

EXPLANATORY NOTE

Liquidation petition by Creditor

The liquidation petition is to be used by a creditor in making an application for liquidation of a debtor.

Legal Basis

Section 424 of the Insolvency Act, 2015 sets out the circumstances in which a company may be liquidated by court and includes inability to pay debts. **Section 425** of on the other hand sets out the persons who can file an application for liquidation order and in this regard includes creditors of the company.

Legal Grounds/Threshold.

In order to succeed, the creditor is required to prove to court the company is unable to pay its debts as and when it falls due. In this regard, Section 384 (1) sets out the circumstances in which a company shall be deemed unable to pay its debts to include;

- (a) if a creditor (by assignment or otherwise) to whom the company is indebted for hundred thousand shillings or more has served on the company, by leaving it at the company's registered office, a written demand requiring the company to pay the debt and the company has for twenty—one days afterwards failed to pay the debt or to secure or compound for it to the reasonable satisfaction of the creditor;
- (b) if execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or
- (c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts as they fall due.

Remedies/Relief Sought

The Orders to be sought in the petition are;

- (a) A declaration that the Company is unable to pay its debts to the Petitioner.
- (b) A declaration that it is just and equitable for the Company to be liquidated.
- (c) That the company be liquidated by the court under the provisions of the Insolvency Act, Act No. 18 of 2015 and all other enabling provisions of the law.
- (d) That following liquidation, the net assets of the Company be distributed to the Petitioner in satisfaction of the Outstanding Amount plus accrued interest.

The Processes/Procedure involved

The petition is filed by uploading it in the E filing system and paying the requisite filing fees after which the petitioner is required to advertise it to notify the creditors of the same and invite them to participate in the hearing.