

**Jersey Law 8/1990**

**BANKRUPTCY (DESASTRE) (JERSEY) LAW 1990**

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**A LAW** to amend and extend the law relating to the declaring of the property of a person to be “en désastre”; to make provision for the disqualification and personal liability of persons involved in the management of companies; to abolish certain customary law concepts; and for connected purposes, sanctioned by Order of Her Majesty in Council of the

**1st day of MAY 1990**

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*(Registered on the 15th day of June 1990)*

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**STATES OF JERSEY**

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The 14th day of November 1989

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**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

*PART I*

## INTERPRETATION AND GENERAL

## ARTICLE 1

**Interpretation**

(1) In this Law, unless the context otherwise requires –

“claim” includes a claim for repossession of goods and a claim for rent;

“company” means –

- (a) a company registered under the “Loi (1861) sur les Sociétés à Responsabilité Limitée”;<sup>1</sup>
- (b) a body corporate incorporated outside the Island;
- (c) a corporation constituted under Article 4 of the “Loi (1862) sur les teneurs en fidéicommis et l’incorporation d’associations”;<sup>2</sup> and
- (d) any association constituted by Act of the States;

“the court” means the Inferior Number of the Royal Court;

“creditor” includes a person claiming repossession of goods;

“debtor” –

- (a) in relation to an application for a declaration means a person who is insolvent;
- (b) in relation to a declaration means the person in respect of whose property that declaration is made;

“declaration” means an Act of the court made under Article 6 declaring the property of a person to be “en désastre”;

“director” means any person occupying the position of director by whatever name called;

“hypothec”, “judicial hypothec” and “conventional hypothec” have the respective meanings assigned to “hypothèque”, “hypothèque judiciaire” and “hypothèque conventionnelle” under the “Loi (1880) sur la propriété foncière”;<sup>3</sup>

<sup>1</sup> Tomes I–III, page 232, and Volume 1968–1968, pages 111, 118, 119 and 120.

<sup>2</sup> Tomes I–III, page 260.

<sup>3</sup> Tomes I–III, page 386, and R & O 5222.

“insolvency” means the inability of a debtor to pay his debts as they fall due;

“prescribed” means prescribed by Rules made under Article 2;

“property” means land, money, goods, things in action, goodwill, and every valuable thing, whether movable or immovable, and whether situated in the Island or elsewhere; and also means obligations, servitudes, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property;

“security interest” has the meaning assigned to it by the Security Interests (Jersey) Law 1983.<sup>4</sup>

(2) In this Law, the expression “during the course of a ‘désastre’ ” means the period between the date of the declaration and such date as an order of discharge under Article 41 takes effect.

(3) Where in this Law there is a reference to an Article by number only, and without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

(4) Where in any Article of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, such reference shall be construed as a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

(5) Where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

(6) Subject to Article 10, the provisions of this Law shall be in addition to and not in derogation of –

<sup>4</sup> Volume 1982–1983, page 103, and Volume 1984–1985, pages 195 and 196.

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- (a) the “Loi (1832) sur les décrets”;<sup>5</sup>
- (b) the “Loi (1839) sur les remises de biens”;<sup>6</sup>
- (c) those provisions of the “Loi (1880) sur la propriété foncière”<sup>7</sup> which relate to bankruptcy;
- (d) the “Loi (1904) (Amendement No. 2) sur la propriété foncière”;<sup>8</sup> and
- (e) any other law relating to bankruptcy,

except in so far as the provisions contained therein are inconsistent with the provisions of this Law.

## ARTICLE 2

### **Power to make Rules**

(1) Rules may from time to time be made in the manner prescribed by the Royal Court (Jersey) Law 1948<sup>9</sup> relating to the procedure of the court (including the procedure and practice to be followed by the Viscount under this Law) and to give effect to this Law.

(2) Without prejudice to the generality of paragraph (1), Rules may be made under this Article as to –

- (a) the manner in which proceedings may be commenced;
- (b) the mode of proving debts and the exemption of certain debts from the requirement of proof;

<sup>5</sup> Tomes I–III, page 55.

<sup>6</sup> Tomes I–III, page 77.

<sup>7</sup> Tomes I–III, page 386, and R & O 5222.

<sup>8</sup> Tomes IV–VI, page 225, Volume 1966–1967, page 228 and R & O 5478.

<sup>9</sup> Tomes VII, page 502, Volume 1979–1981, page 195, and Volume 1984–1985, page 178.

- (c) the amount of the claim which a creditor shall have against a debtor to enable him to apply under Article 3 for a declaration;
- (d) the forms to be used in any proceedings;
- (e) the attestation and verification of documents for use in proceedings;
- (f) the notices to be given in connexion with any proceedings and by and to whom the same shall be given;
- (g) the manner of advertising;
- (h) the granting of costs, and the cases in which security for costs must be given;
- (j) such matters as are required for giving full effect to the provisions of this Law and for the due administration thereof.

## *PART II*

### APPLICATION FOR DECLARATION

#### ARTICLE 3

##### **Application for a declaration**

- (1) An application for a declaration may be made by –
  - (a) a creditor of the debtor with a claim against the debtor of not less than such liquidated sum as shall be prescribed; or
  - (b) the debtor.
- (2) No application shall be made by a creditor whose only claim is one for the repossession of goods.

(3) An application shall be made in the prescribed form and shall be accompanied by an affidavit verifying the contents of the form.

#### ARTICLE 4

#### **Persons in respect of whose property a declaration may be applied for**

(1) An application under Article 3 may be made in respect of the property of any debtor –

(a) who –

(i) is, or

(ii) was, at any time within the period of twelve months immediately preceding the date of the application,

ordinarily resident in the Island;

(b) who –

(i) carries on, or

(ii) has carried on, at any time within the period of three years immediately preceding the date of the application,

business in the Island;

(c) who has in the Island immovable property capable of realisation at the time of the application; or

(d) who, being a company –

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- (i) is registered under the “Loi (1861) sur les Sociétés à Responsabilité Limitée”,<sup>10</sup> or
- (ii) has been dissolved pursuant to Article 38 or Article 38A of that “Loi”,

whether or not the debtor is present in the Island at the time of application for a declaration or at the time of the declaration.

