meeting, the Chairman shall adjourn the meeting to such time and place as the Chairman fixes.

(4) The Chairman of any meeting of creditors may with the consent of the meeting, adjourn the meeting, from time to time.

Committee's Recommendation:
That the provision in Clause 96 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 96 do stand part of the Bill, put and agreed to.

Clause 97: Creditor may vote by class.

Every class of creditors may express its views and wishes separately from every other class and the effect to be given to those views and wishes shall, in case of any dispute and subject to this Act, be in the discretion of the Court.

Committee's Recommendation:
That the provision in Clause 97 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 97 do stand part of the Bill, put and agreed to.

Clause 98: Chairman may admit or reject proofs.

(1) The Chairman of any meeting of creditors has power to admit or reject a proof of claim for the purpose of voting but his decision is subject to appeal to the Court.

(2) Notwithstanding anything in this Act, the Chairman may, for the purpose of voting, accept any letter or printed matter transmitted by any form or mode of telecommunication as proof of the claim of a creditor.

(3) Where the Chairman is in doubt as to whether a proof of claim should be admitted or rejected, the Chairman shall mark the proof as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

Committee's Recommendation:
That the provision in Clause 98 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 98 do stand part of the Bill, put and agreed to.

Clause 99: Completed proof of claim required to enable voting.

(1) A person is not entitled to vote as a creditor at any meeting of creditors unless that person has duly proved a claim provable in bankruptcy and the proof of claim has been duly lodged with the trustee before the time appointed for the meeting.

(2) A creditor may vote either in person or by proxy.

(3) A proxy is not invalid merely because it is in the form of a letter or printed matter transmitted by any form or mode of telecommunication.

(4) A debtor may not be appointed a proxy to vote at any meeting of his creditors.

(5) A corporation may vote by an authorized agent at meetings of creditors.

(6) Except as otherwise provided by this Act, a creditor is not entitled to vote at any meeting of creditors if the creditor did not, at all times within the period beginning on the day that is one year before the date of the initial bankruptcy event in respect of the debtor and ending on the date of the bankruptcy, both dates included, deal with the debtor at arm's length.

(7) A creditor who is not entitled to vote at a meeting of creditors by virtue of subsection (6) may with leave of the Court vote at the meeting of creditors when all the creditors who have dealt with the debtor at arm's length do not together present at least twenty per cent in value of the claims against the debtor.

Committee's Recommendation:
That the provision in Clause 99 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 99 do stand part of the Bill, put and agreed to.

Clause 100: Voting where claims acquired.

(1) No person is entitled to vote on a claim acquired after the bankruptcy of a debtor unless the entire claim is acquired.

(2) Subsection (1) does not apply to persons acquiring notes, bills or other securities on which they are liable.

Committee's Recommendation:
That the provision in Clause 100 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 100 do stand part of the Bill, put and agreed to.

Clause 101: Where non-bankrupt parties jointly liable.

A creditor shall not vote in respect of any claim on or secured by a current bill of exchange or promissory note held by that creditor, unless the creditor is willing to treat the liability to him by virtue of the bill of exchange or promissory note of every person who is liable on that bill or note antecedently to the debtor, and who is not a bankrupt, as a security in his hands and to estimate the value thereof and for the purposes of voting, but not for the purposes of dividend, to deduct it from his claim.

Committee's Recommendation:

That the provision in Clause 101 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 101 do stand part of the Bill, put and agreed to.

Clause 102: Secured creditor may vote unsecured portion only.

For the purpose of voting, a secured creditor shall, unless that creditor surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and he is entitled to vote only in respect of the balance, if any, due to him after deducting the value of his security.

Committee's Recommendation:

That the provision in Clause 102 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 102 do stand part of the Bill, put and agreed to.

Clause 103: Where trustee may vote.

(1) Where the trustee is a creditor or a proxy for a creditor, the trustee may vote as a creditor at any meeting of creditors.

(2) The vote of the trustee or of his partner, clerk, attorney-at-law or attorney's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

(3) The following persons are not entitled to vote on the appointment of a trustee or inspector:

(a) the father, mother, child, sister, brother, uncle or aunt by blood or marriage, or spouse or cohabitant of the bankrupt;

(b) where the bankrupt is a corporation, any officer, director or employee of the corporation; and

(c) where the bankrupt is a corporation, any wholly owned subsidiary corporation or any officer, director or employee of the corporation.

Committee's Recommendation:

That the provision in Clause 103 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 103 do stand part of the Bill, put and agreed to.

Clause 104: Minutes to be proof of meeting.

(1) A minute of proceedings at a meeting of creditors under this Act signed at the same or the next ensuing meeting by a person describing himself as or appearing to be Chairman of the meeting at which the minute is signed shall be admitted in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings where a minute has been signed by the Chairman shall be deemed to have been duly convened and held and all resolutions passed or proceedings at the meeting to have been duly convened and held and to have been duly passed.

Committee's Recommendation:
That the provision in Clause 104 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 104 do stand part of the Bill, put and agreed to.

Clause 105: Creditors vote by naira inspectors.

Subject to this Act, all questions at meetings of creditors shall be decided by resolution carried by the majority of votes, and for that purpose the votes of a creditor shall be calculated by counting one vote for each naira of every claim of the creditor that is not disallowed.

Committee's Recommendation:
That the provision in Clause 105 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 105 do stand part of the Bill, put and agreed to.

Clause 106: Appointment of inspectors.

(1) At the first or a subsequent meeting of creditors, the creditors shall appoint one or more, but not exceeding five inspectors of the estate of the bankrupt for the purpose of overseeing the administration of the estate of the trustee bankrupt.

(2) No person is eligible to be appointed or to act as an inspector unless he satisfies the criteria prescribed and is not a party to any contested action or proceedings by or against the estate of the bankrupt.

(3) The powers of the inspectors may be exercised by a majority of them.

(4) The creditors or inspectors at any meeting may fill any vacancy on the board of inspectors.

(5) The creditors may at any meeting and the Court may on the application of the trustee or any creditor revoke the appointment of any inspector and appoint another in his stead.

(6) Where there are no inspectors, any act or thing or any direction or permission by this Act authorized or required to be done or given by inspectors may be done or given by the Court on the application of the trustee.

Committee's Recommendation:
That the provision in Clause 106 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 106 do stand part of the Bill, put and agreed to.

Clause 107: Trustee may call meeting of inspectors.

(1) The trustee may call a meeting of inspectors when he deems it advisable and he shall do so when requested in writing by a majority of the inspectors.

(2) An inspector may, if all the other inspectors consent, participate in a meeting of inspectors by means of such telephone or other communication facilities as permit all persons participating in the meeting to communicate with each other, and an inspector participating in such a meeting by such means is deemed for the purpose of this Act to be present at that meeting.

(3) In the event of an equal division of opinion at a meeting of inspectors, the opinion of any absent inspector shall be sought in order to resolve the difference, and in the case of a difference that cannot be so resolved, it shall be resolved by the trustee, unless it concerns his personal conduct or interest in which case it shall be resolved by the creditors or the Court.

Committee's Recommendation:
That the provision in Clause 107 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 107 do stand part of the Bill, put and agreed to.

Clause 108: Trustee to call meeting to appoint inspectors.

Where there are no inspectors of the estate of the bankrupt or where the inspectors fail to exercise the powers conferred upon them, the trustee shall call a meeting of the creditors for the purpose of appointing inspectors or substituting other inspectors, taking such action or giving such directions as may be necessary.

Committee's Recommendation:
That the provision in Clause 108 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 108 do stand part of the Bill, put and agreed to.

Clause 109: Directions of creditors to override directions by inspectors.

(1) Subject to this Act, the trustee shall in the administration of the property of the bankrupt and in the distribution of that property among his creditors have regard to any directions that may be given by resolution of the creditors at any general meeting or by the inspectors, and any directions so given by the creditors shall in case of conflict be deemed to override any directions given by the inspectors.

(2) The decisions and actions of the inspectors are subject to review by the Court at the instance of the trustee or any interested person and the Court may revoke or vary any act or decision of the inspectors and it may give such directions, permission or authority as it deems proper in substitution or may refer any matter back to the inspectors for reconsideration.

Committee's Recommendation:
That the provision in Clause 109 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 109 do stand part of the Bill, put and agreed to.

Clause 110: Inspectors may not acquire assets Claims provable.

(1) No inspector is directly or indirectly, capable of purchasing or acquiring for himself or for another any of the property of the estate for which he is inspector, except with the prior approval of the Court.

(2) No defect or irregularity in the appointment of an inspector vitiates any act done by him in good faith.

(3) The inspectors shall from time to time verify the bank balance of the estate, examine the trustee's accounts and inquire into the adequacy of the security filed by the trustee, and subject to subsection (4), shall approve the trustee's final statement of receipts and disbursements, dividend sheet and disposition of unrealized property.

(4) Before approving the final statement of receipts and disbursements of the trustee, the inspectors shall satisfy themselves that all the property has been accounted for and that the administration of the estate has been completed as far as can reasonably be done and shall determine whether or not the disbursements and expenses incurred are proper and have been duly authorized, and the fees and remuneration just and reasonable in the circumstances.

(5) Each inspector:

(a) may be repaid actual and necessary travel expenses incurred in relation to the performance of the inspector's duties; and

(b) may be paid such fees per meeting as are prescribed.

(6) An inspector duly authorized by the creditors or by the other inspectors to perform special services for the estate may be allowed a special fee for those services, subject to approval of the Court, which may vary that fee as it deems proper having regard to the nature of the services rendered in relation to the fiduciary obligations of the inspector to the estate.

Committee's Recommendation:
That the provision in Clause 110 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 110 do stand part of the Bill, put and agreed to.

Clause 111: Claims provable.

(1) All debts and liabilities, present or future, to which the bankrupt is subject on the day on which the bankrupt becomes bankrupt or to which the bankrupt may become subject before the bankrupt's discharge by reason of any obligation incurred before the day on which the bankrupt becomes bankrupt shall be deemed to be claims provable in proceedings under this Act.

(2) The determination whether a contingent or unliquidated claim is a provable claim and the valuation of such a claim shall be made in accordance with section 126.

(3) A creditor may prove a debt not payable at the date of bankruptcy and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

(4) A claim in respect of a debt or liability referred to in section 170(1)(c) or (d) payable under an order or agreement made before the date of the initial bankruptcy event in respect of the bankrupt and at a time when the spouse, cohabitant or child was living apart from the bankrupt, whether the order or agreement provides for periodic amounts or lump sum amounts, is a claim provable under this Act.

Committee's Recommendation:
That the provision in Clause 111 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 111 do stand part of the Bill, put and agreed to.

Clause 112: Where bankruptcy follows proposal.

(1) The claims of creditors under a proposal are, in the event of a debtor subsequently becoming bankrupt, provable in the bankruptcy for the full amount of the claims less any dividends paid on those claims pursuant to the proposal, and the provable claims of creditors arising after the proposal until the date of bankruptcy shall be provable in the bankruptcy.

(2) Where interest on any debt or sum certain is provable under this Act but the rate of interest has not been agreed on, the creditor may prove interest at a rate not exceeding five per cent per annum to the date of the bankruptcy from the time the debt or sum was payable, if evidenced by a written instrument, or, if not so evidenced, from the time notice has been given to the debtor of the interest claimed.

Committee's Recommendation:
That the provision in Clause 112 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 112 do stand part of the Bill, put and agreed to.

Clause 113: Proof in respect of distinct contracts Proof of claims.

Where a bankrupt was, at the date of the bankruptcy, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the fact that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof, in respect of the contracts, against the properties respectively liable on the contracts.

Committee's Recommendation:
That the provision in Clause 113 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 113 do stand part of the Bill, put and agreed to.

Clause 114: Proof of claim required to share in distribution.

(1) Every creditor shall prove his claim, and a creditor who does not prove his claim is not entitled to share in any distribution that may be made.

(2) A claim shall be proved by delivering to the trustee a proof of claim in the prescribed form.

(3) The proof of claim may be made by the creditor himself or by a person authorised by him on behalf of the creditor, and, if made by a person so authorised, it shall state his authority and means of knowledge.

(4) The proof of claim shall contain or refer to a statement of account showing the particulars of the claim and any counterclaim that the bankrupt may have to the knowledge of the creditor and shall specify the vouchers or other evidence, if any, by which it can be substantiated.

(5) The proof of claim shall state whether the creditor is or is not a secured or preferred creditor.

(6) Where any rent or other payment for certain periods falls due at stated times the person entitled to the rent or payment may prove for a proportionate part of the rent or other payment to the date of bankruptcy as if the rent or payment grew due from day-to-day.

Committee's Recommendation:
That the provision in Clause 114 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 114 do stand part of the Bill, put and agreed to.

Clause 115: Court may disallow false claims.

Where a creditor or other person in any proceedings under this Act files with the trustee a proof of claim containing any wilfully false statement or wilful misrepresentation, the Court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part as the Court in its discretion may see fit.

Committee's Recommendation:
That the provision in Clause 115 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 115 do stand part of the Bill, put and agreed to.

Clause 116: Proven creditors may examine proofs of claim Proof by secured creditors.

(1) Every creditor who has lodged a proof of claim is entitled to see and examine the proofs of other creditors.

(2) Proofs of claims for wages of workers and others employed by the bankrupt may be made in one proof by the bankrupt or someone on behalf of the bankrupt or by a representative of a Ministry responsible for labour matters or a representative of a union representing workers and others employed by the bankrupt, by attaching to the proof a schedule setting out

the names and addresses of the workers and others and the amounts severally due to them, but that proof does not disentitle any worker or other wage-earner to file a separate proof on their own behalf.

Committee's Recommendation:
That the provision in Clause 116 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 116 do stand part of the Bill, put and agreed to.

Clause 117: Secured creditor may prove for balance due.

(1) Where a secured creditor realizes his security, he may prove the balance due to him after deducting the net amount realized.

(2) Where a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove his whole claim.

Committee's Recommendation:
That the provision in Clause 117 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 117 do stand part of the Bill, put and agreed to.

Clause 118: Trustee may require proof of claim by secured creditor.

(1) Where the trustee has knowledge of property that may be subject to a security, the trustee may, by serving notice in the prescribed form, require any person to file, in the prescribed form and manner, a proof of the security that gives full particulars of the security, including the date on which the security was given and the value at which that person assesses it.

(2) Where the trustee serves a notice pursuant to subsection (1), and the person on whom the notice is served does not file a proof of security within thirty days after the day of service of the notice, the trustee may, with leave of the Court, sell or dispose of any property that was subject to the security, free of that security.

(3) A creditor is entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

(4) The trustee may redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor.

Committee's Recommendation:
That the provision in Clause 118 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 118 do stand part of the Bill, put and agreed to.

Clause 119: Trustee may require security to be sold.

(1) Where the trustee is dissatisfied with the value at which a security is assessed, the trustee may require that the property the security comprises be offered for sale at such time and on such terms and conditions as may be agreed on between the creditor and the trustee or, in default of such an agreement, as the Court may direct.

(2) Where a sale under subsection (1) is by public auction the creditor or the trustee on behalf of the estate may bid or purchase.

(3) The costs and expenses of a sale made under this section should be subjected to verification by the Court.

Committee's Recommendation:
That the provision in Clause 119 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 119 do stand part of the Bill, put and agreed to.

Clause 120: Secured creditor may require election of trustee.

Notwithstanding section 119(3) and section 120, the creditor may, by notice in writing, require the trustee to elect whether he will exercise the power of redeeming the security or requiring it to be realized, and if the trustee does not, within one month after receiving the notice or such further time or times as the Court may allow, signify in writing to the creditor his election to exercise the power, the trustee is not entitled to exercise that power, and the equity of redemption or any other interest in the property comprised in the security that is vested in the trustee shall vest in the creditor, and the amount of the claim of the trustee shall be reduced by the amount at which the security has been valued.

Committee's Recommendation:
That the provision in Clause 120 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 120 do stand part of the Bill, put and agreed to.

Clause 121: Amended claim where security realized.

Where a creditor after having valued his security subsequently realises it, or it is realized under section 120, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

Committee's Recommendation:
That the provision in Clause 121 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 121 do stand part of the Bill, put and agreed to.

Clause 122: Amendment of claim where security not realized.

(1) Where a trustee has not elected to acquire the security as provided in this Act, a creditor may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the Court that the valuation and proof were made in good faith on a mistaken estimate or that the security has diminished or increased in value since its previous valuation.

(2) An amendment pursuant to subsection (1) shall be made at the cost of the creditor and on such terms as the Court orders, unless the trustee allows the amendment without application to the Court.

(3) Where a valuation has been amended pursuant to this section, the creditor:

(a) shall forthwith repay any surplus dividend that he may have received in excess of that to which he would have been entitled on the amended valuation; or

(b) is entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend that he may have failed to receive by reason of the amount of the original valuation before that money is made applicable to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before the amendment is filed with the trustee.

Committee's Recommendation:
That the provision in Clause 122 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 122 do stand part of the Bill, put and agreed to.

Clause 123: Exclusion of secured creditor from dividend.
Where a secured creditor does not comply with sections 118 to 123, he shall be excluded from any dividend.

Committee's Recommendation:
That the provision in Clause 123 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 123 do stand part of the Bill, put and agreed to.

Clause 124: No creditor to receive more than 100 cents on naira.
Subject to section 121, a creditor shall in no case receive more than thirtynaira and interest as provided by this Act.

Committee's Recommendation:
That the provision in Clause 124 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 124 do stand part of the Bill, put and agreed to.

Admission and disallowance of proofs of claim and proofs of security.

Clause 125: Trustee to examine proofs Scheme of distribution.

