

Overview of the Bankruptcy and Debt Collection System in Nigeria

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Introduction

- Generally, credit transactions run the risk of debt and resultant debt collection
- One of the reasons for debt in credit transactions is bankruptcy
- Bankruptcy law dates back to 1542 with the Statute of Bankrupts in England, 1800 when the first Bankruptcy Act was enacted in the United States of America in response to land speculation and in Nigeria, with the Bankruptcy Act of 1979 etc.
- The focus of bankruptcy laws in debt collection is to give the creditor the right to collect debt by himself or employ the services of a debt collection agency in order to ensure an orderly debt recovery system that prohibits harassment and other unfair treatment. However., the question is whether the debt collection system is orderly as expected to promote the credit system as a tool that supports Micro, Small and Medium Enterprises (MSMEs) for economic growth?
- Consequently, our discussion will overview the Bankruptcy and Debt Collection System in Nigeria by answering the following questions

Discussion Outline

1. What is Credit Transaction?
2. What is Debt and Who is a Debtor?
3. What is Bankruptcy?
4. Overview of the Legal Framework for Bankruptcy and Debt Collection Systems in Nigeria
5. What are the Challenges of Debt Collection in Bankruptcy and the Way Forward?

What is Credit Transaction?

- Credit transaction is the provision of resources especially financial resources in exchange for a future payment. Credit transaction such as instalmental loans, revolving credit and open credit is critical for the growth especially of MSMEs to enable them innovate, improve efficiency, expand to new markets and provide millions of jobs.
- However, credit transactions involve risks of non-repayment thus, creditors especially banks and financial institutions etc. develop a framework used to evaluate the creditworthiness of a borrower as well as the strength of an overall borrowing request to support effective loan structures and mitigate credit risk in 5 Cs as follows:
 1. Character (borrowers historical track record of managing credit and making payments which may be a little complicated particularly for a private company (MSMEs) because of difficulty in assessing their reputation and credibility);
 2. Capacity (Ability to service debt obligations in the future which is measured by applying debt service coverage or total debt service);
 3. Capital (borrowers overall financial strength – marketable securities, real estate, capital structure, guarantees);
 4. Collateral (nature of asset pledge as security that would indicate likelihood of payment); and
 5. Conditions (purpose of the credit sought).

It is necessary to balance the 5Cs because debt will still occur

What is Debt and Who is a Debtor?

- The word “debt” comes from the Latin word *debitum* which means “thing owed”
- Debt involves real property, money, services or other considerations but in *Uzor v. Daewoo (Nig) Ltd* [2019] 10 NWLR (Pt. 1680) 207, debt is defined as “a sum of money due by contract and becomes due when a formal demand for payment is made”
- Debt may be secured (requires collateral), unsecured (based on individual’s creditworthiness), active, ancestral, antecedent, convertible, fraudulent or bad. Bad debts bring concerns because they are either never collected or the interest and principal sum has its payments past due and remains uncollected nor settled.
- Debt is owed by a debtor who is called “*dette*” in French and “*debere*” in Latin meaning owe. In *Barbedos Ventures Limited v. FBN Plc* [2018] 4 NWLR (Pt. 1609) 241, a debtor is a person, firm or entity who owes an obligation to another especially an obligation to pay money. A debtor is called a borrower if the money is owed to the bank/financial institution or issuer if the debt is in the form of securities.

.. What is Debt and Who is a Debtor?

