

BANKRUPTCY AMENDMENT BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to amend the Bankruptcy Act 1908 so as to bring it into line with the provisions of the Companies Act 1955, which is to come into force on 1 January 1957. All the provisions in the Bill, except clauses 12, 13, and 14, are in similar terms to provisions in the Companies Act 1955 or in the United Kingdom Bankruptcy Act 1914, and clauses 2, 3, 4, 5, and 8 relate to provisions which are common to both those Acts.

Clause 2 is to extend from three months to six months the time within which a fraudulent preference will be rendered void by the bankruptcy of the debtor. By virtue of section 309 (1) of the Companies Act the amendment will automatically apply to fraudulent preferences by companies which are wound up. A similar extension has been made in the United Kingdom in respect of companies and bankrupts.

Clause 3 is in similar terms to section 310 of the Companies Act 1955, which is a new provision based on section 321 of the United Kingdom Companies Act 1948. It is designed to give relief to any person who has to repay to the Official Assignee sums paid to that person by the bankrupt under circumstances making the payment a fraudulent preference of a third party. Thus, if someone has secured the bankrupt's overdraft at the bank, either with or without a covenant giving rise to a personal liability on his part, the bankrupt, by paying money into his bank account in reduction of the overdraft instead of paying his trade debts in the ordinary course of business, may fraudulently prefer the person in question. In such circumstances, even if the bank has not been fraudulently preferred, it may have to repay that money to the Official Assignee in consequence of the fraudulent preference of the third party. In such a case this clause would enable the bank to sue the third party as a surety to the extent mentioned in *subclause (1)*, notwithstanding the absence of any express covenant on his part giving rise to a personal liability, and would also enable the bank to raise any question relating to the liability of the surety or guarantor and have it determined in the bankruptcy under *subclause (3)* instead of having to bring separate proceedings.

Clause 4 amends section 80 of the Bankruptcy Act 1908 so as to bring it into line with section 314 of the Companies Act and section 40 of the United Kingdom Bankruptcy Act 1914. Section 80 provides that a creditor who has issued execution against the property of a debtor shall not be entitled to retain the benefit of the execution as against the Official Assignee on the debtor becoming a bankrupt unless he has completed the execution before the date of

the adjudication and before notice of the filing of a bankruptcy petition or of the commission of an act of bankruptcy. The amendments made by this clause provide:

- (a) That a person who purchases in good faith under a sale by the Sheriff any goods of a debtor on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and
- (b) That the rights conferred by section 80 on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.

Clause 5 re-enacts section 81 of the principal Act so as to bring it into line with section 315 of the Companies Act and section 41 of the United Kingdom Bankruptcy Act. Section 81 requires the Sheriff who takes any goods of a debtor in execution to deliver the goods on request to the Official Assignee if, before the goods are sold, notice of the bankruptcy of the debtor is served on the Sheriff, and it also requires the Sheriff to retain for 14 days, and on similar notice to pay to the Official Assignee, the proceeds of the sale of any goods taken in execution of a judgment for over £20. The amendments made in re-enacting section 81 by this clause are to extend the section so that it imposes on the Sheriff the same duties in respect of any money seized by him or paid to him as he has in respect of the goods or the proceeds of the sale of the goods.

Clause 6 inserts a new section 82A in the principal Act, on the lines of section 46 of the U.K. Bankruptcy Act. It preserves the validity of payments made to a bankrupt before his bankruptcy in the ordinary course of business or otherwise in good faith without notice of the presentation of a bankruptcy petition.

Clause 7 inserts a new section 82B in the principal Act, on the lines of section 47 of the U.K. Bankruptcy Act. It preserves the validity of dealings with a bankrupt in good faith and for value as to property acquired by the bankrupt after his adjudication if the dealings have been completed before any intervention by the Official Assignee. It also requires any banker to notify the Official Assignee of any bank account of an undischarged bankrupt and not to make payments out of the account except under an order of the Court or instructions from the Official Assignee, unless the Official Assignee fails for one month to give any instructions.