(2) For the avoidance of doubt it is hereby declared that no application may be made in respect of the property of a deceased person.

## ARTICLE 5

### **Duty of court to refuse to make declaration in certain cases**

- (1) The court shall refuse to make a declaration –
  - (a) if the court has made an order pursuant to Article 2 of the “Loi (1839) sur les remises de biens”<sup>11</sup> granting permission to the debtor to place his property in the hands of the court and at the date of the application the order remains in force;
  - (b) if the debtor has been permitted to make general cession (“reçu à faire cession générale”) of his property; or
  - (c) if the debtor’s property has been adjudged renounced (“adjudée renoncée”).

(2) In the case of an application by a creditor the court may require the creditor to indemnify the Viscount against the costs of the “désastre” to the extent that it thinks fit.

<sup>10</sup> Tomes I–III, page 232, and Volume 1968–1969, pages 111, 118, 119 and 120.

<sup>11</sup> Tomes I–III, page 77.

*PART III*

## DECLARATION

## ARTICLE 6

**Declaration**

(1) The court, after considering an application and the affidavit required by paragraph (3) of Article 3 to accompany it, may make a declaration.

(2) The court may at any time adjourn the hearing of an application for such time as it thinks fit and may require the applicant to furnish such further information as it requires.

(3) Where, as the result of an application made by a creditor a declaration is made and the person in respect of whose property it is made is, notwithstanding the declaration, at the date of the declaration not insolvent, that person shall have a right of action against the applicant to recover damages for or in respect of any loss sustained by him as a consequence of the declaration, unless the applicant, in making the application, acted reasonably and in good faith.

(4) Any action brought pursuant to paragraph (3) shall be commenced within twelve months from the date of the declaration.

## ARTICLE 7

**Debtor's application to recall a declaration**

(1) The debtor may at any time during the course of the "désastre" apply to the court for an order recalling the declaration under,  
(1)

(2) The debtor shall give to the Viscount not less than forty-eight hours' notice of his intention to make an application under paragraph (1).

(3) The court shall refuse an application made under paragraph (1) where it is not satisfied that property of the debtor vested in the Viscount pursuant to Article 8 or Article 9 is at the time of such application sufficient to pay in full claims filed with the Viscount or claims which the Viscount has been advised with be filed within the prescribed time.

(4) In considering an application under paragraph (1) the court shall have regard to the interests of –

- (a) creditor who have filed a statement of claim;
- (b) creditors whose claims the Viscount has been advised will be filed within the prescribed time; and
- (c) the debtor.

(5) Where the court makes an order under this Article it may make such order as to costs as it thinks fit.

(6) Where the court makes an order under this Article, the property of the debtor which is vested in the Viscount pursuant to Article 8 or Article 9 shall, with effect from the date of the order, vest in the debtor.

(7) An order made under this Article shall not prejudice the validity of any act of the Viscount relating to the property of the debtor between the date of the declaration and the date of the order.

*PART IV*

## EFFECT OF DECLARATION

## ARTICLE 8

**Property of debtor at date of declaration to vest in the Viscount**

(1) All the property and powers of the debtor specified in paragraph (2) shall vest in the Viscount immediately upon the making of the declaration.

(2) Subject to paragraph (3), the property and powers of the debtor to vest in the Viscount under this Article and be divisible amongst his creditors shall comprise –

- (a) all property belonging to or vested in the debtor at the date of the declaration;
- (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of any property as might have been exercised by the debtor for his own benefit at the date of the declaration.

(3) Property held by the debtor in trust for any other person shall not vest in the Viscount.

## ARTICLE 9

**After-acquired property**

(1) Subject to this Article, the Viscount may by notice in writing claim any property which has been acquired by, or has devolved upon, the debtor since the date of the declaration for division amongst his creditors.

(2) A notice under this Article shall not be served in respect of any property which is acquired by, or devolves upon, the debtor after his discharge.

(3) Subject to paragraph (4), upon the service on the debtor of a notice under this Article the property to which the notice relates shall vest in the Viscount and the Viscount's title to that property has relation back to the time at which the property was acquired by, or devolved upon, the debtor.

(4) Where, whether before or after service of a notice under this Article –

- (a) a person acquires property in good faith, for value and without notice of the declaration; or
- (b) a banker enters into a transaction in good faith and without such notice, the Viscount is not in respect of that property or transaction entitled by virtue of this Article to any remedy against that person or banker, or any person whose title to any property derives from that person or banker.

(5) Except with the leave of the court a notice shall not be served after the end of the period of forty days beginning with the day on which it first came to the knowledge of the Viscount that the property had been acquired by, or had devolved upon the debtor.

## ARTICLE 10

### **Prohibition on pursuing alternative remedies after declaration**

With effect from the date of the declaration no creditor to whom the debtor is indebted in respect of any debt provable in the “désastre” shall have any remedy against the property or person of the debtor in respect of the debt or shall commence any action or legal proceedings to recover the debt.

## ARTICLE 11

### **Special provisions regarding immovable property**

(1) Any immovable property vesting in the Viscount pursuant to paragraph (1) of Article 8 or paragraph (3) of Article 9 shall

so vest subject to all hypothecs and debts secured thereby to which such property was subject prior to the vesting.

(2) Subject to paragraph (3), and without prejudice to the rights of preference of an hypothecary creditor, where any property which vests in the Viscount pursuant to paragraph (1) of Article 8 or paragraph (3) of Article 9 is subject to a judicial or conventional hypothec, the hypothec shall be extinguished on the sale of the property by the Viscount under Article 27.