- Failure to pay debt may arise owing to many reasons such as lack of financial planning or over commitment on the debtor's part, due to unforeseen eventuality (like the pandemic), loss of job or health problems, dispute or disagreement over the debt or amount or dishonesty on the part of the creditor or debtor.
- The question is what happens when there is default by a debtor to fulfil his contractual obligation? Default in contractual relationship between the creditor and the debtor to pay money after the due date for payment has lapsed results in a claim for payment made against the debtor on a certain, specific, fixed or liquidated amount owed - *Nigeria Postal Service v Insight Engineers Co. Ltd* (2006) 8 NWLR (Pt. 983) 438. - *GTB v. Ogboji* [2019] 13 NWLR (Pt. 1688) 67; *Julius Berger (Nig) Plc v. T. R. C. B. Ltd* [2019] 5 NWLR (Pt. 1665) 219; *Linton Industry Trading Co. (Nig) Ltd v. CBN* [2015] 4 NWLR (Pt. 1448) 94; *Nwosu v. Zenith Bank Plc* [2015] 9 NWLR (Pt. 1464) 314; *UBN Plc. v. Ajabule* [2011] 18 NWLR (Pt. 1278) 152; *RCO & S Ltd v. Rainbownet Ltd* [2014] 5 NWLR (Pt. 1401) 549; *Afribank (Nig) Plc. v. Anuebunwa* [2012] 4 NWLR (Pt. 1291) 560, *Bilante Int'l Ltd v. NDIC* [2011] 15 NWLR (Pt. 1270) 407; *A I Inv. Ltd v. Afribank (Nig) Plc.* [2013] 9 NWLR (Pt. 1359) 380

What is Bankruptcy?

- The term bankruptcy is linked to the words “*bancus ruptus*” (Latin), “*banco rotto*” (Italian) and “*banche route*” (French) meaning inability to pay or continue in business.
- A debtor who wishes to opt for a bankruptcy declaration must understand what it is.
- Bankruptcy is a legal means by which a person with a large burden of debt can get relief. In the US case of *Local Loan v Hunt*, the Supreme Court defined the purpose of bankruptcy as giving a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt. Thus, bankruptcy is an opportunity for a financial do-over” when the debtor is in the quality, state or condition of not having enough money to pay back what is owed.
- However, filing for bankruptcy is a complex legal process because while helping the debtor to get relief from debts they cannot pay, it also helps creditors get paid from assets /property the debtor has. Indeed, it is a legally declared inability or impairment of an individual to pay its creditors and after declaration, the assets are sold including any acquired during bankruptcy for repayment to creditors

.. What is Bankruptcy?

- A person can become bankrupt owing to loss of income, high medical expenses, unaffordable mortgages, spending beyond means and lending money to loved ones who cannot pay back
- Bankruptcy is a question of law and does not cover registered companies in Nigeria as section 108 of CAMA prohibits the court from making a receiving order against any association or company registered under CAMA rather, in relation to corporate entities, CAMA 2020 establishes the focus on insolvency practice which is a question of fact that promotes business rescue culture to help prevent business liquidation
- However, both terms are related tools of debt recovery designed to protect the honest but unfortunate creditor and where necessary discipline the dishonest debtor in order to maintain the equilibrium between the need to recover debts of a creditor and the protection of the debtor through the mechanism of an official receiver (insolvent company) or trustee (bankrupt individual) respectively.

.. What is Bankruptcy?

- The goal of bankruptcy is accomplished through a:
 1. Discharge - a court order that releases the debtor from personal liability for specific debts and legally prohibits the creditor or lender from taking any action to collect the debt in question. The automatic stay triggered by bankruptcy discharge is applicable to certain types of debts so it's not a catch-all remedy. Also, there's a lot more to making bankruptcy proclamation which also shows up on the debtor's credit report for years leaving a scar and harming his credit scores because at bankruptcy, the law vests all property which the debtor has at the commencement of the bankruptcy or before his discharge in a trustee for distribution amongst his creditors equitably according to their rights while releasing the debtor from liability to the creditors. The terms of release of the debtor depends on his conduct before and during the bankruptcy because the court has the power to suspend, refuse or attach condition to the release if it considers that his conduct is reprehensible. It appears that the court is promoting a higher standard of commercial morality and protecting the public from the abuse of commercial credit.
 2. Dismissal – a court dismisses the case if the debtor does not qualify for a bankruptcy discharge for example, if the debts not dischargeable for example they are tax related debts, debts not included in court case, spousal/child support or alimony, government fines and penalties, federal student loans etc.

