

PROCEDURE AFTER APPOINTMENT AS A RECEIVER

Section 396 (1)(a) of the Company and Allied Matters Act 2004 provides that the receiver of a company, after being appointed as such shall forthwith send notice to the company of his appointment and the terms of appointment.

Paragraph (b) of the section is to the effect that the company, on receipt of the notice of appointment shall within 14 days (or any longer period allowed by either the court or the receiver) make out and submit to the receiver a statement of the affairs of the company in the prescribed form. The prescribed form is as contained in section 397.

By paragraph (c) of section 396 (1) the receiver must within 2 months after receiving the statement send:

- (a) To the Corporate Affairs Commission and / or to the court a copy of the statement and the receiver's comment, if any, on it and in the case of the commission also a summary of the statement together with any comment he may make on it;*
- (b) To the company, a copy of the receiver's comments, if any, and if he does not comment, a note to that effect;*
- (c) To any trustees of the debentures and to every debenture holder whose address he is aware of, a copy of the summary of the statement of affairs.*

By sub-section 2 of section 396, the receiver must within 2 months (or any longer period allowed by the court) after the expiration of twelve months from the date of his appointment and of every subsequent period of twelve months thereafter and within two months after he ceases to act as a receiver or manager, send to the company, and to all debenture holders whose address he is aware of, an abstract in the prescribed form showing his receipts and payments during the period of twelve months or during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing and the aggregate amount of his receipts and payments during all preceding periods since his appointment.

However by sub-section 3, where the receiver or manager is appointed under the powers contained in any instrument, then section 396 shall have effect:

- (a) with the omission of references to the court in sub-section 1 of section 396;*
- (b) with the substitution of references to the court in subsection 2 of section 396 of references to the commission; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.*

See also section 398 which is to the effect that where a receiver or manager is appointed under the powers contained in an instrument, the receiver or manager must, within one month of after the expiration of the period of six months from the date of his appointment, and one month after he ceases to act as receiver or manager; deliver to the commission for registration, an abstract in the form prescribed under section 397(1).

Section 397 further sheds lights on what should be the content of the statement of affairs of the company as required by section 396 thus:

- (1) The statement as to the affairs of a company required by section 396 of this act, to be submitted to the receiver (or his successor) shall show as at the date of the receiver's appointment, the particulars of the company's assets, debts and liabilities, the names, residences, and occupations of its creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be prescribed.
- (2) The statement shall be submitted by, and verified by affidavit of one or more of the persons who are at the date of the receiver's appointment, the directors and by the person who is at that date the secretary of the company, or by such of the persons hereafter in this subsection mentioned as the receiver (or his successor), subject to the direction of the court, may require to submit and verify the statement, that is to say, persons-

- (a) who are or have been officers of the company;*
- (b) who have taken part in the formation of the company at any time within one year before the date of the appointment of the receiver;*
- (c) who are in the employment of the company, or have been in the employment of the company within the year, and are in the opinion of the receiver capable of giving the information required;*
- (d) who are or have been within the said year officers of or in the employment of a company to which the statement relates.*

(3) Any person making the statement and affidavit shall be allowed, and shall be paid by the receiver (or his successor) out of his receipts, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the receiver (or his successor) may consider reasonable, subject to an appeal to the court.

(4) Where the receiver is appointed under the powers contained in any instrument, this section shall have effect with the substitution for references to the court of references to the commission and references to an affidavit, of references to a statutory declaration; and in any other case references to the court shall be taken as referring to the court by which the receiver was appointed.