

SCHEDULES

SCHEDULE 5

Section 59.

VOLUNTARY TRUST DEEDS FOR CREDITORS

Remuneration of trustee

- 1 Whether or not provision is made in the trust deed for auditing the trustee's accounts and for determining the method of fixing the trustee's remuneration or whether or not the trustee and the creditors have agreed on such auditing and the method of fixing the remuneration, the debtor, the trustee or any creditor may, at any time before the; final distribution of the debtor's estate among the creditors, have the trustee's accounts audited by and his remuneration fixed by the Accountant in Bankruptcy.

Registration of notice of inhibition

- 2 (1) The trustee, from time to time after the trust deed has been delivered to him, may cause a notice in such form as shall be prescribed by the Court of Session by act of sederunt to be recorded in the register of inhibitions and adjudications ; and such recording shall have the same effect as the recording in that register of letters of inhibition against the debtor.
- (2) The trustee, after the debtor's estate has been finally distributed among his creditors or the trust deed has otherwise ceased to be operative, shall cause to be so recorded a notice in such form as shall be prescribed as aforesaid recalling the notice recorded under sub-paragraph (1) above.

Lodging of claim to bar effect of limitation of actions

- 3 The submission of a claim by a creditor to the trustee acting under a trust deed shall bar the effect of any enactment or rule of law relating to limitation of actions in any part of the United Kingdom.

Valuation of claims

- 4 Unless the trust deed otherwise provides, Schedule 1 to this Act shall apply in relation to a trust deed as it applies in relation to a sequestration but subject to the following modifications—
- (a) in paragraphs 1, 2 and 5 for the word "sequestration" wherever it occurs there shall be substituted the words "granting of the trust deed";
 - (b) in paragraph 3—
 - (i) in sub-paragraph (2), for the words from the beginning of paragraph (a) to " or sheriff" there shall be substituted the words " the trustee "; and

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- (ii) in sub-paragraph (3), for the reference to the permanent trustee there shall be substituted a reference to the trustee;
- (c) paragraph 4 shall be omitted ; and
- (d) in paragraph 5(2) for the references to the permanent trustee there shall be substituted references to the trustee.

Protected trust deeds

- 5 Paragraphs 6 and 7 of this Schedule shall apply in respect of a trust deed if—
- (a) the trustee is a person who would not be disqualified under section 24(2) of this Act from acting as permanent trustee if the debtor's estate were being sequestrated ;
 - (b) the trustee, forthwith after the trust deed has been delivered to him, both publishes in the Edinburgh Gazette and sends to every creditor known to him a notice in the prescribed form—
 - (i) stating that the trust deed has been granted by the debtor; and
 - (ii) inviting creditors, in order that paragraphs 6 and 7 of this Schedule may apply, to accede to the trust deed within 4 weeks of the date on which the notice is so published ;
 - (c) within the said period of 4 weeks a majority in number and not less than two-thirds in value of the creditors accede to the trust deed ; and
 - (d) the trustee immediately after the expiry of the said period sends to the Accountant in Bankruptcy for registration in the register of insolvencies a copy of the trust deed with a certificate endorsed thereon that it is a true copy and the accession of creditors as required by sub-paragraph (c) above has been obtained.
- 6 Where the provisions of paragraph 5 of this Schedule have been fulfilled, then—
- (a) subject to paragraph 7 of this Schedule, a creditor who has not acceded to the trust deed shall have no higher right to recover his debt than a creditor who has so acceded ; and
 - (b) the debtor may not petition for the sequestration of his estate while the trust deed subsists.
- 7 (1) A qualified creditor who has not acceded to the trust deed may present a petition for sequestration of the debtor's estate—
- (a) not later than 6 weeks after the date of publication of the notice under paragraph 5(b) of this Schedule ; but
 - (b) subject to section 8(1)(b) of this Act, at any time if he avers that the provision for distribution of the estate is or is likely to be unduly prejudicial to a creditor or class of creditors.
- (2) The court may award sequestration in pursuance of subparagraph (1)(a) above if it considers that to do so would be in the best interests of the creditors.
- (3) The court shall award sequestration in pursuance of subparagraph (1)(b) above if, but only if, it is satisfied that the creditor's said averment is correct.
- 8 In this Act a trust deed in respect of which paragraphs 6 and 7 of this Schedule apply is referred to as a " protected trust deed ".
- 9 Where the trustee under a protected trust deed has made the final distribution of the estate among the creditors, he shall, not more than 28 days after the final

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distribution, send to the Accountant in Bankruptcy for registration in the register of insolvencies—

- (a) a statement in the prescribed form indicating how the estate was realised and distributed; and
- (b) a certificate to the effect that the distribution was in accordance with the trust deed.

10 Where the trustee under a protected trust deed has obtained a discharge from the creditors who have acceded to the trust deed he shall forthwith give notice of the discharge—

- (a) by sending the notice by recorded delivery to every creditor known to him who has not acceded to the trust deed ; and
- (b) by sending the notice to the Accountant in Bankruptcy who shall register the fact of the discharge in the register of insolvencies,

and, except where the court makes an order under paragraph 12 below, the sending of such notice to a creditor who has not acceded to the trust deed shall be effective to make the discharge binding upon that creditor.

Creditors not acceding to protected trust deed

11 A creditor who has not acceded to a protected trust deed may, not more than 28 days after notice has been sent under paragraph 10 above, apply to the court for an order under paragraph 12 below.

12 Where, on an application by a creditor under paragraph 11 above, the court is satisfied (on grounds other than those on which a petition under paragraph 7(1)(b) above was or could have been presented by that creditor) that the intrusions of the trustee under the protected trust deed with the estate of the debtor have been so unduly prejudicial to that creditor's claim that he should not be bound by the discharge it may order that he shall not be so bound.

13 Where the court makes an order under paragraph 12 above, the clerk of court shall send a copy of the order to—

- (a) the trustee ; and
- (b) the Accountant in Bankruptcy who shall register the copy of the order in the register of insolvencies.