Overview of the Legal Framework for Bankruptcy and Debt Collection in Nigeria

- Upon bankruptcy, a creditor by section 1 (a) proviso to the Bankruptcy Act Cap B2 is entitled to enforce a final judgement or final order to enjoy his right to debt collection.
- Debt collection is the process of pursuing payments of money etc. owed to the creditor who may be an individual or a business. Debt collection is an important part of managing finances that has been in existence since the bartering system in the ancient civilizations of 300 BC with evidences of debt slavery, debtor's prison, coercive collection methods, debt carryover to future generations and foreclosures
- Countries all over the world establish debt collection systems to improve effective management of businesses through recoverable credit in order to promote business life cycle and grow the economy. Debt collections systems employed by creditors include:
 1. First-party agencies – They are often subsidiaries or departments of the creditor party. They get involved earlier in the debt collection process, have a greater incentive to maintain a constructive customer relationship and try to collect the debts before passing it to 3rd party agency or selling the debt and writing off most of its value

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2. 3rd party agencies – Collection agency appointed by the creditor on an initial contingency fee basis determined by a percentage of the debts successfully collected depending on the type of debt, age of account and attempts made at collection. Full payment is only made upon successful collection of the money from the debtor (No Collection – No Fee basis). 3rd party agencies include members of debt collection associations like the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN), Institute of Debt Recovery Practitioners of Nigeria (IDRPN) and International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL International)
3. Debt buyers – They are 3rd party companies that purchase bankruptcy debt at a percentage of its value then attempt to collect it for the full balance including any interest. The purchase gives them more control and flexibility to maximize collections such as the Asset Management Corporation of Nigeria (AMCON) established by the Federal Government to purchase banks and financial institutions bad loans at a particular percentage
4. There is need for a dedicated agency or commission for debt recovery

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- The process of debt collection revolves around licensed and regulated agencies activities
- In the UK, they are licensed and regulated under the Financial Conduct Authority (FCA), the Consumer Credit Act and Trade Association Code of Conduct while in the United States of America (USA), the agencies are subject to the Federal Trade Commission and the Bureau of Consumer Financial Protection housed within the US Federal Reserve, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act (FDCPA) 1977 which allows creditors to prove that debtors owe the money and prohibits the use of abusive, unfair or deceptive practices that harass, threaten and public shame debtors to collect debt.
- In Nigeria, licensed debt collection agencies engage in bankruptcy proceedings governed by the Bankruptcy Act and Bankruptcy Proceeding Rules while AMCON is the established government agency on debt recovery of bank debts. For proper regulation and efficiency in the implementation of the Bankruptcy Act, there is need for the establishment of an agency in relation to credit transaction. The agency's role should extend to enforcement of insolvency proceedings so that it can handle the circumstances under which a person or corporate entity will be declared bankrupt or insolvent respectively by the court

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- Generally, debt collection revolve around demand letter before legal claim, court judgement and enforcement of judgement. The creditor is required to:
 1. Engage the debtor for repayment or employ the service of a legal counsel
 2. Where the debt is ascertained, a demand letter is sent to the debtor outlining the amount owed and interests incurred if any and payment deadline
 3. Where payment is not made, legal action is pursued using summary judgment procedure and the debt amount determines the court with jurisdiction – small claims court, magistrate/high/federal high courts
 4. If the agreement contains a mediation/arbitration clause, that line of dispute settlement must be pursued before going to court as last resort
 5. Under the Statute of Limitation/Limitation Laws of the States, debt collection from simple contract must be recovered within 6 years from the date of contract and when the cause of action arose except there is a break in chain of causation such as the debtor admitting or paying some of the debts during the period in question
 6. The creditor especially secured creditors have forfeiture powers to take over the property of the debtor

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- Can the bankruptcy Act achieve an orderly and equitable debt collection?
- The Act is divided into 9 parts as follows:
 1. Part I – Proceeding from Acts of Bankruptcy to Discharge in sections 1 – 31
 2. Part II – Administration of Property and Proof of Debts in sections 32 – 71
 3. Part III – Official Receiver in sections 72 – 75
 4. Part IV – Trustees in Bankruptcy in sections 76 – 93
 5. Part V – Constitution, Procedure and Powers of Court in sections 94 – 106
 6. Part VI – Supplemental Provisions in sections 107 – 125
 7. Part VII – Disqualification of Bankrupt in sections 126 – 128
 8. Part VIII – Bankruptcy Offences in sections 129 – 141
 9. Part IX – Supplementary in sections 142 – 143

