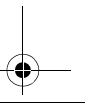
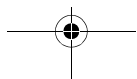
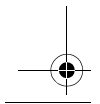
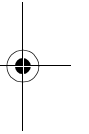
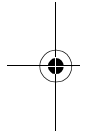
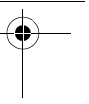
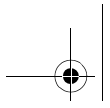
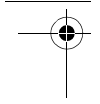


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**AN ACT AGAINST SUCH PERSONS AS DO MAKE BANKRUPTS 1543**  
**(34 & 35 Hen VIII, c 4)<sup>1</sup>**

*Where divers and sundry persons craftily obtaining into their hands great substance of other mens goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any their creditors, their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men, for their own pleasure and delicate living, against all reason, equity and good conscience:*

I.

... the lord Chancellor ... to order the same for true satisfaction and payment of the said creditors: that is to say, to every of the said creditors, a portion, rate and rate like, according to the quantity of their debts ...

V.

... all goods, chattels, lands, tenements and debts of every such offender shall be by the order and direction of the said lords employed and distributed amongst his creditors equally and indifferently rate for rate, in like manner and form as is afore declared.

**AN ACT TOUCHING ORDERS FOR BANKRUPTS 1571**  
**(Stat 13 Eliz I, c 7)<sup>2</sup>**

*Forasmuch as notwithstanding the statute made against bankrupts in the thirty-fourth year of the reign of our late sovereign lord King Henry the Eighth, those kind of persons have and do still increase into great and excessive numbers, and are like more to do, if some better provision be not made for the repression of them, and doe a plain declaration to be made and set forth, who is and ought to be taken and deemed for a bankrupt:*

- (2) ... That if any merchant or other person, using or exercising the trade of merchandize by way of bargaining, exchange, rechange, bartry, cheviance, or otherwise, in gross or retail,
- (3) or seeking his or her trade of living by buying and selling ...
- ...
- (6) ... begin to keep his or her house or houses; or otherwise to absent him or herself;
- (7) to take sanctuary;
- (8) to suffer him or herself willingly to be arrested for any debt or other thing ...
- (9) hath or will suffer him or herself to be outlawed, or yield him or herself to prison, or depart from his or her dwelling-house or houses,
- (10) to the intent or purpose to defraud or hinder any of his or her creditors ... shall be reputed, deemed and taken for a bankrupt.

II.

... That the lord chancellor ... shall have full power and authority by commission under the great seal of England, to name, assign and appoint such wise and honest discreet persons as to him shall seem good ...

1. Professor David Graham QC has posited that the widely held view that this statute received Royal Assent in 1542 is erroneous (Graham, D, *The formative years of English Insolvency Law – 1543 to 1603* (1995) (Phoenix, December 1995, Issue 21, pp 23 to 25)). See also Elton, G, *Reform and Renewal: Thomas Cromwell and the Common Weal* (Cambridge, 1973) at p 149. More work on the primary source documentation of the period is required to resolve this issue definitively. For an argument in favour of the Act being carried over in to 1543 see Lehmborg, SE, *The Later Parliaments of Henry VIII 1536-1547* (Cambridge University Press, 1977) at p 181.

2. Unlike 34 & 35 Hen VIII, c. 4 (1543), there is little debate over the year of Royal assent and passage of the second early modern bankruptcy statute (Stat 13 Eliz I, c. 7 (1571)). See: Elton, GR, *The Parliament of England 1559-1581* (Cambridge University Press, Cambridge, 1986) at p. 297, which for example puts the Act at 1571. See also: Elton, GR, *Studies in Tudor and Stuart Politics and Government. Volume III: Papers and Reviews 1973-1981* (Cambridge University Press, Cambridge, 1983) at p 146n for an exposition of the passage of the Act.

4 An Act for the Better Relief of the Creditors against such as shall become Bankrupts 1604

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- (10) or otherwise to order the same for true satisfaction and payment of the said creditors; that is to say, to every of the said creditors a portion, rate and rate like, according to the quantity of his or their debts ...

**AN ACT FOR THE BETTER RELIEF OF THE CREDITORS AGAINST SUCH AS SHALL BECOME BANKRUPTS 1604**  
**(1 Jac, c 15)**

*FOR that frauds and deceits, as new diseases, daily increase amongst such as live by buying and selling, to the hindrance of traffick and mutual commerce, and to the general hurt of the realm, by such as wickedly and wilfully become bankrupts; (2) and for that the description of a bankrupt in former statutes is not so fully expressed, nor the power given thereby to the commissioners for bankrupts so large, as it meet in such cases of deceit, to prevent the deceitful actions of bankrupts.*

VI.