(1) The trustee shall examine every proof of claim or proof of security and the grounds for the proof and may require further evidence in support of the claim or security.

(2) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if it is a provable claim, the trustee shall value it, and the claim, is subject to this section, deemed a proved claim to the amount of its valuation.

(3) The trustee may disallow in whole or in part:
(a) any claim;

(b) any right to a priority under the applicable order of priority set out in this Act; or(c) any security.

(4) Where the trustee makes a determination under subsection (2), or pursuant to subsection (3), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (2) or whose claim, right to a priority or security was disallowed under subsection (3), a notice in the prescribed form setting out the reasons for the determination or disallowance.

(5) A determination under subsection (2), or a disallowance referred to in subsection (3) is final and conclusive unless, within a thirty-day period after the service of the notice referred to in subsection (4) or such further time as the Court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the Court in accordance with the Bankruptcy Rules.

(6) The Court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

Committee's Recommendation:

That the provision in Clause 125 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 125 do stand part of the Bill, put and agreed to.

Scheme of distribution

Clause 126: Preferred creditors:

(1) Subject to subsection (2) and the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:
(a) in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal personal representative of the deceased bankrupt;

(b) the costs of administration, in the following order:
(i) the expenses and fees of any person acting under a direction made under section 189(1)(a);

(ii) the expenses and fees of the trustee; and

(iii) legal costs;

(c) the levy payable under section 137;

(d) excluding severance, claims for wages, salaries, commissions or compensation of any employee for services rendered during the six months immediately preceding the bankruptcy to the extent of one

hundred and twenty thousand naira in each case, together with, in the case of a traveling salesman, disbursements properly incurred by that salesman in and about the bankrupt's business, to the extent of an additional two thousand dollars in each case, during the same period.

(e) contributions payable by the bankrupt, as an employer, pursuant to the Pensions Reform Act;

(f) all taxes including land tax or income tax assessed on the bankrupt and not exceeding in total one year's assessment;

(g) the landlord pursuant to section 63(6);

(h) claims of individuals being of less than thirty years of age as of the date of bankruptcy having contracted directly with the bankrupt, in each case to the extent of forty-five thousand naira, and where there are insufficient funds in the estate to pay all such claims, they shall be paid rateably; and

(i) all claims of all persons having contracted directly with the bankrupt, in each case to a maximum of thirty thousandnaira, and where there are insufficient funds in the estate to pay all such claims, they shall be paid rateably.

(2) Where a proposal made by an insolvent person has been approved by the Court pursuant to section 42(7), the insolvent person has not subsequently been adjudged bankrupt, and the trustee has not been required to notify the Supervisor pursuant to section 45, the claims under subsection (1)(d) and (e) shall be read as including only those amounts due for the periods commencing twelve and six months, respectively, before the proposal was filed.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsections (1) and (2) shall be made as soon as funds are available for the purpose.

(4) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due to him.

Committee's Recommendation:
That the provision in Clause 126 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 126 do stand part of the Bill, put and agreed to.

Clause 127: Where reviewable transaction.
A creditor who entered into a reviewable transaction with a debtor at any time prior to the bankruptcy of the debtor is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied unless the transaction was in the opinion of the trustee or of the Court a proper transaction.

Committee's Recommendation:
That the provision in Clause 127 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 127 do stand part of the Bill, put and agreed to.

Clause 128: **Claim of relative of bankrupt.**
A father, child, mother, brother, sister, uncle or aunt by blood, marriage, or adoption of a bankrupt is not entitled to have a claim preferred as provided by section 127, in respect of wages, salary, commission or compensation for work done or services rendered to the bankrupt.

Committee's Recommendation:
That the provision in Clause 128 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 128 do stand part of the Bill, put and agreed to.

Clause 129: **Claim of participating lender.**
Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied.

Committee's Recommendation:
That the provision in Clause 129 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 129 do stand part of the Bill, put and agreed to.

Clause 130: **Claim of officer and director.**
Where a corporation becomes bankrupt, no officer or director of the corporation is entitled to have his claim preferred as provided by section 127 in respect of wages, salary, commission or compensation for work done or services rendered to that corporation in any capacity.

Committee's Recommendation:
That the provision in Clause 130 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 130 do stand part of the Bill, put and agreed to.

Clause 131: **Dividends pro rata.**
Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

Committee's Recommendation:
That the provision in Clause 131 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 131 do stand part of the Bill, put and agreed to.

Clause 132: Property of bankrupt partnership.

(1) Where partners become bankrupt, their joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

(2) Where there is a surplus of the separate properties of the partners, it shall be dealt with as part of the joint property.

(3) Where there is a surplus of the joint property of the partners, it shall be dealt with as part of the respective separate properties in proportion to the right and interest of each partner in the joint property.

(4) Where a bankrupt owes or owed debts both individually and as a member of one or more partnerships, the claims shall rank first on the property of the individual or partnership by which they were contracted and shall only rank on the other estate or estates after all the creditors of the other estate or estates have been paid in full.

(5) Where the joint property of any bankrupt partnership is insufficient to defray any costs properly incurred, the trustee may pay such costs as cannot be paid out of the joint property out of the separate property of the bankrupts or one or more of them in such proportion as he may determine with the consent of the inspectors of the estates out of which the payment is intended to be made, or, if the inspectors withhold or refuse their consent, with the approval of the Court.

Committee's Recommendation:
That the provision in Clause 132 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 132 do stand part of the Bill, put and agreed to.

Clause 133: Where surplus remains after claims paid.

Where there is a surplus after payment of the claims as provided in sections 127 to 133, it shall be applied in payment of interest from the date of the bankruptcy at the rate of six per cent per annum on all claims proved in the bankruptcy and according to their priority.

Committee's Recommendation:
That the provision in Clause 133 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 133 do stand part of the Bill, put and agreed to.

Clause 134: Final surplus to bankrupt.

The bankrupt or the legal personal representative of a deceased bankrupt is entitled to any surplus remaining after payment in full of his creditors with interest as provided by this Act and of the costs, charges and expenses of the bankruptcy proceedings.

Committee's Recommendation:
That the provision in Clause 134 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 134 do stand part of the Bill, put and agreed to.

Clause 135: Motor vehicle insurance.

Nothing in this Act affects the right of any person who has a claim against the bankrupt for damages on account of injury to or death of any person, or injury to property, occasioned by a motor vehicle, or on account of injury to property being carried in or on a motor vehicle, to have the proceeds of any liability insurance policy applied in or toward the satisfaction of the claim.

Committee's Recommendation:
That the provision in Clause 135 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 135 do stand part of the Bill, put and agreed to.

Clause 136: Supervisor's levy Dividends.

(1) For the purpose of defraying the expenses of the supervision by the Supervisor, there shall be payable to the Supervisor for deposit with the State a levy on all payments, made by the trustee by way of dividend or otherwise on account of the claims of creditors, whether unsecured, preferred or secured creditors, and including the State claiming in respect of taxes or otherwise.

(2) The levy referred to in subsection (1) shall be one per cent of all payments and shall be charged proportionately against all payments and deducted from the payments by the trustee before payment is made.

Committee's Recommendation:
That the provision in Clause 136 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 136 do stand part of the Bill, put and agreed to.

Dividends

Clause 137: Inspectors to declare dividends to ordinary unsecured creditor.

(1) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the trustee shall, from time to time as required by the inspectors, declare and distribute dividends among the unsecured creditors entitled to dividends.

(2) Where the validity of any claim filed with the trustee has not yet been determined, the trustee shall retain sufficient funds to provide for payment of the claim in the event that the claim is admitted.

(3) No action for a dividend lies against the trustee, but, if the trustee refuses or fails to pay any dividend after having been directed to do so by the inspectors, the Court may, on the application of any creditor, order him to pay it, and also to pay personally interest on the dividend for the time that it is withheld as well as the costs of the application.

Committee's Recommendation:
That the provision in Clause 137 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 137 do stand part of the Bill, put and agreed to.

Clause 138: Thirty-day notice to prove claims.

(1) The trustee may, after the first meeting of the creditors, give notice by registered mail to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved that if that person does not prove his claim within a period of thirty days after the mailing of the notice the trustee will proceed to declare a dividend or final dividend without regard to that person's claim.

(2) Where a person notified under subsection (1) does not prove the claim within the time limit or within such further time as the Court may allow on proof of merits and satisfactory explanation of the delay in making proof, the claim of that person shall, notwithstanding anything in this Act, be excluded from all share in any dividend, but a taxing authority may notify the trustee within the period referred to in subsection (1) that it proposes to file a claim as soon as the amount has been ascertained, and the time for filing the claim shall thereupon be extended to three months or such further time as the Court may allow.

(3) Notwithstanding subsection (2), a claim may be filed for an amount payable under the Income Tax Act within the time limit referred to in subsection (2) or within three months from the time the return of income or other evidence of the facts on which the claim is based is filed or comes to the attention of the State.

(4) Unless the trustee retains sufficient funds to provide for payment of any claims that may be filed under the Income Tax Act, no dividend shall be declared until the expiration of three months after the trustee has filed all returns that the trustee is required to file.

Committee's Recommendation:
That the provision in Clause 138 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 138 do stand part of the Bill, put and agreed to.

Clause 139: Where claim proven after dividend declared.

A creditor who has not proved his claim before the declaration of any dividend is entitled on proof of his claim to be paid out of any money for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before his claim was proved for the reason that he has not participated in that dividend, except on such terms and conditions as may be ordered by the Court.

Committee's Recommendation:
That the provision in Clause 139 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 139 do stand part of the Bill, put and agreed to.

Clause 140: **Final statement of receipts and disbursements to be prepare.**
When the trustee has realized all the property of the bankrupt or all of that property that can, in the joint opinion of the trustee and of the inspectors, be realized without needlessly protracting the administration, and settled or determined or caused to be settled or determined, the claims of all creditors to rank against the estate of the bankrupt, the trustee shall prepare a final statement of receipts and disbursements and dividend sheet and, subject to this Act, divide the property of the bankrupt among the creditors who have proved their claims.

Committee's Recommendation:
That the provision in Clause 140 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 140 do stand part of the Bill, put and agreed to.

Clause 141: **Final statement to be complete account.**

(1) The trustee's final statement of receipts and disbursements shall contain a complete account of all monies received by the trustee out of the property of the bankrupt or otherwise, the amount of interest received by the trustee, all monies disbursed and expenses incurred and the remuneration claimed by the trustee, together with full particulars, description and value of all property of the bankrupt that has not been sold or realised, setting out the reason why the property has not been sold or realised and the disposition made thereof.

(2) The statement referred to in subsection (1) shall be prepared in the prescribed form or as near thereto as the circumstances of the case will permit and together with the dividend sheet shall be submitted to the inspectors for their approval.

(3) The trustee shall forward a copy of the statement and dividend sheet to the Supervisor after they have been approved by the inspectors.

(4) The Supervisor shall comment as he sees fit and his comments shall be placed by the trustee before the taxing officer for his consideration on the taxation of the accounts of the trustee.

(5) After the Supervisor has commented on the taxation of the trustee's accounts or advised the trustee that the Supervisor has no comments to make and the accounts of the trustee have been taxed, the trustee shall, in the prescribed manner, forward to every creditor whose claim has been proved, to the Registrar, to the Supervisor and to the bankrupt:

(a) a copy of the final statement of receipts and disbursements;

(b) a copy of the dividend sheet; and

(c) a notice in the prescribed form of his intention to pay a final dividend after the expiration of fifteen days from the mailing of the notice, statement and dividend sheet and to apply to the Court for his discharge on a subsequent date not less than thirty days after the payment of the dividend.

(6) No interested person is entitled to object to the final statement and the dividend sheet unless, prior to the expiration of the fifteen days referred to in subsection (5) (c), that person files notice of his objection with the Registrar setting out his reasons for the objection and serves a copy of the notice on the trustee.

Committee's Recommendation:
That the provision in Clause 141 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 141 do stand part of the Bill, put and agreed to.

Clause 142: Dividends on joint and separate properties.
Where joint and separate properties are being administered, the dividends may be declared together, and the expenses of administering the properties shall be apportioned by the trustee.

Committee's Recommendation:
That the provision in Clause 142 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 142 do stand part of the Bill, put and agreed to.

Clause 143: Unclaimed dividends and undistributed funds Summary Administration.
(1) Before proceeding to discharge, the trustee shall forward to the Supervisor for deposit, as prescribed, the unclaimed dividends and undistributed funds that the trustee possesses, other than those exempted by the Bankruptcy Rules, and shall provide a list of names and the post office addresses, in so far as known, of the creditors entitled to the unclaimed dividends, showing the amount payable to each creditor.

(2) The Supervisor shall, after receiving the dividends and funds and the list referred to in subsection (1), on application, pay to any creditor his proper dividend as shown on that list, and such payment has effect as if made by the trustee.

Committee's Recommendation:
That the provision in Clause 143 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 143 do stand part of the Bill, put and agreed to.

Summary administration

Clause 144: Provisions applying to summary administration.
The following provisions apply to the summary administration of estates under this Act:
(a) all proceedings under this section shall be titled "Summary Administration";

(b) the security to be deposited by a trustee under section 199 shall not be required unless directed by the Supervisor;

(c) a notice of the bankruptcy shall not be published in a local newspaper unless such publication is deemed expedient by the trustee or ordered by the Court;

(d) all notices, statements and other documents shall be sent by registered mail or courier;

(e) a first meeting of creditors:
(i) is required to be called by the trustee only if it is requested within thirty days after the date of the bankruptcy by the Supervisor or by creditors who have in the aggregate at least twenty-five per cent in value of the proven claims;

(ii) must be called in the prescribed form and manner; and

(iii) must be held within twenty-one days after being called;

(f) there shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed, the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors;

(g) in such circumstances as may be specified by the Supervisor, the estates of individuals who, because of their relationship, could reasonably be dealt with as one estate may be dealt with as one estate;

(h) in such circumstances as are specified by the Supervisor and with the approval of the Supervisor, the trustee may deposit all monies relating to the summary administration of estates in a single trust account;

(i) a notice of bankruptcy and:
(i) a notice of impending automatic discharge of the bankrupt; or

(ii) an application for discharge of the bankrupt may be given in a single notice in the prescribed form;

(j) notwithstanding section 142, the procedure respecting the accounts of the trustee, including the taxation of those accounts shall be as prescribed; and

(k) notwithstanding section 224(1), (5) and (6), the procedure for the discharge of the trustee shall be as prescribed.

Committee's Recommendation:
That the provision in Clause 144 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 144 do stand part of the Bill, put and agreed to.

Clause 145: Remuneration in summary administration.
For the summary administration of estates, the trustee shall receive such fees and disbursements as may be prescribed.

Committee's Recommendation:
That the provision in Clause 145 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 145 do stand part of the Bill, put and agreed to.

Clause 146: Mutatis mutandis.
Except as provided in section 145, all provisions of this Act, in so far as they are applicable, apply with such modifications as the circumstances require to summary administration.

Committee's Recommendation:
That the provision in Clause 146 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 146 do stand part of the Bill, put and agreed to.

PART VIII- BANKRUPTS

Counselling Services.

Clause 147: Trustee to counsel individual bankrupts.
(1) The trustee shall provide, or provide for, counselling for an individual bankrupt and his immediate family as prescribed, and the estate of the bankrupt shall pay the costs of the counselling, as costs of administration of the estate according to the prescribed tariff.

(2) Where counselling is provided by a trustee to a debtor who is not bankrupt, that counselling must be provided as prescribed.

(3) Section 160 (1) (g) does not apply to an individual bankrupt who has refused or neglected to receive counselling provided pursuant to subsection (1).

Committee's Recommendation:
That the provision in Clause 147 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 147 do stand part of the Bill, put and agreed to.

Clause 148: Duties of bankrupts.
A bankrupt shall:
(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(b) deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(c) deliver to the trustee all books, records, documents, writings and papers including without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(d) at such time and place as may be fixed by the Supervisor, attend upon the Supervisor for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(e) within five days following the bankruptcy, unless the time is extended by the Supervisor, prepare and submit to the trustee a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing:

(i) the particulars of the bankrupt's assets and liabilities;

(ii) the names and addresses of the bankrupt's creditors;

(iii) the securities held by them respectively;

(iv) the dates when the securities were respectively given; and

(v) such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the Supervisor may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(f) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(g) make disclosure to the trustee:

(i) of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the Court direct, and ending on the date of the bankruptcy; and

(ii) how and to whom and for what consideration any part of the property was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(h) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of the bankruptcy;

(i) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and at the meeting submit thereat to examination;

(j) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;

(k) submit to such other examinations under oath with respect to his property or affairs as may be required;

(l) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(m) execute such powers of attorney, conveyances, deeds and instruments as may be required;

(n) examine the correctness of all proofs of claim filed, if required by the trustee;

(o) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(p) inform the trustee of any material change in the bankrupt's financial situation;

(q) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address; and

(r) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the Bankruptcy Rules, or may be directed by the Court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested.

Committee's Recommendation:
That the provision in Clause 148 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 148 do stand part of the Bill, put and agreed to.

Clause 149: Bankrupt corporation.
Where a bankrupt is a corporation, the Director executing the assignment, or such officer of the corporation, or person who has, or has had, directly or indirectly, control of the corporation as the Supervisor may specify, shall attend before the Supervisor for examination and shall perform all of the duties imposed on a bankrupt by section 149, and, in case of failure to do so, the officer or person is punishable as though that officer or person were the bankrupt.

Committee's Recommendation:
That the provision in Clause 149 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 149 do stand part of the Bill, put and agreed to.