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- From the Act, bankruptcy proceedings are available in a judicial proceedings as stated in section 1 however, the process is cumbersome because bankruptcy is a secondary means of debt recovery and the creditor's success is dependent on his ability to demonstrate that the debtor committed an act/s of bankruptcy.
- Accordingly, an act of bankruptcy is committed if:
 1. The creditor has obtained a final judgement or final order against the debtor in any amount and execution thereon not having been stayed and has a bankruptcy notice under section 2 served on him – section 1 (a)(1). The action to obtain final judgement or order can be instituted in the high court using Undefended List/Summary Judgement/AMCON Act Procedures – *ITB Plc v Okoye* [2021] 11 NWLR (Pt1786) 163
 2. The debtor does not, within 14 days after service of the notice, comply with the requirements of the notice or satisfy the court that he has a counterclaim, set off or cross demand which equals or exceeds the amount of the judgement debt or sum ordered to be paid and which he could not set up in the action in which the judgement was obtained or the proceedings in which the order was made – section 1 (a) (ii)
 3. The creditor is entitled to petition to the Federal High Court (FHC) in the place where the debtor carried on business rather than where he resides in the event of the debtor's inability to satisfy the judgement debt to declare the debtor bankrupt

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4. The creditor must ensure that the act of bankruptcy must have occurred 3 months preceding the presentation of the proceeding, that the debt of a specific and liquidated sum due is not less than ₦2,000 (two thousand Naira) payable either immediately or at some future time and that the debtor must have within a year prior to the presentation of the petition been resident in Nigeria, owned a dwelling house or place of business in Nigeria, conducted business in Nigeria either personally or through an agent/manager and have been a member of a firm or partnership having business in Nigeria through a partner, agent or manager – section 4. The proof of debt under section 32 requires a description of the liquidated debts as provided under the FHC rules

5. Under section 7, the creditor's petition shall be verified by an affidavit stating the facts and served in the same manner as the writ of summons and at the hearing, the court shall require proof of the debt, service of the petition and the act/s of bankruptcy

6. If the court is satisfied with the presentation of the petition by either the creditor or the debtor at the FHC, it will make a receiving order for the protection of the estate but where the court is not satisfied, the petition is dismissed. Where there is a pending appeal from the judgement or order or a denial of indebtedness or amount of indebtedness, the court will stay action. See also section 12 on power to stay pending proceedings

7. A creditor's petition can only be withdrawn by leave of court

Overall, the creditor applies by petition to the Registrar of the FHC for the issuance of a Notice of Bankruptcy attaching a certified copy of the judgement and an affidavit averring that he has levied execution of the debtor's property and the proceeds of sale of the property could not satisfy the judgement debt. The issuance of the Bankruptcy notice mandates the debtor to pay the debt within a specified period failing which he would have committed an act of bankruptcy. The creditor then obtains a receiving order from the court enabling him to proceed against the debtor

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For the debtor, he can:

1. File in court a declaration of his inability to pay his debts - present a bankruptcy petition against himself – sections 1 (c) and 8. The court will make a receiving order only if it is satisfied that the assets for division among unsecured creditors after payment of costs, charges and expenses etc. will be sufficient to pay a dividend of 15%. The order will not be made for sufficient cause where there is fraud or misconduct or non- production of any material book of account by the debtor in relation to his affairs
2. On the making of a receiving order, the property of the debtor is received by the Official Receiver and unless as stated under the Act, no creditor shall have remedy against the debtor or shall commence any action or other legal proceedings unless with the leave of court. This provision does not affect the right of a secured creditor to realise or otherwise deal with his security... is his security not part of the property with the official receiver? This part of the law should be amended
3. Where there is urgency to preserve the property of the debtor, an interim receiver may be appointed before the official receiver – section 11. The court may also appoint a special manager on the application of an official receiver or the creditors until a trustee is appointed – section 13. The receiving order will be gazetted and advertised in a national newspaper while a receiver- manager/trustee is appointed to manage the debtor's assets.

