

DEBT CONCILIATION

AN ORDINANCE TO PROVIDE FOR THE ESTABLISHMENT OF A DEBT CONCILIATION BOARD IN SRI LANKA AND FOR OTHER MATTERS CONNECTED WITH OR INCIDENTAL TO SUCH ESTABLISHMENT.

Ordinance Nos,

39 of 1941

40 of 1941

9 of 1943

Act Nos,

43 of 1952

5 of 1959

24 of 1964

19 of 1978

20 of 1983

29 of 1999

4 of 2019

Law Nos, 41

of 1973

Short title. 1. This Ordinance may be cited as the Debt Conciliation Ordinance.

THE BOARD

Establishment and 2.

constitution of the Board.

[2, 4 of 2019]

(1) For the purposes of this Ordinance there shall be established a board to be called the Debt Conciliation Board of Sri Lanka which shall consist of eleven members appointed by the Minister.

(2) The Board shall consist of the following:-

(a) seven members consisting of persons-

(i) who hold or have held a post as a Judge of the High Court or as a District Judge; or

(ii) who have not less than fifteen years professional experience as an attorney-at-law; and

(b) four members consisting of persons-

(i) who have not less than ten years' professional experience as an attorney-at-law;

(ii) who hold or have held a post of Class I officer in the Sri Lanka Administrative Service or in an All Island Service; or

(iii) who have experience in the fields of trade and commerce.

(3) The Minister shall appoint a member appointed under paragraph (a) of subsection (2) to be the Chairman of the Board.

(4) The Chairman and every other member of the Board shall hold office for a period of three years from the date of his appointment:

Provided that notwithstanding the term of any such appointment, the Chairman or any other member of the Board may at any time -
(a) resign from his office; or (b) be removed from office by the Minister;

Provided, further, that any person who is appointed to the Board to fill any vacancy caused by the resignation or removal from office of any member of the Board shall hold office during a period equal to the unexpired portion of the term of office of the member in whose place he is appointed and no longer.

(5) Any member of the Board who is absent without reasonable cause from three consecutive meetings of the Board may, by resolution of the Board passed at a meeting of which due notice has been given in the prescribed manner, be held to have vacated his office; and upon the passing of any such resolution, the member affected by that resolution shall cease to be a member of the Board.

(6) Any person ceasing to be a member of the Board shall be eligible for re-appointment thereto.

Conduct of
business.

3. (1) The Chairman shall preside at all meetings of the board at which he is present. In the absence of the Chairman from any meeting, the members present at the meeting may elect one of their own number to be Chairman at that meeting:

Provided, however, that if at any time it appears to the Chairman that he will be unable to discharge his duties for a period exceeding one week by reason of ill health or other sufficient cause, the Chairman shall nominate a member of the Board temporarily to exercise and perform all the powers and duties of the Chairman until the resumption of duties by him,

(2) Three members shall constitute a quorum of the Board.

(3) If at any meeting the Board is divided in opinion as to the decision to be given on any point or matter, such point or matter shall be decided according to the opinion of the majority of the members present; but if the members are equally divided, then the opinion of the Chairman shall prevail.

(4) The Board may regulate its own procedure in any matter not provided for in this Ordinance or by regulation.

Appointment of
secretary and other
officers and
servants.
[2, 24 of 1964]

4. For the purpose of carrying out the provisions of this Ordinance, the Public Service Commission may appoint-
- (a) a person by name or by office, to be or to act as secretary of the Board; and
 - (b) such other officers and servants as may be necessary for that purpose.

(* Section 5 is repealed by Act No. 24 of 1964.)

Remuneration of
members of the
Board.
[2, 19 of 1978]

6. Regulations may be made providing for-
- (a) the payment of fees to any or all of the members of the Board for attendance at meetings of the Board and the rates at which such fees shall be computed;
 - (b) the payment of an allowance in respect of travelling done by any or all of the members of the Board outside the Municipal limits of the town of Colombo in the discharge of their duties as members of the Board, and the rates at which such allowance shall be computed;
 - (c) the payment of subsistence and an allowance in respect of travelling done by any or all of the members of the Board resident outside the Municipal limits of Colombo for attendance at meetings of the Board and the rates at which such allowances shall be computed.

BRANCH BOARDS

- Establishment of branch boards.
[3, 4 of 2019]
7. The Minister may from time to time establish such number of branch debt conciliation boards as may be necessary-
- (a) to advise and assist the Board in any matter on which the advice and assistance of the branch board is sought by the Board;
 - (b) to deal, as hereinafter provided, with any one or more applications referred to the branch board by the Board.
- Constitution of branch boards.
[4, 4 of 2019]
- 8.
- (1) Every branch board shall consist of a chairman and such number of other members appointed by the Minister, not exceeding four and not less than two, as the Minister may determine.
 - (2) The Chairman of each branch board shall be a member of the Board and be -
 - (a) a person who holds or has held a post as a Judge of the High Court or as a District Judge; or
 - (b) a person who has not less than fifteen years' professional experience as an attorney-at-law.
 - (3) Other members of each branch board shall consist of persons-
 - (a) who have not less than ten years' professional experience as an attorney-at-law; or
 - (b) who hold or have held a post of Class I officer in the Sri Lanka Administrative Service or in an All Island Service.
 - (4) Any member of the branch board may at any time-
 - (a) resign from his office on the branch board;
 - (b) be removed from office by the Minister for reasons assigned.
 - (5) Any person ceasing to be a member of a branch board other than a person who has been removed from office shall be eligible for reappointment thereto.
- Conduct of business by branch boards.
- 9.
- (1) The chairman of a branch board shall preside at all meetings of the branch board.
 - (2) A branch board shall have such quorum as may be prescribed.
 - (3) The procedure to be followed at the meetings of the branch board shall be prescribed.
- Remuneration of
10. Regulations may be made providing for-

members of branch boards.
[3, 19 of 1978]

- (a) the payment of fee to any or all of the members of a branch board for attendance at meetings of the branch board and for any work done and the rates at which such fees shall be computed;
- (b) the payment of an allowance in respect of travelling done by any or all of the members of a branch board in the discharge of their duties as members of a branch board, and the rates at which such allowance shall be computed; and
- (c) the payment of subsistence and an allowance in respect of travelling done by any or all of the members of a branch board resident outside the area where the branch board has been constituted, for attendance at meetings of the branch board, and the rates at which such allowances shall be computed.

