



ANALYSIS

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1990, No. 7

An Act to amend the Insolvency Act 1967

[19 March 1990]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Insolvency Amendment Act 1990, and shall be read together with and deemed part of the Insolvency Act 1967 (hereinafter referred to as the principal Act).

2. First meeting of creditors—Section 34 (1) of the principal Act is hereby amended by omitting the words “Except where the Assignee considers that special circumstances would justify the delay, he shall”, and substitute the words “Except as otherwise provided in section 34A of this Act, or where the Assignee considers that special circumstances would justify the delay, the Assignee shall”.

3. Assignee may dispense with first meeting of creditors—The principal Act is hereby amended by inserting, after section 34, the following section:

“34A. The Assignee shall not be required to summon a first meeting of creditors under section 34 of this Act in any case where—

“(a) The Assignee considers, having regard to the assets and liabilities of the bankrupt, the likely result of the

bankruptcy, and any other relevant matters, that no such meeting should be summoned; and

“(b) The Assignee gives notice in writing to each creditor named in the bankrupt’s statement of affairs and to such other creditors (if any) as are known to the Assignee stating—

“(i) That the Assignee does not consider that the meeting should be held; and

“(ii) The reasons for the Assignee’s view; and

“(iii) That no such meeting will be summoned unless a creditor gives notice in writing to the Assignee, within 14 days after receiving the notice, requiring the meeting to be summoned; and

“(c) No notice requiring the meeting to be summoned is received by the Assignee within that period.”

4. When Court may annul adjudication—The principal Act is hereby amended by repealing section 119, and substituting the following section:

“119. (1) In any of the following cases the Court may by order, on the application of the Assignee or any person interested, annul the adjudication—

“(a) Where the Court is of the opinion that the order of adjudication should not have been made:

“(b) Where the Court is satisfied that the debts of the bankrupt have been fully paid or satisfied:

“(c) Where the Court is of the opinion that the liability of the bankrupt to pay his or her debts should be revived because since the date of adjudication there has been a substantial change in the financial circumstances of the bankrupt:

“(d) Where the Court has approved a composition under Part XII of this Act.

“(2) If an application is made on any ground specified in paragraphs (a) to (c) of subsection (1) of this section by any person other than the Assignee, a copy of the application shall be served on the Assignee in such manner and within such time as the Court may direct.

“(3) The Assignee may appear on the hearing of any application made on any ground specified in paragraphs (a) to (c) of subsection (1) of this section as if the Assignee were a party to the proceeding.

“(4) If the order of annulment is made on the ground specified in paragraph (a) of subsection (1) of this section, the

adjudication shall be annulled from and after the date of the adjudication.

“(5) If the order of annulment is made on any ground specified in paragraphs (b) to (d) of subsection (1) of this section, the adjudication shall be annulled as from the date of the order.

“(6) Where application is made to the Court to annul any order of adjudication on the ground that the order ought not to have been made by reason of a defect in form or procedure, subject to section 11 of this Act, the Court may, in addition to annulling the order, exercise its powers to correct the defect and order that the petition be reheard as if no order of adjudication had been made.

“(7) Where an order of annulment is made on any ground specified in paragraphs (a) to (c) of subsection (1) of this section—

“(a) The Court may, on the application of the Assignee, order, in addition to any costs that may be awarded, the payment of such fee by way of remuneration for the Assignee’s services as the Court considers reasonable:

“(b) Any such fee shall be paid into the Crown Bank Account:

“(c) No commission shall be payable under section 166 of this Act in respect of any services for which any such fee is paid.”

5. New sections substituted relating to Assignee’s accounts—(1) The principal Act is hereby amended by repealing section 132, and substituting the following sections:

“132. Assignees to keep proper books of account—

(1) Every Assignee under this Act shall keep proper books of account, in the prescribed form, and shall, whenever required by the Court, verify the same by statutory declaration.

“(2) The accounts of the Assignee in respect of any bankruptcy shall be open to the inspection of any creditor or of any person who has an interest in the bankruptcy.

“(3) As soon as practicable after the notice of the distribution of a final dividend in any estate is advertised, or when the whole of the estate is realised if it is insufficient to pay a dividend, the Assignee shall prepare a statement of accounts and balance sheet, showing in detail the receipts and payments in respect of the estate. The statement of accounts and balance sheet shall be filed in the Court.

“(4) Every statement of accounts and balance sheet shall be verified by a statutory declaration and shall, when filed, be

open to inspection without fee by any creditor or by any person who has an interest in the bankruptcy.

“(5) Notice of the filing of every such statement of accounts and balance sheet shall be advertised by the Assignee in one or more newspapers circulating in the locality in which the bankruptcy has been conducted.

“132A. **Audit Office may audit Assignee’s accounts—**

(1) The Audit Office may, at its discretion, audit—

“(a) The books of account of the Assignee in respect of any bankruptcy:

“(b) Any statement of accounts and balance sheet prepared by the Assignee under section 132 (3) of this Act:

“(c) Any account maintained by the Assignee for the purposes of this Act.

“(2) For the purposes of this section, the Audit Office shall have the same powers as it has under the Public Finance Act 1977 in relation to the audit of public money and stores.”

(2) Nothing in sections 132 and 132A of the principal Act (as substituted by subsection (1) of this section) shall apply in respect of any bankruptcy in any case where an audit of the Assignee’s accounts has been commenced before the coming into force of this section, and the provisions of section 132 of the principal Act shall, notwithstanding its repeal by this section, continue to apply in relation to that bankruptcy.

(3) Section 104 (1) of the principal Act is hereby consequentially amended by repealing paragraph (c) (as substituted by section 2 of the Insolvency Amendment Act 1987), and substituting the following paragraph:

“(c) Thirdly in payment of all commission payable to the Assignee as specified in regulations made under section 14 (a) of this Act:”.

(4) Section 133 of the principal Act is hereby consequentially amended—

(a) By omitting from subsection (1) the words “and report”; and

(b) By omitting from subsection (3) the words “the Auditor’s report, and”.

(5) The Insolvency Regulations 1970 are hereby amended—

(a) By revoking regulation 48A and the heading above that regulation (as substituted by regulation 3 of the Insolvency Regulations 1970, Amendment No. 6); and

(b) By revoking the Second Schedule (as substituted by regulation 4 of the Insolvency Regulations 1970, Amendment No. 6).

6. Power to make summary instalment orders—

(1) Section 146 (1) of the principal Act is hereby amended by omitting the expression “\$4,000” in both places where it occurs, and substituting in each case the expression “\$12,000”.

(2) Section 146 (4) of the principal Act is hereby amended by omitting the expression “\$4,000”, and substituting the expression “\$12,000”.

(3) Section 146 (13) of the principal Act is hereby amended by omitting the expression “\$4,000”, and substituting the expression “\$12,000”.

7. Payment of disbursements relating to certain advertisements and postages—The principal Act is hereby amended by repealing section 167, and substituting the following section:

“167. The cost of advertising notices of adjudication, of examination of the bankrupt, of annulment, of the time and place of any meeting of creditors, of the filing of accounts, and of the intention to apply for an order of release, and also the cost of all postages and other communications incurred by the Assignee in respect of any estate shall be paid—

“(a) From any money received by the Assignee by the realisation of the property of the bankrupt, in accordance with section 104 (1) (a) of this Act:

“(b) Where no such money has been received, or where any such money is insufficient to cover all such costs, from money in the Crown Bank Account appropriated by Parliament for the purpose.”

This Act is administered in the Department of Justice.