(3) Paragraph (2) shall not apply to a judicial or conventional hypothec obtained against or created or consented to by any predecessor in title of the debtor, the debtor not having been charged by his contract of acquisition with the payment of the debt or other claim which the hypothec secures, and paragraph (3) of Article 2 of the “Loi (1880) sur la propriété foncière”<sup>12</sup> shall continue to apply in such a case.

(4) Where, immediately prior to a declaration, the debtor is beneficially entitled to any immovable property as a joint tenant (“conjointement par ensemble”) the title to the property shall, as from the date of the declaration, be deemed to be converted into a tenancy in common in equal shares (“en indivis en parts égales”) and any hypothecs to which any such immovable property is subject shall with the debts secured thereby, be apportioned equally between such shares.

## ARTICLE 12

### **Special provisions regarding matrimonial home**

(1) Where any property vesting in the Viscount pursuant to paragraph (1) of Article 8 or paragraph (3) of Article 9 represents the matrimonial home or an interest in part thereof the spouse of the debtor may, within three months of the date of the declaration, apply to the court for such order as is referred to in paragraph (5) as the court thinks fit.

(2) Application may be made under paragraph (1) notwithstanding any agreement made to the contrary.

<sup>12</sup> Tomes III, page 388.

(3) The power to sell property conferred on the Viscount by Article 27 shall not be exercised in respect of property referred to in paragraph (1) until a period of more than three months has elapsed from the date of the declaration.

(4) Paragraph (1) shall apply whether or not the spouse of the debtor is beneficially entitled as a joint tenant with the debtor to the matrimonial home.

(5) After considering an application under paragraph (1) the court may order –

(a) that the property or the interest in part thereof as to which the Viscount is beneficially entitled, subject to –

(i) any hypothec and debts secured thereby, or

(ii) security interest and debts secured thereby,

or part thereof attaching to the property or interest therein, be vested in the applicant;

(b) the sale of the property and the distribution of the proceeds of sale, or such part of the proceeds as represents the value of the interest in the part of the property as to which the Viscount is beneficially entitled, to such persons and in such proportions as the court thinks fit;

(c) a usufruct in the property or in such part thereof as to which the Viscount is beneficially entitled to be vested in the applicant for such period as the court thinks fit.

(6) Where the court makes an order under sub-paragraph (a) of paragraph (5) it may make a further order that payment be made by the applicant to the Viscount of such sum as the court thinks fit for the benefit of the debtor's creditors.

(7) Orders made under paragraphs (5) and (6) shall be on such terms and conditions as the court thinks fit.

(8) It shall be the duty of the court in deciding in what manner to exercise its powers under paragraph (5) to give first consideration to the desirability of reserving the matrimonial home for the occupation of the spouse and any dependants of the debtor having regard to all the circumstances of the “désastre” including the interests of creditors.

(9) The court shall in particular have regard to the following matters –

- (a) the income, earning capacity, property and other financial resources which the spouse has or is likely to have in the foreseeable future;
- (b) the age of the debtor’s dependants; and
- (c) the income, earning capacity (if any), property and other financial resources of the debtor’s dependants.

(10) Before deciding whether to make an order under paragraph (5), the court shall give the Viscount an opportunity to make representations with respect to the order.

(11) Any representations made by the Viscount shall be included among the circumstances to which the court is required to have regard under this Article.

(12) For the purposes of this Article –

“dependants” means all persons who in the opinion of the court are dependant on the debtor wholly or partially for the provision of the ordinary necessities of life;

“matrimonial home” means the residence that is used habitually or from time to time by the debtor and the spouse or either of them as the only or principal family residence;

“spouse” includes a person to whom the debtor is alleged to be married by habit and repute.

## ARTICLE 13

**Special provisions regarding movable property**

Where immediately prior to a declaration the debtor owns or has an interest in movable property jointly with one or more persons, the debtor's share or interest in that property shall vest in the Viscount upon the making of a declaration as a tenancy in common in equal shares with the other co-owners.

## ARTICLE 14

**Security interests**

(1) Where immediately prior to a declaration the debtor is beneficially entitled with other persons to any movable property in undivided shares and that property is the subject of a security interest, the security interest shall as from the date of the declaration be apportioned between the persons beneficially entitled to the property and the interest of the debtor vesting in the Viscount shall bear its proportion of the security interest.

(2) The provisions of Article 6 of the Security Interests (Jersey) Law 1983<sup>13</sup> shall apply to any security Interests to which any movable property of a debtor is subject.

## ARTICLE 15

**Power to disclaim certain onerous property**

(1) Subject to this Article, the Viscount may, within six months of the date of the declaration, and by giving the prescribed notice, disclaim any onerous movable property or any onerous immovable property situated outside the Island and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

<sup>13</sup> Volume 1982–1983, page 108, and Volume 1984–1985, page 196.

- (2) For the purposes of this Article –
  - (a) onerous movable property is any –
    - (i) unprofitable contract, and
    - (ii) other movable property of the debtor which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act;
  - (b) onerous immovable property is any immovable property of the debtor situated outside the Island and having the characteristics mentioned in clause (ii) of sub-paragraph (a).
- (3) A disclaimer under this Article shall –
  - (a) operate so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the debtor in or in respect of the property disclaimed; and
  - (b) discharge the Viscount from all liability in respect of that property as from the date of the declaration,

but shall not, except so far as is necessary for the purpose of releasing the debtor, the debtor's property and the Viscount from any liability, affect the rights or liabilities of any other person.

(4) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this Article shall be deemed to be a creditor of the debtor to the extent of the loss or damage and accordingly may prove for the loss or damage.

## ARTICLE 16

**Powers of court in respect of disclaimed property**

(1) This Article applies where the Viscount has disclaimed any property under Article 15.

(2) An application may be made to the court under this Article by –

(a) any person who claims an interest in the disclaimed property; or

(b) any person who is under any liability in respect of the disclaimed property, not being a liability discharged by the disclaimer.