Delegation of powers by the Board to a branch board.

- 11.**
- (1) The Board may at any time, in respect of any one or more applications received by it, delegate to any branch board powers by the Board to a branch all or any of its powers under this Ordinance.
 - (2) Every delegation under this section shall be made by order in writing under the hand of the Chairman of the Board and shall specify the powers so delegated and the particular application or applications in respect of which such delegation is made; and, upon such delegation, it shall be lawful for the branch board to exercise in respect of such application or applications the powers so delegated in all respects as if it were the Board.

SPECIAL PROVISIONS RELATING TO MEMBERS OF THE BOARD AND OF BRANCH BOARDS

Penalty on member for hearing, considering, &c, application in which he has an interest.

- 12.** Any member of the Board or of a branch board who participates in any discussion on, or in the consideration, hearing, or determination of, any application or other matter before the Board or the branch board, as the case may be-
- (a) where the applicant or any other party is a debtor or creditor of his or is in partnership with him or in his employ; or
 - (b) where he has a pecuniary interest in the property or assets of the debtor or of a creditor,

shall be guilty of an offence and shall be liable on conviction before a Magistrate to a fine not exceeding one thousand rupees or, in default of payment, to imprisonment of either description for a period not exceeding three months.

Members to be public officers. **13.** Every member of the Board and of a branch board shall be deemed to be a public officer within the meaning of the Penal Code.

APPLICATION TO THE BOARD BY A DEBTOR OR CREDITOR

Application by debtor or creditor. **14.** (1) A debtor may make an application to the Board to effect a settlement of the debts owed by him to all his secured creditors or any one or more of them.

(2) Any secured creditor of any debtor may make an application to the Board to effect a settlement of the debts owed to him by that debtor.

(3) Where an application has been made to the Board under subsection (1) or subsection (2) in respect of any debt owed by any person, and another application under either of those subsections is made to the Board in respect of any other debt owed by that person, the Board may order that the applications be consolidated.

Mode of application. **15.** Every application under the preceding section shall be in writing, signed by the applicant, and shall be forwarded to the Board in the prescribed manner, together with such affidavits as may be requisite to furnish prima facie proof of the material facts set out or alleged in the application.

Affidavits. **16.** Every affidavit submitted under section 15 shall contain a statement of only those facts to which the declarant is able of his own knowledge and observation to testify:

Provided, however, that a statement of the declarant's belief may be set forth in any such affidavit where the grounds of such belief are stated.

Particulars to be set out in debtor's application. **17.** (1) Every application made by a debtor to the Board shall contain the following particulars:-

- (a) The name, description, and place of residence of the applicant;
 - (b) A statement that the applicant is desirous of obtaining relief;
 - (c) Particulars of the debt or debts in respect of which relief is sought, and of all debts due to secured creditors by the applicant, together with the names and residences of such creditors so far as they are known to and can by the exercise of reasonable care be ascertained by him;
 - (d) The number and date of each mortgage bond, the amount payable as principal and as interest on each bond, together with a clear description of the land affected by each bond and the situation of such land;
 - (e) Particulars of all debts due by the applicant to unsecured creditors, together with the names and residences of such creditors so far as they are known to or can by the exercise of reasonable care be ascertained by him;
 - (f) Particulars of the applicant's property both movable and immovable (including debts or claims due to him), a specification of the estimated value thereof and the places where the immovable property is situated or where the movable property may be found;
 - (g) Particulars of all debts, whether secured or unsecured, due to the State or to any person or body prescribed by regulation under section 61 (2);
 - (h) Particulars relating to such other matters as may be prescribed.
- (2) The debtor shall, together with his application, transmit to the Board a statement setting out the manner in which the properties disclosed in his application are being administered, the income obtained from each such property, and the purposes for which such income is being applied. The debtor shall, unless otherwise directed by the Board, transmit such a statement to the Board periodically, at such intervals as may be prescribed.
- (3) The debtor shall, forthwith upon entering into any transaction affecting or relating to any property disclosed in his application, transmit to the Board a statement setting out full particulars of such transaction.

Particulars to be set out in creditor's application. **18.** Every application made by a secured creditor shall contain the following particulars :-

- (a) the name, description and place of residence of the applicant;
- (b) the name, description and place of residence of the debtor;
- (c) the amount and particulars of the applicant's claim against such debtor.

POWERS AND DUTIES OF THE BOARD AND PROCEDURE TO BE FOLLOWED ON RECEIPT OF APPLICATION

Applications involving matters already the subject of pending actions.

- 19.** The Board shall not entertain any application by any debtor or creditor in respect of a debt which is the matter directly and substantially in issue in a previously instituted action which is pending in any court between the same parties or between parties under whom they or any of them claim litigating under the same title:
- Provided that nothing herein contained shall be held to affect the right of the Board to deal with any application referred to it under section 45.

Applications in respect of debts purporting to be secured by conditional transfers of immovable property.

[2, 29 of 1999]
[2, 20 of 1983]
[2, 5 of 1959]

- 19A.** (1) The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such conditional transfer of immovable property as is a mortgage within the meaning of this Ordinance unless that application is made before the expiry of the period within which that property may be redeemed by the debtor by virtue of any legally enforceable agreement between him and his creditor.

(1A) The Board shall not entertain any application by a debtor or creditor in respect of a debt purporting to be secured by any such transfer of immovable property as is a mortgage within the meaning of this Ordinance, unless that application is made within three years of the date of the notarially executed instrument, effecting such transfer:

Provided that nothing in this subsection shall be read or construed as preventing the Board from entertaining, after the period referred to in that subsection, an application by a debtor who is in possession of the property transferred.