And for that the practices of bankrupts of late are so secret and so subtil, as they can very hardly be found out or brought to light; (2) and for that the former statute, giving power to the commissioners to examine others than the bankrupts, hath not fully or sufficiently authorised them to examine the said bankrupt upon oath ...

IX.

And that if upon his, her or their examination, it shall appear that he, she or they have committed any wilful or corrupt perjury, tending to the hurt or damage of the creditors of the said bankrupt, to the value of ten pounds of lawful money of England, or above, the party so offending shall or may thereof be indicted in any of the King's majesty's courts of record, and being lawfully convicted thereof shall stand upon the pillory in some publick place by the space of two hours, and have one of his ears nailed to the pillory and cut off.

XVII.

... the commissioners shall distribute the goods, lands and debts of the offenders or any of them, by force of the aforementioned statute of the thirteenth year of the reign of our late sovereign lady Queen Elizabeth ...

**AN ACT FOR THE FURTHER DESCRIPTION OF A BANKRUPT AND RELIEF OF CREDITORS AGAINST SUCH AS SHALL BECOME BANKRUPTS AND FOR INFLICTING CORPORAL PUNISHMENT UPON THE BANKRUPTS IN SOME SPECIAL CASES 1623**  
**(21 Jac 1, c 19)**

*Forasmuch as daily experience showeth, that the number and multitude of bankrupts do increase more and more, and also the frauds and deceits invented and practised for the avoiding and deluding the penalties of the good laws in that behalf already made, and the remedy by them provided: (2) and for that divers defects are daily found in the former statutes made against bankrupts, both in the description of a bankrupt, as also in the power given to the commissioners for the discovery and distributing the bankrupts estate, to the great encouragement of evil-minded persons, the hindrance of traffick and commerce, the great decay, overthrow and undoing of many clothiers, by whom many thousands of the natural-born subjects of this realm be from time t time in all parts of this kingdom set on work: all which do tend to the general hurt of this realm ...*

- (3) ... That all and singular the aforesaid statutes and laws heretofore made against bankrupts, and for relief of creditors, shall be in all things largely and beneficially construed and expounded for the aid, help and relief of the creditors of such person or persons as already be or hereafter shall become bankrupt ...

## V.

... but some doubt hath been made whether the commissioners have power to examine the wives of the bankrupts touching the same, by reason whereof the bankrupts wives do daily conceal and convey away, and cause to be conveyed away, much part of their husbands monies, wares, goods, merchandize and other estate, to person or persons unknown to any but such wives, by reason whereof much of the bankrupts estate is concealed and detained from creditors ... the said commissioners ... have power and authority to examine upon oath the wife or wives of all and every such bankrupt ...

## VII.

... if any bankrupt ... be found fraudulently or deceitfully to have conveyed away his or her goods, chattels, lands, tenements, offices, fees, rents or annuities ... to the end and purpose to hinder the execution of this statute ... or to defraud, delay or hinder his or her creditors of the same, and shall not upon his or her examination discover unto the said commissioners and ... deliver unto the said commissioners all that estate ... [the bankrupt] may be indicted ... and if upon such indictment or indictments the bankrupt be thereof convicted, he or she so convicted shall be set upon the pillory in some publick place for the space of two hours, and have one of his or her ears nailed to the pillory and cut off.

## IX.

And for the better division and distribution of the lands, tenements, hereditaments, goods, chattels and other estate of such bankrupt to and amongst his creditors ... and that all and every creditor and creditors having security for his or their several debts ... whereof there is no execution or extent served ... before such time as he or she shall or do become bankrupt ... shall not be relieved upon any such judgment, statute, recognisance, specialty, attachments or other security for any more than a rateable part of their just and due debts, with the other creditors of the said bankrupt.