Clause 150: Imprisoned bankrupt.
Where a bankrupt is undergoing imprisonment, the Court may, in order to enable the bankrupt:

(a) to attend Court in bankruptcy proceedings at which his personal presence is required;

(b) to attend the first meeting of creditors; or

(c) to perform the duties required of him under this Act, direct that the bankrupt be brought before the Court in the protective custody of a Sheriff, or other duly authorised officer at such time and place as may be designated, or the Court may make such other order as it deems proper and requisite in the circumstances.

Committee's Recommendation:
That the provision in Clause 150 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 150 do stand part of the Bill, put and agreed to.

Examination of bankrupts and others

Clause 151: Examination of bankrupt by supervisor.

(1) Before the discharge of a bankrupt, the Supervisor may, on the attendance of the bankrupt, examine the bankrupt under oath with respect to the conduct of the bankrupt, the causes of the bankruptcy and the disposition of the bankrupt's property and shall put to the bankrupt questions as the Supervisor may see fit.

(2) The Supervisor shall make notes of an examination made under subsection (1) and shall forward a copy of the notes to the trustee and the Court for deposit therein.

(3) Where the examination under subsection (1) is held:

(a) before the first meeting of creditors, the notes shall be communicated to the creditors at the meeting; or

(b) after the first meeting of creditors, the notes shall be made available to any creditor who requests them.

(4) Where a bankrupt fails to present himself for examination by the Supervisor, the Supervisor shall report the failure to the trustee.

Committee's Recommendation:
That the provision in Clause 151 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 151 do stand part of the Bill, put and agreed to.

Clause 152: Investigation by Supervisor regarding bankrupt.

(1) The Supervisor may make or cause to be made any inquiry or investigation that may be deemed necessary in respect of the conduct of the bankrupt, the causes of his bankruptcy and the disposition of his property, and the Supervisor shall report the findings on any such inquiry or investigation to the trustee and to the Court.

(2) Where, pursuant to subsection (1), an inquiry or investigation is made by the Supervisor, the Supervisor shall, out of the monies appropriated by the National Assembly to defray the expenses of the office of the Supervisor, pay such reasonable costs and expenses incurred in connection with the inquiry or investigation, not being ordinary costs or expenses of his office.

(3) Section 155 applies in respect of an inquiry or investigation under subsection (1).

Committee's Recommendation:
That the provision in Clause 152 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 152 do stand part of the Bill, put and agreed to.

Clause 153: Trustee may examine bankrupt and others.

(1) The trustee, on ordinary resolution passed by the creditors or on the written request or resolution of a majority of the inspectors, may, without an order, examine under oath before the Court or other authorised person, the bankrupt, any person reasonably thought to have knowledge of the affairs of the bankrupt or any person who is or has been an agent, clerk, servant, officer, director or employee of the bankrupt, respecting the bankrupt, his dealings or property and may order any person liable to be so examined to produce any books, documents, correspondence or papers in his possession or power relating in all or in part to the bankrupt, his dealings or property.

(2) On the application to the Court by the Supervisor, any creditor or other interested person and on sufficient cause being shown, the Court may make an order for the examination under oath, before the Registrar or other authorised person:

(a) of the trustee;

(b) the bankrupt;

(c) an inspector or a creditor; or

(d) any other person named in the order, for the purpose of investigating the administration of the estate of any bankrupt, and may further order any person liable to be so examined to produce any books, documents, correspondence or papers in the person's possession or power relating in all or in part to the bankrupt, the trustee or any creditor, the costs of the examination and investigation to be in the discretion of the Court.

(3) The evidence of any person examined under this section shall, if transcribed, be filed in the Court and may be read in any proceedings before the Court under this Act and to which the person examined is a party.

Committee's Recommendation:
That the provision in Clause 153 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 153 do stand part of the Bill, put and agreed to.

Clause 154: Trustee may require delivery of property of bankrupt and production of books and records.

(1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession.

(2) Where a person fails to produce a book, document or paper or to deliver property as required by this section within five days after being required to do so, the trustee may, without an order, examine the person before the Registrar of the Court or other authorized person concerning the property, book, document or paper that the person is supposed to possess.

(3) Any person referred to in subsection (1) may be compelled to attend and testify, and to produce on his examination any book, document or paper that under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as would apply to a bankrupt.

Committee's Recommendation:
That the provision in Clause 154 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 154 do stand part of the Bill, put and agreed to.

Clause 155: Where person may be ordered by Court to pay trustee.

(1) Where a person on examination admits that he is indebted to the bankrupt, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted or any part of the amount either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(2) Where any person on examination admits that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the trustee, order him to deliver to the trustee the property or any part of the property at such time, in such manner and on such terms as to the Court may seem just.

Committee's Recommendation:
That the provision in Clause 155 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 155 do stand part of the Bill, put and agreed to.

Clause 156: Issue of warrant for apprehension and examination of persons.

Where the bankrupt fails to present himself for examination before the Supervisor as required by section 149 (d) or where he or any other person is served with an appointment or summons to attend for any examination but refuses or neglects to attend as required by the appointment or summons, the Court may, on the application of the trustee, by warrant cause the bankrupt or other person so in default to be apprehended and brought up for examination.

Committee's Recommendation:
That the provision in Clause 156 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 156 do stand part of the Bill, put and agreed to.

Clause 157: Examination by Court Arrest of bankrupts.

(1) Any person being examined is bound to answer all questions relating to the business or property of the bankrupt, to the causes of his bankruptcy and the disposition of his property.

(2) The Court may order that any person who, if in Nigeria, would be liable to be brought before the Court for any examination under this Act, shall be examined in any place out of Nigeria.

Committee's Recommendation:

That the provision in Clause 157 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 157 do stand part of the Bill, put and agreed to.

Arrest of Bankrupts

Clause 158: Court order for arrest of bankrupt Discharge of bankrupts.

(1) The Court may by warrant cause a bankrupt to be arrested and detained, and any books, papers and property in his possession to be seized, and the books, papers, electronic documents and property to be safely kept as directed until such time as the Court may order, under the following circumstances:

(a) where, after the filing of a bankruptcy petition against the bankrupt, it appears to the Court that there are grounds for believing that he has absconded or is about to abscond from Nigeria with a view to:

(i) avoiding payment of the debt in respect of which the bankruptcy petition was filed;

(ii) avoiding appearance to any such petition;

(iii) avoiding examination in respect of his affairs; or

(iv) otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;

(b) where, after making an assignment, it appears to the Court that there are grounds for believing that the bankrupt has absconded or is about to abscond from Nigeria with a view to avoiding payment of his debts or to avoiding examination in respect of his affairs;

(c) where, after the filing of a bankruptcy petition or an assignment, it appears to the Court there are reasonable grounds for believing that the debtor:

(i) is about to remove his property with a view to preventing or delaying possession being taken of the property by the trustee; or

(ii) has concealed or is about to conceal or destroy any of his property or any books, documents or writings that might be of use to the trustee or to his creditors in the course of the bankruptcy proceedings;

(d) where the bankrupt removes any property in his possession above the value of six thousand naira without leave of the Court or the trustee; or

(e) where after the commencement of proceedings under this Act, the bankrupt has failed to obey an order of the Court.

(2) No payment or proposal made or security given after arrest made under this section is exempt from the provisions of this Act relating to fraudulent preferences.

Committee's Recommendation:
That the provision in Clause 158 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 158 do stand part of the Bill, put and agreed to.

Discharge of bankrupts

Clause 159: Automatic discharge of first-time individual bankrupt.

(1) Except as provided in subsection (2), the following provisions apply in respect of an individual who has never before been bankrupt under the laws of Nigeria or any prescribed jurisdiction:

(a) the trustee shall, before the expiration of the eight-month period immediately following the date on which a receiving order is made against, or an assignment is made by the individual bankrupt, file a report prepared under section 162 (1) with the Supervisor and send a copy of the report to the bankrupt and to each creditor who requested a copy;

(b) the trustee shall, not less than fifteen days before the date of automatic discharge provided for in paragraph (g), give notice of the impending discharge, in the prescribed form, to the Supervisor, the bankrupt and every creditor who has proved a claim, at the creditor's last known address;

(c) where the Supervisor intends to oppose the discharge of the bankrupt, the Supervisor shall give notice of the intended opposition, stating the grounds for the opposition to the trustee and to the bankrupt at any time prior to the expiration of the nine months period immediately following the bankruptcy;

(d) where a creditor intends to oppose the discharge of the bankrupt, the creditor shall give notice of the intended opposition, stating the grounds for the opposition to the Supervisor, to the trustee and to the bankrupt at any time prior to the expiration of the nine-month period immediately following the bankruptcy;

(e) where the trustee intends to oppose the discharge of the bankrupt, the trustee shall give notice of the intended opposition in prescribed form and manner, stating the grounds for the opposition to the bankrupt and the Supervisor at any time prior to the expiration of the nine-month period immediately following the bankruptcy;

(f) where the Supervisor, the trustee or a creditor opposes the discharge of the bankrupt, the trustee shall, unless the matter is to be dealt with by mediation under section 163, forthwith apply to the Court for an appointment for the hearing of the opposition in the manner referred to in sections 161 to 168, which hearing shall be held:

(i) within thirty days after the day the appointment is made; or

(ii) at such later time as may be fixed by the Court at the request of the bankrupt or the trustee; and

(g) where the Supervisor, the trustee or a creditor has not opposed the discharge of the bankrupt in the nine-month period immediately following the bankruptcy, then, subject to section 148(3):

(i) on the expiration of that nine months period, the bankrupt is automatically discharged; and

(ii) forthwith after the expiration of that nine-month period, the trustee shall issue a certificate to the discharged bankrupt, in the prescribed form, declaring that the bankrupt is discharged and is released from all debts except those matters referred to in section 223 and shall send a copy of the certificate to the Supervisor.

(2) Nothing in subsection (1) precludes an individual bankrupt from applying to the Court for discharge before the expiration of the nine-month period immediately following the bankruptcy, and subsection (1) ceases to apply to an individual bankrupt who makes an application before the expiration of that period.

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Nigeria or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the Court for a discharge referred to in subsection (2).

(4) An automatic discharge by virtue of subsection (1) (g) is deemed, for all purposes, to be an absolute and immediate order of discharge.

Committee's Recommendation:

That the provision in Clause 159 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 159 do stand part of the Bill, put and agreed to.

Clause 160: Bankruptcy of an individual operates as an application for discharge.

(1) Subject to section 160, the making of a receiving order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing, files in the Court and serves on the trustee a waiver of application before being served by the trustee with a notice of the trustee's intention to apply to the Court for an appointment for the hearing of the application as provided in this section.

(2) The trustee, before proceeding to the discharge and in any case not earlier than three months and not later than one year following the bankruptcy of any person who has not served a notice of waiver on the trustee, shall on five days notice to the bankrupt apply to the Court for an appointment for a hearing of the application on a date not more than thirty days after the date of the appointment or at such other time as may be fixed by the Court at the request of the bankrupt or trustee.

(3) A bankrupt who has given a notice of waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply for a discharge by obtaining from the Court an appointment for hearing, which shall be served on the trustee not less than twenty-one days before the date fixed for the hearing of the application, and the trustee on being served therewith shall proceed as provided in this section.

(4) A bankrupt corporation may not apply for a discharge unless it has satisfied the claims of its creditors in full.

(5) The Court may, before issuing an appointment for hearing an application for discharge, if requested by the trustee, require such funds to be deposited with, or such guarantee to be given to, the trustee, as it deems proper, for the payment of the fees and disbursements incurred in respect of the application.

(6) The trustee, on obtaining or being served with an appointment for hearing an application for discharge, shall, not less than fourteen days before the day appointed for the hearing of the application, send a notice of the application in the prescribed form to the Supervisor, the bankrupt and every creditor who has proved a claim, at the creditor's last known address.

(7) Where the trustee is not available to perform the duties required of a trustee on the application of a bankrupt for a discharge, the Court may authorize any other person to perform such duties and may give such directions as it deems necessary to enable the application of the bankrupt to be brought before the Court.

Committee's Recommendation:
That the provision in Clause 160 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 160 do stand part of the Bill, put and agreed to.

Clause 161: Trustee to prepare report of application of bankrupt for discharge.

(1) The trustee shall prepare a report in the prescribed form with respect to:

(a) the affairs of the bankrupt;

(b) the causes of his bankruptcy;

(c) the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the Court;

(d) the conduct of the bankrupt both before and after the date of the initial bankruptcy event;

(e) whether the bankrupt has been convicted of any offence under this Act; and

(f) any other fact, matter or circumstance that would justify the Court in refusing an unconditional order of discharge, and the report shall be accompanied by a resolution of the inspectors declaring whether or not they approve or disapprove of the report, and in the latter case, the reasons of the disapproval shall be given.

(2) Where an application of a bankrupt for a discharge is pending, the trustee shall file the report prepared under subsection (1) in the Court not less than two days, and forward a copy to the Supervisor, to the bankrupt and to each creditor who requested a copy not less than ten days before the day appointed for hearing the application, and in all other cases the trustee, before proceeding to the discharge, shall file the report in the Court and forward a copy to the Supervisor.

(3) The Supervisor may make such further or other report to the Court as he deems expedient or as in his opinion ought to be before the Court on the application referred to in subsection (2).

(4) The trustee or any creditor may attend the Court and be heard in person or by counsel.

(5) For the purposes of the application referred to in subsection (2), the report of the trustee is evidence of the statements contained in the report.

(6) Where a bankrupt intends to dispute any statement contained in the trustee's report prepared under subsection (1), the bankrupt shall at or before the time appointed for hearing the application for discharge give notice in writing to the trustee specifying the statements in the report that he proposes at the hearing to dispute.

(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition, stating the grounds of the opposition to the trustee and to the bankrupt at or before the time appointed for the hearing of the application for discharge.

Committee's Recommendation:
That the provision in Clause 161 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 161 do stand part of the Bill, put and agreed to.

Clause 162: Trustee's report to provide recommendation.

(1) The report prepared under section 162 (1) shall include a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the bankrupt's conduct and ability to make payments.

(2) The trustee shall consider the following matters in making a recommendation under subsection (1):

(a) whether the bankrupt has complied with a requirement imposed on the bankrupt under section 53;

(b) the total amount paid to the estate by the bankrupt, having regard to the bankrupt's indebtedness and financial resources; and

(c) whether the bankrupt, where the bankrupt could have made a viable proposal, chose to proceed to bankruptcy rather than to make a proposal as the means to resolve the indebtedness.

(3) A recommendation that the bankrupt be discharged subject to conditions is deemed to be an opposition to the discharge of the bankrupt.

(4) Where the bankrupt does not agree with the recommendation of the trustee, the bankrupt may, before the expiration of the ninth month after the date of the bankruptcy, send the trustee a request in writing to have the matter determined by mediation.

(5) Where a request for mediation has been made under subsection (4) or the discharge of the bankrupt is opposed by a creditor or the trustee in whole or in part on a ground referred to in section 165 (m) or (n), the trustee shall send an application for mediation in the prescribed form to the Supervisor within five days after the expiration of the nine-month period referred to in subsection (4) or within such further time as the Supervisor may allow.

(6) A mediation shall be in accordance with prescribed procedures.

(7) Where the issues submitted to mediation are not resolved by mediation or the bankrupt has failed to comply with conditions that were established by the trustee or as a result of mediation, the trustee shall forthwith apply to the Court for an appointment for the hearing of the matter, which hearing shall be held:

(a) within thirty days after the day the appointment is made; or

(b) at such later time as may be fixed by the Court, and the provisions of this Part in respect of applications to the Court under this subsection in relation to the discharge of a bankrupt apply, with such modifications as the circumstances require.

(8) Where the bankrupt complies with the conditions imposed on the bankrupt by the trustee in relation to the discharge of the bankrupt or as a result of mediation referred to in this section, the trustee shall:

(a) issue to the bankrupt a certificate of discharge in the prescribed form releasing the bankrupt from all debts other than a debt referred to in section 170 (1); and

(b) send a copy of the certificate of discharge to the Supervisor.

(9) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in section 10(2)

Committee's Recommendation:
That the provision in Clause 162 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 162 do stand part of the Bill, put and agreed to.

Clause 163: Questions to debtor.

(1) On the hearing of an application of a bankrupt for a discharge, the Court may put such questions to the debtor and receive such evidence as it thinks fit.

(2) On the hearing of an application of a bankrupt for a discharge, the Court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.

(3) The Court shall on proof of any of the facts mentioned in section 165:

(a) refuse the discharge of a bankrupt;

(b) suspend the discharge for such period as the Court thinks proper; or

(c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such monies, consent to such judgments or comply with such other terms as the Court may direct.

(4) Where at any time after the expiration of one year after the date of any order made under this section the bankrupt satisfies the Court that there is no reasonable probability for his being in a position to comply with the terms of the order, the Court may modify the terms of the order or of any substituted order, in such manner and on such conditions as it may think fit.

(5) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.

Committee's Recommendation:
That the provision in Clause 163 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 163 do stand part of the Bill, put and agreed to.

Clause 164: Facts pursuant to which bankrupt's conduct is subject to censure.

The facts referred to in section 164 are:

(a) the assets of the bankrupt are not of a value equal to thirty-three and one-third cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the Court that the fact that the assets are not that value has arisen from circumstances for which the bankrupt cannot justly be held responsible;

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and does not sufficiently disclose the business transactions and financial position of the bankrupt within the three years before the date of the initial bankruptcy event;

(c) the bankrupt has continued to trade after becoming aware of being insolvent;

(d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

(e) the bankrupt has brought on, or contributed to, the bankruptcy reckless speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

(f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

(g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;

(i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, incurred liabilities in order to make the bankrupt's assets equal to one thousand naira on the amount of the bankrupt is unsecured liabilities;

(j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;

(k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(1) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings under the bankruptcy;

(m) the bankrupt has failed to comply with the requirement to pay imposed under section 53;

(n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and

(o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the Court.