- (2) Where the Board entertains an application of a debtor in respect of such a debt as is referred to in subsection (1),
or

subsection (1A), the Board shall cause notice of that fact signed by the secretary to be sent together with a copy of the application by registered post to the creditor to whom the application relates.

Prohibition of the sale, alienation, & c, of any immovable property to which an application entertained by the Board in respect of a debt referred to in section 19A relates.
[3, 29 of 1999]
[2, 5 of 1959]

19B.

- (1) Where a creditor receives a notice under subsection (2) of section 19A relating to an application of a debtor of his in respect of such a debt as is referred to in subsection (1) or subsection (1A) of that section, he shall not sell, alienate, transfer, lease or mortgage the property to which such notice relates unless such application is dismissed by the Board or unless the settlement effected under this Ordinance in respect of such debt permits him to dispose of such property.
- (2) Any sale, alienation, transfer, lease, or mortgage effected in contravention of subsection (1) shall be null and void.

Effect of insolvency proceedings on applications to the Board.

20.

- (1) Where an application under this Ordinance has been made to the Board by any debtor or by any creditor of his for the settlement of any debt and it appears to the Board that proceedings under the Insolvency Ordinance are pending in any court in respect of the insolvency of that debtor, the Board shall, whether or not proceedings under this Ordinance have already commenced upon such application, forthwith dismiss such application.
- (2) The dismissal of any application under subsection (1) shall not be a bar to a further application.

Matters to be taken into consideration by the Board.

21. The Board in coming to a decision on any application may take into consideration:-

- (a) the amount actually lent to or received by the debtor;
- (b) the reasonableness of the rates of interest charged;
- (c) the amount of interest that has been left to accumulate;
- (d) the amount that has already been paid as or by way of interest and other charges;
- (e) the onerous conditions, if any, subject to which the loan was granted;

(f) the capacity of the debtor to repay;

(g) any other particulars which the Board thinks it desirable to take into account.

Matters to be considered in deciding whether or not a conditional transfer of immovable property is in reality a mortgage.
[4, 19 of 1999]
[4, 29 of 1999]
[3, 5 of 1959]

21A. (1) In any proceedings under this Ordinance in regard to an application relating to a transfer or conditional transfer of immovable property, the Board shall, notwithstanding anything to the contrary in section 2 of the Prevention of Frauds Ordinance (Chapter 70), or sections 91 and 92 of the Evidence Ordinance (Chapter 14) and for the purpose of deciding whether or not such transfer or conditional transfer is in reality a mortgage, take into consideration all the circumstances of the case and in particular the following matters:-

(a) the language of the notarial instrument of transfer and where provision in regard to the right of the transferor or any other person to redeem or purchase the property transferred is contained in any other notarial instrument, the language of that other instrument;

(b) any difference between the sum received by the transferor from the transferee and the value of the property transferred;

(c) the continuance of the transferor's possession of the property transferred; and

(d) the existence of any agreement in whatever form between the transferor and the transferee whereby the transferor is bound to pay the transferee interest, or any sum which may reasonably be considered to be interest, on the sum received by the transferor from the transferee.

(2) The burden of adducing evidence to show that a transfer of immovable property is in reality a mortgage shall be on the transferor.

Return of application for amendment.

22. The Board may, if it is of opinion that any application is substantially defective in any of the particulars required by section 17 or section 18, return the application and order that it be amended within such time as may be fixed by the Board. If the application is not amended as ordered by the Board it shall be deemed to have been withdrawn by the applicant.

Fixing of date for

23. (1) On receipt of an application under section 14 or, where an

preliminary hearing of application.

application is returned for amendment under section 22, on receipt of the amended application, the Board may make order fixing a date and place for the preliminary hearing of the application or amended application, as the case may be.

(2) Notice of the order under subsection (1) shall be sent by registered post to the applicant, and, where the application is made by a creditor, such notice shall also be sent to the debtor.

Preliminary hearing of application.

24. (1) At the time and place appointed under section 23 (1), or at any other time and place to which the preliminary hearing may be postponed or adjourned, the Board shall examine the applicant.

(2) Where the application has been made by a creditor-

(a) the Board shall, in addition to the examination required by subsection (1), also examine the debtor;

(b) the debtor shall furnish in writing a statement of the particulars mentioned in paragraphs (c), (d), (e), (f), (g) and (h) of section 17 (1);

(c) if the debtor desires that the Board should attempt to effect a settlement between him and all his creditors, whether secured or unsecured, he shall annex to the statement of particulars furnished under paragraph (b) a written request to that effect.

Action where Board decides to attempt to effect a settlement with secured creditor or creditors.

[2, 8 of 1943]

25.(1) Where, after holding the examination required by section 24, the Board is of opinion that it is desirable to attempt to effect a settlement between the debtor and all his secured creditors or any one or more of them, the Board -

(a) shall cause a notice signed by the secretary to be served in the prescribed manner on each of such secured creditors calling upon him to submit to the Board on or before a specified date a statement, verified by a declaration, setting out all particulars of the debts owed to him by that debtor;

(b) shall cause a notice to be published in the Gazette stating that the Board proposes to attempt to effect a settlement under the Ordinance between the debtor and all his secured creditors, or one or more of them, as the case may be, and specifying the date on or before which each such secured creditor has been called upon to submit a statement of the debts owed to him by the

debtor; and

(c) may cause a notice in the prescribed form to be delivered or transmitted by the secretary to the proper Registrar of Lands for registration in accordance with the provisions of section 35, setting out the prescribed particulars relating to each land which has been disclosed to be the property of the debtor and stating that proceedings under the Ordinance have commenced in respect of certain debts owed by the debtor.

