

CHAPTER 81

DEBT CONCILIATION (AMENDMENT)

AN ACT TO AMEND THE DEBT CONCILIATION ORDINANCE.

[Act No. 5 of 1959—9th February, 1959.]

[Act No. 24 of 1964—5th October, 1964.]

Acts
Nos. 5 of 1959,
24 of 1964.

1. This Act may be cited as the Debt Conciliation (Amendment) Act.

Short title.

2. Section 4 of the Debt Conciliation Ordinance, hereinafter in this Act referred to as the "principal enactment", is hereby repealed and the following new section substituted therefor:—

Replacement
of section 4
of Chapter 81.
[§ 2, 24 of 1964.]

"Appoint-
ment of
secretary
and other
officers and
servants.

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."

3. Section 5 of the principal enactment is hereby repealed.

Repeal of
section 5
of the
principal
enactment.
[§ 3, 24 of 1964.]

4. The following new sections are hereby inserted immediately after section 19, and shall have effect as section 19A and section 19B, of the principal enactment:—

Insertion of
new sections
19A and 19B
in the
principal
enactment.
[§ 2, 5 of 1959.]

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

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 at least thirty days 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.

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

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) 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."

Insertion of new section 21A in the principal enactment.
[§ 3, 5 of 1959.]

5. The following new section is hereby inserted immediately after section 21, and shall have effect as section 21A, of the principal enactment:—

"Matters to be considered in deciding whether or not a conditional transfer of immovable property is in reality a mortgage.

21A. In any proceedings under this Ordinance in regard to an application relating to a conditional transfer of immovable property, the Board shall, for the purpose of deciding whether or not such 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 to redeem 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 a legally enforceable agreement 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."

6. Section 64 of the principal enactment is hereby amended as follows:—

- (a) by the omission of the definition of "agricultural property";
- (b) by the insertion, immediately after the definition of "branch board", of the following new definition:—

"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

Amendment
of section 64
of the
principal
enactment.
[§ 4, 5 of 1959.]

instrument or any other notarial instrument, is subject to the right of the person by whom such property was transferred, sold or alienated to redeem such property within a period specified in such instrument or such other instrument ;' ;

(c) in the definition of "creditor", by the substitution, for the words "is owing," of the words "is owing and includes the heirs, executors and administrators of such person," ;

(d) in the definition of "debtor"—

(i) by the substitution, in clause (i) of that definition, for the words "an agricultural property", of the words "any immovable property" ;

(ii) by the substitution, in clause (ii) of that definition, for the semi-colon occurring at the end of that clause, of a comma ; and

(iii) by the addition, at the end of that definition, of the following :—

"and includes the heirs, executors and administrators of such person ;" ; and

(e) by the insertion, immediately after the definition of "debtor", of the following new definition :—

"mortgage", with reference to any immovable property, includes any 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 ;'.