Committee's Recommendation:
That the provision in Clause 164 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 164 do stand part of the Bill, put and agreed to.

Clause 165: Value of bankrupt's assets.

For purposes of section 165, the assets of a bankrupt shall be deemed of a value equal to one thousand naira on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, is likely to realize or, with due care in realization, might have realized an amount equal to one thousand naira on his unsecured liabilities.

Committee's Recommendation:

That the provision in Clause 165 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 165 do stand part of the Bill, put and agreed to.

Clause 166: Cessation of any statutory disqualification.

(1) A statutory disqualification on account of bankruptcy ceases when the bankrupt is discharged and obtains from the Court a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part.

(2) The Court may, if it thinks fit, grant a certificate mentioned in subsection (1), and a refusal to grant such a certificate is subject to appeal.

Committee's Recommendation:

That the provision in Clause 166 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 166 do stand part of the Bill, put and agreed to.

Clause 167: Bankrupt to report to trustee and Court.

(1) Where an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until the terms, conditions or judgment are satisfied-

(a) give the trustee such information as he may require with respect to his earnings and after acquired property and income; and

(b) not less than once each year, file in the Court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge, and the trustee or any creditor may require the bankrupt to attend for examination under oath with respect to the facts contained in the statement or with respect to his earnings, income, after-acquired property or dealings.

(2) Where the bankrupt fails to give information or to file a statement as required by subsection (1), to attend for examination when required to do so or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the Court may on the application of the trustee or of any creditor revoke the order of discharge.

(3) Where a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt, all payments on account in respect of the dividend or sum of money shall be made to the trustee for distribution to the creditors.

Committee's Recommendation:
That the provision in Clause 167 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 167 do stand part of the Bill, put and agreed to.

Clause 168: Court may consider effects of settlement before marriage or cohabitation.
Where:

(a) a settlement is made before and in consideration of marriage, or made before and in consideration of a cohabitational relationship and the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(b) any covenant or contract is made in consideration of marriage or cohabitation, for the future settlement on or for the settlor's spouse, cohabitant or children of any property the settlor had not at the date of marriage, or at the date of cohabitation, any estate or interest, not being property of or in right of his or her spouse or cohabitant, if the settlor becomes bankrupt, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay his creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions in like manner as in cases where the bankrupt has been guilty of fraud.

Committee's Recommendation:
That the provision in Clause 168 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 168 do stand part of the Bill, put and agreed to.

Clause 169: Debts not released by order of discharge.
(1) An order of discharge does not release the bankrupt from:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a Court in respect of an offence, or any debt arising out of a recognisance or bail;

(b) any award of damages by a Court in civil proceedings in respect of:

(i) bodily harm intentionally inflicted, or sexual assault; or

(ii) wrongful death resulting from the bodily harm or sexual assault referred to in paragraph (i);

(c) any debt or liability for maintenance of the spouse or cohabitant of the bankrupt;

(d) any debt or liability under a support, maintenance or affiliation order or under an agreement for maintenance and support of a spouse, cohabitant or child living apart from the bankrupt;

(e) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;

(f) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;

(g) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim; or

(h) any debt for interest owed in relation to an amount referred to paragraphs (a) to (g);

(i) any debt or obligation in respect of a loan made under the Revolving Fund Loan Act or any other law which provides for loans or guarantees of loans to students where the date of bankruptcy of the bankrupt occurred:

(i) before the date of which the bankrupt ceased to be a fulltime or part-time student, as the case may be, under the relevant law; or

(ii) within ten years after the date on which the bankrupt ceased to be a full-time or part-time student.

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

(3) At any time after ten years after a bankrupt who has a debt referred to in subsection (1)(i) ceases to be a full-time or part-time student as the case may be under the relevant law, the Court may, on application, order that subsection (1) does not apply to the debt if the Court is satisfied that:

(a) the bankrupt has acted in good faith in connection with the liabilities under the loan; and

(b) the bankrupt has and will continue to experience financial difficulty to such an extent that the bankrupt will be unable to pay the liabilities under the loan.

Committee's Recommendation:
That the provision in Clause 169 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 169 do stand part of the Bill, put and agreed to.

Clause 170: Third parties not released.

An order of discharge does not release a person who at the date of the bankruptcy was a partner or co-trustee with the bankrupt or was jointly bound or had made a joint contract with the bankrupt, or a person who was surety or in the nature of a surety for the bankrupt.

Committee's Recommendation:
That the provision in Clause 170 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 170 do stand part of the Bill, put and agreed to.

Clause 171: Court may annul discharge.

(1) Where a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the Court may, on application, annul his discharge.

(2) Where it appears to the Court that the discharge of a bankrupt was obtained by fraud, the Court may, on application, annul his discharge.

(3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the revocation or annulment of the discharge.

Committee's Recommendation:
That the provision in Clause 171 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 171 do stand part of the Bill, put and agreed to.

Clause 172: Court may annul bankruptcy.

(1) Where, in the opinion of the Court, a receiving order ought not to have been made or an assignment ought not to have been filed, the Court may by order annul the bankruptcy.

(2) Where an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts done theretofore by the trustee or other person acting under his authority, or by the Court, are valid, but the property of the bankrupt shall vest in such person as the Court may appoint, or, in default of that appointment, without any conveyance or assignment whatever revert to and revest in the debtor for all his estate and interest in the property upon such terms and subject to such conditions, if any, as the Court may order.

Committee's Recommendation:
That the provision in Clause 172 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 172 do stand part of the Bill, put and agreed to.

Clause 173: Time Limit for Completion of Corporate Insolvency/bankruptcy Resolution Process.

(1) The Corporate insolvency resolution process shall be completed within a period of one hundred and eighty working days from the date of admission of the application to initiate such process.

(2) On an application under sub-section (1), if the court determines that the case is of such complexity that an orderly corporate insolvency resolution process cannot be completed within one hundred and eighty working days, it may by order extend the duration of such process beyond one hundred and eighty working days.

(3) Provided that any extension of the corporate insolvency resolution process period granted by the court under this section shall not be beyond a period of ninety working days.

(4) Provided further that any extension of the corporate insolvency resolution under this section shall not be granted more than once.

Committee's Recommendation:
That the provision in Clause 173 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 173 do stand part of the Bill, put and agreed to.

Clause 174: Fast Track Corporate Insolvency Resolution Process.

(1) A corporate insolvency resolution process carried out in accordance with this part shall be called a fast track corporate insolvency resolution process.

(2) subject to sub-section (3), the fast track corporate insolvency resolution process shall be completed within a period of ninety working days from the insolvency commencement date.

(3) The resolution professional shall file an application to the court to extend the period of the fast track corporate insolvency resolution process beyond ninety working days if instructed to do so by way of a resolution passed at a meeting of the committee of creditors and supported by a vote of seventy five percent of the voting share.

(4) On an application under sub-section (3), if the court determines that the case is of such complexity that an orderly fast track corporate insolvency resolution process cannot be completed within ninety working days, it may by order extend the duration of such process beyond ninety working days;

Provided that any extension of the fast track corporate insolvency resolution process period granted by the court under this section shall not be beyond a period of forty five working days.

Provided further that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once.

Committee's Recommendation:
That the provision in Clause 174 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 174 do stand part of the Bill, put and agreed to.

Clause 175: Manner of Initiating Fast Track Corporate Insolvency Resolution Process.

(1) An application for fast track corporate insolvency process may be initiated by a creditor or corporate debtor as the case may be, by furnishing:

(a) the proof of the existence of default as evidenced by records available with an information utility or such other means as may be specified by the Board; and

(b) such other information as may be specified by the Board to established that the corporate debtor is eligible for fast track corporate insolvency resolution process.

Committee's Recommendation:
That the provision in Clause 175 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 175 do stand part of the Bill, put and agreed to.

Clause 176: Issuance of order to be delayed.

An order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or delivered until the expiration of the time allowed for an appeal, and, if an appeal is entered, not until the appeal has been finally disposed of.

Committee's Recommendation:

That the provision in Clause 176 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 176 do stand part of the Bill, put and agreed to.

PART IX - ADMINISTRATIVE OFFICIALS

Supervisor

Clause 177: Appointment of Supervisor.

(1) For the purposes of this Act, there shall be a Supervisor of Insolvency who shall be responsible to the Minister for the general administration of this Act and whose office shall be a public office.

(2) The Supervisor shall supervise the administration of all estates and matters to which this Act applies.

(3) The Supervisor shall, without limiting the authority conferred by subsection (2):

(a) receive applications of licences to act as trustees under this Act and issue licences to persons whose applications have been approved;

(b) where not otherwise provided for, require the deposit of one or more continuing guaranty bonds as security for the due accounting of all property received by trustees and for the due and faithful performance by them of their duties in the administration of estates to which they are appointed, in such amount as the Supervisor may determine, and:

(i) which amount may be increased or decreased as he may deem expedient;

(ii) the security shall be in a form satisfactory to the Supervisor; and

(iii) may be enforced by the Supervisor for the benefit of the creditors;

(c) from time to time make or cause to be made such inspection or investigation of estates or other matters to which this Act applies, including the conduct of a trustee or a trustee acting as a receiver or interim receiver, as the supervisor may deem expedient and for the purpose of the inspection or investigation the Supervisor or any person appointed by the Supervisor for the purpose shall have access to and the right to examine and make copies of all books and records pertaining or relating to any estate or other matter to which this Act applies;

(d) receive and keep a record of all complaints from any creditor or other person interested in any estate and make such specific investigations with regard to such complaints as the Supervisor may determine; and

(e) examine trustees' accounts of receipts and disbursements and final statements.

(4) The Supervisor may by way of notice, intervene in any matter or proceeding in Court, where the Supervisor considers it expedient to do so, as if the Supervisor were a party to the matter of proceedings.

Committee's Recommendation:
That the provision in Clause 177 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 177 do stand part of the Bill, put and agreed to.

Clause 178: Access to trustee's account.

(1) The Supervisor, or anyone duly authorized by him in writing on his behalf, is entitled to have access to and to examine and make copies of the banking accounts of a trustee in which estate funds may have been deposited, and, when required, all deposit slips, cancelled cheques or other documents relating to the banking accounts in the custody of the bank or the trustee shall be produced for examination.

(2) The Supervisor, or anyone duly authorized in writing by or on behalf of the Supervisor, may with the leave of the Court granted on an ex parte application examine the books, records. and deposit accounts of a trustee or any other person designated in the order granting that leave for the purpose of tracing or discovering the property or funds of an estate when there are reasonable grounds to believe or suspect that the property or funds of an estate have not been properly disclosed or dealt with and for that purpose may under a warrant from the Court enter on and search any premises.

(3) Where the Supervisor, on ex parte application, satisfies the Court that it is necessary and in the public interest to do so, the Court may issue an order directing a deposit-taking institution that holds a deposit account of a trustee or such other person as is designated in the order not to make payments out of the account until such time as the Court otherwise directs.

Committee's Recommendation:
That the provision in Clause 178 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 178 do stand part of the Bill, put and agreed to.

Clause 179: Suspected offences.

(1) Where, on information supplied by a trustee or other person, the Supervisor suspects on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this Act or any other law, the Supervisor may, if it appears to the Supervisor that the alleged offence might not otherwise be

investigated, make or cause to be made such enquiries or investigations as the Supervisor deems expedient with respect to:

(a) the conduct, dealings and transactions of the debtor concerned;

(b) the causes of the bankruptcy or insolvency of the debtor; and

(c) the disposition of the property of the debtor.

(2) Where, on the application of the Supervisor or the Supervisor's authorised representative, a subpoena has been issued by the Court, the Supervisor may, for the purpose of an investigation under subsection (1), examine or cause to be examined under oath before the Court or other authorised person:

(a) the debtor;

(b) any person whom the Supervisor suspects, on reasonable grounds, has knowledge of the affairs of the debtor; or

(c) any person who is or has been an agent, clerk, servant, officer, director or employee of the debtor, with respect to:

(i) the conduct, dealings and transactions of the debtor;

(ii) the causes of the bankruptcy or insolvency of the debtor; and

(iii) the disposition of the property of the debtor, and may order any person liable to be so examined to produce any books and records in the person's possession or under the control of the person relating to the debtor and the conduct, dealings and transactions of the debtor or the disposition of the debtor's property.

(3) A person being examined pursuant to this section is bound to answer all questions relating to the conduct, dealings and transactions of the debtor, the causes of the debtor's bankruptcy or insolvency and the disposition of the debtor's property.

(4) A statement or admission made by any person in any examination or deposition before the Court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence under any other law.

(5) No person shall obstruct or interfere with any person doing anything that he is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing, and, notwithstanding any other law, every person shall, unless he is unable to do so, do everything he is required by

(6) Where any book or record is examined or produced in accordance with this section, the person by whom it is examined or to whom it is produced or the Supervisor may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Supervisor or a person authorized by the Supervisor to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in accordance with the Evidence Act.

(7) Notwithstanding section 127, a recovery made as the result of any inquiries or investigation made or caused to be made pursuant to this section shall be applied to the reimbursement of any costs and expenses incurred by the Supervisor on the recovery, not being ordinary costs or expenses of the office of the Supervisor, and the balance remaining in respect of the recovery shall be made available for the benefit of the creditors of the debtor.

Committee's Recommendation:
That the provision in Clause 179 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 179 do stand part of the Bill, put and agreed to.

Public records

Clause 180: Maintenance of public records.

(1) The Supervisor shall keep, or shall cause to be kept, in such form as the Supervisor deems appropriate and for the prescribed period, a public record of:

(a) proposals;

(b) bankruptcies;

(c) licences issued to trustees by the Supervisor; and

(d) notices sent to the Supervisor by receivers pursuant to section 14, and, on request for the records and on payment of such fee as may be prescribed, shall provide, or cause to be provided, any information contained in that public record.

(2) The Supervisor shall keep, or cause to be kept, in such form as the supervisor deems appropriate and for the prescribed period, such other records relating to the administration of the Act as the Supervisor deems necessary.

Committee's Recommendation:
That the provision in Clause 180 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 180 do stand part of the Bill, put and agreed to.

TRUSTEES

Licensing of trustees

Clause 181: Application for licence as trustee.

(1) A person who wishes to obtain a licence to act as a trustee shall file with the Supervisor an application for a licence in the prescribed form.

(2) The Supervisor, after such investigation concerning an applicant for a licence to act as a trustee as the Supervisor considers necessary, may issue the licence if the Supervisor having regard to the qualifications prescribed is satisfied that the applicant is qualified to obtain the licence.

Committee's Recommendation:
That the provision in Clause 181 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 181 *do stand part of the Bill, put and agreed to.*

Clause 182: Form of licence.
A licence shall be in the prescribed form and shall be subject to such conditions and limitations as are specified by the Supervisor in the licence.

Committee's Recommendation:
That the provision in Clause 182 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 182 *do stand part of the Bill, put and agreed to.*

Clause 183: Payment of fees Conduct of trustee.

(1) Prior to the issue of a licence, the applicant shall pay such fees as may be prescribed and thereafter on the thirty-first day of December following the day on which a licence is issued, and on the thirty-first day of December in each year, the trustee shall pay such fees as may be prescribed.

(2) A licence ceases to be valid:
(a) on the failure of the trustee to pay a fee in accordance with subsection (1); or

(b) if the trustee becomes bankrupt.

(3) Where a licence has ceased to be valid by reason of:
(a) failure to pay fees, the Supervisor may reinstate the trustee where the trustee pays the outstanding fees together with any penalty amount prescribed and provides a reasonable written explanation of the failure to pay the fees in accordance with subsection (1); or

(b) the trustee becoming bankrupt, the Supervisor may, on written representations made by the trustee, reinstate the licence subject to such conditions and limitations as the Supervisor considers appropriate and may specify in that licence.

(4) A licence may be suspended or cancelled by the Supervisor where:
(a) the trustee is convicted of an indictable offence;

(b) the trustee has failed to comply with any of the conditions or limitations to which the licence is subject;

(c) the trustee has ceased to act as a trustee; or

(d) the trustee so requests.

(5) Notice of an intended decision under subsection (4) shall be in writing setting out the reasons of the Supervisor for the decision and shall be sent to the trustee at least ten days before the decision takes effect.

(6) Where a licence ceases to be valid by virtue of subsection (2) or is suspended or cancelled under subsection(4), the Supervisor may impose on the trustee such requirements as the Supervisor considers appropriate, including a requirement that the trustee deposit security for the protection of an estate.

(7) For the avoidance of doubt, section 188 does not apply in respect of a suspension or cancellation of a licence under subsection (4).

Committee's Recommendation:
That the provision in Clause 183 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 183 *do stand part of the Bill, put and agreed to.*

Conduct of trustees.

Clause 184: Trustee prohibited from acting in specified circumstances.

(1) Except with the permission of the Court and on such conditions as the Court may impose, no trustee shall act as trustee in relation to the estate of a debtor:

(a) where the trustee is, or at any time during the two preceding years was:

(i) a director or officer of the debtor;

(ii) an employer or employee of the debtor or of a director or officer of the debtor;

(iii) related to the debtor or to any director or officer of the debtor; or

(iv) the auditor, accountant or attorney at-law, or a partner or employee of the auditor, accountant or attorney at-law, of the debtor; or

(b) where the trustee is:

(i) the trustee under a trust indenture issued by the debtor or any person related to the debtor; or

(ii) related to the trustee under a trust indenture referred to in subsection (1) (a) (i).