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4. The debtor is required to give the official receiver in affidavit form a statement of his affairs under section 16 showing particulars of his assets, debts and liabilities in Nigeria and overseas. There shall be public examination of the debtor on oath as to his conduct, dealings and property under sections 24 – 27 in the presence of the Official Receiver or trustee if any but no legal practitioner shall be allowed to take part in the examination of the debtor or appear on his behalf – section 17
5. Under sections 15, 18 and 19, the debtor has the option of proposing compositions and schemes of arrangement to his creditors who may accept or reject the scheme. If rejected, within 14 days of the rejection, the court will adjudge the petition and declare the debtor bankrupt, the property of the debtor shall become divisible among his creditors and shall vest in the trustee – sections 20 and 21 and, notice of adjudication order would be gazetted and advertised in at least 2 national newspapers
6. The process for the debtor's petition are the appointment of a receiver, composition with creditors or a scheme of arrangement, public examination of the debtor, bankrupt adjudication, appointment of a trustee to administer the debtor's estate monitored by a committee of inspectors under section 22
7. A person adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of an offence and liable to conviction to one year imprisonment where after the presentation of the bankruptcy petition or within 6 months before such presentation leaves Nigeria or attempts to leave Nigeria taking with him any part of his property to the amount of ₦500 (ridiculous amount) or upwards which is sought by law to be divided amongst his creditors (punishment not commensurate with present realities)

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- Under the law, the following exists:
 1. Debtor's Rights - The law provides debtors with the opportunity to initiate and invoke its machinery against improper pressures from creditors provided that recourse to some form of solution even before the bankruptcy proceedings starts such as a scheme of arrangement with the creditors. Debtors' rights are rights guaranteed by law to protect them from being unfairly treated by creditors for example, the Fair Debt Collection Practices Act (FDCPA) 1977 of United States of America (USA) allows creditors to prove that debtors owe the money but prohibits the use of abusive, unfair or deceptive practices that harass, threaten and public shame debtors to collect debt. In the UK, debt collection guidelines prohibit unfair practices such as misrepresenting enforcement powers, harassment etc. In Nigeria, section 36 (1) CFRN, 1999 allows the debtor like any other citizen who believes that his right is being contravened in any cause or matter to seek for the determination of his civil rights and obligations
 2. Annulment of bankruptcy adjudication under section 23 where there is another acceptance under a composition or scheme to the discharge of the bankrupt while an order of bankruptcy may be upheld if the court annuls the second compositions and schemes of arrangements
 3. Discharge of a bankrupt – This may be refused, suspended or allowed under section 28 but an order of discharge will not release a bankrupt who committed fraud except there is automatic discharge under section 31 after five years from the date a receiving order was made against the bankrupt

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4. Priority of debts, preferential claims in case of apprenticeship and property available for payment of debts - sections 35
5. Restriction of the rights of a creditor under execution or judgement against the trustee -Section 43
6. Powers of the trustee - sections 57 – 71 and Part IV as “The Trustee of the Bankrupt” with realization of property of the debtor – possession, seizure, sale, transfer, appropriation and disclaimer under section 51 but he is liable for any dealings by an undischarged bankrupt under section 50. He must vacate office after distribution of final dividend by applying to the court for release under section 91. The trustee may also vacate office by insolvency or removed from office under sections 92 and 93
7. Powers and duties of the Official Receiver - Part III – sections 72 – 75
8. Constitution, procedure and powers of the court to preside (jurisdiction), review, make discretion, rules and appeals etc. - Part IV

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9. Disqualification of a bankrupt from elective positions of the office of the President/VP/National and State Assemblies/LGA/Member of any governing board/JP/membership of any profession until the disqualification is annulled – Part VII - section 126

10. Offences for bankruptcy - Any person adjudged a bankrupt or in respect of whose estate a receiving order is made shall be guilty of an offence in Part VIII – under section 129 as a fraudulent debtor. The circumstances for determining the guilt of the bankrupt are stated in sections 129 – 140. The penalties for the offences are outdated - fines of one-year imprisonment or ₦200 fine or both under sections 129 and 132. They are grossly inadequate to deal with present realities

11. The Bankruptcy Rules - Subsidiary legislation containing 23 parts - Part I (Proceedings), Part II (Witnesses and depositions), Part III (Sale and Disposal and Proceeds of Sale of Mortgaged Property), Part IV (Bankruptcy Petitions), Part V (Bankruptcy (Proceeding) Rules), Part VI (Creditor's Petition), Part VII (Hearing of Petition), Part VIII (Non-appearance of creditor) and Part IX (Debtor's Petition)