Clause 8 brings section 84 (4) of the principal Act into line with section 312 (4) of the Companies Act and section 54 (4) of the U.K. Bankruptcy Act, by substituting twenty-eight days for one month as the time within which the Official Assignee must decide whether he will or will not disclaim any onerous property after receiving an application requiring him to decide.

Clause 9 is in similar terms to section 313 of the Companies Act 1955, which is a new provision based on section 324 of the United Kingdom Companies Act 1948. It prevents a person becoming liable under a rentcharge on land vested in him on a disclaimer under section 84 of the Bankruptcy Act 1908 unless and until he has taken possession or control of the land or entered into possession of it.

Clause 10 amends section 88 of the principal Act so as to enable an absconding debtor to be arrested in proper cases after the service of a bankruptcy notice on him, as well as after the filing of a bankruptcy petition. This brings the section into line with section 23 (1) (a) of the U.K. Bankruptcy Act.

Clause 11 amends section 120 of the Bankruptcy Act 1908, as to the priority of debts in a bankruptcy, so as to bring it into line with section 308 of the Companies Act 1955. The new clause abolishes the distinction between “clerks and servants” on the one hand and “artisans, labourers, and workmen” on the other hand, and makes the maximum sum £200 in both cases, instead of the existing sums of £100 and £50. It also makes it clear that accrued holiday pay is included as if it were wages or salary, and that wages for a period of holiday or absence from work, as well as workers’ compensation not covered by insurance, are also included. A person who advances money for the payment of wages is given the same priority as would have been enjoyed by the person receiving the payment. *Subclause (3)* repeals section 10 of the Workers’ Compensation Amendment Act 1936, as that section is replaced by the new subparagraph (iii) of paragraph (c) in *clause 6 (1)*.

Clause 12 repeals subsection (3) of section 125 of the Bankruptcy Act 1908. That subsection requires every bankrupt to apply for his discharge within four months of the date of his adjudication. This provision is not usually complied with, and does not survive in the United Kingdom legislation.

Clause 13 repeals section 128 of the Bankruptcy Act 1908. That section provides that a bankrupt shall not be entitled to an absolute discharge until all preferential claims for wages and salary are fully paid and satisfied, unless with the consent of the persons entitled thereto. This provision could lead to an injustice to the bankrupt, as in cases where the creditors cannot be traced; and it is considered that to leave the matter to the discretion of the Court should not result in any failure to give due protection to the interests of the persons to whom wages may be owing.

Clause 14 makes it a crime punishable by imprisonment for a term not exceeding two years for a bankrupt to leave or attempt to leave New Zealand within three years after his adjudication unless he has first obtained the consent of the Official Assignee or has obtained his discharge or had the bankruptcy annulled. *Subclause (2)* sets out the procedure on applications for the Official Assignee’s consent and makes it clear that there is an appeal to the Supreme Court from his decision on any such application.

Hon. Mr Marshall

BANKRUPTCY AMENDMENT

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A BILL INTITULED

An Act to amend the Bankruptcy Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Bankruptcy Amendment Act 1956, and shall be read together with and deemed part of the Bankruptcy Act 1908 (hereinafter referred to as the principal Act).

10 (2) This Act shall come into force on the first day of January, nineteen hundred and fifty-seven.

2. Fraudulent preference—(1) Section seventy-nine of the principal Act is hereby amended by omitting from subsection one the words “three months”, and substituting the words “six months”.

(2) This section shall not apply to anything made or done before the commencement of this Act. 5

3. Liabilities and rights of certain fraudulently preferred persons—The principal Act is hereby amended by inserting, after section seventy-nine, the following section:

“79A. (1) Where, in the case of any debtor, anything made or done after the commencement of this section is void under section seventy-nine of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the debtor’s debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less. 10 15 20

“(2) The value of the said person’s interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the debtor’s debt was then subject. 25

“(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the bankruptcy, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.” 30 35

4. Restriction of rights of creditor as to execution or attachment—(1) Section eighty of the principal Act is hereby amended by adding to subsection one the following proviso:

“Provided that—

5 “(a) A person who purchases in good faith under a sale by the Sheriff any goods of a debtor on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and

10 “(b) The rights conferred by this subsection on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.”