(2) No trustee shall act as a trustee in relation to the estate of a debtor where the trustee is already:

(a) the trustee in the bankruptcy of, or in a proposal concerning any person related to the debtor; or

(b) the receiver or the liquidator of the property of any person related to the debtor, without making, at the time of being appointed as trustee in relation to the estate of the debtor and at the first meeting of creditors, full disclosure of that fact and of the potential conflict of interest.

Committee's Recommendation:
That the provision in Clause 184 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 184 *do stand part of the Bill, put and agreed to.*

Clause 185: Independent legal opinion.

(1) No trustee shall, while acting as the trustee of an estate, act for or assist a secured creditor of the estate to assert any claim against the estate or to realize or otherwise deal with the security that the secured creditor holds, unless the trustee has obtained a written opinion of an attorney-at-law who does not act for the secured creditor, that the security is valid and enforceable as against the estate.

(2) On commencing to act for or assist a secured creditor of the estate in the manner set out in subsection (1), a trustee shall notify forthwith the Supervisor and the creditors or the inspectors:

(a) that the trustee is acting for the secured creditor;

(b) of the basis of any remuneration paid by the secured creditor; and

(c) of the opinion referred to in subsection (1).

(3) Within two days after receiving a request for a copy of the opinion referred to in subsection (1), a trustee shall provide the Supervisor with that copy and shall also provide a copy to each creditor who has made a request for a copy.

Committee's Recommendation:
That the provision in Clause 185 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 185 *do stand part of the Bill, put and agreed to.*

Clause 186: Code of ethics.

A trustee shall comply with such code of ethics respecting the conduct of trustees as may be prescribed.

Committee's Recommendation:
That the provision in Clause 186 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 186 *do stand part of the Bill, put and agreed to.*

Clause 187: Cancelled licence.

A trustee shall not engage the services of another trustee whose licence has been cancelled under section 181 (4) (a) or 187 (1).

Committee's Recommendation:
That the provision in Clause 187 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 187 *do stand part of the Bill, put and agreed to.*

Appointment and substitution of trustees.

Clause 188: Appointment or substitution of trustees by creditors.
The creditors may, at any meeting by special resolution, appoint or substitute another licensed trustee for the trustee named in an assignment, receiving order or proposal, or otherwise appointed or substituted.

Committee's Recommendation:
That the provision in Clause 188 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 188 *do stand part of the Bill, put and agreed to.*

Clause 189: Rights of Supervisor where questionable trustee conduct.
(1) Where, after making an investigation into the conduct of a trustee, it appears to the Supervisor that:
(a) a trustee has not properly performed the duties of a trustee or has been guilty of any improper management of an estate;

(b) a trustee has not fully complied with this Act, the Bankruptcy Rules, or any law with regard to the proper administration of any estate; or

(c) it is in the public interest to do so, the Supervisor may do one or more of the following:
(i) cancel or suspend the licence of the trustee;
(ii) place such conditions or limitations on the licence as the Supervisor considers appropriate including a requirement that the trustee successfully take an exam or enrol in such course as may be prescribed; and

(iii) require the trustee to make restitution to the estate of such amount of money as the estate has been deprived of as a result of the trustee I s conduct.

(2) This section and section 188 apply, in so far as they are applicable, in respect of former trustees, with such modifications as the circumstances require.

Committee's Recommendation:
That the provision in Clause 189 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 189 *do stand part of the Bill, put and agreed to.*

Clause 190: Notice to trustee.
(1) Where the Supervisor intends to exercise any of the powers referred to in section 187 (1), the Supervisor shall send the trustee written notice of the powers that the Supervisor intends to exercise and the reasons therefore and afford the trustee a reasonable opportunity for a hearing.

(2) At a hearing referred to in subsection (1), the Supervisor:
(a) has power to administer oaths;

(b) is not bound by any legal or technical rules of evidence in conducting the hearing;

(c) shall deal with the matters set out in the notice of the hearing as informally and as expeditiously as the circumstances and a consideration of fairness permit; and

(d) shall cause a summary of any oral evidence to be made in writing.

(3) The notice referred to in subsection (1) and, where applicable, the summary of oral evidence referred to in subsection (2)(d), together with such documentary evidence as the Supervisor receives in evidence shall form the record of the hearing.

(4) The record of the hearing referred to in subsection (3) is public, unless the Supervisor is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public interest, outweighs the desirability of the access by the public to information about those matters.

(5) The decision of the Supervisor after a hearing referred to in subsection (1), together with the reasons given for the hearing, shall be given in writing to the trustee not later than three months after the conclusion of the hearing, and the decision shall be made public.

(6) Any decision of the supervisor may on application to the Court be reviewed, set aside, or confirmed.

Committee's Recommendation:
That the provision in Clause 190 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 190 *do stand part of the Bill, put and agreed to.*

Clause 191: Protection of estate by Supervisor.

(1) The Supervisor may, for the protection of an estate in the circumstances referred to in subsection (2):

(a) direct a person to deal with property of the estate described in the direction in such manner as may be indicated in the direction, including the continuation of the administration of the estate;

(b) direct any person to take such steps as the Supervisor considers necessary to preserve the books and records of the estate;

(c) direct a bank or other depository not to payout funds held to the credit of the estate except in accordance with the direction; and

(d) where action in respect of a trustee is being taken under section 181(4) or 187(1), refuse to appoint the trustee in respect of any new estates until a decision in respect of the trustee is made.

(2) The circumstances in which the Supervisor is authorised to exercise the powers set out in subsection (1) are where:

(a) an estate is left without a trustee by the death, removal or incapacity of the trustee;.

(b) the Supervisor makes or causes to be made any investigation pursuant to section 175 (3) (c);

(c) the Supervisor exercises any of the powers set out in section 187;

(d) the fees referred to in section 181(1) have not been paid in respect of the licence of a trustee;

(e) a trustee becomes insolvent;

(f) a trustee is convicted of an indictable offence or has failed to comply with any of the conditions or limitations to which the trustee I s licence is subject; or

(g) a circumstance referred to in section 181(4)(c) or (d) exists and the Supervisor is considering cancelling the licence.

(3) A direction given pursuant to subsection (1):

(a) shall state the statutory authority pursuant to which the direction is given;

(b) is binding on the person to whom it is given; and

(c) is, in favour of the person to whom it is given, conclusive proof of the facts set out in the direction.

(4) A person who complies with a direction given pursuant to subsection (1) is not liable for any act done by the person only in compliance with that direction.

Committee's Recommendation:
That the provision in Clause 191 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 191 *do stand part of the Bill, put and agreed to.*

Clause 192: Court removal of trustee.
The Court on the application of any interested person, may for cause remove a trustee and appoint another licensed trustee in the trustee's place.

Committee's Recommendation:
That the provision in Clause 192 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 192 *do stand part of the Bill, put and agreed to.*

Clause 193: Appointment by Supervisor of non-licensed trustee.
Where no licensed trustee can be found who is willing to act as trustee, the Court or the Supervisor may appoint a responsible person to administer the estate of the debtor, and that person, for that purpose, has all the powers of a licensed trustee under this Act, and the provisions of this Act apply to that person as if a licence had been issued to that person under section 175 (3) (a).

Committee's Recommendation:
That the provision in Clause 193 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 193 *do stand part of the Bill, put and agreed to.*

Clause 194: Duty to act.

(1) No trustee is bound to assume the duties of trustee in matters relating to assignments, receiving orders or proposals, but having accepted an appointment in relation to those matters the trustee shall, until discharged or another trustee is appointed in the place of the trustee, perform the duties required of a trustee under this Act.

(2) In subsections (3) to (9), reference to a trustee means a trustee in a bankruptcy or proposal and includes an interim receiver or a receiver.

(3) Notwithstanding anything in any law, where a trustee carries on in that position the business of the debtor or continues the employment of the debtor's employees, the trustee is not by reason of that fact personally liable in respect of any claim against the debtor or related to a requirement imposed on the debtor to pay an amount where the claim arose before or upon the trustee's appointment.

(4) A claim referred to in subsection (3) shall not rank as costs of administration.

(5) Notwithstanding anything in any law, a trustee is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:

(a) before the trustee's appointment; or

(b) after the trustee's appointment, unless it is established that the condition arose or the damage occurred as a result of the trustee's negligence or misconduct.

(6) Nothing in subsection (5) exempts a trustee from any duty to report or make disclosure imposed by a law referred to in that subsection.

(7) Notwithstanding anything in any law but subject to subsection (5) where an order is made which has the effect of requiring a trustee to remedy any environmental condition or environmental damage affecting property involved in a bankruptcy, proposal or receivership, the trustee is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order:

(a) where, within such time as is specified in the order and where no time is specified, within ten days after the order is made, within ten days after the appointment of the trustee, if the order is in effect when the trustee is appointed, or during the period of the stay referred to in paragraph

(b) the trustee:

(i) complies with the order; or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(b) where during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a), within ten days after the order is made or within ten days after the appointment of the trustee, where the order is in effect when the trustee is appointed, to:

(i) the Court or body having jurisdiction under the law pursuant to which the order was made to enable the trustee to contest the order; or

(ii) the Court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or

(c) if the trustee had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

(8) The Court may grant a stay of the order referred to in subsection (7) on such notice and for such period as the Court deems necessary for the purpose of enabling the trustee to assess the economic viability of complying with the order.

(9) Where the trustee has abandoned or renounced any interest in real property affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

(10) Any claim by the State against the debtor in a bankruptcy, proposal or receivership for costs of remedying any environmental condition or environmental damage affecting real property of the debtor is secured by a charge on the real property and on any other real property of the debtor that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge

(a) is enforceable in the same way as a mortgage, or other security on real property; and

(b) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other law.

(11) Notwithstanding section 112(1), a claim against a debtor in a bankruptcy or proposal for the costs of remedying any environmental condition or environmental damage affecting real property of the debtor shall be a provable claim, whether the condition arose or the damage occurred before or after the date of the filing of the proposal or the date of the bankruptcy.

Committee's Recommendation:
That the provision in Clause 194 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 194 *do stand part of the Bill, put and agreed to.*

Clause 195: Acts done in good faith.
No defect or irregularity in the appointment of a trustee vitiates any act done by the trustee in good faith.

Committee's Recommendation:
That the provision in Clause 195 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 195 *do stand part of the Bill, put and agreed to.*

Corporations as trustees

Clause 196: Corporate trustees.
A body corporate may hold a licence as trustee only if a majority of its directors and a majority of its officers hold licences as trustees.

Committee's Recommendation:
That the provision in Clause 196 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 196 *do stand part of the Bill, put and agreed to.*

Clause 197: Incorporation.
Notwithstanding the Companies Act, no person may be incorporated under the Act for the purpose of acting as a trustee in insolvency from within Nigeria unless its incorporation has been consented to by the Supervisor.

Committee's Recommendation:
That the provision in Clause 197 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 197 *do stand part of the Bill, put and agreed to.*

Clause 198: Acts by corporate trustee.
A body corporate that holds a licence as a trustee may perform the duties and exercise the powers of a trustee only through a director or officer of the body corporate who holds a licence as a trustee.

Committee's Recommendation:
That the provision in Clause 198 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 198 *do stand part of the Bill, put and agreed to.*

Clause 199: Corporate trustee not a trust company Official name.
Every body corporate that is incorporated by or under an Act of the National Assembly and that holds a licence as a trustee may carry on the business of a trustee and shall not, in respect of its operations as a trustee, be construed to be carrying on the business of a trust company.

Committee's Recommendation:
That the provision in Clause 199 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 199 *do stand part of the Bill, put and agreed to.*

Clause 200: Official name.
The official name of a trustee acting in bankruptcy proceedings is "The Trustee of the Estate of (insert name of the bankrupt), a Bankrupt", and the official name of a trustee acting with respect to a proposal by an insolvent person is "The Trustee acting in re the proposal of (insert the name of the debtor)"

Committee's Recommendation:
That the provision in Clause 200 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 200 *do stand part of the Bill, put and agreed to.*

Duties and powers of trustees

Clause 201: Trustee to give security.

(1) Every trustee duly appointed shall forthwith give security in cash or by bond of a guarantee company satisfactory to the Supervisor for the due accounting for the payment and the transfer of all property received by him as trustee and for the due and faithful performance of his duties.

(2) The security required to be given under subsection (1) shall be deposited with the Supervisor, shall be given in favour of the creditors generally and may be enforced by any succeeding trustee or by one of the creditors on behalf of all by direction of the Court, and may be increased or reduced by the Supervisor.

(3) The trustee shall, as soon as possible, take possession of the deeds, books and records, and all property of the bankrupt and make an inventory and for the purpose of making an inventory the trustee is entitled to enter, subject to subsection (4), on any premises on which the deeds, books and records, or property of the bankrupt may be, notwithstanding that they may be in the possession of a Marshal, a secured creditor or other claimant to the deeds, books, records or property of the bankrupt.

(4) Where the premises referred to in subsection (3) are occupied by a person other than the bankrupt, the trustee may not enter the premises without the consent of that other person except under the authority of a warrant issued under section 231.

(5) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may on his application, enforce the acquisition or retention accordingly.

(6) No person is, as against the trustee, entitled to withhold possession of the books and records belonging to the bankrupt or to set up any lien or right of retention on those books and records.

Committee's Recommendation:
That the provision in Clause 201 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 201 *do stand part of the Bill, put and agreed to.*

Clause 202: Delivery of property to trustee.
Where a person has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee, that person shall deliver the property to the trustee.

Committee's Recommendation:
That the provision in Clause 202 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 202 *do stand part of the Bill, put and agreed to.*

Clause 203: Protective measures.
The trustee may when necessary in the interest of the estate of the bankrupt-
(a) take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value; and

(b) carry on the business of the bankrupt until the date fixed for the first meeting of creditors.

Committee's Recommendation:
That the provision in Clause 203 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 203 *do stand part of the Bill, put and agreed to.*

Clause 204: Legal proceedings to protect estate.
(1) The trustee may prior to the first meeting of creditors, obtain such legal advice and take such Court proceedings as he may consider necessary for the recovery or protection of the property of the bankrupt.

(2) In the case of an emergency where the necessary authority cannot be obtained from the inspectors in time to take appropriate action, the trustee may obtain such legal advice and institute such legal proceedings and take such action as he may deem necessary in the interests of the estate of the bankrupt.

(3) The trustee shall verify the bankrupt's statement of affairs.

Committee's Recommendation:
That the provision in Clause 204 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 204 *do stand part of the Bill, put and agreed to.*

Clause 204: Divesting of real property.

(1) The trustee may, with the permission of the inspectors, divest all or any part of the trustee's right, title or interest in any real property of the bankrupt by notice or disclaimer by the trustee, and the official in charge of the land registry office, as the case may be, where title to the real property is registered shall accept and register in the land register the notice when tendered for registration.

(2) Registration of a notice under subsection (1) operates as a discharge or release of any document previously registered in the land register by or on behalf of the trustee with respect to the property referred to in the notice.

Committee's Recommendation:
That the provision in Clause 204 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 204 *do stand part of the Bill, put and agreed to.*

Clause 205: Initiation of criminal proceeding.
The trustee may initiate such criminal proceedings as may be authorised by the creditors, the inspectors or the Court against any person believed to have committed an offence under this Act.

Committee's Recommendation:
That the provision in Clause 205 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 205 *do stand part of the Bill, put and agreed to.*

Clause 206: Returns.
The trustee is not liable to make any return that the bankrupt was required to make more than one year prior to the commencement of the calendar year, or the fiscal year of the bankrupt where that is different from the calendar year in which he became bankrupt.

Committee's Recommendation:
That the provision in Clause 206 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 206 *do stand part of the Bill, put and agreed to.*

Clause 207: Regulators empowered to review records.
The trustee shall at all reasonable times permit any authorised person to inspect the books and records of the bankrupt in order to prepare or verify returns that the bankrupt is by statute required to file.

Committee's Recommendation:
That the provision in Clause 207 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 207 *do stand part of the Bill, put and agreed to.*

Clause 208: Insure property.

(1) The trustee shall forthwith temporarily insure and keep insured in his official name all the insurable property of the bankrupt, for such amount and against such hazards as he may deem advisable until the inspectors are appointed; and the inspectors shall determine the amount for which and the hazards against which the bankrupt's property shall be insured by the trustee.

(2) All insurance covering property of the bankrupt in force at the date of bankruptcy shall in the event of loss suffered, without any notice to the insurer or other action on the part of the trustee and notwithstanding any statute or rule of law or contract or provision to a contrary effect become payable immediately to the trustee as if the name of the trustee were written in the policy or contract of insurance as that of the insured or as if no change of title or ownership had come about and the trustee were the insured.

Committee's Recommendation:
That the provision in Clause 208 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 208 *do stand part of the Bill, put and agreed to.*

Clause 209: Deposits.

(1) Subject to subsections (2) and (3), a trustee shall forthwith deposit all monies received for an estate in a separate trust account for each estate.

(2) The trustee shall deposit moneys pursuant to subsection (1) in a deposit-taking institution licensed under the Financial Institutions Act.

(3) Where monies referred to in subsection (1) are situated in a country other than Nigeria, the trustee may, where authorized by the Supervisor, deposit the monies in a financial institution in that country that is similar to a bank.

(4) Except for the payment of dividends and charges incidental to the administration of estate, the trustee shall not withdraw any money from the trust account of an estate without the permission in writing of the inspectors or the court.

(5) All payments made by a trustee under subsection (4) shall be made by electronic payment orby cheque drawn on the estate account or in such manner as may be specified by the Supervisor.