## X.

- (5) And for that it often falls out, that many persons before they become bankrupts, do convey their goods to other men upon good consideration, yet still do keep the same, and are reputed the owners thereof, and dispose the same as their own:

**AN ACT FOR RELIEF OF CREDITORS, BY MAKING COMPOSITIONS  
WITH THEIR DEBTORS IN CASE TWO THIRDS IN NUMBER AND VALUE  
DO AGREE 1697  
(8&9 WmIII, c 18)<sup>1</sup>**

Whereas many debtors disabled by Losses and Misfortunes to pay their whole Debts, are often willing to make What Satisfaction they can for the same, so as they may enjoy their Liberty upon Reasonable Agreements or Compositions; But some ... Creditors insisting on their whole Debts ... Incapacitated to make any Composition with Debtors despairing to see and end to their Troubles, Transport themselves and their Effects beyond the Sea, or consume the same in Prisons, or pretended Priviledged Places to their utter Ruin, and become useless to the Government, their families, a burden to their Relations, or the Parishes they live in and all their Creditors lose what may be had for their debts: for remedy whereof, Be it Enacted ... That is shall be lawful to and for Two Third parts or more in number and value of all real creditors ... to make such Agreements they shall think fit and reasonable with any of their Debtors, who being unable to pay their whole Debt ...

1. Repealed in the following year (William III, cap XXIX, 1698), *An Act to Repeal the Act made the last session of Parliament, intituled An Act for Relief of Creditors, by majority Composition with their Debtors, in case Two thirds in Number and Value do Agree.*

**AN ACT TO PREVENT FRAUDS FREQUENTLY COMMITTED BY  
BANKRUPTS 1705  
(4 & 5 Anne, c 17)**

Whereas many persons have and do daily become bankrupt, not so much by reason of losses and unavoidable misfortunes, as to the intent to defraud and hinder their creditors of their just debts and duties to them due and owing; for the prevention thereof ...

... in all things conform to the several statutes already made concerning bankrupts, and also upon such examination fully and truly disclose and discover how, and in what manner, and to whom, and upon what consideration, he, she or they hath or have disposed, assigned or transferred any of his, her or their goods, wares, merchandizes, money or other effects or estate, and all books, papers and writings relating thereunto ... as at the time of such examination shall be in his, her or their possession, custody or power(his, her of their, and his her and their wives and childrens necessary wearing apparel only accepted) then he, she or they the said bankrupt in case of any default or wilful omission therein, or in any the premisses, and being thereof lawfully lawfully convicted by indictment or information, shall suffer as a felon, without the benefit of clergy.

VII.

... Allowance to all and every person and person so becoming bankrupt as aforesaid, who shall within the time limited by this act surrender him, her, or themselves to the major part of the commissioners therein named and in all things confirm as in and by this act is directed, shall be allowed the sum of five pounds per centum out of the neat product of all the state that shall be recovered in and received on such discovery, which shall be paid unto him by the assignee or assignees of the said commissioners ... and shall be discharged from all debts by him, her, or them due and owing at the time that he, she, or they did become bankrupt;

XVIII

... That is such person or persons so voluntarily surrendering him, her or themselves, shall afterwards neglect or omit to discover and deliver and his, her or their estates and effects, and in every thing act and do as in this act is directed, every such person or persons shall be taken and adjudged to be a fraudulent bankrupt within the true intent and meaning of this act, and thereof being lawfully convicted, shall suffer as a felon without benefit of clergy.

XX.

And whereas commissioners of bankrupts have been often executed with great expense in eating and drinking, at the meetings of the commissioners, or some of them therein named, to the great prejudice of the bankrupts and their creditors; be it further enacted by the authority aforesaid, That there shall not be paid or allowed by the creditors, or out of the estate of the bankrupts, any monies whatsoever for expences in eating or drinking of the commissioners ...

**AN ACT FOR THE ABOLITION OF IMPRISONMENT FOR DEBT, FOR  
THE PUNISHMENT OF FRAUDULENT DEBTORS, AND FOR OTHER  
PURPOSES (DEBTORS ACT 1869)  
(1869, c 62)**

PART I

ABOLITION OF IMPRISONMENT FOR DEBT

- 4** With the exceptions herein-after mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money ... that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year ...

**INSOLVENCY ACT 1976**  
**(1976, c 60)**

- ...
- (2) Where the court makes an order under subsection (1) above, then, if the debtor is or has been adjudged bankrupt in the proceedings and—
- (a) is not discharged in respect of the adjudication under section 26 of the said Act of 1914 before the fifth anniversary of the date of the adjudication; and
  - (b) the adjudication is not annulled before the anniversary under section 21(2) or 29 of that Act, the same results shall ensue as if the court had on that anniversary granted him an absolute order of discharge in respect of the adjudication under the said section 26.
- ...