15 (2) Section eighty of the principal Act is hereby further amended by omitting from subsection two the words “completed by sale”, and substituting the words “completed by seizure”.

5. Duties of Sheriff as to goods taken in execution—The principal Act is hereby amended by repealing section eighty-
20 one, and substituting the following section:

“81. (1) Subject to the provisions of subsection *three* of this section, where any goods of a debtor are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy,
25 notice is served on the Sheriff that the debtor has been adjudicated a bankrupt, the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the Official Assignee, but the costs of the execution shall be a first charge on the goods or
30 money so delivered, and the Official Assignee may sell the goods or a sufficient part thereof for the purpose of satisfying that charge.

“ (2) Subject to the provisions of subsection *three* of this section, where, under an execution in respect of a judgment
35 for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid a sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and, if within that time notice is served on him of a bank-
40 ruptcy petition having been presented by or against the debtor,

and the debtor is adjudged a bankrupt thereon or on any other petition of which the Sheriff has notice, the Sheriff shall pay the balance to the Official Assignee, who shall be entitled to retain it as against the execution creditor.

“(3) The rights conferred by this section on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.” 5

6. Validity of certain payments to bankrupt and assignees— The principal Act is hereby amended by inserting, after section eighty-two, the following section: 10

“82A. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date of the adjudication and without notice of the presentation of a bankruptcy petition and is either pursuant to the ordinary course of business or otherwise in good faith.” 15 20

7. Dealings with undischarged bankrupt—The principal Act is hereby amended by inserting, after section eighty-two A, the following section:

“82B. (1) All transactions by a bankrupt with any person dealing with him in good faith and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the Official Assignee, be valid against the Official Assignee, and any estate or interest in any such property which by virtue of this Act is vested in the Official Assignee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction. 25 30

“(2) Subsection *one* of this section shall apply to transactions with respect to real property completed before the first day of January, nineteen hundred and fifty-seven, in any case where there has not been any intervention by the Official Assignee before that date. 35

“(3) For the purposes of subsection *one* of this section the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable 40

instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him for value.

5 “(4) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the Official Assignee of the existence of the account, and thereafter he shall not make any payments out of the account, except
10 under an order of the Court or in accordance with instructions from the Official Assignee, unless by the expiration of one month from the date of giving the information no instructions have been received from the Official Assignee.”

**8. Time for Official Assignee to decide whether to disclaim
15 onerous property**—Section eighty-four of the principal Act is hereby amended by omitting from subsection four the words “one month”, and substituting the words “twenty-eight days”.

9. Liability for rentcharge on bankrupt’s land after disclaimer—The principal Act is hereby amended by inserting,
20 after section eighty-four, the following section:

“84A. (1) Where on a disclaimer under section eighty-four of this Act land vests subject to a rentcharge in the Crown or any other person, that shall not, subject to subsection *two* of this section, impose on the Crown or the said other person or
25 its or his successors in title any personal liability in respect of the rentcharge.

“(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the
30 said other person, has taken possession or control of the land or has entered into occupation thereof.

“(3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this section.”

35 10. Arrest of absconding debtor after service of bankruptcy notice—Section eighty-eight of the principal Act is hereby amended by inserting in subsection one, after the words “at any time”, the words “after the service on a debtor of a bankruptcy notice under this Act or”.