(2) The cost of the service of any notice under paragraph (a) of subsection (1) and of the publication of the notice under paragraph (b) of that subsection shall be paid in the prescribed manner by the debtor or by any secured creditor or creditors as the Board may in its discretion determine:

Provided, however, that the Board may, if it thinks fit so to do in any case, waive the whole or any part of the cost of such service or publication.

(3) Any secured creditor on whom a notice under paragraph (a) of subsection (1) has not been served may, on or before the date specified in the notice published under paragraph (b) of that subsection, submit to the Board a statement, verified by a declaration, setting out all particulars of the debts owed to him by the debtor, and may, if he desires that the Board should attempt to effect a settlement in respect of such debts, attach to the statement submitted by him a written request to that effect.

Action where Board decides to attempt to effect a settlement with all creditors, secured and unsecured.

26.(1) Where, after holding the examination required by section 24, the Board is of opinion that it is desirable to attempt to effect a settlement between the debtor and all his creditors whether secured or unsecured, the Board-

(a) shall cause a notice signed by the secretary to be served in the prescribed manner on each such creditor calling upon him to submit to the Board on or before a specified date a statement, verified by a declaration, setting out all particulars of the debts owed to him by that debtor ;

(b) shall cause a notice to be published in the Gazette stating that the Board proposes to attempt to effect a settlement under the Ordinance between the debtor and all his creditors, whether secured or unsecured, and specifying the date on or before which each such creditor has been called upon to submit a statement of the debts owed to him by the debtor ; and

(c) may cause a notice in the prescribed form to be delivered or transmitted by the secretary to the proper Registrar of Lands for registration in accordance with the provisions of section 35, setting out the prescribed particulars relating to each land which has been disclosed to be the property of the debtor, and stating that proceedings under the Ordinance have commenced in respect of the debts due by that debtor.

(2) The cost of the service of any notice under paragraph (a) of subsection (1) and of the publication of the notice under paragraph (b) of that subsection shall be paid in the prescribed manner by the debtor or by any creditor or creditors as the Board may in its discretion determine :

Provided, however, that the Board may, if it thinks fit so to do in any case, waive the whole or any part of the cost of such service or publication.

(3) Any creditor, whether secured or unsecured, on whom a notice under paragraph (a) of subsection (1) has not been served may, on or before the date specified in the notice published under paragraph (b) of that subsection, submit to the Board a statement, verified by a declaration, setting out all particulars of the debts owed to him by the debtor, and may, if he desires that the Board should attempt to effect a settlement in respect of such debts attach to the statement submitted by him a written request to that effect.

Action when Board, decides not to attempt to effect a settlement.

27. Where, after holding the examination required by section 24, the Board is of opinion that it is not desirable to attempt to effect a settlement between the debtor and any of his creditors, the Board shall dismiss the application.

Hearing of application.

28.(1) As soon as may be after the date specified under section 25 or section 26 as the date on or before which statements of debts should be submitted to the Board, the Board shall appoint a time and place for the hearing of the application and notice thereof signed by the secretary shall be served in the prescribed manner on -

(a) each creditor who has submitted a statement of debts in response to a notice served on him under section 25 (1) or section 26 (1), and

(b) on each creditor who has submitted a statement of debts under section 25 (3) or section 26 (3) and who has attached to

such statement a request that the Board should attempt to effect a settlement in respect of the debts owed to him by the debtor.

(2) At the time and place appointed under subsection (1) for the hearing of the application, or at any other time and place to which such hearing may be postponed or adjourned, the Board shall call upon the debtor and each creditor to explain his case regarding each debt.

Order for issue of certificate failure of creditor to submit a statement of debts or to appear at hearing of application. 29. (1)

- (a) Where any creditor, who has been required by a notice issued under section 25 (1) or section 26 (1) to submit a statement of debts, fails to submit such statement on or before the date specified in such notice, and
- (b) where any creditor to whom notice of the time and place appointed for the hearing of the application has been issued under section 28 (1) fails to appear at that time and place or at any other time and place to which such hearing may be postponed or adjourned -

the Board may, if it is satisfied, after such inquiry (if any) as it may deem necessary, that such notice has been served on that creditor, order that a certificate shall be granted to the debtor in respect of the debts owed by him to that creditor unless on or before a date fixed in the order that creditor shows cause as hereinafter provided against the grant of such certificate:

Provided, however, that no order shall be made for the grant of a certificate in respect of any debt which is payable under a decree or order of a civil court.

(2) A copy of every order under subsection (1) for the grant of a certificate in respect of any debt shall be served in the prescribed manner on the creditor to whom that debt is payable.

(3) If, on or before the date fixed in any order under subsection (1), the creditor proves to the satisfaction of the Board that his failure to submit the statement of debts, or to appear, as the case may be, was due to accident, misfortune or other unavoidable cause, the Board may rescind the order in such terms as it may deem fit.

(4) Where any creditor on whom a copy of any order under subsection (1) has been served fails, on or before the date fixed in that order, to show cause to the satisfaction of the Board

against the grant of a certificate in terms of that order, the Board shall grant to the debtor a certificate in the prescribed form in respect of the debts owed by him to that creditor.

Amicable
settlement.
[5, 40 of 1941]

30. (1) Subject as hereinafter provided, where any secured creditor comes to an amicable settlement with the debtor, such settlement shall, if approved by the Board, be reduced to the form of a document (hereinafter referred to as ' the original') and a duplicate thereof shall also be prepared; and such original as well as the duplicate shall be signed by the debtor and by such creditor:

Provided, however, that the Board shall not approve any such settlement until the Board is satisfied that a notice setting out in full the terms of such settlement has been served in the prescribed manner on each person who appears to the Board to be a secured creditor of the debtor.

- (2) The Chairman shall countersign the original as well as the duplicate, and any such settlement shall, when the original and the duplicate have been countersigned by the Chairman, be valid and effectual for all purposes, notwithstanding anything to the contrary in the Prevention of Frauds Ordinance.
- (3) The original of the settlement shall be retained in the custody of the Board.

