

Zambia

## Preferential Claims in Bankruptcy Act, 1995

### Chapter 83

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Preferential Claims in Bankruptcy Act, 1995

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## Zambia

# Preferential Claims in Bankruptcy Act, 1995

## Chapter 83

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*[Act No. 9 of 1995]*

**An Act to make provision with respect to preferential payments in bankruptcy; to give effect to the International Labour Conference Convention 173 Concerning the Protection of Workers' Claims in the event of the Insolvency of their Employer, Adopted by the Conference at its Seventy-ninth Session, at Geneva, on 23rd June, 1992, to which Zambia is a State Party; and to provide for matters connected with or incidental to the foregoing.**

### 1. Short title

This Act may be cited as the Preferential Claims in Bankruptcy Act.

### 2. Priority debts

- (1) Subject to this Act, in a bankruptcy there shall be paid in priority to all other unsecured debts—
  - (a) all amounts due by way of wages or salary (whether or not earned wholly or in part by way of commission) accruing to any employee within the period of three months before the date of the receiving order;
  - (b) all amounts due in respect of leave accruing to any employee within the period of two years before the date of the receiving order;
  - (c) all amounts due in respect of any paid absence (not being leave) accruing to any employee within the period of three months before the date of the receiving order;
  - (d) recruitment expenses or other amounts reimbursable under any contract of employment;
  - (e) an amount equal to three months' wages or salary, by way of severance pay, to each employee;
  - (f) all amounts due in respect of workers' compensation under any written law relating to workers' compensation accrued before the date of the receiving order;
  - (g) any tax, duty or rate payable by the bankrupt in respect of any period prior to the date of the receiving order whether or not payment has become due after that date;
  - (h) all Government rents not more than five years in areas due to the Government on the date of the receiving order; and
  - (i) all rates from the bankrupt to a local authority having become due and payable within the period of three years before the date of the receiving order.
- (2) Debts having priority shall rank as follows:
  - (a) firstly, the debts referred to in paragraphs (a) to (f), inclusive of subsection (1);
  - (b) secondly, the debts referred to in paragraphs (g) and (h) of subsection (1); and
  - (c) thirdly, the debts referred to in paragraph (i) of subsection (1).

- (3) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.
- (4) Where a payment has been made to any employee of the bankrupt on account of wages or salary out of money advanced by a person for that purpose, the person by whom the money was advanced shall, in the event of a bankruptcy, have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the employee would have been entitled to priority in the event of a bankruptcy has been diminished by reason of the payment, and shall have the same right of priority in respect of that amount as the employee would have had if the payment had not been made.
- (5) Where the bankrupt is, under a contract of insurance entered into before the commencement of the bankruptcy, insured against liability to third parties, then, if any such liability is incurred by the bankrupt (either before or after the date of the receiving order) and an amount in respect of that liability is or has been received by the bankrupt or trustee in bankruptcy, from the insurer, the amount shall, after deducting any expenses of, or incidental to, getting the amount, be paid by the trustee in bankruptcy to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability or any part of that liability remaining undischarged in priority to all payments in respect of the debts referred to in subsection (1).
- (6) Notwithstanding anything in subsection (1)—
  - (a) paragraph (a) of that subsection shall not apply in relation to bankruptcy where the bankrupt has entered into a contract with an insurer in respect of any liability under any law relating to workmen's compensation; and
  - (b) where a bankrupt has given security for the payment or repayment of any amount to which paragraph (f), (g), or (h) of that subsection relates, that paragraph shall apply only in relation to the balance of any such amount remaining due after deducting therefrom the net amount realised from the security.
- (7) Where, in any bankruptcy—
  - (a) assets have been recovered under an indemnity for costs of litigation given by certain creditors;
  - (b) assets have been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or
  - (c) expenses in relation to which a creditor has indemnified a liquidator have been recovered;the court may make such order as it thinks just with respect to the distribution of those assets and the amount of those expenses so recovered with a view to giving those creditors an advantage over others in consideration of the risk run by them in so doing.
- (8) Subject to this Act, all debts proved in the bankruptcy or death shall be paid *pari passu*.

### 3. Discharge of debts

Subject to the retention of such sums as may be necessary for the cost of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

### 4. Distress for rent

In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order, the debts to which priority is given by this Act shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

## **5. Application of Act to a deceased insolvent**

This Act shall apply in the case of a deceased person who dies insolvent, whether or not an order has been made in respect of the deceased's estate in terms of the Bankruptcy Act, as if he were a bankrupt and as if the date of his death were substituted for the date of the receiving order;

Provided that the proper funeral and testamentary expenses incurred by the legal personal representative of the deceased person in and about that person's estate, together with the costs of the administration of the deceased person's estate, shall have priority over all other debts and shall rank equally between themselves.

*[Cap. 82]*