(3) Subject to paragraph (4), the court may, on an application under this Article, make an order on such terms as it thinks fit for the vesting of the disclaimed property in, or for its delivery to –

(a) a person entitled to it or a trustee for such a person; or

(b) a person subject to such a liability as is mentioned in subparagraph (b) of paragraph (2) or a trustee for such a person.

(4) The court shall not make an order by virtue of subparagraph (b) of paragraph (3) except where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer.

(5) The effect of any order under this Article shall be taken into account in assessing for the purposes of paragraph (4) of Article 15 the extent of any loss or damage sustained by any person in consequence of the disclaimer.

## ARTICLE 17

**Transactions at an undervalue and preferences**

(1) Subject to this Article, where a debtor in respect of whose property a declaration has been made, has at a relevant time –

- (a) entered into a transaction with any person at an undervalue; or
- (b) given a preference to any person,

the Viscount may apply to the court for such order as the court thinks fit for restoring the position to what it would have been if that debtor had not entered into that transaction or given that preference, as the case may be.

(2) For the purposes of this Article a debtor enters into a transaction with a person at an undervalue if –

- (a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms for which there is no “cause”;
- (b) he enters into a transaction with that person by way of a marriage settlement; or
- (c) he enters into a transaction with that person for a “cause” the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the “cause” provided by the debtor.

(3) For the purposes of this Article a debtor gives a preference to a person if –

- (a) that person is one of the debtor’s creditors or a surety or guarantor for any of his debts or other liabilities; and
- (b) the debtor –

- (i) does anything, or
- (ii) suffers anything to be done,

which has the effect of putting that person into a position which, in the event of a declaration being made in respect of the debtor's property, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this Article in respect of a preference given to any person unless the debtor who gave it was influenced in deciding to give it by a desire to produce in relation to that person the effect referred to in sub-paragraph (b) of paragraph (3).

(5) Subject to paragraph (6), the time at which a debtor enters into a transaction at an undervalue or gives a preference is a relevant time if the transaction is entered into or the preference given –

- (a) in the case of a transaction at an undervalue, at a time in the period of five years ending with the day of the declaration;
- (b) in the case of a preference which is not a transaction at an undervalue, at a time in the period of one year ending with that day.

(6) Subject to paragraph (7), where a debtor enters into a transaction at an undervalue or gives a preference at a time mentioned in paragraph (a) or paragraph (b) of paragraph (5), that time is not a relevant time unless the debtor –

- (a) is insolvent at that time; or
- (b) becomes insolvent in consequence of the transaction or preference.

(7) Paragraph (6) shall not apply to a transaction at an undervalue which takes place less than two years before the day of the declaration.

(8) Nothing in this Article shall derogate from the provisions of Article 52 of the “Loi (1880) sur la propriété foncière”.<sup>14</sup>

(9) For the purposes of this Article, “cause” has the meaning assigned to it by the customay law of the Island.

## *PART V*

### CONTROL OVER PERSON AND PROPERTY OF DEBTOR

#### ARTICLE 18

##### **General duties of debtor**

(1) In addition to every other duty imposed on the debtor by this Law or any other enactment or by law, he shall, to the utmost of his power, aid the Viscount in the realisation of his property and the distribution of the proceeds amongst his creditors, and, more particularly, shall –

- (a) give a complete and accurate list of his property and of his creditors and debtors and such other information as to his property as the Viscount requires, and attend before the Viscount whenever called upon to do so;
- (b) disclose to the Viscount as soon as practicable any property which may be acquired by him during the course of the “désastre”;
- (c) execute an assignment in favour of the Viscount of any property which has been acquired by, or has devolved upon, him since the date of the declaration;
- (d) supply such information as he may require regarding his expenditure and sources of income after the declaration as the Viscount may require;

<sup>14</sup> Tomes III, page 417.

- (e) deliver on demand all or any of his property that is divisible amongst his creditors and is under his possession or control to the Viscount or anyone authorised by him to take possession of it or any part thereof;
- (f) deliver on demand to the Viscount or anyone authorised by him any property that is acquired by him during the course of the “désastre”;
- (g) notify the Viscount immediately in writing of any change of his address, employment or his name.

(2) If the debtor fails without reasonable excuse to comply with any of the provisions of paragraph (1) he commits an offence and is liable to a fine or to imprisonment for a term not exceeding six months, or to both.

(3) Where an offence under this Article which has been committed by a company is proved to have been attributable to any director, manager, secretary or other officer of the company, or any person who was purporting to act in any such capacity, or any liquidator of the company, he, as well as the company, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## ARTICLE 19

### **Failure to keep proper accounts of business**

(1) Where the debtor has been engaged in any business for any of the period of two years ending with the date of the declaration, he commits an offence if he has not –

- (a) kept proper accounting records throughout that period; or
- (b) preserved all the accounting records which he has kept.

(2) The debtor shall not be guilty of an offence under sub-paragraph (a) of paragraph (1) if –

- (a) his unsecured liabilities at the date of the declaration did not exceed the prescribed amount; or
  - (b) he proves that in the circumstances in which he carried on business the omission was honest and excusable.
- (3) The debtor shall not be guilty of an offence under sub-paragraph (b) of paragraph (1) if he complies with sub-paragraph (b) of paragraph (2).
- (4) For the purposes of this Article, a person shall be deemed not to have kept proper accounting records if he has not kept such records as are necessary to show or explain his transactions and financial position in his business, including –
- (a) records containing entries from day to day, in sufficient detail, of all cash received and paid;
  - (b) where the business involved dealings in goods, statements of annual stock-takings; and
  - (c) except in the case of goods sold by way of retail trade to the actual customer, records of all goods sold and purchased showing the buyers and sellers in sufficient detail to enable the goods and the buyers and sellers to be identified.
- (5) A debtor who commits an offence under paragraph (1) is liable to a fine or to imprisonment for a term not exceeding six months, or to both.
- (6) Where an offence under paragraph (1) has been committed by a company, any director, or any person who was purporting to act in such capacity who knowingly and wilfully authorised or permitted the offence shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

## ARTICLE 20

**Attendance of persons respecting debtor or his property**

- (1) The Viscount may, at any time, summon before him –
- (a) the debtor;
  - (b) the wife or husband of the debtor; or
  - (c) any other person known or suspected to have in his possession any of the property, or any book, paper, document or record relating to the affairs or property, of the debtor, or supposed to be indebted to the debtor, or whom he thinks capable of giving any information respecting the debtor, his trade, dealings, or property, or concerning his income from any source, or his expenditure, and may require the person so summoned to produce and surrender to the Viscount any book, paper, document or record in his custody or power relating to the dealings or property of the debtor.