Settlement with
secured and
unsecured
creditors.
[6, 40 of 1941]

31. (1) Where creditors, whether secured or unsecured, to whom more than fifty per centum of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall, if it is considered equitable by the Board, be reduced to the form of a document (hereinafter referred to as ' the original'), which shall set out the amounts payable to each of such creditors and the manner in which, the assets from which, and the times at which such amounts are payable. Together with such original, a duplicate thereof shall be prepared, and the original as well as the duplicate shall be signed by the debtor and by each of the creditors who have agreed to the settlement.

- (2) Subject as hereinafter provided, the Chairman shall countersign the original as well as the duplicate ; and any such settlement shall, when the original and the duplicate have been countersigned by the Chair man, be valid and effectual for all purposes, not with standing anything to the contrary in the

Prevention of Frauds Ordinance :

Provided that where the debtor owes an unsecured debt to the State or to any person or body prescribed by regulation under section 61 (2), the Chairman shall not countersign such original or duplicate until proof has been adduced to the satisfaction of the Board that such debt has been liquidated.

(3) The original of the settlement shall be retained in the custody of the Board.

Dismissal of application and grant of certificate where creditor refuses to agree to reasonable settlement
[5, 29 of 1999]

32. (1) The Board may, if it thinks fit so to do, dismiss any application at any stage of the proceedings.
- (2) Where no amicable settlement is arrived at between the debtor and any secured creditor, the Board may, if it is of opinion that the debtor has made the creditor a fair offer which the creditor ought reasonably to have accepted, grant the debtor a certificate in the prescribed form in respect of the debts owed by him to that creditor.

Provisions relating to settlements.
[6, 29 of 1999]

33. In any settlement under this Ordinance -
- (a) all property which is exempt from seizure and sale under section 218 of the Civil Procedure Code shall not be taken into account ; and
- (b) a creditor shall be allowed, notwithstanding anything to the contrary in any other law, as interest such sum as appears to the Board to be reasonable, having regard to all the circumstances of the case.

Appointment of manager or trustee to give effect to settlement.

34. (1) It may be a term of any settlement under this Ordinance that, for the purpose of giving effect to the settlement or any of the terms thereof, the debtor shall execute a deed or instrument appointing a specified person as manager or trustee for the purpose of administering any property dealt with in the settlement; and, where such a term is inserted in any settlement, the deed or instrument may be submitted by any party to the settlement to the Board for its approval.
- (2) Any deed or instrument which is approved by the Board shall be signed by the debtor and attested by the Chairman of the Board at the time when the settlement is countersigned by the Chairman, and shall have effect notwithstanding anything in any

other written law to the contrary regarding the mode of execution of such deed or instrument:

Provided, however, that no such deed or instrument shall be executed in respect of any immovable property dealt with in the settlement, unless all persons having any mortgage or charge over that property are parties to the settlement and concur in the terms of the deed or instrument.

(3) Notwithstanding anything in the Stamp Ordinance or the Stamp Duty Act, No. 43 of 1982 or the Registration of Documents Ordinance, every deed or instrument executed under this section shall be free of stamp duty and no fee shall be payable in respect of the registration of any such deed or instrument.

Registration of notice of proceedings under the Ordinance.

35.(1) Where, at any time in the course of proceedings before the Board, any land in respect of which a notice under section 25 (1) (c) or section 26 (1) (c) has not already been registered is disclosed to be the property of the debtor, the Board may cause a notice in the prescribed form to be delivered or transmitted to the proper Registrar of Lands for registration, setting out the prescribed particulars relating to that land and stating that proceedings under the Ordinance have commenced in respect of the debts owed by that debtor or of certain of such debts, as the case may be.

(2) Every notice under subsection (1) or under section 25 (1) (c) or section 26 (1) (c) shall be registered by the Registrar in the manner provided in the Registration of Documents Ordinance for the registration of an instrument affecting or relating to land and shall be deemed for such purpose to be an instrument affecting or relating to each land the prescribed particulars of which are set out in such notice; and the provisions of that Ordinance shall apply accordingly:

Provided, however, that notwithstanding anything in that Ordinance, no fee shall be payable for or in respect of the registration of any such notice.

(3) Every notice registered under subsection (2) shall be in force for a period of six months from the date of registration, but may be re-registered from time to time at the direction of the Board, and every such re-registration shall have the effect of an original registration:

Provided that the Board shall on the dismissal of any application under this Ordinance, and may at any time prior to such dismissal if

they think fit so to do, direct that the registration of any such notice shall be cancelled; and thereupon such cancellation shall be effected and registered in the manner provided in the Registration of Documents Ordinance for the cancellation of the registration of a Us pendens.

(4) Every alienation, transfer, lease, mortgage, or other transaction whatsoever, of or affecting any immovable property of the debtor made or executed by him without the written sanction of the Board, at any time while a notice registered under subsection (2) is in force in respect of such property, shall be void and of no effect.

Rights of secured creditor who is not a party to a settlement unaffected such settlement. 36. Subject to the provisions of section 39, the right of any secured creditor to proceed against the debtor or the security given by the debtor for the recovery of any debt shall not be affected or prejudiced by reason of the fact that such creditor is not, or has refused to be, a party to any settlement under section 30.

Power of Board to decide dispute. [7, 40 of 1941] 37. If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the Board may decide the matter after hearing such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the Board:
Provided that a decree of a court relating to a debt shall be conclusive evidence that the debtor was indebted to the creditor at the time of the decree in the sum specified therein.

Signature of agent to bind debtor or creditor as the case may be. 38. The duly authorized agent of any debtor or creditor may consent to any settlement under this Ordinance on behalf of that debtor or creditor, and where such agent so agrees to any settlement, the settlement shall be binding on that debtor or creditor, as the case may be.