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Part X (Proceedings by or against a Firm), Part XI (Receiving Orders and Statement of Affairs), Part XII (Public Examination), Part XIII (Composition or Scheme), Part XIV (Proof of Debt), Part XV (Adjudication), Part XVI (Discharges), Part XVII (Discharge of Trustee), Part XVIII (Appeals and Execution), Part XIX (Accounts), Part XX (Acting as Director), Part XXI (Meeting of Creditors), Part XXII (Offences) and Part XXIII (Miscellaneous)

What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

- By the Bankruptcy Act, a successful bankruptcy proceeding is the expected but the question is whether it has been an easy route for debt collection in Nigeria? The answer is no owing to several factors such as:
 1. Too many agencies in debt collection – The Nigerian law on bankruptcy provides debtors with the right to institute action where there is harassment, abuse or oppression, use of threat or violence, obscene languages, thugs, mystical, occultism and diabolical methods, police and other security agencies. Government agencies involved in enforcement of laws dealing with money, financial crimes, corrupt practices should not be involved in debt collection. The EFCC, Police and the ICPC have no business in the enforcement of debt and recovery of civil debts for banks or anybody - *OSIL v Balogun & Ors*. It is only where there issuance of a dud cheque which is a criminal offence that they are involved - *EFCC v Diamond Bank Plc* [2019] All FWLR (Pt. 985) 487 - EFCC powers does not extend to the investigation and/or resolution of disputes arising to resulting from simple contract or civil transactions. EFCC and the Police are not a debt recovery agencies - Debt collection is a civil action that does not require police

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

2. Proper enforcement of Bankruptcy laws – The survival of businesses and individual's which rests on the capital or finances they possess through the use of credit facilities as loans is always an imperative thus, there is need for proper enforcement of bankruptcy laws
3. Establishment of a dedicated agency on credit transactions debt collection – This will promote an effective and easy collection and debt recovery system and also, ensure long-term viability of the economy and financial trust of lenders
4. There is a dearth of cases on bankruptcy owing to its social stigma - Bankruptcy exposes the bankrupt to loss of credibility from creditors, colleagues and friends and he has to deal with the psychological effect of shame, embarrassment and inherent depression

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

5. Amendment of the Act - Bankruptcy as a debt recovery facility in Nigeria is unpopular and requires amendment. The provisions are technical with lengthy provisions and alien to the Nigeria culture as it may conflict with the right to fair hearing. The provisions that reduce the process as a secondary debt recovery procedure must be amended to make it less cumbersome. The exclusive jurisdiction of the FHC in bankruptcy matters with bankruptcy and insolvency as item 5 of the Exclusive Legislative List of the CFRN 1999 should be changed and bankruptcy moved to the Concurrent Legislative List knowing that it deals with individuals so that the state high courts can also handle the matter

6. Locus to institute bankruptcy proceedings - A debtor or creditor may institute bankruptcy proceedings and where the petitioner is a debtor, he merely alleges that he is a debtor and unable to pay his debt but the court may not make such order in certain circumstances e.g. where he has no legal grounds for alleging his inability to pay. The creditor's petition is only valid upon disclosing that the debtor committed an act/s of bankruptcy which is very demanding and should be modified. He cannot suffer so much to recover his money used to help the debtor

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

7. For secured creditor's, the loan is tied to an asset or collateral that creditors can seize while unsecured debt is not backed by a collateral so creditors don't have the same recourse. For unsecured creditors even when judgement is obtained, collection remains dependent on the debtor's being able to repay

8. Competency of the filing after 3 months in the context of prevailing business and legal practice in Nigeria considering the exploring of other alternatives before a bankruptcy legal action is instituted is a clog to the implementation of the law and must be extended to 6 months' minimum

9. Standard of Proof - What is the standard of proof in bankruptcy proceedings? Is it on the preponderance of evidence as is applicable in civil matters?

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10. Absence of legal representation in the public examination of the debtor – Is the absence of legal representation not a presumption of guilt and violation of his right to legal representation and fair hearing in section 36 (5), (6)(c) and (1) respectively of the CFRN 1999?