**COMPANIES ACT 1985**  
**(1985, c 6)**

**247 Qualification of company as small or medium-sized**

- (1) A company qualifies as small or medium-sized in relation to a financial year if the qualifying conditions are met—
  - (a) in the case of the company's first financial year, in that year, and
  - (b) in the case of any subsequent financial year, in that year and the preceding year.
- (2) A company shall be treated as qualifying as small or medium-sized in relation to a financial year—
  - (a) if it so qualified in relation to the previous financial year under subsection (1) above or was treated as so qualifying under paragraph (b) below; or
  - (b) if it was treated as so qualifying in relation to the previous year by virtue of paragraph (a) and the qualifying conditions are met in the year in question.
- (3) The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements—

Small company	
1. Turnover	Not more than £2.8million
2. Balance sheet total	Not more than £1.4 million
3. Number of employees	Not more than 50
Medium-sized company	
1. Turnover	Not more than £11.2 million
2. Balance sheet total	Not more than £5.6 million
3. Number of employees	Not more than 250

- (4) For a period which is a company's financial year but not in fact a year the maximum figures for turnover shall be proportionately adjusted.
- (5) The balance sheet total means—
  - (a) where in the company's accounts Format 1 of the balance sheet formats set out in Part I of Schedule 4 or Part I of Schedule 8 is adopted, the aggregate of the amounts shown in the balance sheet under the headings corresponding to items A to D in that Format, and
  - (b) where Format 2 is adopted, the aggregate of the amounts shown under the general heading "Assets".
- (6) The number of employees means the average number of persons employed by the company in the year (determined on a monthly basis).

That number shall be determined by applying the method of calculation prescribed by paragraph 56(2) and (3) of Schedule 4 for determining the corresponding number required to be stated in a note to the company's accounts.

### **395 Certain charges void if not registered**

- (1) Subject to the provisions of this Chapter, a charge created by a company registered in England and Wales and being a charge to which this section applies is, so far as any security on the company's property or undertaking is conferred by the charge, void against the liquidator or administrator and any creditor of the company, unless the prescribed particulars of the charge together with the instrument (if any) by which the charge is created or evidenced, are delivered to or received by the registrar of companies for registration in the manner required by this Chapter within 21 days after the date of the charge's creation.
- (2) Subsection (1) is without prejudice to any contract or obligation for repayment of the money secured by the charge; and when a charge becomes void under this section, the money secured by it immediately becomes payable.

### **396 Charges which have to be registered**

- (1) Section 395 applies to the following charges—
  - (a) a charge for the purpose of securing any issue of debentures,
  - (b) a charge on uncalled share capital of the company,
  - (c) a charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale,
  - (d) a charge on land (wherever situated) or any interest in it, but not including a charge for any rent or other periodical sum issuing out of the land,
  - (e) a charge on book debts of the company,
  - (f) a floating charge on the company's undertaking or property,
  - (g) a charge on calls made but not paid,
  - (h) a charge on a ship or aircraft, or any share in a ship,
  - (j) a charge on goodwill, or on any intellectual property.
- (2) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company is not, for purposes of section 395, to be treated as a charge on those book debts.
- (3) The holding of debentures entitling the holder to a charge on land is not for purposes of this section deemed to be an interest in land.
- (3A) The following are "intellectual property" for the purposes of this section—
  - (a) any patent, trade mark ..., registered design, copyright or design right;
  - (b) any licence under or in respect of any such right.
- (4) In this Chapter, "charge" includes mortgage.

## **PART XIII**

### **ARRANGEMENTS AND RECONSTRUCTIONS**

### **425 Power of company to compromise with creditors and members**

- (1) Where a compromise or arrangement is proposed between a company and its creditors, or any class of them, or between the company and its members, or any class of them, the court may on the application of the company or any creditor or member of it or, in the case of a company being wound up or an administration order being in force in relation to a company, of the liquidator or administrator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members (as the case may be), to be summoned in such manner as the court directs.
- (2) If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members (as the case may be), present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the court, is binding on all creditors or the class of creditors or on the members or class of members (as the case may be), and also on the company or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company.

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