11. Priority of debts—(1) Section one hundred and twenty of the principal Act (as amended by section ten of the Bankruptcy Amendment Act 1927) is hereby further amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Thirdly, in payment of—

“(i) All wages or salary of any servant or worker, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the bankrupt during four months next before the relevant date: 10

“(ii) All holiday pay becoming payable to any servant or worker (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the adjudication: 15

“(iii) Unless the bankrupt has at the date of adjudication under such a contract of insurance as is mentioned in section nine of the Law Reform Act 1936 rights capable of being transferred to and vested in the worker, all amounts due in respect of any compensation or liability for compensation under the Workers’ Compensation Act 1922 accrued before the relevant date: 20 25

“(iv) All sums ordered by the Court to be paid out of the bankrupt’s estate to or for the use of any apprentice or articed clerk under section eighty-three of this Act:

“(v) All sums required by any other enactment to be included among the debts which are to be paid in the third priority in the distribution of the property of a bankrupt: 30

“Provided that the sum to which priority is to be given under subparagraphs (i) and (ii) of this paragraph shall not, in the case of any one claimant, exceed two hundred pounds: 35

“Provided also that the debts mentioned in this paragraph shall rank equally among themselves and be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions:” 40

(2) The said section one hundred and twenty is hereby further amended by adding the following subsections as subsections two and three thereof:

“(2) Where any payment has been made—

5 “(a) To any servant or worker in the employment of a bankrupt, on account of wages or salary; or

“(b) To any such servant or worker or, in the case of his death, to any other person in his right, on account of holiday pay,—

10 out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a bankruptcy have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the servant or worker would have been
15 entitled to priority in the bankruptcy has been diminished by reason of the payment having been made.

“(3) For the purposes of paragraph (c) of subsection one of this section—

20 “(a) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period:

25 “(b) The expression ‘holiday pay’, in relation to any person, means all sums payable to him by the bankrupt under the Annual Holidays Act 1944, and includes all sums which by or under any other enactment or any award, agreement, or contract of service are payable to him by the bankrupt as holiday pay:

30 “(c) The expression ‘the relevant date’ means the date of the filing of the debtor’s petition or, as the case may be, the date of the filing of the creditor’s petition on which an order of adjudication is made.”

35 (3) Section ten of the Workers’ Compensation Amendment Act 1936 is hereby consequentially repealed.

(4) This section shall not apply where the relevant date as hereinbefore defined occurred before the commencement of this Act.

40 **12. Repeal**—Section one hundred and twenty-five of the principal Act is hereby amended by repealing subsection three.

13. Repeal—Section one hundred and twenty-eight of the principal Act is hereby repealed.

14. Crime for undischarged bankrupt to leave New Zealand without consent—(1) Section one hundred and thirty-eight of the principal Act is hereby amended by inserting, after paragraph (u), the following paragraph:

“(uu) Quits New Zealand within three years after the 5
date of the adjudication, and before he has ceased
to be a bankrupt by reason of the granting of an
absolute order of discharge or the taking effect of a
suspended or conditional order of discharge or the
making of an order of annulment, without having 10
first obtained the consent of the Official Assignee,
or attempts to quit New Zealand as aforesaid, or
makes preparation for quitting New Zealand as
aforesaid; or”

(2) Section one hundred and thirty-eight of the principal 15
Act is hereby further amended by adding the following sub-
section as subsection two thereof:

“(2) For the purposes of paragraph (uu) of subsection one
of this section the following provisions shall apply:

“(a) Every application for the consent of the Official 20
Assignee to the departure of a bankrupt from New
Zealand shall be made in writing by the bankrupt
or his solicitor and shall be verified by affidavit
and contain particulars of the bankrupt’s proposed
departure, including— 25

“(i) His reasons for leaving New Zealand; and
“(ii) Whether he intends to return to New Zea-
land; and

“(iii) The approximate date of departure and,
where applicable, the approximate date of return: 30

“(b) The Official Assignee, having regard to the interests
of the creditors, may in his discretion refuse any
such application or grant it either unconditionally
or upon or subject to such conditions as he thinks
fit: 35

“(c) Every decision of the Official Assignee under this
subsection shall be subject to appeal to the Court
under section sixty-six of this Act.”