



# Deeds of Arrangement Act 1914

## 1914 CHAPTER 47

### PART IV

#### PROVISIONS AS TO TRUSTEES

#### 11 Security by trustee

- (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 of the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, or, if he then resided or carried on business in the London bankruptcy district, to the senior bankruptcy registrar of the High Court, 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 :

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar of Bills of Sale a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima 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 having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, 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 to whom it was given and filed with the Registrar of Bills of Sale, shall be conclusive evidence of the fact.

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*Status: This is the original version (as it was originally enacted).*

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- (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 ten pounds shall be reckoned in the majority in value but not in the majority in number.

## **12 Penalty on trustee acting when deed of arrangement void**

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 Act or any enactment repealed by this Act; or
- (b) after he has failed to give security within the time and in the manner provided for by this Act or any enactment repealed by this Act,

he shall be liable on summary conviction to a fine not exceeding five pounds 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.

## **13 Transmission of accounts to Board of Trade**

- (1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the Board of Trade, or as they direct, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.
- (2) If any trustee fails to transmit such account, he shall be liable on summary conviction to a fine not exceeding five pounds for each day during which the default continues, and the judge of the High Court to whom bankruptcy business has been assigned may, for the purpose of enforcing the provisions of the last preceding subsection, exercise, on the application of the Board of Trade, all the powers conferred on the court by subsection (5) of section one hundred and five of the Bankruptcy Act, 1914, in cases of bankruptcy.
- (3) The accounts transmitted to the Board of Trade 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 Act, 1914.

#### **14 Transmission of accounts to creditors**

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 Board of Trade, 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 High Court may, for the purpose of enforcing those provisions, exercise on the application of the Board of Trade all the powers conferred on the court by subsection (5) of section one hundred and five of the Bankruptcy Act, 1914, in cases of bankruptcy.

#### **15 Audit of accounts**

- (1) Where, in the course of the administration of the estate 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 Board of Trade, an application in writing is made to the Board by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the Board may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Act, 1914, 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 Board 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 Board of Trade 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.

#### **16 Payment of undistributed moneys into court**

At any time after the expiration of two years from the date of the registration of a deed of arrangement, the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed 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.

#### **17 Preferential payment to creditor an offence**

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 a misdemeanour.

## **18 Power to bankruptcy courts to appoint new trustee**

The power to appoint a new trustee or new trustees under section twenty-five of the Trustee Act, 1893, may, in the case of a deed of arrangement, be exercised either by the High Court or by the court having jurisdiction in bankruptcy in the district in which the debtor resided or carried on business at the date of the execution of the deed, and the provisions of that section shall apply accordingly.

## **19 Provisions for the protection of trustees under void deeds**

- (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 Act, 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 the 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.
- (2) Where a receiving order is made against a debtor under subsection (5) of section one hundred and seven of the Bankruptcy Act, 1914, this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed.

## **20 Notice to creditors of avoidance of deed**

When a deed of arrangement is void by virtue of this Act 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 Act, 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 of Bills of Sale, and, if he fails to do so, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

## **21 Payment of expenses incurred by trustees**

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 Act shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

## **22 Application of Part IV**

The provisions of this Part of this Act, except such of those provisions—

- (a) as relate to the transmission of accounts to the Board of Trade ;
- (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.