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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O 62/36

An Ordinance to amend the Ordinance intituled “ An Ordinance to provide for the establishment of a Debt Conciliation Board in Ceylon and for other matters connected with or incidental to such establishment ”.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1. This Ordinance may be cited as the Debt Conciliation (Amendment) Ordinance, No. of 1941. Short title.

2. In the event of the Bill intituled “ An Ordinance to provide for the establishment of a Debt Conciliation Board in Ceylon and for other matters connected with or incidental to such establishment ” receiving the assent of His Majesty and taking effect as an Ordinance (hereinafter referred to as “ the principal Ordinance ”) upon the signification of such assent by Proclamation published in the *Government Gazette*, section 2 of the principal Ordinance shall, with effect from the date of the publication of such Proclamation (hereinafter referred to as “ the appointed date ”) be amended as follows :— Clause 2 of the Debt Conciliation Bill to be amended in the event of that Bill becoming law.

(1) by the re-numbering of sub-sections (2), (3) and (4) of that section as sub-sections (4), (5), and (6) ; and

(2) by the insertion, immediately after sub-section (1) of that section, of the two following new sub-sections :—

“ (2) The Chairman of the Board shall be—

- (a) a person who holds or has held a substantive appointment as a Judge of the Supreme Court or as a District Judge ; or
- (b) a person who is or has been a member of Class I of the Ceylon Civil Service and who holds or has held office as a District Judge ; or
- (c) an advocate or proctor of the Supreme Court of not less than fifteen years' standing.

(3) Of the four other members of the Board—

- (a) at least one shall be an advocate or proctor of the Supreme Court of not less than fifteen years' standing ; and
- (b) at least one shall be a person engaged in trade or commerce in Ceylon and recommended by the Executive Committee for appointment as a member of the Board.”

Amendment of section 8 of the principal Ordinance.

3. Section 8 of the principal Ordinance shall, with effect from the appointed date, be amended as follows :—

- (1) in sub-section (1) of that section, by the substitution for the words “ Chairman, who shall be a member of the Board,” of the word “ Chairman ” ;
- (2) by the re-numbering of sub-sections (2) and (3) of that section as sub-sections (4) and (5), respectively ; and
- (3) by the insertion, immediately after sub-section (1) of that section, of the two following new sub-sections :—

“ (2) The Chairman of each Branch Board shall be a member of the Board and shall be—

- (a) a person who holds or has held a substantive appointment as a Judge of the Supreme Court or as a District Judge ; or
- (b) a person who is or has been a member of Class I of the Ceylon Civil Service and who holds or has held office as a District Judge ; or
- (c) an advocate or proctor of the Supreme Court of not less than fifteen years' standing.

(3) Of the other members of each Branch Board—

- (a) at least one shall be an advocate or proctor of not less than fifteen years' standing ; and
- (b) at least one shall be a person engaged in trade or commerce in Ceylon and approved by the Executive Committee for appointment as a member of a Branch Board.”

Amendment of section 17 of the principal Ordinance.

4. Section 17 of the principal Ordinance shall, with effect from the appointed date, be amended in sub-section (1) of that section, by the substitution for the word and figures “ section 60 (2)” occurring in paragraph (g), of the word and figures “ section 61 (2)”.

Amendment of section 30 of the principal Ordinance.

5. Section 30 of the principal Ordinance shall, with effect from the appointed date, be amended in sub-section (1) thereof, as follows :—

- (1) by the substitution for the words “ Where any secured creditor ” of the words “ Subject as hereinafter provided, where any secured creditor ” ;
- (2) by the substitution for the words “ by such creditor ” of the following :—

“ by such creditor :

Provided, however, that the Board shall not approve any such settlement until the Board is satisfied that a notice setting out in full the terms of such settlement has been served in the prescribed manner on each person who appears to the Board to be a secured creditor of the debtor.”

6. Section 31 of the principal Ordinance shall, with effect from the appointed date, be amended as follows:—

Amendment of section 31 of the principal Ordinance.

(1) by the substitution of the following for sub-section (1) of that section:—

“(1) Where creditors, whether secured or unsecured, to whom more than fifty per centum of the total amount of the debtor's debts is owing come to an amicable settlement with the debtor, such settlement shall, if it is considered equitable by the Board, be reduced to the form of a document (hereinafter referred to as “the original”), which shall set out the amounts payable to each of such creditors and the manner in which, the assets from which, and the times at which such amounts are payable. Together with such original, a duplicate thereof shall be prepared, and the original as well as the duplicate shall be signed by the debtor and by each of the creditors who have agreed to the settlement.”;

(2) in sub-section (2) of that section—

(a) by the substitution for the words “the duplicate:” of the words “the duplicate; and any such settlement shall, when the original and the duplicate have been countersigned by the Chairman, be valid and effectual for all purposes, notwithstanding anything to the contrary in the Prevention of Frauds Ordinance:”; and

Cap. 57.

b) by the substitution for the word and figures “section 60 (2)” of the word and figures “section 61 (2)”;

(3) by the repeal of sub-section (3) of that section; and

(4) by the re-numbering of sub-section (4) of that section as sub-section (3).

