

CHAPTER 6. No. 7.

DEEDS OF ARRANGEMENT.

AN ORDINANCE RELATING TO DEEDS OF ARRANGEMENT.

Ordinance
No. 28—1932.

[1st January, 1934.]

Commencement.

1. This Ordinance may be cited as the Deeds of Arrangement Ordinance. Short title.

2. (1) In this Ordinance,—

Interpreta-
tion.

“ Court ” means the Supreme Court;

“ creditors generally ” includes all creditors who may assent to, or take the benefit of, a deed of arrangement;

“ property ” has the same meaning as in the Bankruptcy Ordinance;

“ rules ” includes forms.

(2) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

PART I.

APPLICATION OF ORDINANCE.

3. (1) A deed of arrangement to which this Ordinance applies shall include any instrument of the classes mentioned in subsection (2) hereof—

Deeds of
arrangement
to which
Ordinance
applies

(a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally:

(b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the

instrument for the benefit of any three or more of his creditors:

otherwise than in pursuance of the law for the time being in force relating to bankruptcy.

(2) The classes of instrument hereinbefore referred to are—

(a) an assignment of property;

(b) a deed of or agreement for a composition;

and in cases where creditors of the debtor obtain any control over his property or business—

(c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(d) a letter of licence authorising the debtor or any other person to manage, carry on, realise or dispose of a business with a view to the payment of debts; and

(e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise or dispose of the debtor's business with a view to the payment of his debts.

PART II.

AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH.

Avoidance of
unregistered
deeds of
arrangement.

4. A deed of arrangement shall be void unless it is registered with the Registrar General within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of the Colony, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in the Colony, if posted within one week after the execution thereof, and unless it bears such ordinary and *ad valorem* stamp as is provided by this Ordinance.

Avoidance of
deeds of
arrangement
unless
assented to by
a majority of
the creditors.

5. (1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before, or within twenty-one days after, the registration thereof, or within such extended time as the Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be *primâ facie* evidence of the names of the creditors and the amounts of their claims.

(3) The assent of a creditor for the purposes of subsection (1) of this section shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the Registrar General at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twenty-eight days after registration or within such extended time as the Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be *primâ facie* evidence, of the act declared.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding forty-eight dollars shall be reckoned in the majority in value but not in the majority in number.

PART III.

REGISTRATION OF DEEDS OF ARRANGEMENT.

6. The Registrar General shall be the Registrar for the purposes of this Ordinance, and his office shall be the office for the registration of deeds of arrangement.

Registrar and
office for
registration.

7. (1) The registration of a deed of arrangement under this Ordinance shall be effected in the following manner:—

Mode of
registration.

The deed, and every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the Registrar General within seven clear days after the execution of the deed, together with an affidavit verifying the time of execution, and containing a description

of the residence and occupation of the debtor and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.

(2) No deed shall be registered under this Ordinance unless it has been duly stamped with the proper stamp duty, and in addition to such duty a stamp denoting a duty computed at the rate of twenty-four cents for every four hundred and eighty dollars or fraction thereof of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed.

Form of register.

8. The Registrar General shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Ordinance, containing the following and any other prescribed particulars—

(a) the date of the deed, its registered number and the date of its registration;

(b) the name, address, and description of the debtor, and the place or places where his business was carried on at the date of the execution of the deed, and the title of the firm or firms under which the debtor carried on business, and the name and address of the trustee (if any) under the deed;

(c) the amount of property and liabilities included under the deed, as estimated by the debtor.

Rectification of register.

9. The Court, upon being satisfied that the omission to register a deed of arrangement within the time required by this Ordinance or that the omission or mis-statement of the name, residence, or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or mis-statement to be supplied or rectified by the insertion in the register of the true name, residence, or description.