Effect of certificate. [5, 19 of 1978] [2, 43 of 1952] 39. (1) Where any creditor brings an action in any court for the recovery of any debt in respect of which a certificate has been granted under this Ordinance, then, notwithstanding the provisions of any law for the time being in force, the court -
(a) shall order the debt together with the interest thereon to be paid in such instalments, and within such period not exceeding ten years, as the court thinks fit, and
(b) shall not allow the creditor any costs in such action, and

shall not allow, in respect of any period subsequent to the receipt by the Board of any application for the settlement of the debt, any interest on the amount of the debt in excess of simple interest at a rate not higher than the prescribed rate.

(2) Where a certificate has been granted under this Ordinance in respect of a debt secured by a conditional transfer of immovable property and subsequent to the granting of that certificate an action is instituted in any court for the recovery of that property, the court -

(a) shall, notwithstanding that the title that property has vested in the creditor in relation to that debt, make such appropriate orders as are necessary to reconvey title to, and possession of, that property to the debtor, in relation to that debt, on the payment by the debtor of the debt together with the interest thereon in such instalment and within such period not exceeding ten years, as the court thinks fit; and

(b) where the action is instituted by the creditor or any person claiming title to the property through the creditor, shall not allow the creditor or that person any costs in such action, and shall not allow in respect of any period subsequent to the receipt by the Board of the application for the settlement of that debt, any interest on the amount of the debt in excess of simple interest at a rate not higher than the prescribed rate.

Effect of
settlement.

40.(1) A settlement under section 30 or section 31 shall when the original and the duplicate thereof have been countersigned by the Chairman and subject to any order the Board may make in respect of that settlement under section 54, be final between the parties, and the contract in respect of any debt dealt with in the settlement shall become merged in the settlement:

Provided, however, that where any debt secured by any charge, lien or mortgage over any property, movable or immovable, is dealt with in any settlement, the rights of the creditor under such charge, lien or mortgage shall, unless otherwise expressly provided in the settlement, be deemed to subsist under the settlement to the extent of the amount payable thereunder in respect of such debt, until such amount has been paid or the property over which the charge, lien or mortgage was created has

been sold for the satisfaction of such debt.

(2) Where, in any settlement, any charge or mortgage over any movable or immovable property which is the subject-matter of the settlement, is created in favour of any party to that settlement, such charge or mortgage shall, upon the registration of the settlement as hereinafter provided, be as valid and effectual for all purposes as though it had been made or executed by the debtor in respect of the property to which it relates by an instrument duly executed on the date on which the settlement is countersigned by the Chairman.

PROCEDURE SUBSEQUENT TO SETTLEMENT

Registration of settlement. 41. (1) The duplicate of every settlement under this Ordinance shall, within the prescribed period from the date on which it is countersigned by the Chairman, be delivered or transmitted by the secretary to the proper Registrar of Lands for registration.

For the purposes of the application to such registration of the provisions of the Registration of Documents Ordinance the settlement shall be deemed to be an instrument affecting or relating to each land dealt with in the settlement, and, so far as the settlement deals with any movable property, a bill of sale affecting such movable property.

(2) Notwithstanding anything in the Registration of Documents Ordinance to the contrary, no fee shall be payable for or in respect of the registration of the duplicate of any settlement under this Ordinance.

Certified copy of settlement to court for a such bank or other institution as the Minister may specify. 42. A copy of every settlement made under section 30 or section 31, certified under the hand of the secretary as a true copy of such settlement shall, within the prescribed period from the date on which the Chairman countersigns the settlement, be forwarded to such bank or other institution as the Minister may by Notification published in the Gazette specify for the purposes of this section.

Application to court for a decree in terms of settlement, and entry of decree nisi. 43. (1) Where the debtor fails to comply with the terms of any settlement under this Ordinance, any creditor may, except in a case where a deed or instrument has been executed in accordance with the provisions of section 34 for the purpose of giving effect to those terms of that settlement, apply to a court of competent jurisdiction, at any time after the expiry of three months from the date on which such settlement was

countersigned by the Chairman of the Board, that a certified copy of such settlement be filed in court and that a decree be entered in his favour in terms of such settlement. The application shall be by petition in the way of summary procedure, and the parties to the settlement, other than the petitioner shall be named respondents, and the petitioner shall aver in the petition that the debtor has failed to comply with the terms of the settlement,

(2) If the court is satisfied, after such inquiry as it may deem necessary, that the petitioner is prima facie entitled to the decree in his favour, the court shall enter a decree nisi in the petitioner's favour in terms of the settlement. The court shall also appoint a date, notice of which shall be served in the prescribed manner on the debtor, on or before which the debtor may show cause as hereinafter provided against the decree nisi being made absolute.

(3) In this section - 'court of competent jurisdiction' means any court in which the creditor could have filed action for the recovery of his debt, if the cause of action in respect of that debt had not been merged in the settlement; 'summary procedure' has the same meaning as in Chapter XXIV of the Civil Procedure Code.

- Decree absolute. 44. (1) If on or before the date appointed by the court under section 43, the debtor fails to prove to the satisfaction of the court that there has been no default on his part in complying with the terms of the settlement, the decree nisi entered under section 43 shall by order of the court be made absolute.
- (2) Any decree which has been made absolute under subsection (1) may be executed as if it were a decree entered in a civil action, and the court may award to the petitioner the costs of the application under section 43 and of the execution of the decree, and the provisions of the Stamp Ordinance or the Stamp Duty Act, No. 43 of 1982, and of the Civil Procedure Code shall apply accordingly:
- Provided that no appeal from, or application for revision of, any such decree shall lie to the Court of Appeal.

REFERENCE BY COURT

- Reference by court. 45. Where an action has been instituted in a court by a secured creditor to enforce a right of sale under a mortgage or to obtain a decree for the payment of money in satisfaction of a claim arising under a mortgage

and at any time before decree is entered the parties agree that the matter in dispute between them be referred to the decision of the Board, the court shall refer the matter to the Board.

Procedure on
reference by a
court.