(6) The trustee shall not deposit any sums received by the trustee in the trustee's official capacity as a trustee in any banking account kept by the trustee for the trustee's personal use.

(7) Any interest recoverable in respect of the account shall be part of the assets of the estate.

Committee's Recommendation:
That the provision in Clause 209 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 209 *do stand part of the Bill, put and agreed to.*

Clause 210: Maintenance books and records.

(1) The trustee shall keep proper books and records of the administration of each estate to which he is appointed, in which shall be entered:

(a) a record of all monies received or disbursed by him;

(b) a list of all creditors filing claims;

(c) the amount and disposition of those claims;

(d) a copy of all notices sent out;

(e) the original signed copy of all minutes, proceedings had, and resolutions passed at any meeting of creditors or inspectors;

(f) Court orders; and

(g) all such other matters or proceedings as may be necessary to give a complete account of his administration of the estate.

(2) The estate books and records relating to the administration of an estate are deemed to be the property of the estate, and, in the event of any change of trustee, shall forthwith be delivered to the substituted trustee.

(3) The trustee shall permit the books and records referred to in subsection (2) to be inspected and copies of those books and records made by the Supervisor, the bankrupt, or any creditor or their agents at any reasonable time.

Committee's Recommendation:
That the provision in Clause 210 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 210 *do stand part of the Bill, put and agreed to.*

Clause 211: Reporting by trustee.

(1) The trustee shall report in writing-

(a) when required by the inspectors, to every creditor;

(b) when required by any specific creditor, to the creditor; and

(c) when required by the Supervisor, to the Supervisor or the creditors, showing the condition of the bankrupt's estate, the monies on hand, if any, and particulars of any property remaining unsold.

(2) The trustee is entitled to charge against the estate of the bankrupt, for the preparation and delivery of any report referred to in subsection (1), only his actual disbursements.

Committee's Recommendation:
That the provision in Clause 211 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 211 *do stand part of the Bill, put and agreed to.*

Clause 212: Documents to be provided to Supervisor.

(1) The trustee shall, forthwith after the receipt or preparation of the documents referred to in section 145:

(a) send them to the Supervisor along with a true copy of:

(i) the notice referred to in section 93;

(ii) the statement referred to in section 149 (e);

(iii) the trustee's final statement of receipts and disbursements and the dividend sheet; and

(iv) every order made by the Court on the application for discharge of a bankrupt or for annulling any bankruptcy; and

(b) file a copy of the documents referred to in paragraphs (ii) and (iii) in the Court.

(2) The trustee shall forward promptly to the Supervisor copies of all notices, reports and statements sent by the trustee to the creditors and, when required, copies of such other documents as the Supervisor may specify.

Committee's Recommendation:
That the provision in Clause 212 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 212 *do stand part of the Bill, put and agreed to.*

Clause 213: Report to Supervisor where trustee no longer appointed.

(1) Where:

(a) the licence of a trustee has been cancelled or suspended, or has ceased to be valid by reason of failure to pay fees;

(b) a trustee has been removed from continuing the administration of an estate; or

(c) a trustee dies or becomes incapacitated, the trustee or the legal representative of the trustee shall, within such time as is fixed by the Supervisor:

(i) prepare and forward to the supervisor a detailed financial statement of the receipts and disbursements together with a list of and report on the unadministered property of every estate under the administration of the trustee for which the trustee has not been discharged; and

(ii) shall forward to such other trustee as may be appointed in the place of the trustee or, pending the appointment of the other trustee, to the Supervisor, all the remaining property of every estate under the administration together with all the books and records relating thereto.

(2) Every trustee before proceeding to his discharge shall, unless he has already done so, prepare and file the report referred to in section 162 and forward a copy to the Supervisor.

Committee's Recommendation:
That the provision in Clause 213 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 213 *do stand part of the Bill, put and agreed to.*

Clause 214: Permission to take specified action.

(1) The trustee may, with the permission of the inspectors, do all or any of the following things:

(a) sell or otherwise dispose of for such price or other consideration as the inspectors may approve of all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or falling due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole of the property to any person or to sell the same in parcels;

(b) lease any real property;

(c) carry on the business of the bankrupt, in so far as may be necessary for the beneficial administration of the estate of the bankrupt;

(d) bring, institute or defend any action or other legal proceedings relating to the property of the bankrupt;

(e) employ an attorney-at-law or other agent to take any proceedings or do any business that may be sanctioned by the inspectors;

(f) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the inspectors think fit;

(g) incur obligations, borrow money and give security on any property of the bankrupt by mortgage, charge, assignment, pledge or otherwise, and the obligations and money borrowed shall be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;

(h) compromise and settle any debt owing to the bankrupt;

(i) compromise any claim made by or against the estate;

(j) divide in its existing form among the creditors, according to its estimated value, any property that from its particular nature or other special circumstances cannot be readily or advantageously sold;

(k) disclaim any property which binds the possessor of the property to the performance of any onerous act or to the payment of any sum of money;

(l) elect to retain for the whole part of its unexpired term, or to assign, surrender, disclaim any lease of, or other temporary interest in, any property of the bankrupt; and

(m) appoint the bankrupt to aid in administering the estate of the bankrupt in such manner and on such terms as the inspectors may direct.

(2) The permission given for the purposes of subsection (1) is not a general permission to do all or any of the things mentioned in that subsection, but is only a permission to do the particular thing or things or class of thing or things that the permission specifies.

Committee's Recommendation:
That the provision in Clause 214 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 214 *do stand part of the Bill, put and agreed to.*

Clause 215: Borrowing with permission of Court.

(1) With the permission of the Court, an interim receiver or trustee, may prior to the appointment of inspectors, make necessary or advisable advances, incur obligations, borrow money and give security on the property of the debtor in such amounts, on such terms and on such property as may be authorised by the Court; and those advances, obligations and money borrowed shall be repaid out of the property of the debtor in priority to the claims of the creditors.

(2) The creditors or inspectors may by resolution limit:

(a) the amount of the obligations that may be incurred; and

(b) the advances that may be made or moneys that may be borrowed by the trustee and may limit the period of time during which the business of the bankrupt may be carried on by the trustee.

(3) All debts incurred and credit received in carrying the business of a bankrupt are deemed to be debts incurred and credit received by the estate of the bankrupt.

Committee's Recommendation:
That the provision in Clause 215 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 215 *do stand part of the Bill, put and agreed to.*

Clause 216: Trustee not required to operate business.

The trustee is not under any obligation to carry on the business of the bankrupt:

(a) where in his opinion the realizable value of the property of the bankrupt is insufficient to protect him fully against possible loss occasioned by so doing; and

(b) the creditors or inspectors, on demand made by the trustee, neglect or refuse to secure him against such possible loss.

Committee's Recommendation:
That the provision in Clause 216 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 216 *do stand part of the Bill, put and agreed to.*

Clause 217: Order for sale of assets.

(1) The Court may make an order providing for the sale of any or all of the assets of the estate of the bankrupt, either by tender, private sale or public auction, setting out the terms and conditions of the sale and directing that the proceeds from the sale shall be used for the purpose of reimbursing the trustee in respect of any costs that may be owing to him or of any monies that he may have advanced for the benefit of the estate.

(2) If no bid is received for the assets of the estate of the bankrupt sufficient to reimburse the trustee, the Court may make an order vesting in the trustee personally all assets of the estate and on the making of the order the rights to the assets and interests of the creditors and of the bankrupt to the assets, shall be determined and ended.

Committee's Recommendation:
That the provision in Clause 217 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 217 *do stand part of the Bill, put and agreed to.*

Clause 218: Application for directions.

(1) A trustee may apply to the Court for directions in relation to any matter affecting the administration of the estate of a bankrupt and the Court shall give in writing such directions, if any, as appears to be proper in the circumstances.

(2) Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall, if requested to do so by the Supervisor, report that fact to the Court as soon as practicable thereafter, and the Court shall make such order as it considers fit to expedite the administration of the estate.

Committee's Recommendation:
That the provision in Clause 218 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 218 *do stand part of the Bill, put and agreed to.*

Clause 219: Redirection of mail.

(1) Subject to subsection (2), the trustee may, by sending to the Post Master-General of the Nigerian Postal Service:

(a) a notice in the prescribed form; and

(b) a copy of the trustee's certificate of appointment, request that any mail addressed to a bankrupt that is directed to any place referred to in the notice be redirected or sent by the Managing Director of the Nigerian Postal Corporation to the trustee or to such other person as the trustee may designate; and when the Managing Director receives those documents, he shall so redirect or send that mail.

(2) A notice referred to in subsection (1) may refer to a bankrupt's residence only where the trustee has, on application, obtained permission from the Court.

(3) Where a bankrupt is an individual, a notice referred to in subsection (1) is operative only during the three-month period immediately following the date of bankruptcy unless the Court, on application, extends that period on such terms as the Court considers fit.

Committee's Recommendation:
That the provision in Clause 219 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 219 *do stand part of the Bill, put and agreed to.*

Clause 220: Former trustee to pass accounts.

(1) On the appointment of a substituted trustee, the former trustee shall forthwith pass his accounts before the Court and deliver to the substituted trustee all the property of the estate, together with all books and records of the bankrupt and of those relating to the administration of the estate.

(2) A substituted trustee shall:

(a) if appointed by the creditors, file with the Court a copy of the minutes of the meeting at which the substituted trustee was appointed signed by the Chairman;

(b) notify the Supervisor of the appointment of the substituted trustee;

(c) if required by the inspectors, register a notice of the appointment in the land register of any land titles or registry office where the assignment or receiving order has been registered; and

(d) as soon as funds are available, pay to the former trustee his remuneration and disbursements as approved by the Court.

Committee's Recommendation:
That the provision in Clause 220 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 220 *do stand part of the Bill, put and agreed to.*

Clause 221: Application for Court by aggrieved party.

Where the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of and make such other order as it deems fit.

Committee's Recommendation:
That the provision in Clause 221 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 221 *do stand part of the Bill, put and agreed to.*

Clause 222: Trustee refusing to act.

(1) Where a creditor requests the trustee to take any proceedings that in his opinion would be for the benefit of the estate of a bankrupt and the trustee refuses or neglects to take the proceedings, the creditor may obtain from the Court an order authorising him to take the proceedings in his own name and at his own expense and risk, on notice being given to the other creditors of the contemplated proceeding, and on such other terms and conditions as the Court may direct.

(2) On an order under subsection (1) being made, the trustee shall assign and transfer to the creditor all his right, title and interest in the chose-in-action or subject matter of the proceeding, including any document in support of the chose-in-action or proceedings.

(3) Any benefit derived from a proceeding taken pursuant to subsection (1), to the extent of his claim and the costs, belongs exclusively to the creditor instituting the proceedings, and the surplus, if any, belongs to the estate.

(4) Where, before an order is made under subsection (1), the trustee, with the permission of the inspectors, signifies to the Court his readiness to institute the proceedings for the benefit of the creditors, the order shall fix the time within which he shall do so, and in that case the benefit derived from the proceedings, if instituted within the time so fixed, belongs to the estate.

Committee's Recommendation:
That the provision in Clause 222 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 222 do stand part of the Bill, put and agreed to.

Remuneration of trustee

Clause 223: Determination of fees.

(1) The remuneration of the trustee shall be such as is voted to the trustee by ordinary resolution at any meeting of creditors, or if the creditors resolve by ordinary resolution, by the inspectors.

(2) Where the remuneration of the trustee has not been fixed under subsection (1), the trustee shall apply to the Court for an order fixing the amount of the trustee's remuneration.

(3) Where the business of the debtor has been carried on by the trustee or under his supervision, he may be allowed such special remuneration for such services as the creditors or the inspectors may by resolution authorise, and, in the case of a proposal, such special remuneration as may be agreed to by the debtor, or in the absence of agreement with the creditors or debtor such amount as may be approved by the Court.

(4) In the case of two or more trustees acting in succession, the remuneration shall be apportioned between the trustees in accordance with the services rendered by each, and in the absence of agreement between the trustees the Court shall determine the amount payable to each.

(5) On application by the trustee, a creditor or the debtor and on notice to such parties as the Court may direct, the Court may make an order increasing or reducing the remuneration.

Committee's Recommendation:
That the provision in Clause 223 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 223 *do stand part of the Bill, put and agreed to.*

Discharge of trustee

Clause 224: Property incapable of realization.

(1) With the permission of the inspectors, any property of a bankrupt found incapable of realization shall be returned to the bankrupt prior to the trustee's application for discharge.

(2) Where a trustee is unable to dispose of any property as provided in this section, the Court may make such order as it may consider necessary.

Committee's Recommendation:
That the provision in Clause 224 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 224 *do stand part of the Bill, put and agreed to.*

Clause 225: Trustee to apply for discharge.

(1) When a trustee has completed the duties required of him with respect to the administration of the property of a bankrupt, he shall apply to the Court for a discharge.

(2) The Court may discharge a trustee with respect to any estate on full administration thereof or, for sufficient cause, before full administration.

(3) A trustee when replaced by another trustee is entitled to be discharged if he has accounted to the satisfaction of the inspectors and the Court for all property that came to his hands, and a period of three months has elapsed after the date of the replacement without any undisposed of claim or objection having been made by the bankrupt or any creditor.

(4) When the accounts of a trustee have been approved by the inspectors and taxed by the Court and all objections, applications and appeals have been settled or disposed of and all in dividends have been paid, the estate is deemed to have been fully administered.

(5) Any interested person desiring to object to the discharge of a trustee shall, at least five days prior to the date of the hearing, file notice of objection with the Registrar of the Court setting out the reasons for the objection and serve a copy of the notice on the trustee.

(6) The Court shall consider the objection filed under subsection (5) and may grant or withhold a discharge or give such directions as it may deem proper in the circumstances.

(7) Nothing in or done under the authority of this section relieves or discharges or shall be deemed to relieve or discharge a trustee from the results of any fraud.

(8) The discharge of a trustee discharges him from all liability:
(a) in respect of any act done or default made by him in the administration of the property of the bankrupt; and

(b) in relation to his conduct as trustee, any discharge may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment

(9) Nothing in subsection (8) shall be construed to prevent an investigation or a proceeding in respect of a trustee under section 187 (1).

(10) The discharge of a trustee under this section operates as a release of the security provided pursuant to section 199 (1).

(11) Notwithstanding his discharge, the trustee remains the trustee of the estate for the performance of such duties as may be incidental to the full administration of the estate.

(12) The Court, on being satisfied that there are assets that have not been realized or distributed, may, on the application of any interested person, appoint a trustee to complete the administration of the estate of the bankrupt; and the trustee shall be governed by the provisions of this Act, in so far as they are applicable.

Committee's Recommendation:
That the provision in Clause 225 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 225 do stand part of the Bill, put and agreed to.

PART X - COURTS AND PROCEDURE

Jurisdiction of Courts

Clause 226: Jurisdiction of High Court.
The Court shall have and exercise jurisdiction in respect of bankrupts and matters of insolvency, and such jurisdiction shall be exercised under and subject to this Act, the Bankruptcy Rules and any other enactment relating to bankruptcy and insolvency.

Committee's Recommendation:
That the provision in Clause 226 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 226 do stand part of the Bill, put and agreed to.

Clause 227: Title of insolvency.
Subject to the Bankruptcy rules:
(a) all processes used in Court must be dated and entitled in the name of the Court in which they are used, together with the words "In Bankruptcy and Insolvency

(b) every document used in the filing of a petition or used after the filing of an assignment must be entitled "In the Matter of the Bankruptcy of";

(c) every document used in the filing of a proposal before bankruptcy must be entitled "In the Matter of the Proposal of and

(d) every document used in the course of a receivership must be entitled " In the Matter of the Receivership of ....."

Committee's Recommendation:
That the provision in Clause 227 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 227 *do stand part of the Bill, put and agreed to.*

Clause 228: General power of Court.
Subject to this Act, the Court shall have full power to decide all questions of priorities and all other questions whatsoever whether law or fact, that may arise in any case of insolvency coming within the cognizance of the Court or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

Committee's Recommendation:
That the provision in Clause 228 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 228 *do stand part of the Bill, put and agreed to.*

Clause 229: Proceeding not invalidate by defect or irregularity.
No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of the opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by any order of that Court.

Committee's Recommendation:
That the provision in Clause 229 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 229 *do stand part of the Bill, put and agreed to.*

Clause 230: Court may review, rescind, or vary order.
(1) The Court may review, rescind, or vary any order made by it under its jurisdiction in insolvency.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act, upon such terms, if any, as it may think fit to impose.

Committee's Recommendation:
That the provision in Clause 230 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 230 *do stand part of the Bill, put and agreed to.*

Clause 231: Court may give leave to omit material or to send notices in alternative manner.

(1) Where in the opinion of the Court the cost of preparing statements, lists of creditors or other material required by this Act to be sent with notices to creditors, or the cost of sending the material or notices, is unjustified in the circumstances, the Court may give leave to omit the material or any part thereof or to send the material or notices in such manner as the Court may direct.

(2) Where by this Act or by the Bankruptcy Rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

Committee's Recommendation:
That the provision in Clause 231 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 231 *do stand part of the Bill, put and agreed to.*

Clause 232: Seizure of property of bankrupt.

(1) Where on expert application by the trustee or interim receiver the Court is satisfied by information on oath that there are reasonable grounds to believe there is in any place or premises any property of the bankrupt, the Court may issue a warrant authorising the trustee or interim receiver to enter and search that place or premises and to seize the property of the bankrupt, subject to such conditions as may be specified in the warrant.