10. Where the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open. Time for registration.

11. Any person shall be entitled, at all reasonable times to search the register on payment of twenty-four cents, or such other fee as may be prescribed, and subject to such regulations as may be prescribed, and shall be entitled, at all reasonable times to inspect, examine, and make extracts from any registered deed of arrangement upon payment of twenty-four cents, or such other fee as may be prescribed, for each deed of arrangement inspected: Inspection of register and registered deeds.

Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses, and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

PART IV.

PROVISIONS AS TO TRUSTEES.

12. (1) The trustee under a deed of arrangement shall, within seven days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the Registrar General in a sum equal to the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration, to administer the deed properly and account fully for the assets which come to his hands, unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security: Security by trustee.

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar General a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be *primâ facie*, evidence, of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the Court, on the

application of any creditor and after hearing such persons as it may think fit, may declare the deed of arrangement to be void or may make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by the Registrar General, shall be conclusive evidence of the fact.

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding forty-eight dollars shall be reckoned in the majority in value but not in the majority in number.

Penalty on trustee acting when deed of arrangement void.

13. If a trustee acts under a deed of arrangement—

(a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Ordinance, or

(b) after he has failed to give security within the time and in the manner provided for by this Ordinance,

he shall be liable, on summary conviction, to a fine of twenty-four dollars for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Transmission of accounts to the Registrar General.

14. (1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Registrar General an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner; and the Court may, for the purpose of enforcing the provisions of this subsection, exercise on the application of the Registrar

General all the powers conferred on the Court by subsection (3) of section 97 of the Bankruptcy Ordinance, as in the case of bankruptcy.

(2) If any trustee fails to transmit such account, he shall be liable, on summary conviction, to a fine of twenty-four dollars for each day during which the default continues.

(3) The accounts transmitted to the Registrar General in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the accounts shall, on payment of the prescribed fee, be furnished to the debtor, the creditors, or any other persons interested.

(4) In this section the expression "trustee" shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression "prescribed" means prescribed by rules under the Bankruptcy Ordinance.

15. Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, in his affidavit verifying his accounts transmitted to the Registrar General, state whether or not he has duly sent such statements, and the dates on which the statements were sent; and, if a trustee fails to comply with any of the provisions of this section, the Court may, for the purpose of enforcing those provisions, exercise on the application of the Registrar General all the powers conferred on the Court by subsection (3) of section 97 of the Bankruptcy Ordinance, as in the case of bankruptcy.

Transmission
of accounts
to creditors.

16. (1) Where, in the course of the administration of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the Registrar General, an application in writing is made to the Registrar General by a majority in number and value of the creditors who have assented to the

Audit of
accounts.

deed for an official audit of the trustee's accounts, the Registrar General may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Ordinance, relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications, apply to the audit of the trustee's accounts, and the Registrar General shall have power on the audit to require production of a certificate for the taxed costs of any solicitor whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced.

(2) The Registrar General may determine how and by what parties the costs, charges and expenses of and incidental to the audit (including any prescribed fees, chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an application for an audit, require the applicants to give security for the costs of the audit.

Payment of undistributed moneys into Court.

17. At any time after the expiration of two years from the date of the registration of a deed of arrangement, the Court may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be paid into Court.

Preferential payment to creditor an offence.

18. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then unless the deed authorises him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of an offence and liable, on summary conviction, to a fine of two hundred and forty dollars, or to imprisonment for six months.

Power of Court to appoint new trustees.

19. (1) The Court may whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony, or is insane, or is a bankrupt, or is a corporation which is in liquidation or has been dissolved.

(2) An order under this section and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing herein contained gives power to appoint an executor or administrator.

20. (1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the benefit of three or more creditors, by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Ordinance, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after the lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

Provisions for the protection of trustees under void deeds.

(2) Where a receiving order is made against a debtor under section 98 of the Bankruptcy Ordinance, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

21. When a deed of arrangement is void by virtue of this Ordinance for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by this Ordinance, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar General, and, if he fails to do so, he shall be liable, on summary conviction, to a fine of ninety-six dollars.

Notice to creditors of avoidance of deed.