46. On receipt of a reference from a court under section 45, the Board shall appoint a day and place for inquiring into the matter and notice thereof signed by the secretary shall be served on the debtor and creditor in the manner prescribed. On or before the appointed date each party shall submit a concise statement of his case in writing.

Hearing before
Board on
reference.
[8, 40 of 1941]

47. (1) On the appointed date or on any date to which the inquiry may be postponed or adjourned, the Board shall call upon each of the parties respectively to explain his case.
(2) Subject as hereinafter provided, where on the date referred to in subsection (1), both parties fail to appear without good and sufficient cause being shown, the Board shall make order dismissing the plaintiff's action; and where on such date one of the parties fails to appear without good and sufficient cause being shown and the other party appears, the Board shall inquire into the matter and make its decision:

Provided, however, that if at any time before a copy of such order or decision is forwarded to the court under subsection (5), it is proved to the satisfaction of the Board that the failure of the party or parties to appear was due to accident, misfortune or other unavoidable cause, the Board may rescind such order or decision on such terms as it may deem fit.

(3) If the parties come to an amicable settlement such settlement shall be reduced to writing and shall be signed by the parties and it shall be countersigned by the Chairman of the Board.

(4) If the parties fail to arrive at an amicable settlement the Board shall, after considering the written statements referred to in section 46 and the evidence, if any, make its decision on the matter in dispute.

(5) A copy of the order or decision referred to in subsection (2) or a copy of the settlement referred to in subsection (3) or the decision referred to in subsection (4), certified under the hand of the Chairman of the Board, shall be forwarded by the Chairman to the court which referred the matter to the Board.

Decree to be

48. The court shall enter decree in accordance with the terms of the order,

entered by court in terms of the order, decision or settlement under section 47.

decision or settlement referred to in section 47 and such decree may be executed in accordance with the provisions of the Civil Procedure Code and all the provisions of that Code and of the Stamp Ordinance or the Stamp Duty Act, No 43 of 1982, as the case may be, shall apply accordingly :

Provided that no appeal from, or application for revision of, any such decree shall lie to the Court of Appeal.

SPECIAL PROVISIONS RELATING TO PROCEEDINGS BEFORE THE BOARD

Procedure before the Board.

49. It shall be the duty of the Board to do substantial justice in all matters coming before it without regard to matters of form.

Application of certain, provisions of the Civil Procedure Code to proceedings under this Ordinance.

50. (1) The provisions of the Civil Procedure Code relating to-

- (a) the enforcing of the attendance of any person and his examination on oath;
- (b) the enforcing of the production of documents; and
- (c) the issuing of commissions for the examination on interrogatories or otherwise of any person,

shall apply to all proceedings by or before the Board, and, for the purpose of the application of such provisions, proceedings before the Board shall be deemed to be an action instituted in a court under that Code, and the Board shall be deemed to be a court and shall have and may exercise all the powers of a court.

(2) Any person present at a hearing before the Board may be required by it to furnish any information or to produce any document then and there in his possession or power.

(3) Any person who when summoned by the Board to attend or when required by the Board to produce any document or book refuses or, without reasonable cause, neglects to attend, or to produce such document or book, or who, when summoned by the Board to attend, attends and refuses to be sworn or affirmed or to be examined, shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding one month, or to both such fine and imprisonment.

Appearance of

51. In any proceedings before the Board any party may appear in person

parties.

or by a legal practitioner or an agent authorized in writing.

Exemption of
certain documents
from stamp duty.

- 52.** All applications, declarations, statements, orders, certificates, settlements, notices and other documents in proceedings before the Board under this Ordinance shall be exempt from stamp duty.

CASES STATED FOR OPINION OF COURT OF APPEAL.

Power of Board to
state case on
question of law for
opinion of Court of
Appeal.
[10, 40 of 1941]

- 53.**
- (1) The Board may in its discretion, at any time in the course of any proceedings under this Ordinance, state a case for the opinion of the Court of Appeal on any question of law arising for decision in such proceedings.
 - (2) The stated case shall set forth in writing the facts of the case as found by the Board and the question of law upon which the opinion of the Court of Appeal is sought, and shall, when signed by the Chairman of the Board be transmitted to the Court of Appeal. At or before the time when the stated case is transmitted to the Court of Appeal, a copy of the stated case shall also be transmitted to each party to the proceedings.
 - (3) Any two Judges of the Court of Appeal may cause a stated case to be sent back for amendment by the Board and thereupon the case shall be amended accordingly.
 - (4) Any two Judges of the Court of Appeal may hear and determine any question of law arising on a stated case, and upon such determination the Registrar of the Court shall remit the case to the Board with the opinion of the Court of Appeal thereon. Such opinion shall be final and conclusive and shall be binding on the Board and on the parties to the proceedings.
 - (5) Any party to the proceedings may appear either personally or by pleader at the hearing before the Court of Appeal.

Power of Board to
review its order.
[2, 41 of 1975]

REVIEW OF DECISIONS OF THE BOARD

- 54.**
- (1) The Board may, of its own motion or on application made by any person interested, within three months from the making of an order by the Board dismissing an application, or granting a certificate, or approving a settlement, or before the payment of the compounded debt has been completed, review any order passed by it and pass such other in reference thereto as it thinks

fit.

(2) No order shall be reviewed under subsection (1) unless previous notice of the application or of the intention of the Board to review its order has been served in the prescribed manner on the parties interested in the order which is to be reviewed.

(3) Every order made by the Board under subsection (1) shall be final and shall not be subject to further review by the Board under that subsection.

(4) If the terms of any settlement under section 30 or section 31 are varied by any order of the Board under subsection (1), the Board shall cause the order to be registered in the manner provided in section 41 for the registration of the duplicate of a settlement, and the provisions of that section shall apply accordingly.

MISCELLANEOUS

Bar against execution of decree.