(2) Where the debtor is a company the Viscount may at any time summon before him any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the Viscount deems capable of giving information concerning the promotion, formation, trade, dealings, affairs or property of the company.

(3) The Viscount may apply to the court for an order to question before him the debtor or any other person referred to in paragraph (1) or (2) on oath.

(4) If the debtor or any other person summoned before the Viscount under paragraphs (1) or (2) –

- (a) fails without reasonable excuse to come before the Viscount at the time appointed; or

- (b) not being questioned on oath –
  - (i) makes any statement knowing it to be false in a material particular, or
  - (ii) wilfully misleads or attempts to mislead the Viscount,

he commits an offence and is liable to a fine or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of paragraph (2) “officer” includes a director, manager or secretary.

(6) A person shall not under this Article be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in the Royal Court.

## ARTICLE 21

### **Unenforceability of liens on books, etc.**

A lien or other right to retain possession of any of the books, papers or other records of the debtor shall be unenforceable to the extent that its enforcement would deny possession of any books, papers or other records to the Viscount.

## ARTICLE 22

### **Privilege of witnesses**

Any debtor or other person who is being questioned by the Viscount under Article 20 shall be excused from answering any question on the ground that the answer may incriminate or tend to incriminate him or his spouse.

## ARTICLE 23

**Viscount may make allowance to debtor**

The Viscount may from time to time make such an allowance of money as he thinks just out of the property of the debtor for the support of the debtor and his dependants.

## ARTICLE 24

**Debtor prohibited from acting in certain capacities**

- (1) No debtor shall, during the course of the “désastre” –
  - (a) accept appointment as –
    - (i) an “administrateur”,
    - (ii) a curator,
    - (iii) a director of a company,
    - (v) an “electeur”,
    - (v) a liquidator of a company,
    - (vi) a trustee, or
    - (vii) a “tuteur”; or
  - (b) hold any public office.
- (2) No debtor shall, during the course of the “désastre”, sit on a jury.
- (3) Any debtor who at the date of the declaration holds any appointment or office referred to in paragraph (1) shall submit his resignation forthwith.

(4) A debtor who contravenes paragraph (1) or (2) or fails to comply with paragraph (3) commits an offence and is liable to a fine or to imprisonment for a term not exceeding six months, or to both.

(5) For the purposes of sub-paragraph (b) of paragraph (1) “public office” means the office of Connétable, Centenier, Vingtenier, Constable’s Officer, “Procureur du Bien Public” and member of the Assessment Committee constituted under the Parish Rate (Administration) (Jersey) Law 1946.<sup>15</sup>

## ARTICLE 25

### **Requirement that debtor disclose declaration**

(1) No debtor shall obtain credit, in excess of such sum as shall be prescribed, during the course of the “désastre” unless he informs the intending creditor of the declaration.

(2) A debtor who contravenes paragraph (1) commits an offence and is liable to a fine or to imprisonment for a term not exceeding six months, or to both.

## *PART VI*

### ADMINISTRATION OF DEBTOR’S ESTATE

## ARTICLE 26

### **General powers of Viscount**

Subject to the provisions of this Law, the Viscount may –

- (a) hold property of every description;

<sup>15</sup> Tome VII, page 351, and Volume 1984–1985, pages 13 and 14.

- (b) bring, institute, or defend any action or other legal proceedings relating to the property of the debtor whether situated in the Island or elsewhere;
- (c) refer any dispute to arbitration, or at his discretion compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist, between the debtor and any person who may have incurred any liability to the debtor on such terms as may be agreed upon;
- (d) make such compromise or other arrangements as are thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the declaration;
- (e) make such compromise or other arrangements as are thought expedient with respect to any debt or other claim secured upon the property of the debtor by a judicial or conventional hypothec obtained against or created or consented to by any predecessor in title of the debtor;
- (f) accept for the sale of any property of the debtor a sum of money payable at a future time, subject to such conditions as to security and otherwise as the Viscount thinks fit;
- (g) make such compromise or other arrangements as are thought expedient with respect to any claim arising out of or incidental to the property of the debtor made or capable of being made on the Viscount by any person or by the Viscount on any person;
- (h) carry on the business of the debtor as far as is necessary or expedient for the beneficial disposal of the same and for that purpose may employ and pay the debtor or any other person;

- (i) expend money of the debtor for the repair, maintenance, upkeep, or renovation of the property of the debtor, whether or not the work is necessary for the purpose of the salvage of the property;
- (j) borrow any money and charge any property of the debtor;
- (k) employ any person to transact any business or do any act required to be transacted or done in the course of administration of a “désastre”, including the receipt and payment of money;
- (l) prove and draw a dividend in respect of any debt due to the debtor;
- (m) divide in its existing form amongst the creditors according to its estimated value any property which from its peculiar nature or other special circumstances cannot readily or advantageously be sold;
- (n) give receipts and execute discharges and releases for any money received by him, which receipts, discharges, or releases shall effectively discharge the person paying the money from all responsibility in respect of the application thereof, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Law;
- (o) exercise any voting rights on shares owned by the debtor;
- (p) exercise any authority or power or do any act in relation to the debtor’s property which the debtor could have exercised or done if it were not for the declaration;
- (q) from time to time appoint an agent by power of attorney or otherwise to act for him, either in or out of the Island, in respect of any particular property and delegate to any such agent all or any of the powers hereby conferred upon the Viscount in respect of the property and from time to time

revoke any such appointment and fix the remuneration for any such agent, which shall be paid out of the debtor's property:

Provided that the powers conferred upon the Viscount by this Article shall be in furtherance of and not in limitation of all other powers vested in him.

