

## EXPLANATORY NOTE

### **Bankruptcy petition by a creditor.**

This petition is to be used by a Creditor in making an application for issuance of a bankruptcy order.

### **Legal Basis**

The guiding legal provision is **Section 17 (3) (a) of the Insolvency Act No. 18 of 2015** which empowers a creditor who has served on the debtor a demand requiring the debtor to pay the debt or to secure or compound for it to the satisfaction of the creditor, and at least twenty—one days have elapsed since the demand was served, and the demand has been neither complied with nor set aside in accordance with the insolvency regulations to make an application for a bankruptcy order against the debtor. The debt in question ought to be not less than the bankruptcy level being KShs. 250,000 as set out under **regulation 3 of the Insolvency Regulations** and it should not be disputed. However, **Section 30** provides that where the debtor disputes the debt informing the application for a bankruptcy order, the court may stay the application while the issue of whether the debt is owed or how much debt is owed is determined in trial.

### **Legal Grounds/Threshold**

According to **Section 20 of the Insolvency Act, 2015** a liquidation order is to be made only if a debt which, having been payable at the date of the application or having since become payable, has been neither paid nor secured or compounded for; or a debt that the debtor has no reasonable prospect of being able to pay when it falls due. Further, the application shall be dismissed if satisfied that the debtor is able to pay his debts or that the debtor has made an offer to secure or compound but the creditor has unreasonably refused to accept it.

### **Remedies/Relief Sought**

The Order to be sought in the petition is; appointment of a fit and proper person as trustee of the property of the said debtor in accordance with the provisions of the Insolvency Act.

### **The Processes/Procedure involved**

According to **Regulation 15 (3) of the Insolvency Regulations**, the application for bankruptcy is to be preceded by a 21 days' statutory demand as contemplated under the aforementioned section 17 (3) of the Insolvency Act and a bankruptcy order cannot be made before the lapse of the 21 days. **Section 19** of the Insolvency Act however provides that an application for the bankruptcy order can be made before the lapse of

the 21 days if there is a serious possibility that the debtor's property, or the value of any of that property, will be significantly reduced during that period.

With respect to execution upon making the application for a bankruptcy order, **Section 21 of the Insolvency Act** provides that execution is not to issue by a creditor with respect to the debt which informs the bankruptcy petition except with leave of court. **Section 22** also provides that upon making of the application, the debtor or creditor may file an application for stay of execution processes by the other creditors.