(2) In executing a warrant under subsection (1), the trustee or interim receiver shall not use force unless the trustee or interim receiver is accompanied by a Police Officer or officer of the Court and the use of force has been specifically authorised in the warrant.

Committee's Recommendation:
That the provision in Clause 232 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 232 *do stand part of the Bill, put and agreed to.*

Clause 233: Evidence in Court.

(1) Subject to the Bankruptcy Rules, the Court may in any matter take the whole or any part of the evidence either viva voce or by interrogatories or upon affidavit or, out of Nigeria, by commission.

(2) Subject to the Bankruptcy Rules, any affidavit to be used in Court may be sworn before any person authorised to administer oaths in the Court or, in the case of a person who is out of Nigeria, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in the country where he resides

(3) Any document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act shall, if it appears to be sealed with the seal of the Court having jurisdiction in insolvency, purports to be signed by any Judge thereof or is certified as a true copy by any Registrar thereof, be admissible in evidence in all legal proceedings.

(4) The production of an original document relating to any insolvency proceeding or a copy certified by the person making it as a true copy thereof or by a successor in that office of that person as a true copy of a document found among the records in his control or possession is evidence of the contents of those documents.

(5) In case of the death of the bankrupt or the spouse or cohabitant of a bankrupt or a witness, whose evidence has been received by any Court in any proceedings under this Act, the deposition of the deceased person, purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Committee's Recommendation:
That the provision in Clause 233 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 233 *do stand part of the Bill, put and agreed to.*

Clause 234: Orders subject to appeal.

(1) Orders in insolvency matters shall at the instance of any person aggrieved, be subject to appeal in the same manner as other orders of the Court.

(2) Where by this Act an appeal to the Court is given against any decision of the Supervisor or trustee, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Committee's Recommendation:
That the provision in Clause 234 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 234 *do stand part of the Bill, put and agreed to.*

Clause 235: Costs are in the discretion of the Court.
Subject to this Act and the Bankruptcy Rules, the costs of and incidental to any proceedings in Court under this Act shall be in the discretion of the Court.

Committee's Recommendation:
That the provision in Clause 235 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 235 *do stand part of the Bill, put and agreed to.*

Clause 236: Application to Court where default.
Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Court, the Supervisor or the trustee under any power conferred by this Act, in addition to any other remedy provided for under this Act, the Supervisor, trustee, or other interested person may apply to the Court for an order requiring such person to comply with the order or direction so given, and the Court may also, if it thinks fit, upon any such application, make an immediate order for the committal of such person.

Committee's Recommendation:
That the provision in Clause 236 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 236 *do stand part of the Bill, put and agreed to.*

Clause 237: Trustee not personally liable.
Where an action or any proceedings is brought by or against a trustee, or where a trustee is made a party to any action or proceedings on his application or on the application of any other party thereto, he is not personally liable for costs unless the Court otherwise directs.

Committee's Recommendation:
That the provision in Clause 237 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 237 *do stand part of the Bill, put and agreed to.*

PART XI - INTERNATIONAL INSOLVENCIES

Interpretation.

Clause 238: Copy of order to be proof of event.
(1) For the purposes of this Part, where a bankruptcy, insolvency, reorganization or like order has been made in respect of a debtor in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor is insolvent and proof of the appointment of the foreign representative made by the order.

(2) Where a foreign proceeding has been commenced and a receiving order or assignment is made under this Act in respect of a debtor, the Court may, on application and on such terms as it considers appropriate, limit the property to which the authority of the trustee extends to the property of the debtor situated in Nigeria and to such property of the debtor outside Nigeria as the Court considers can be effectively administered by the trustee.

(3) The Court may, in respect of a debtor, make such orders and grant such relief as it considers appropriate to facilitate, approve or implement arrangements that will result in a co-ordination of proceedings under this Act with any foreign proceeding.

(4) An order of the Court under this Part may be made on such terms and conditions as the Court considers appropriate in the circumstances.

(5) Nothing in this Part prevents the Court, on the application of a foreign representative or any other interested person, from applying such legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives as are not inconsistent with the provision of this Act.

(6) Nothing in this Part requires the Court to make any order that is not in compliance with the laws of Nigeria or to enforce any order made by a foreign Court.

Committee's Recommendation:
That the provision in Clause 238 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 238 *do stand part of the Bill, put and agreed to.*

Clause 239: **Stay of proceedings proceeding not to apply unless proceeding due to appeal.**
A stay of proceedings that operates against creditors of a debtor in a foreign proceeding does not apply in respect of creditors who reside or carry on business in Nigeria with respect to property in Nigeria unless the stay of proceedings is the result of proceedings taken in Nigeria.

Committee's Recommendation:
That the provision in Clause 239 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 239 *do stand part of the Bill, put and agreed to.*

Clause 240: **Proceedings by foreign representatives.**
A foreign representative may commence and continue proceedings pursuant to sections 5 and 8 to 11 and section 26(1) in respect of a debtor as if the foreign representative were a creditor, trustee, liquidator or receiver of property of the debtor, or the debtor.

Committee's Recommendation:
That the provision in Clause 240 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 240 do stand part of the Bill, put and agreed to.

Clause 241: **Court may seek aid of foreign authority.**

(1) The Court may seek the aid and assistance of a Court, tribunal or other authority in a foreign proceeding by order or written request or otherwise as the Court considers appropriate.

(2) On application by a foreign representative in respect of a foreign proceeding commenced for the purpose of effecting a composition, an extension of time or a scheme of arrangement in respect of a debtor or in respect of the bankruptcy of a debtor, the Court may grant a stay of proceedings against the debtor or the debtor's property in Nigeria on such terms and for such period as is consistent with the relief provided for under sections 55 to 58 in respect of a debtor in Nigeria who files a notice of intention or a proposal or who becomes bankrupt in Nigeria.

(3) On application by a foreign representative in respect of a debtor, the Court may, where it is satisfied that it is necessary for the protection of the debtor's estate or the interest of a creditor or creditors—

(a) appoint a trustee as interim receiver of all or any part of the debtor's property in Nigeria, for such term as the Court considers appropriate; and

(b) direct the interim receiver to do all or any of the following—

(i) take conservatory measures and summarily dispose of property that is perishable or likely to depreciate rapidly in value;

(ii) take possession of all or part of the debtor's property mentioned in the appointment and exercise such control over the property and over the debtor's business as the Court considers appropriate; and (iii) take such other action as the Court considers appropriate.

(4) Section 11 applies, with such modifications as the circumstances require, in respect of an interim receiver appointed under subsection (3).

(5) On application of a foreign representative in respect of a debtor, the Court may authorize the examination under oath by the foreign representative of the debtor or of any person in relation to the debtor who, if the debtor were a bankrupt referred to in section 154, would be a person who could be examined under that section.

Committee's Recommendation:
That the provision in Clause 241 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 241 do stand part of the Bill, put and agreed to.

Clause 242: **Court order may be conditional on compliance of foreign representative with other Court order.**
An application to the Court by a foreign representative under this Part does not submit the foreign representative to the jurisdiction of the Court for any other purpose except with regard to the costs of the proceedings, but the Court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the Court.

Committee's Recommendation:
That the provision in Clause 242 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 242 do stand part of the Bill, put and agreed to.

Clause 243: **Foreign representative not prevented from proceeding due to appeal.**
A foreign representative is not prevented from making an application to the Court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the Court may, on an application where such proceedings have been taken, grant relief as if the proceedings had not been taken.

Committee's Recommendation:
That the provision in Clause 243 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to*.

Question that Clause 243 do stand part of the Bill, put and agreed to.

Clause 244: **Dividend subject to property the creditor may acquire outside Nigeria.**
(1) Where any receiving order, proposal or assignment is made in respect of a debtor under this Act—
(a) the amount that a creditor receives or is entitled to receive outside Nigeria by way of a dividend in a foreign proceeding in respect of the debtor; and

(b) the value of any property of the debtor that the creditor acquires outside Nigeria—

(i) on account of a provable claim of the creditor; and

(ii) by way of a transfer that, if it were subject to this Act, would be set aside or reviewed under sections 80 to 92, shall be taken into account in the distribution of dividends to creditors of the debtor in Nigeria as if they were a part of that distribution.

(2) The creditor is not entitled to receive a dividend from the distribution in Nigeria referred to in subsection (1) until every other creditor who has a claim of equal rank in the order of priority established under this Act has received a dividend, the amount of which is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (a) and the value referred to in paragraph (b) is of that creditor's claim.

Committee's Recommendation:
That the provision in Clause 244 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 244 do stand part of the Bill, put and agreed to.

Clause 245: Claim payable foreign currency.

A claim for a debt that is payable in a currency other than Nigerian currency shall be converted to Nigeria currency—

(a) in the case of a proposal in respect of an insolvent person and unless otherwise provided in the proposal, where a notice of intention was filed under section 30, as of the day the notice was filed or, if no notice was filed, as of the day the proposal was filed with the Supervisor under section 44;

(b) in the case of a proposal in respect of a bankrupt and unless otherwise provided in the proposal, as of the date of the bankruptcy; or

(c) in the case of a bankruptcy, as of the date of the bankruptcy.

Committee's Recommendation:
That the provision in Clause 245 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 245 do stand part of the Bill, put and agreed to.

PART XII - OFFENCES

Clause 246: Offences committed by bankrupt.

(1) Any bankrupt who—

(a) makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event;

(b) refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act;

(c) makes a false entry or knowingly makes a material omission in a statement or accounting;

(d) after or within one year immediately preceding the date of the initial bankruptcy event—

(i) conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs;

(ii) obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge;

(iii) fraudulently conceals or removes any property of a value of six thousand naira or more or any debt due to or from the bankrupt;

(iv) hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the othecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud; or

(e) after the filing of a petition against him, or within six months before the filing of the petition, leaves Nigeria and takes with him, or attempts or makes preparation to leave Nigeria and take with him, any part of his property to the amount of sixty thousand naira or upwards, which ought by law to be divided amongst his creditors, Commits an offence and is liable on summary conviction, to a fine of three hundred thousand naira and imprisonment for one year, or on conviction on indictment, to a fine of six hundred thousand naira and imprisonment for three years.

(2) A bankrupt who, without reasonable cause fails to comply with an order of the Court made under section 53 or to do any of the things required of the bankrupt under section 149 commits an offence and is liable—

(a) on summary conviction, to a fine of fifty thousand naira and imprisonment for one year; or

(b) on conviction on indictment, to a fine of Fifty thousand naira and imprisonment for a term of three years.

Committee's Recommendation:
That the provision in Clause 246 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 246 do stand part of the Bill, put and agreed to.

Clause 247: Offences committed by undischarged bankrupt.

An undischarged bankrupt who—

(a) engages in any trade or business without disclosing to all persons with whom he enters into any business transaction valued at more than fifteen thousand naira that he is an undischarged bankrupt; or

(b) obtains credit to a total of thirty thousand naira or more from any person or Persons without informing such persons that he is an undischarged bankrupt, commits an offence and is liable on summary conviction, to a fine of three hundred thousand naira and imprisonment for one year.

Committee's Recommendation:

That the provision in Clause 247 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 247 do stand part of the Bill, put and agreed to.

Clause 248: Where debtor having previously taken bankruptcy protection and not keeping proper books.

(1) Where any person who on any previous occasion has been bankrupt or made a proposal to creditors becomes bankrupt or makes a proposal, that person commits an offence and is liable on summary conviction to a fine of three hundred thousand naira and imprisonment for one year, if—

(a) being engaged in any trade or business, at any time within the period beginning on the day that is two years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, that person has not kept and preserved proper books and records; or

(b) within the period mentioned in paragraph (a), that person conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of, any book or record affecting or relating to the person's property or affairs, unless the person had no intent to conceal the state of the person's affairs.

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day-to-day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of physical inventory counts.

Committee's Recommendation:

That the provision in Clause 248 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 248 do stand part of the Bill, put and agreed to.

Clause 249: False claims, unlawful fees and unlawful transactions.

(1) Where a creditor, or a person claiming to be a creditor in any proceedings under this Act, wilfully and with intent to defraud makes any false claim or any proof, declaration or statement of account that is untrue in any material particular, the creditor or person commits an offence and is liable on summary conviction to a fine of seven hundred fifty thousand naira and imprisonment for two years.

(2) Where an inspector accepts from the bankrupt or from any person, firm or corporation acting on behalf of the bankrupt or from the trustee any fee, commission or emolument other than or in addition to the regular fees provided for by this Act, the inspector commits an offence and is liable on summary conviction to a fine of three hundred thousand naira and imprisonment for five years.

(3) Where the bankrupt enters into any transaction with any person for the purpose of obtaining a benefit or advantage to which either of them would not be entitled, the bankrupt commits an offence and is liable on summary conviction to a fine of fifty thousand Naira and imprisonment for a term of one year.

Committee's Recommendation:
That the provision in Clause 249 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 249 do stand part of the Bill, put and agreed to.

Clause 250: Offences by trustee and others.

(1) A person who—

(a) not being a licensed trustee, does any act as, or represents himself to be, a licensed trustee;

(b) being a trustee, either before providing the bond required by section 199 (I) or after providing the bond but at any time while the bond is not in force, acts as or exercises any of the powers of trustee;

(c) having been appointed a trustee, with intent to defraud, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform an act or duty that he may be ordered to do, observe or perform by the Court pursuant to this Act;

(d) having been appointed a trustee, without reasonable exercise, fails to observe or to comply with any of the provisions of this Act, or fails duly to do, observe or perform any act or duty that he may be ordered to do, observe or perform by the Court pursuant to this Act;

(e) having been appointed a trustee to any estate and another trustee having been appointed in his place, does not deliver to the substituted trustee on demand all administered property of the estate, together with the books, records and documents of the estate and of his administration;

(f) directly or indirectly solicits or canvasses any person to make an assignment or proposal under this Act, or to petition for a receiving order;

(g) being a trustee, directly or indirectly, solicits proxies to vote at a meeting of creditors; or

(h) being a trustee—

(i) makes any arrangement under any circumstances with the bankrupt, or an legal practitioner, auctioneer or other person employed in connection with a bankruptcy, for any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration payable out of the estate; or

(ii) accepts any such consideration or benefit from any such person, or makes any arrangement for giving up, or gives up, any part of his remuneration, either as a receiver or trustee, to the bankrupt or any solicitor, auctioneer or other person employed in connection with the bankruptcy, commits an offence and is liable on summary conviction to a fine of three millionnaira ,

(2) A person who fails to comply with or contravenes any provision of section 177 commits an offence and is liable on summary conviction to a fine of three hundred thousand naira and imprisonment for one year.

(3) Every person who contravenes or fails to comply with an order made under section 255—

(a) commits an offence and is liable on summary conviction to a fine of three hundred thousand naira and imprisonment for a term of one year; or

(b) commits an indictable offence and is liable to a fine of six hundred thousand naira and imprisonment for three years.

(4) Nothing in subsection (1) (h) shall be construed to apply to a sharing of trustee's fees among persons who together act as trustee of the estate of a bankrupt or as joint trustee to a proposal.

(5) Subject to this Act, every person who contravenes or fails to comply with a provision of this Act or the Bankruptcy Rules commits an offence and is liable on summary conviction to a fine of three hundred thousand naira and imprisonment for one year.

Committee's Recommendation:
That the provision in Clause 250 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 250 do stand part of the Bill, put and agreed to.

Clause 251: Removal of property.
A person, except the trustee, who—

(a) within thirty days after delivery to the trustee of the proof of claim mentioned in section 71; or

(b) where no proof has been delivered, removes or attempts to remove the property or part mentioned in section 71 out of the charge or possession of the bankrupt, the trustee or other custodian of the property, except with the written permission of the trustee, commits an offence and is liable on summary conviction to a fine of six hundred thousand naira and imprisonment for a term of two years.

Committee's Recommendation:
That the provision in Clause 251 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 251 do stand part of the Bill, put and agreed to.

Clause 252: Invalid trustee licence.
Any trustee who exercises any of the powers or perform any of the duties of a trustee while the trustee's licence has ceased to be valid for failure to pay licence fees, after the trustee's licence has been suspended or cancelled under section 181(4) or after having been informed pursuant to section 188(5) of the suspension or cancellation of the trustee's licence commits an offence and is liable on summary conviction to a fine of six hundred thousand naira and imprisonment for a term of two years.

Committee's Recommendation:
That the provision in Clause 252 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 252 do stand part of the Bill, put and agreed to.

Clause 253: Trustee acting outside authority.
Where the Supervisor has placed conditions or limitations on the licence of a trustee and the trustee exercises any of the powers of a trustee other than the powers that the trustee is authorized to exercise, the trustee commits an offence and is liable on summary conviction to a fine not exceeding two million naira or imprisonment for two years

Committee's Recommendation:
That the provision in Clause 253 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 253 do stand part of the Bill, put and agreed to.

Clause 254: Offence committed by corporation.
Where a corporation commits an offence under this Act, any officer, director or agent of the corporation, or any person who has or has had, directly or indirectly, control of the corporation, who directed, authorised, assented to, acquiesced in or participated in the commission of the offence commits an offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

Committee's Recommendation:
That the provision in Clause 254 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 254 do stand part of the Bill, put and agreed to.

Clause 255: Court may make order for community service

Where a person has been convicted of an offence under this Act, the Court may, having regard to the nature of the offence and the circumstances surrounding its commission, and in addition to any other punishment that may be imposed under this Act, make an order directing the person to perform community service, subject to such reasonable conditions as may be specified in the order.

Committee's Recommendation:

That the provision in Clause 255 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 255 do stand part of the Bill, put and agreed to.

Clause 256: Variation of order made under section 255.