## ARTICLE 27

### **Power of Viscount to sell**

(1) Subject to the provisions of this Law, and to paragraph (3) of Article 12, the Viscount may sell the whole or any part of the property of the debtor by public auction or public tender on such terms and conditions as he thinks fit, with power to buy in at any auction or to rescind or vary any contract for sale on such terms as he thinks fit, and with power also to sell the whole thereof to any person or to sell the same in parcels and in any order.

(2) In addition to the powers given by paragraph (1), but subject to the provisions of this Law, the Viscount may sell by private contract –

- (a) any perishable property;
- (b) any property offered for sale by public auction or public tender and not sold;
- (c) any property which, by reason of its nature, situation, value, or other special circumstances, he considers it unnecessary or inadvisable to sell by public auction or public tender.

(3) Except in the case of perishable property none of the property of the debtor shall be sold until after the specified date.

(4) For the purposes of paragraph (3), “specified date” means the date specified in Rules made under Article 2 by which statements of claim of creditors shall be filed.

(5) Where a document is made or executed in exercise of the power to sell conferred by this Article, the title of any person acquiring title thereunder shall not be impeachable except on the ground of fraud, or be affected on the ground that no case has arisen to authorise the sale, or the power was otherwise improperly or irregularly exercised.

## ARTICLE 28

### **Reports by Viscount to creditors**

The Viscount may from time to time report to creditors on the progress of a “désastre”.

## *PART VII*

### PROOFS OF DEBT

## ARTICLE 29

### **Provable debts**

(1) Except as provided in paragraph (4), all certain debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the time of the declaration, or to which he becomes subject before payment of the final dividend by reason of any obligation incurred before the time of the declaration shall be debts provable in the “désastre”.

(2) Where a debt bears interest, interest to the date of the declaration is provable as part of the debt, except in the case of a debt secured by a hypothec, security interest, or pledge, when interest is provable to the date of payment of the claim and payable out of the proceeds of sale of the secured property to the extent that it is required and able to meet it and is secured thereby.

(3) In the case of a debt which, by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value, and a debt provable by virtue of paragraph (4) of Article 15 the creditor shall make an estimate of its value.

(4) Where a declaration has been made in respect of the property of a person before the commencement of this Law, no debt or liability which would not have been provable in the “désastre” if this Law had not been passed shall be provable in the “désastre”.

### ARTICLE 30

#### **Creditors to prove**

(1) Unless exempted by Rules made under Article 2, every creditor shall prove his debt at the prescribed time and in the prescribed manner.

(2) A creditor shall bear the cost of proving his debt unless the court decides otherwise.

(3) Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at a time fixed by the Viscount in accordance with Rules made under Article 2.

(4) A creditor may from time to time amend or withdraw his proof and every such amendment shall be subject to the same formalities as the original proof.

### ARTICLE 31

#### **Viscount to examine proofs and admit or reject**

(1) The Viscount shall have power to admit or reject proofs either wholly or in part, and he shall examine every proof and the grounds of the debt and admit it or reject it in whole or in part, or require further evidence in support of it.

(2) The Viscount may reject in whole or in part that part of a proof appertaining to interest on the debt if he considers such interest to be extortionate.

(3) If the Viscount rejects a proof, in whole or in part, he shall serve notice of rejection in the prescribed manner.

(4) Where any person to whom notice has been given is dissatisfied with the decision of the Viscount he shall within twenty-one days of the date of such notice notify the Viscount that he wishes application to be made to the court for the reversal or variation of the decision, and the Viscount shall apply to the court for a date to be fixed for the hearing of such applications.

## *PART VIII*

### DISTRIBUTION OF ASSETS

#### ARTICLE 32

#### **Order of payment of debts**

(1) Subject to paragraphs (4), (5) and (6), the money received by the Viscount by the realisation of the property of a debtor shall be applied by him in the following order -

- (a) in payment of the Viscount's fees and emoluments and all costs, charges, allowances and expenses properly incurred by or payable by the Viscount in the "désastre";
- (b) in payment of –
  - (i) all arrears of wages or salary of any employee due at the date of the declaration in respect of services rendered to the debtor during the six months immediately preceding the declaration,

- (ii) all holiday pay and bonuses due at the date of the declaration to any employee of the debtor:

Provided that the sum to which priority is to be given under clauses (i) and (ii) shall not exceed such sum as shall be prescribed;

- (c) in payment of –

- (i) all sums payable to the Health Insurance Fund under Article 34 of the Health Insurance (Jersey) Law 1967,<sup>16</sup> to the Social Security Fund under Article 41 of the Social Security (Jersey) Law 1941<sup>17</sup> and to the Comptroller of Income Tax under Article 45 of the Income Tax (Jersey) Law 1961,<sup>18</sup>
- (ii) an amount due by the debtor to his landlord for the payment of rent due to the extent, if any, that his claim qualifies for preference by virtue of customary law,
- (iii) any amount in respect of which judgement has been obtained in the court or the Petty Debts Court prior to the ten days immediately preceding the declaration,
- (iv) parochial rates due to any parish in the Island for a period not exceeding two years;

- (d) in payment of all other debts proved in the “désastre”.

(2) The debts referred to in sub-paragraphs (b) and (c) of paragraph (1) shall rank equally between themselves and shall be paid in full, unless the property of the debtor is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Debts provable in the “désastre”, other than those referred to in paragraph (2), shall be paid *pari passu*.

<sup>16</sup> Volume 1966–1967, page 561.

<sup>17</sup> Volume 1973–1974, page 352.

<sup>18</sup> Volume 1961–1962, page 220.