55. Notwithstanding anything in the Civil Procedure Code, where, after the date on which any settlement is countersigned by the Chairman, any creditor sues for the recovery of any debt which is not dealt with in the settlement, any decree entered in such action shall not, save to the extent to which the rights of any secured creditor to proceed against any security given by the debtor for the debt are preserved under section 36, be executed against the assets, if any, set apart in the settlement for the satisfaction of the debts specified in such settlement, until all amounts recorded as payable under such settlement have been paid.

Bar of civil actions.

56. No civil court shall entertain -

- (a) any action in respect of -
 - (i) any matter pending before the Board ; or
 - (ii) the validity of any procedure before the Board or the legality of any settlement;
- (b) any application to execute a decree, the execution of which is suspended under section 55.

Compliance with provisions of Ordinance not to

57. (1) No debtor shall, by reason only of the fact that any proceedings under this Ordinance have been taken or are pending or have commenced in respect of any debt owed by him,

be an act of insolvency or a fraudulent preference within the meaning of the Insolvency Ordinance.

be deemed to have committed an act of insolvency within the meaning of the Insolvency Ordinance.

(2) No alienation, transfer, lease, mortgage or other transaction whatsoever, of or affecting land, made with the sanction of the Board in order to give effect to any settlement under this Ordinance shall be deemed to be a fraudulent preference of any creditor before any other creditor within the meaning of the Insolvency Ordinance.

Computation of period of prescription for suits and proceedings.

58. In calculating the period of prescription for the purposes of any action filed in or proceeding before a civil court for the recovery of any debt which was the subject of any proceedings under this Ordinance, the period that elapsed between the making of the application under section 14 in respect of that debt and the date of the dismissal of the application, or of the grant of the certificate, or of the signing of the settlement, as the case may be, shall be excluded.

Certified copies of settlements, & c.

59. Any person shall be entitled on payment of the prescribed fee to obtain a copy of any settlement under this Ordinance, or of any order or decision made by the Board, certified by the secretary to be a true and correct copy of such settlement, order or decision.

Evidence of acts of the Board.

60. The production in any court of any document purporting to be issued by the Board, or on the authority thereof, shall be prima facie proof of the contents of that document and it shall be presumed until the contrary is proved that such document was issued by the Board or on its authority, as the case may be.

Ordinance not to apply to debts due to the State and prescribed persons or bodies.

61. (1) Nothing in this Ordinance shall apply or be deemed to apply to any debt due to the State, in respect of the recovery of any such debt.
(2) Regulations may be made declaring that this Ordinance shall not apply or be deemed to apply to any debt due to any prescribed person or body, or affect the rights of any such person or body in respect of the recovery of any such debt.

Regulations.

62. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.
(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make

regulations for and in respect of all or any of the following matters:-

- (a) all matters stated or required in this Ordinance to be prescribed;
- (b) the forms of applications, notices, certificates, required to be made, issued or used for the purposes of this Ordinance;
- (c) the procedure to be followed at the hearing of applications;
- (d) the form in which settlements under this Ordinance shall be entered, the particulars which shall be mentioned and the matters for which provision shall be made in such settlements, and generally for all matters incidental to or connected with such settlements;
- (e) the matters for which provision shall be made in every deed or instrument executed under section 34;
- (f) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this subsection

Date of operation of regulations. [6, 19 of 1978]

63.(1) Every regulation made by the Minister shall be published in the Gazette and -

(a) shall, if so expressed in the regulation, be deemed to have come into operation on such date, prior to the date of publication in the Gazette, as may be specified therein, such prior date being a date not earlier than the date of commencement of this Ordinance; or

(b) shall, if no such prior date is specified therein, come into operation on publication in the Gazette or on such later date as may be specified therein.

(2) Every regulation made by the Minister shall as soon as convenient after its publication in the Gazette be brought before Parliament for approval.

(3) Every regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(4) The date on which such regulation shall be deemed to be so

rescinded shall be published in the Gazette.

Interpretation.
[7, 19 of 1978]

64. In this Ordinance unless the context otherwise requires
-

- 'Board'** 'Board' means the Debt Conciliation Board established under section 2;
- 'branch board'** 'branch board' means a branch debt conciliation board established under section 7;
- 'conditional transfer of immovable property'** 'conditional transfer of immovable property' means any transfer, sale, or alienation of immovable property which is effected by a notarial instrument and which, by virtue of such instrument or any other notarial instrument, is subject to the right of the person by whom the property was transferred, sold or alienated or of any other person to redeem or purchase the property within a period specified in such instrument or such other instrument;
- 'court'** 'court' means a court in which civil actions may be brought;
- 'creditor'** 'creditor' means a person to whom a debt is owing and includes the heirs, executors and administrators of that person and, in the case of a debt secured by a transfer or conditional transfer of immovable property as is a mortgage within the meaning of this Ordinance, the transferee of that property and the heirs, executors and administrators of the transferee but does not include the State or any person or body prescribed by regulation under section 61 (2);
- 'debt'** 'debt' includes all liabilities owing to a creditor in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not, but does not include arrears of wages or any money for the recovery of which an action is barred by prescription;
- 'debtor'** 'debtor' means a person -

(i) who has created a mortgage or charge over any immovable property or any part thereof and whose debts in respect of such property exceed the prescribed amount; or

(ii) who is a transferee of a right of redemption on a conditional transfer,

'mortgage'

'mortgage' with reference to any immovable property, includes any transfer or conditional transfer of such property which, having regard to all the circumstances of the case, is in reality intended to be security for the repayment to the transferee of a sum lent by him to the transferor;

'prescribed'

'prescribed' means prescribed by regulation;

'regulation'

'regulation' means a regulation made by the Minister under this Ordinance;

'secured creditor'

'secured creditor' means a creditor holding a mortgage or charge on the immovable or movable property of the debtor or any part thereof created by a notarial instrument as a security for a debt due to him from the debtor;

'secretary'

'secretary' means the secretary of the Board;

'secured debt'

'secured debt' means a debt secured by a mortgage of immovable property and includes any debt in respect of which a charge on immovable property is created by a notarial instrument.