

Deeds of Arrangement Act

Principal Act

Act. No. 1917-12	<i>Commencement</i>	1.10.1917
	<i>Assent</i>	1.10.1917

Amending enactments	Relevant current provisions	Commencement date
Act. 1921-01	s. 14(3)	
1934-14	s. 18(2)	
1949-25	–	
1983-48	ss. 5(5), 11, 12(5)	

English Sources:

Deeds of Arrangement Act Act 1914 (4 & 5 Geo. 5c.47)

ARRANGEMENT OF SECTIONS

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AN ACT TO PROVIDE FOR THE REGISTRATION OF DEEDS OF ARRANGEMENT.

PART I.
PRELIMINARY.

Short title.

1. This Act may be cited as the Deeds of Arrangement Act.

Interpretation.

2.(1) In this Act, unless the context otherwise requires—
(1914 c.47,
s.30). “creditors generally” include all creditors who may assent to, or take the benefit of, a deed of arrangement;

“property” includes money, goods, things in action, land, and every description of property whether movable or immovable and whether situate in Gibraltar or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

“Registrar” means the Registrar of the Supreme Court;

“rules” include 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.

Application of Act.

3.(1) A deed of arrangement to which this Act applies shall include any instrument of the classes hereinafter mentioned whether under seal or not—

- (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 time being in force relating to bankruptcy.

(2) The classes of instruments 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 authorizing the debtor or any other person to manage, carry on, realize 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 authorizing the debtor or any other person to manage, carry on, realize or dispose of the debtor's business with a view to the payment of his debts.

PART II.

AVOIDANCE OF DEEDS OF ARRANGEMENT.

Avoidance of, unregistered deeds of arrangement.

4. A deed of arrangement shall be void unless it is registered with the Registrar under this Act (1914 c.47, s.2) 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 Gibraltar, then within seven days after the time at which it would, in the ordinary course of the post, arrive at Gibraltar if posted within one week after the execution thereof.

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 Supreme 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 prima 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) 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 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 Supreme 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 prima facie evidence, of the fact 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 £100 shall be reckoned in the majority in value but not in the majority in number.

PART III.
REGISTRATION OF DEEDS OF ARRANGEMENT.

Registrar and office for registration.

(1914 c.47, s.4). 6. (1) The Registrar shall be the Registrar of Deeds of Arrangement for the purposes of this Act.

(2) The Registry of the Supreme Court shall be the office for the registration of deeds of arrangement.

Mode of registration.

7.(1) The registration of a deed of arrangement under this Act shall be effected in the manner set out in subsection (2).

(2) A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the Registrar within seven clear days after the execution of the deed, in like manner as a bill of sale given by way of security for the payment of money is required to be filed, 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.

(3) No deed shall be registered under this Act unless the original of the deed is produced to the Registrar at the time of such registration.

Forms of register.

(1914 c.47, s.6).

8. The Registrar 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 Act, containing the following and any other prescribed particulars—

- (a) the date of the deed;
- (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) a short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder;
- (d) the date of registration; and
- (e) the amount of property and liabilities included under the deed, as estimated by the debtor.

Rectification of register.

9. The Supreme Court upon being satisfied that the omission to register a deed of arrangement within the time required by this Act or that the omission or misstatement 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 misstatement to be supplied or rectified by the insertion of the true name, residence or description.

Time for registration

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.

Inspection of register and registered deeds.

11. Any person shall be entitled, at all reasonable times, to search the register on payment of such fee as may be prescribed, and subject to such rules of court as may be prescribed, and shall be entitled, at all reasonable times, to inspect, examine and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of such fee as may be prescribed, for each deed of arrangement inspected: *(1914 c.47, s.9).*

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.

Security by trustee.

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 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 debtors' 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 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 Supreme 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 any 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 and filed with the Registrar, 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 on 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 £100 shall be reckoned in the majority in value but not in the majority in number.

Penalty on trustee acting when deed of arrangement void.

(1914 c.47, s.12).

13. A trustee who 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;
- (b) after he has failed to give security within the time and in manner provided for by this Act,

is guilty of an offence and is liable, on summary conviction, to a fine of £5 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 registrar and audit of same.