(4) Hypothecary creditors shall be entitled to preference in the order of the date of creation of their respective judicial or conventional hypothecs upon the proceeds of sale of any corpus-fundi (“corps de bien-fonds”) upon which their respective judicial or conventional hypothecs are secured.

(5) In the event that the proceeds of sale of any corpus-fundi (“corps de bien-fonds”) upon which any judicial or conventional hypothec is secured shall be insufficient to meet in full the claim of any hypothecary creditor the balance shall rank for payment *pari passu* with all other debts proved under sub-paragraph (d) of paragraph (1).

(6) Where any property of the debtor is subject to a security interest the proceeds of sale of the collateral shall be applied in the manner provided by paragraph (6) of Article 8 of the Security interests (Jersey) Law 1983.<sup>19</sup>

(7) In paragraphs (4) and (5), “(‘corps de bien-fonds’)” has the meaning assigned to it by Article 1 of the “Loi (1880) sur la propriété foncière”.<sup>20</sup>

## ARTICLE 33

### **Distribution of assets**

The Viscount shall distribute the assets among the persons entitled to receive them in accordance with their respective claims as provided by Article 32 as soon as practicable and may from time to time pay interim dividends for this purpose.

## ARTICLE 34

### **Set off**

Where there have been mutual credits, mutual debts or other mutual dealings between the debtor and a creditor, an account shall be taken of what is due from the one party to the other as at the date of the

<sup>19</sup> Volume 1982–1983, page 111.

<sup>20</sup> Tomes I-III, page 386.

declaration in respect of such mutual dealings, and the sum due from one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively.

## ARTICLE 35

### **Hire-purchase agreements**

Where the debtor is in possession of goods by virtue of a hire-purchase agreement, the Viscount may settle the debtor's indebtedness under such agreement if he considers that it would be in the interests of the creditors to do so.

## ARTICLE 36

### **Duty of Viscount to report to creditors and Judicial Greffier and pay final dividend**

(1) When the Viscount has realised all the debtor's property, or as much of it as in the Viscount's opinion can be realised without needlessly protracting the "désastre", the Viscount shall –

- (a) supply all creditors of the debtor and the Judicial Greffier with a report and accounts relating to the "désastre"; and
- (b) pay whatever final dividend is due.

(2) Where the debtor is a company registered under the "Loi (1861) sur les Sociétés à Responsabilité Limitée"<sup>21</sup> the Viscount shall notify the Judicial Greffier in writing of the date of payment of the final dividend.

<sup>21</sup> Tomes I-111, page 232, and Volume 1968–1969, pages 111, 118, 119 and 120.

## ARTICLE 37

**Surplus of assets**

(1) This Article shall have effect where a surplus of assets remains after payment in full of the provable debts and payment of the Viscount's fees and emoluments and all costs, charges, allowances and expenses incurred by or payable by him in the "désastre".

(2) The Viscount may pay interest on all provable debts not bearing interest at such rate as to him seems reasonable having regard to the circumstances of the "désastre".

(3) Where interest is paid under this Article it shall be calculated from the date of the declaration.

(4) The Viscount shall serve notice on the debtor and creditors of the rate fixed by him under paragraph (2).

(5) Where any person to whom notice has been given is dissatisfied with the decision of the Viscount he shall within twenty-one days of the date of such notice notify the Viscount that he wishes application to be made to the court for a variation of the decision, and the Viscount shall apply to the court for a date to be fixed for the hearing of such applications.

(6) If a surplus remains after payment in full of interest referred to in this Article the Viscount shall pay the surplus to the debtor.

## ARTICLE 38

**Status of debtor following distribution of assets**

(1) Until an order of discharge under Article 41 takes effect –

- (a) the debtor shall not cease to be liable for any debts provable in the "désastre" that are still outstanding;

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- (b) no action for the recovery of a debt incurred during the course of the “désastre” shall be taken against the debtor.

(2) Subject to paragraph (3), where the debtor is a company registered under the “Loi (1861) sur les Sociétés à Responsabilité Limitée”<sup>22</sup> it shall be dissolved with effect from the date on which the Judicial Greffier receives the notice under paragraph (2) of Article 36, which notice the Judicial Greffier shall thereupon register in the Register of Limited Liability Companies.

(3) Paragraph (2) shall not apply where the Attorney General has notified the Judicial Greffier that criminal proceedings have been instituted or are pending against the company.

## *PART IX*

### DISCHARGE WHERE DEBTOR IS AN INDIVIDUAL

#### ARTICLE 39

#### **Application of Part IX**

This Part applies to debtors who are individuals.

#### ARTICLE 40

#### **Application by Viscount for order of discharge**

(1) Subject to paragraph (2), at the expiration of four years from the date of the declaration the Viscount shall apply to the court for an order discharging the debtor.

(2) The Viscount, the debtor or a creditor of the debtor may apply to the court for an order that the period referred to in paragraph (1) be reduced or extended.

<sup>22</sup> Tomes I-III, page 232, and Volume 1968–1969, pages 111, 118, 119 and 120.

## ARTICLE 41

**Order of discharge**

(1) At the hearing of any application for an order under paragraph (1) of Article 40, the court may –

- (a) grant an immediate order;
- (b) grant an order subject to such conditions as it thinks fit, or suspend an order for such time as it thinks fit;
- (c) grant an order with or without such conditions as it thinks fit to take effect at a specified future date;
- (d) refuse to make an order.

(2) At the hearing of an application for an order under paragraph (2) of Article 40, the court shall make such order as it thinks fit.

(3) If the court exercises its powers under sub-paragraph (d) of paragraph (1) the Viscount, the debtor or a creditor of the debtor may from time to time apply for an order under paragraph (1) of Article 40.

## ARTICLE 42

**Effect of order of discharge**

(1) An order of discharge shall release the debtor from all debts provable in the “désastre” except the following –

- (a) any debt or liability incurred by means of fraud or fraudulent breach of trust to which he was a party;
- (b) any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(2) The prohibitions imposed by Article 24 and the provisions of Article 25 shall, as from the date at which an order under Article 41 takes effect, cease to apply to the debtor.