(1) Subject to subsection (2), where a Court has made an order under section 255 in respect of a person, the Court may, on application by the person or the Attorney General of the Federation require the person to appear before it and, after hearing the person or the Attorney General, the Court may vary the order in one or any combination of the following ways that is applicable and that, in the opinion of the Court, is desirable because of a change in the circumstances of the person since the order was made—

(a) by making changes in the order or conditions specified therein or extending the period for which the order is to remain in force for such period, not exceeding one year, as the Court considers desirable; or

(b) by reducing the period for which the order is to remain in force or relieving the person, either absolutely or partially or for such period as the Court considers desirable, of compliance with any condition that is specified in the order.

(2) Before varying an order under subsection (1), the Court may direct that notice be given to such persons as the Court considers to be interested, and may hear any such persons.

(3) Where an application made under subsection (1) in respect of a person has been heard by the Court, no application may be made with respect to the person except with leave of the Court.

Committee's Recommendation:

That the provision in Clause 256 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 256 do stand part of the Bill, put and agreed to.

Clause 257: Court may make an order regarding damage.

(1) Where a person has been convicted of an offence under this Act and any other person has suffered loss or damage because of the commission of the offence, the Court may, at the time sentence is imposed, order the person who has been convicted to pay to the person who has suffered loss or damage or to the trustee of the bankrupt an amount by way of satisfaction or compensation for loss or damage to property suffered by that person as a result of the commission of the offence.

(2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the person in favour of whom the order has been made may file the order in Court and that order is enforceable against the person who has been convicted in the same manner as if it were a judgment rendered against the person who has been convicted in that Court in civil proceedings.

Committee's Recommendation:
That the provision in Clause 257 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 257 do stand part of the Bill, put and agreed to.

Clause 258: Trustee to report to Court.

(1) Whenever a trustee has grounds to believe that—

(a) an offence under this Act or under any other law has been committed with respect to any bankrupt estate in connection with which he has been acting under this Act; or

(b) that for any special reason an investigation should be had in connection with that estate, it is the duty of the trustee to—

(i) report the matter to the Court, including in the report a statement of all the facts or circumstances of the case within his knowledge, the names of the witnesses who should in his opinion be examined, and a statement respecting the offence or offences believed to have been committed; and

(ii) forward a copy of the report forthwith to the Supervisor.

(2) A creditor, inspector or other interested person who believes on reasonable grounds that a person has committed an offence under this Act or under any other law, in connection with a bankrupt, his property or his transactions, may file a report with the Court of the facts on which that belief is based, or he may make such further representations supplementary to the report of the trustee as he may deem proper.

(3) Whenever the Court is satisfied on the representation of the Supervisor or trustee or of any creditor, inspector or other interested person, that there is ground to believe that any person has committed an offence under this Act or under any other law in connection with the bankrupt, his property or transactions, the Court may authorise the trustee to initiate proceedings for the prosecution of that person for that offence.

(4) Where a trustee is authorised or directed by the creditors, the inspectors or the Court to initiate proceedings against any person believed to have committed an offence, the trustee shall institute the proceedings and shall send or cause to be sent to the Attorney General, a duly certified copy of the resolution or order, together with a copy of all reports or statements of the facts on which the order or resolution was based.

Committee's Recommendation:
That the provision in Clause 258 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 258 do stand part of the Bill, put and agreed to.

Clause 259: Trustee to report criminal acts.

(1) Where the trustee believes on reasonable grounds that an offence under this Act or any other law relating to the property of the bankrupt was committed either before or after the date of the initial bankruptcy event by the bankrupt or any other person, the trustee shall make a report to the Attorney General.

(2) A copy of a report made under subsection (1) shall be sent by the trustee to the Supervisor.

Committee's Recommendation:
That the provision in Clause 259 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 259 do stand part of the Bill, put and agreed to.

Clause 260: Substance of offence sufficient.

In an information, complaint or indictment for an offence under this Act, it is sufficient to set out the substance of the offence charged in the words of this Act, specifying the offence or as near thereto as circumstances admit, without alleging or setting out any debt, act of bankruptcy, trading, adjudication or any proceedings, in, or order, warrant, or document of, any Court acting under this Act.

Committee's Recommendation:
That the provision in Clause 260 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 260 do stand part of the Bill, put and agreed to.

Clause 261: Time for commencement of action.

A prosecution under this Act shall be commenced within five years from the time of the commission of the offence and, in the case of an offence punishable on conviction upon summary trial, the complaint shall be made or the information laid within three years from the time when the subject matter of the complaint or information arose.

Committee's Recommendation:
That the provision in Clause 261 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 261 do stand part of the Bill, put and agreed to.

PART XIII - GENERAL

Clause 262: Power respecting Bankruptcy Rules.

For the purpose of carrying into effect the objects of this Act, Rules of Court may be made under the Chief Judge to report criminal acts Substance of offence sufficient Time for commencement of action Power respecting Bankruptcy Rules, such Rules may provide for—

(a) the sittings of the Court and a Judge of the Court in chambers;

(b) the practice and procedure in Court; and

(c) any matters relating to the practice and procedure of the Court, the duties of the officers of the Court, and the costs of or fees upon and percentages to be charged for or in respect of proceedings provided that no rules so made shall extend the jurisdiction of the Court.

Committee's Recommendation:
That the provision in Clause 262 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 262 do stand part of the Bill, put and agreed to.

Clause 263: Gazette or local daily newspaper to be evidence of facts.

(1) A copy of the Gazette or local daily newspaper containing any notice inserted in the Gazette or local newspaper in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette or local newspaper containing any notice of a receiving order, an assignment, a proposal, or a receivership shall be conclusive evidence in all legal proceedings of the order or declaration having been duly made and of its date.

(3) Copies authenticated by the signature of the Supervisor or trustee of any entries in the books kept by them with respect to any estate vested in or administered by the Supervisor or trustee under this Act shall be admissible in evidence in any legal proceeding or for any other purpose and shall have the same effect in evidence in all respects as the originals from which copies were made.

(4) In all legal proceedings, judicial notice shall be taken of the signature of the Supervisor and of the trustee but any Court, Judge may require such signature to be proved as may be required under the Evidence Act, if it is doubtful to the Court, Judge or Magistrate whether the alleged signature is genuine.

Committee's Recommendation:
That the provision in Clause 263 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 263 do stand part of the Bill, put and agreed to.

Clause 264: Admission not admissible under any other law.

A statement or admission made by any person in any compulsory examination or deposition before the Court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in respect of any offence under any other law.

Committee's Recommendation:
That the provision in Clause 264 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 264 do stand part of the Bill, put and agreed to.

Clause 265: Act by corporations, firms and individuals of unsound mind.
For all or any purposes of this Act—
(a) a corporation may act by any of its officers authorized in that behalf under the seal of the corporation;

(b) a firm may act by any of its members; and

(c) an individual of unsound mind may act by his committee.

Committee's Recommendation:
That the provision in Clause 265 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 265 do stand part of the Bill, put and agreed to.

Clause 266: Leave of the Court required to pursue certain actions.
Except by leave of the Court, no action lies against the Supervisor, an interim receiver or a trustee with respect to any report made under, or any action taken pursuant to this Act.

Committee's Recommendation:
That the provision in Clause 266 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 266 do stand part of the Bill, put and agreed to.

Clause 267: Exclusion Clause.
Notwithstanding the foregoing, provisions the Bankruptcy and Insolvency Act shall not apply to or have effect whatsoever, to the enforcement or/ and operations of the Asset Management Corporation of Nigeria (Amendment)Act, 2015.

Committee's Recommendation:
That the provision in Clause 267 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 267 do stand part of the Bill, put and agreed to.

Clause 268: Regulations.
(1) The Minister may make Regulations—
(a) generally for giving effect to this Act; and

(b) for prescribing anything that is authorized or required to be prescribed by the Act.

(2) Regulations made under subsection(1) shall be subject to negative resolution of the National Assembly .

Committee's Recommendation:
That the provision in Clause 268 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 268 do stand part of the Bill, put and agreed to.

Clause 269: Transitional.

With effect from the date of the commencement of this Act—

(a) any winding up which is commenced or treated as having commenced before the commencement of this Act; or

(b) any case in which a petition in bankruptcy was presented, or a receiving order or adjudication in bankruptcy was made before the commencement of this Act, shall be subject to the law in force immediately before the commencement of this Act.

Committee's Recommendation:

That the provision in Clause 269 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 269 do stand part of the Bill, put and agreed to.

Clause 270: Repeal.

The Bankruptcy Act No. 16 of 1979 Cap B2 LFN 2004 is repealed.

Committee's Recommendation:

That the provision in Clause 270 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 270 do stand part of the Bill, put and agreed to.

Clause 271: Interpretation.

(1) In this Act unless the context otherwise requires:

"affidavit" includes statutory declaration and solemn affirmation;

"assignment" means an assignment filed with the Supervisor of Insolvency;

"bank" means every bank to which the Banks and other Financial Institutions Act applies;

"bankrupt" means a person who has made an assignment or against whom a receiving order has been made under section 5(10);

"books" and "records" include documents as well as data maintained or processed manually, mechanically, photographically or electronically by any information storage device;

"claim provable in bankruptcy", "provable claim" or "claim provable" includes any claim or liability provable in proceedings under this Act by a creditor;

"cohabitation relationship" means the relationship between co-habitants of full age, who not being married to each other are living or have lived together as husband and wife in a bona fide domestic relationship;

"company" means any incorporated company, wherever or however incorporated, that is authorized to carry on business in Nigeria or that has an office or property in Nigeria, except those licensed by CBN, PENCOM, SEC and NAICOM;

"Court" means the Federal High Court;

"creditor" means a person having a claim whether, unsecured preferred by virtue of priority under section 127 or secured, provable as a claim under this Act;

"date of the initial bankruptcy event", in respect of a person, means the earliest of the date of filing of or making of—

(a) an assignment by or in respect of the person;

(b) a proposal by or in respect of the person;

(c) a notice of intention by the person; or

(d) the first petition for a receiving order against the person;

"debtor" includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Nigeria and, where the context requires, includes a bankrupt;

"debtor" means an insolvent person who has property in Nigeria, a bankrupt who has property in Nigeria or a person who has the status of a bankrupt under foreign law in a foreign proceeding and has property in Nigeria;

"foreign proceeding" means a judicial or an administrative proceeding commenced outside Nigeria in respect of a debtor, under a law relating to bankruptcy or insolvency and dealing with the collective interests of creditors generally;

"foreign representative" means a person, other than a debtor, holding office under the law of a jurisdiction outside Nigeria who, irrespective of the person's designation, is assigned, under the laws of the jurisdiction outside Nigeria, functions in connection with a foreign proceeding that are similar to those performed by a trustee, liquidator, administrator or receiver appointed by the Court.

"goods" include all chattels personal;

"individual" means a natural person;

"individuals" mean group of natural persons;

"insolvent person" means a person who is not bankrupt and who, carrying on business or has property in Nigeria, whose liabilities to creditors provable as claims under this Act amount to not less than five thousand naira, and—

(a) who is for any reason unable to meet his obligations as they generally become due;

(b) who has ceased to paying his current obligations in the ordinary course of business as they generally become due; or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable the payment of all his obligations, due and accruing;

"Sheriff" includes bailiff and any officer charged with the execution of a writ or other process under this Act or any other proceeding with respect to any property of a debtor;

"Minister" means the Minister of the Federal Government of Nigeria to whom the responsibility for Industry, Trade and Investment is assigned.

"person" includes a partnership, an unincorporated association, a corporation, a co-operative society or an organization, the successors of a partnership, association, corporation, society or organization, and the heirs, executors, liquidators of the succession, administrators or other legal representative of a person;

"property" includes money, goods, chose in action, land and every description of property, whether real a person under a financial obligation or personal, legal or equitable, and whether situated in Nigeria or elsewhere, and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent in, arising out of or incidental to property;

"proposal" means a proposal for a composition or, for an extension of time, or for a scheme or arrangement;

"Receiver" means a person who has been appointed to take, or has taken, possession or control, pursuant to—

(a) a security agreement; or

(b) an order of a Court made under any law that provides for or authorizes the appointment of a receiver or receiver-manager, of all or substantially all of—

(i) the inventory;

(ii) the accounts receivable; or

(iii) the other property, of a debtor that was acquired for, or is used in relation to, a business carried on by the debtor;

"receiving order" means an order of the Court made under any law that provides for or authorizes the appointment of a receiver or a receiver-manager;

"Registrar" means the Registrar of the Federal High Court;

"resolution" representing or "ordinary resolution" means a resolution carried by the majority of votes, and for that purpose the votes of a creditor shall be calculated by counting one vote for each naira of every claim of the creditor that is not disallowed;

"secured creditor" means a person holding a mortgage, pledge, charge or lien on or against the property of the debtor or any part thereof as security for a debt due or accruing due to him from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security and on which the debtor is only indirectly or secondarily liable;

"security agreement" means an agreement under which property becomes subject to a security for the payment of an obligation;

"service provider" means any entity or person who supplies fuel, water, electricity, telecommunications, or such services as may be prescribed;

"settlement" includes a contract, covenant, conveyance, transfer, gift and designation of a beneficiary in an insurance contract, to the extent that the contract, covenant, conveyance, transfer, gift, or designation is gratuitous or made for merely nominal consideration;

"special resolution" means a resolution decided by a majority in number and two-thirds in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"Supervisor" means the office of Supervisor of Insolvency established under section 175;

"trustee" or "licensed trustee" means a person who is licensed or appointed under this Act.

(2) For the purposes of this Act:

"related group" means a group of persons each member of which is related to every other member of the group;

"unrelated group" means a group of persons that is not a related group;

(3) For the purposes of this Act:
"related persons" are persons who are related to each other if they are—

(a) individuals connected by blood relationship, marriage, cohabitation relationship or adoption;

(b) a corporation and—

(i) a person who controls the corporation, if it is controlled by one person;

(ii) a person who is a member of a related group that controls the corporation; or

(iii) any person connected in the manner set out in paragraph (a) to a person described in subparagraph (i) or (ii); or

(c) two corporations—

(i) controlled by the same person or group of persons;

(ii) each of which is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation;

(iii) one of which is controlled by one person and that person is related to any member of a related group that controls the other corporation;

(iv) one of which is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation;

(v) one of which is controlled by a related group a member of which is related to each member of an unrelated group that controls the other corporation; or

(vi) one of which is controlled by an unrelated group each member of which is related to at least one member of an unrelated group that controls the other corporation.

(4) For the purposes of this Act—

(a) where two corporations are related to the same corporation within the meaning of subsection (3), they shall be deemed to be related to each other;

(b) where a related group is in a position to control a corporation, it shall be deemed to be a related group that controls the corporation whether or not it is part of a larger group by whom the corporation is in fact controlled;

(c) a person who has a right under a contract, in equity or otherwise, either immediately or in the future and either absolutely or contingently, to, or to acquire, shares in a corporation, or to control the voting rights in shares of a corporation, shall, except where the contract provides that the right is not exercisable until the death of an individual designated therein, be deemed to have the same position in relation to the control of the corporation as if he owned the shares;

(d) where a person owns shares in two or more corporations, he shall, as a shareholder of one of the corporations, be deemed to be related to himself as shareholder of each of the other corporations;

(e) persons are connected by blood relationship if one is the child, mother, father, brother, sister, aunt, uncle or cousin of the other;

(f) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other;

(g) persons are connected by a co-habitational relationship if one is a co-habitant of the other; and

(h) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is connected by blood relationship, otherwise than as a brother or sister, to the other.

(5) For the purposes of the Act, a person who has entered into a transaction with another person otherwise than at arm's length shall be deemed to have entered into a reviewable transaction.

(6) It is a question of fact whether persons not related to one another within the meaning of subsection (2) were at a particular time dealing with each other at arm's length.

(7) Persons related to each other within the meaning of subsection (2) shall be deemed not to deal with each other at arm's length while so related.

Committee's Recommendation:
That the provision in Clause 271 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 271 do stand part of the Bill, put and agreed to.

Clause 272: Short Title.
This Act may be cited as the Bankruptcy and Insolvency Act, 2016.

Committee's Recommendation:
That the provision in Clause 272 be retained (*Senator Ibrahim A. Rafiu — Kwara South*) — *Agreed to.*

Question that Clause 272 do stand part of the Bill, put and agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Banking, Insurance and other Financial Institutions on the Bankruptcy and Insolvency Act CAP B2 LFN 2004 (Repeal and Re-enactment) Bill, 2016 and approved as follows:

Clauses 1- 172	—	As Recommended
Clauses 173 - 176	—	As Recommended
Clauses 177 - 272	—	As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Motion made: That the Bill be now Read the Third Time *(Senate Leader).*

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

9. Environmental Health Officers (Registration, etc.) Act 2002 (Amendment) Bill, 2016 (HB.29):

Consideration of Bill deferred to another Legislative Day.

10. Auditor-General for the Federation (Establishment, etc.) Bill, 2016 (HB. 107):

Consideration of Bill deferred to another Legislative Day.

11. Chartered Institute of Management Accountants of Nigeria (Establishment, etc.) Bill, 2016 (SB. 236):

Consideration of Bill deferred to another Legislative Day.

12. National Research and Innovation Council (Establishment, etc.) Bill, 2016 (SB. 239):

Consideration of Bill deferred to another Legislative Day.

13. Adjournment:

Motion made: That the Senate do now adjourn till Tuesday, 31st May, 2016 at 10:00 a.m. (*Deputy Senate Leader*).

Adjourned accordingly at 1:10 *p.m.*

Abubakar Olubukola Saraki, CON
President,
Senate of the Federal Republic of Nigeria.