14. (1) Every trustee under a deed of arrangement shall, at the expiration of six months from the date of registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up, transmit to the Registrar an account in duplicate of his receipts and payments as trustee in the prescribed form and verified in the prescribed manner.

(2) A trustee who fails to transmit such account, is guilty of an offence and is liable, on summary conviction, to a fine of £5 for every day during which the default continues, and the Supreme Court may, on the application of the debtor or any creditor or other person interested, order such defaulting trustee to comply with the provisions of subsection (1) and the court may also, if it thinks fit, upon any such application, make an immediate order for the committal of such defaulting trustee:

Provided that the power given to the Supreme Court by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

(3) The accounts so transmitted shall be audited by the Principal Auditor who shall agree with the trustee as to the fee to be paid for his services in auditing the accounts. Should they be unable to agree as to the fee, then the fee charged by the Principal Auditor shall be taxed in the Supreme Court, as if it were an accountant's fee. The fee shall be paid out of the dividends accruing from the estate, and shall be paid by the Principal Auditor into the Consolidated Fund. For the purposes of the audit the trustees shall furnish the Principal Auditor with such vouchers and information as the Principal Auditor may require, and the Principal Auditor may at any time require the production of and inspect any books or accounts kept by the trustee. The Principal Auditor 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.

(4) When any such account has been audited, one copy thereof shall be filed with the Registrar, and the other copy shall be returned to the trustee.

(5) The accounts so audited and filed with the Registrar 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 person interested.

(6) In this section “trustee” shall include any person appointed to distribute a composition, or to act in any fiduciary capacity under any deed of arrangement.

Transmission of accounts to creditors.

(1914 c.47, s.14). 15. (1) 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, state whether or not he has duly sent such statements and the dates on which the statements were sent.

(2) If a trustee, fails to comply with any of the provisions of this section, the Supreme Court may, on the application of the debtor or any creditor or any other person interested order such defaulting trustee to comply with the provisions of this section and the court may also, if it thinks fit, upon any such application make an immediate order for the committal of such defaulting trustee:

Provided that the power given to the Supreme Court by this section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Payment of undistributed moneys into court.

(1914 c.47, s.16). 16. At any time .after the expiration of two years from the date of the registration of a deed of arrangement, the Supreme 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.

17. A trustee under a deed of arrangement who 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, unless the deed authorizes 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, is guilty of an offence.

Provisions for the protection of trustees under void deeds.

18. (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 official 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.

(2) Where a receiving order is made against a debtor under section 85 of the Bankruptcy Act this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed. 1934-13

Notice to creditors of avoidance of deed.

19. Where a deed of arrangement is void by virtue of this Act for any reason other than that, *(1914 c.47, s.20)*, 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, and, if he fails to do so, is guilty of an offence and is liable, on summary conviction, to a fine of £20.

Payment of expenses incurred by trustees.

20. 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 official trustee in bankruptcy as a first charge on the estate.

Application of Part IV.

21. The provisions of this Part, except such of those provisions—

- (a) as relate to the transmission of accounts to the Registrar;
- (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.**

Relation to bankruptcy law.

22. (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 any other act committed by him in the course of 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 has become void by virtue of this Act, 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 Act, nothing in this Act 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.

Office copies.

(1914 c.47, s.25).

23. Subject to the provisions of this Act, and to any rules of court made thereunder, any person shall be entitled to have an office copy of or extract from any deed registered under this Act, upon paying for it at the like rate as is payable for office copies of documents in 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.

Affidavits.

24. An affidavit required by or for the purposes of this Act may be sworn before the Registrar or before any person empowered to take affidavits in the Supreme Court or before any other person before whom such an affidavit may, by any law for the time being in force, be sworn.

Rules of court.

25. The Chief Justice may from time to time make rules of court for carrying this Act into effect.

Fees.

26. (1) There shall be taken in respect of the registration of deeds of arrangement, and in respect of any office copies or extracts, or official searches made by the Registrar, such fees as may be from time to time prescribed by rules of court made under section 25 and nothing in this Act contained shall make it obligatory on the Registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee. *(1914 c.47, s.26).*

(2) The provisions of the Fees (Collection) Act shall apply to fees payable under this Act. **1882-02**