*PART X*

ADDITIONAL POWERS OF COURT WHERE DEBTOR IS A  
COMPANY

ARTICLE 43

**Disqualification of directors**

(1) Where during the course of the “désastre” in respect of a company it appears to the Attorney General that it is expedient in the public interest that a director of that company should not be a director of or in any way, whether directly or indirectly be concerned or take part in the management of a company, the Attorney General may apply to the court for an order to be made to that effect against that director.

(2) The court may make an order against a director where, on an application under this Article, the court is satisfied that his conduct in relation to the company makes him unfit to be concerned in the management of a company.

(3) An order under paragraph (2) shall be for such period not exceeding five years as the court thinks fit.

(4) If a person acts in contravention of an order made under this Article he is guilty of an offence and liable to imprisonment for a term not exceeding two years or to a fine or both.

## ARTICLE 44

**Personal liability for company's debts where person acts while disqualified**

(1) A person who acts in contravention of an order made under Article 43 is personally responsible for such debts and other liabilities of the company as are incurred at a time when that person was involved in the management of the company.

(2) Where a person is personally responsible under paragraph (1) for debts and other liabilities of a company he is jointly and severally liable in respect of the debts and liabilities with the company and any other person who is so liable.

(3) For the purposes of this Article, a person is involved in the management of a company if he is a director of the company or if he is concerned, whether directly or indirectly, or takes part, in the management of the company.

## ARTICLE 45

**Responsibility of persons for company's wrongful trading**

(1) Subject to paragraph (3), if during the course of the "désastre" in respect of a company it appears that paragraph (2) applies in relation to a person who is or has been a director of the company, the court, on the application of the Viscount may, if it thinks it proper to do so, order that that person be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company arising after the time referred to in paragraph (2).

(2) This paragraph applies in relation to a person if –

- (a) at some time before the date of the declaration that person –
  - (i) knew that there was no reasonable prospect that the company would avoid a declaration, or

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(ii) on the facts known to him was reckless as to whether the company would avoid a declaration; and

(b) that person was a director of the company at that time.

(3) The court shall not make an order under paragraph (1) with respect to any person if it is satisfied that after either condition specified in sub-paragraph (a) of paragraph (2) was first satisfied in relation to him that person took reasonable steps with a view to minimising the potential loss to the company's creditors.

(4) On the hearing of an application under this Article, the Viscount may himself give evidence or call witnesses.

## *PART XI*

### ABOLITION OF CERTAIN CUSTOMARY LAW CONCEPTS

#### ARTICLE 46

##### **Norman Customary Dower**

The dower, known as Norman Customary Dower, is abolished.

#### ARTICLE 47

##### **“Désastre maritime”**

Any customary rule of law providing for a “désastre maritime” and for the order of payment of debts in such a “désastre” is abolished.

**PART XII****MISCELLANEOUS AND SHORT TITLE****ARTICLE 48****Assistance for other courts in insolvency matters**

(1) The court shall assist the courts of such countries and territories as may be prescribed in all matters relating to the insolvency of any person to the extent that it thinks fit.

(2) For the purposes of paragraph (1), a request from a court of a prescribed country or territory for assistance shall be sufficient authority for the court to exercise, in relation to the matters to which the request relates, any jurisdiction which it or the requesting court would exercise in relation to these matters if they otherwise fell within its jurisdiction.

(3) In exercising its discretion for the purposes of this Article the court shall have regard in particular to the rules of private international law.

**ARTICLE 49****Registration in the Public Registry**

The Judicial Greffier shall register in the Public Registry all Acts and orders affecting immovable property made under this Law.

**ARTICLE 50****Repeal and consequential amendments**

(1) The “Loi (1867) au sujet des débiteurs et créanciers”<sup>23</sup> is repealed.

<sup>23</sup> Tomes I-III, page 307, and Tomes IV-VI, page 15.

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(2) The enactments specified in the first column of the Schedule shall be amended to the extent and in the manner set out in the second column thereof.

## ARTICLE 51

### **Short title and commencement**

This Law may be cited as the Bankruptcy (Désastre) (Jersey) Law 1990 and shall come into force on such day as the States may by Act appoint.

**E.J.M. POTTER**

*Greffier of the States.*

*SCHEDULE***(Article 50(2))****Consequential amendments**

## First column

“Loi (1839) sur les remises de biens”<sup>24</sup>

“Loi (1880) sur la propriété foncière”<sup>25</sup>

## Second column

In Article 7 the words “de la déclaration de biens en désastre ou” shall be deleted.

In Article 8 the words “d’une déclaration de désastre” shall be deleted.

In paragraph (2) of Article 2 after the words “En cas de décret ou de dégrèvement de l’héritage hypothéqué” there shall be inserted the words “(sauf dans le cas où les biens du débiteur ont été déclarés en désastre)”.

In Article 7 –

- (a) for the words – “soit du jour” to the end of the sentence there shall be substituted the words “du jour du décès du mari”;
- (b) for the words “Lorsque l’hypothèque de la veuve” to the end of the sentence there shall be substituted the words “Les pièces insérables seront l’extrait du

<sup>24</sup> Tomes I-III, page 79.

<sup>25</sup> Tomes I-III, pages 388, 390, 391 and 417.

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décès du mari”.

In Article 52 the words “avant l’expiration du délai fixé pour l’évocation des causes” shall be deleted.

“Loi (1904) (Amendement No. 2) sur la propriété foncière”<sup>26</sup>

Article 9 shall be repealed.

In Article 10 for the words “S’il n’y a pas eu de désastre préalable, l’Attourné” there shall be substituted the words “L’Attourné”.

Interpretation (Jersey) Law 1954<sup>27</sup>

Sub-paragraph (e) of Article 13 shall be repealed.

<sup>26</sup> Tomes IV-VI, page 230.

<sup>27</sup> Tome VIII, page 382.