Payment of expenses incurred by trustees.

22. Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor, any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Ordinance shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

Application of Part IV.

23. The provisions of this Part of this Ordinance, except such of those provisions—

(a) as relate to the transmission of accounts to the Registrar General,

(b) as provide for the protection of trustees under void deeds,

(c) as require a notice to be given to creditors of avoidance of deeds,

(d) as provide for the payment of expenses incurred by trustees,

shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

PART V.

GENERAL.

Applications for enforcement of trusts.

24. Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the Court.

Relation to bankruptcy law.

25. (1) If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditors' assents with an intimation that the creditor will not after the expiration of one month from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other

act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by him as an act of bankruptcy.

(2) Where such a deed of arrangement as aforesaid has become void by virtue of this Ordinance, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

(3) Save as otherwise expressly provided by this Ordinance, nothing in this Ordinance shall be construed as repealing or shall affect any provision of the law for the time being in force in relation to bankruptcy or shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable.

26. Subject to the provisions of this Ordinance, and to any rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Ordinance, upon paying for it at the like rate as for office copies of judgments of the Supreme Court, and any copy or extract purporting to be an office copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. Office copies.

27. There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or searches, such fees as are set out in the Schedule hereto, or as may be from time to time prescribed; and nothing in this Ordinance contained shall make it obligatory on the Registrar General to do, or permit to be done, any act in respect of which any fee is specified, except on payment of such fee. Fees.

28. Rules for carrying this Ordinance into effect may be made in like manner as rules may be made under and for the purposes of the Judicature Ordinance. Rules.

(Section 27.)

SCHEDULE.**Fees.**

Item.	Fee.	Document to be stamped.
	\$ c.	
1. On registering a deed with the Registrar General: (i) where the total estimated amount of property included therein, or the total amount of composition payable thereunder, appears from the affidavit of the debtor—		
(a) not to exceed \$4,800	4 80	The deed.
(b) to exceed \$4,800	9 60	
(ii) in every case to which the above fees do not apply	9 60	
2. On a certificate	1 20	The certificate.
3. On filing a statutory declaration or notice with the Registrar General of arrangement pursuant to the Ordinance or the rules	0 60	The declaration or notice.
4. On searching the register and on inspecting the deed, including the limited extract to be taken pursuant to the Ordinance and the rules (for every name inspected)	0 24	The search form.
5. On an account transmitted by a trustee in pursuance of section 14 of the Ordinance; a fee upon the gross amount of the assets realised and brought to credit or in the case of a composition a fee upon the gross amount of the composition distributed during the period comprised in the account, according to the following scale:—		
On every \$480 or fraction of \$480 up to \$2,400	1 80	
On every \$480 or fraction of \$480 above \$2,400	0 90	
6. On an application in pursuance of section 14 (3) of the Ordinance, to inspect accounts of a trustee under a deed of arrangement	0 36	The application.
7. On an application to the Registrar General under section 16 (1) of the Ordinance, for an official audit of a trustee's accounts	7 20	The application.

SCHEDULE—continued.

Fees—continued.

Item.	Fee.	Document to be stamped.
<p>8. On the audit of a trustee's accounts by the Registrar General in pursuance of section 16 (1) of the Ordinance:</p> <p>a fee, not being less than \$36 according to the following scale on the amount brought to credit after deducting (1) the amount received and spent in carrying on the business, and (2) the amount paid to secured creditors out of the proceeds of their securities, viz.:</p> <p>On every \$480 or fraction of \$480 up to \$24,000 7 20</p> <p>On every \$480 or fraction of \$480 beyond \$24,000 3 60</p> <p><i>Provided that there shall be deducted from this fee the amount of any fee taken on accounts transmitted in pursuance of section 14 of the Ordinance.</i></p>	<p>\$ c.</p>	
<p>9. On copies furnished by the Registrar General, per folio of 120 words</p>	<p>0 24</p>	<p>The copy.</p>