7. Section 37 of the principal Ordinance shall, with effect from the appointed date, be amended by the substitution for the words “*prima facie*” of the word “conclusive”.

Amendment of section 37 of the principal Ordinance.

8. Section 47 of the principal Ordinance shall, with effect from the appointed date, be amended by the substitution for sub-section (2) of that section of the following:—

Amendment of section 47 of the principal Ordinance.

“(2) Subject as hereinafter provided, where on the date referred to in sub-section (1), both parties fail to appear without good and sufficient cause being shown, the Board shall make order dismissing the plaintiff's action; and where on such date one of the parties fails to appear without good and sufficient cause being shown and the other party appears, the Board shall inquire into the matter and make its decision.

Provided, however, that if at any time before a copy of such order or decision is forwarded to the Court under sub-section (5), it is proved to the satisfaction of the Board that the failure of the party or parties to appear was due to accident, misfortune or other unavoidable cause, the Board may rescind such order or decision on such terms as it may deem fit.”.

9. Sections 53 to 63 of the principal Ordinance shall with effect from the appointed date, be re-numbered as sections 54 to 64, respectively, of that Ordinance.

Re-numbering of sections 53 to 63 of the principal Ordinance.

10. The following new section shall, with effect from the appointed date, be inserted immediately after section 52 of the principal Ordinance and have effect as section 53 of that Ordinance:—

Insertion of new section 53 in the principal Ordinance.

Cases stated for opinion of Supreme Court.

53. (1) The Board may in its discretion, at any time in the course of any proceedings under this Ordinance, state a case for the opinion of the Supreme Court on any question of law arising for decision in such proceedings.

Power of Board to state case on question of law for opinion of Supreme Court.

(2) The stated case shall set forth in writing the facts of the case as found by the Board and the question of law upon which the opinion of the Supreme Court is sought, and shall, when signed by the Chairman of the Board be transmitted to the Supreme Court. At or before the time when the stated case is transmitted to the Supreme Court, a copy of the stated case shall also be transmitted to each party to the proceedings.

(3) Any two Judges of the Supreme Court may cause a stated case to be sent back for amendment by the Board and thereupon the case shall be amended accordingly.

(4) Any two Judges of the Supreme Court may hear and determine any question of law arising on a stated case, and upon such determination the Registrar of the Court shall remit the case to the Board with the opinion of the Supreme Court thereon. Such opinion shall be final and conclusive and shall be binding on the Board and on the parties to the proceedings.

(5) Any party to the proceedings may appear either personally or by pleader at the hearing before the Supreme Court.

Amendment of re-numbered section 64 of the principal Ordinance.

11. The re-numbered section 64 of the principal Ordinance shall, with effect from the appointed date, be amended in the definition of "creditor" by the substitution for the word and figures "section 60 (2)" of the word and figures "section 61 (2)".

Objects and Reasons.

The object of this Bill is to effect in the Debt Conciliation Bill, which was passed by the State Council on March 8, 1939, and reserved for the signification of His Majesty's pleasure, certain amendments which the Secretary of State has suggested should be made before the Debt Conciliation Bill becomes law.

2. Clauses 2 and 3 of this Bill amplify the provisions relating to the composition of the Debt Conciliation Board and of Branch Debt Conciliation Boards. In each case it is proposed that the Chairman should be a person who holds or has held office as a Judge of the Supreme Court or as a District Judge, or an officer of Class I. of the Civil Service with judicial experience, or an advocate or proctor of the Supreme Court of not less than fifteen years' standing. Further, it is provided that there should be on the Debt Conciliation Board and on each Branch Board at least one person of standing in the mercantile community recommended for the purpose by the Executive Committee of Agriculture and Lands and at least one advocate or proctor of not less than fifteen years' standing.

3. Clause 5 amends Clause 30 of the Debt Conciliation Bill so as to provide that where an amicable settlement is arrived at between the debtor and any particular secured creditor, the settlement should not be approved by the Board until the Board satisfies itself that the terms of the proposed settlement have been brought to the notice of all the other secured creditors of the debtor.

4. Clause 6 amends Clause 31 of the Debt Conciliation Bill in such a way as to remove the element of compulsion in that Clause whereby certain unsecured creditors might be bound by a settlement to which they have not consented. Under Clause 31 as amended, where the creditors, whether secured or unsecured, to whom more than fifty per centum of the total amount of the debtor's debts is owing arrive at a settlement which the Board considers equitable, the settlement will be accepted by the Board, but will not bind any creditors other than those who are parties to the settlement.

5. Clause 10 provides that the Debt Conciliation Board may at any time in the course of any proceedings state a case on a point of law for the opinion of the Supreme Court. The stated case will be heard and determined by two Judges of the Supreme Court and the parties to the proceedings before the Board will be allowed to appear before the Supreme Court either personally or by pleader.

6. Clauses 7 and 8 introduce certain minor amendments suggested by the Secretary of State. Clauses 9 and 11 effect amendments which are of a consequential nature.

D. S. SENANAYAKE,

Minister for Agriculture and Lands.

Colombo, June 2, 1941.