11. The provisions of rule 95 (2) which allows ex parte application for adjudication of bankruptcy when the debtors properties are involved is an infringement on his right to fair hearing. Any provision or rule that contravenes the Constitution must be rendered void to the extent of the inconsistency and supremacy clause in section 1 (1) and (3) CFRN, 1999

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

12. Debt collectors generally work on commission and this pushes them to convince debtors to pay but where the property is jointly owned by the debtor, there is challenge in using it for payment until severed

13. For international debt collection, there is need to partner with foreign debt collection agencies

14. Limitation law cannot be extended by agency payment for example, in some cases, a debt collector will attempt to revive a debt that has expired due to the statute of limitation by themselves making a payment without the knowledge or permission of the debtor. Under the Collection Agencies Act of provinces in Canada, most debts are subject to limitation period of 2 years (Ontario and Alberta) while other provinces have 6 years so that after at the expiry of this date, no collection agency nor anyone else has legal authority to collect unless the court upholds a new date of last activity owing to supervening event. In Nigeria, statute limitation is 6 years excluding the year the contract was entered or executed under sections 18, 20 and 21 (1) (a) of the Limitation of Action Law – *Airtel Networks Ltd v Plus Ltd* [2020] 15 NWLR (Pt1747) 235 but the law is not applicable under the Failed Banks (Recovery of Debts), Financial Malpractices in Banks Act and under section 35 (5) of the AMCON Act. There is need for reconciliation of the provisions to align in order to complement the efforts of collection agencies-

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

15. Too many laws representing many agencies. It is time to streamline under one central debt collection agency for bankruptcy issues - Laws associated with debt recovery in Nigeria are CAMA, FHC (Civil Procedure) Rules, High Court Civil Procedure Rules, AMCON Act, EFCC (Establishment) Act, Police Act, Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act, Bankruptcy Act, CBN Act, NDIC Act and BOFIA

16. What happens when there is a *force majeure* leading to bankruptcy? - With COVID - 19 pandemic effects, many cases abound of debtor's inability to settle their creditors and it appears that the pandemic is a *force majeure* affecting bankruptcy proceedings especially with debtors who were faithful to the contractual agreement before the pandemic. The amendment must take such circumstance into consideration

..What are the Challenges of Debt Collection in Bankruptcy and the Way forward?

17. Most creditors/debt collectors resort to self-help whenever they intend debt recovery which is seen as an extra-judicial measure and frowned at by the courts and may expose the debt collector to allegations of assault, battery, unlawful detention, false imprisonment and constitutional rights abuse. This calls for a single agency enforcement to ensure proper enforcement

18. The provisions of the Act are not well structured and arranged. It is not easily readable nor understood. Lack of clarity will lead to ambiguity which makes the law difficult to implement

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19. Litigation should be considered as a last resort only when the debtor is recalcitrant and willfully neglects to pay his indebtedness because an action for debt recovery requires speedy dispensation of justice thus, the collector must act fast. Delay in debt collection stalls money which should be readily available for the growth of the economy. The establishment of the Nigerian Bankruptcy Commission with debt collection offices in the 36 states and the FCT for a centralized debt collection system will help in the development of rules for timely recovery of debts. The rules will promote a trusted credit-oriented economy in trade-debt contracts thereby promoting the ease of doing business amongst producers, retailers and consumers in Micro, Small and Medium Enterprises (MSMEs)

Conclusion

- Bankruptcy is the right path in some debt cases because getting rid of debt collectors is a great benefit but you may spend many future years repairing your credit so it is necessary to consider other paths to debt freedom and financial stability such as debt settlement, negotiating with the creditors for a debt payment plan or loan modifications before deciding on bankruptcy
- It is the court that has the power to declare a person bankrupt but bankruptcy as a debt recovery facility in Nigeria is unpopular and requires amendment as follows - the law is technical with lengthy provisions that may conflict with the right to fair hearing, the provisions that reduce the process as a secondary debt recovery procedure must be amended to make it less cumbersome, the provisions of the law should be elegantly drafted and areas of potential conflict with the Constitution avoided while the rules must align with the law because it is a subsidiary legislation.
- For the creditor, debt is a liability and one of the most successful collection strategies is to have a robust credit check and unboarding process in place while offering credit. Ask for your payment immediately and offer easy payment options
- Thank you for listening!