

# BANKRUPTCY AMENDMENT ACT 1976

## No. 161 of 1976

An Act to make Provision for the Transfer of Jurisdiction from the Federal Court of Bankruptcy to the Federal Court of Australia and for the Abolition of the first-mentioned Court.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

1. (1) This Act may be cited as the *Bankruptcy Amendment Act* 1976.<sup>1</sup> Short title,  
&c.

(2) The *Bankruptcy Act* 1966<sup>2</sup> is in this Act referred to as the Principal Act.

2. This Act shall come into operation on a date to be fixed by Proclamation, not being earlier than the day that is the commencing day for the purposes of the *Federal Court of Australia Act* 1976. Commence-  
ment.

3. Section 27 of the Principal Act is amended—

Bankruptcy  
courts.

(a) by omitting paragraph (a) of sub-section (1) and substituting the following paragraph:—

“(a) the Federal Court of Australia;”; and

(b) by inserting after sub-section (1) the following sub-section:—

“(1A) Where proceedings under this Act were instituted in the Federal Court of Bankruptcy before the date of commencement of this sub-section and the hearing of the proceedings had commenced or been completed before that day, that Court continues to have jurisdiction in bankruptcy under this Act in relation to those proceedings and in relation to proceedings incidental to those proceedings.”.

4. Section 28 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:— Jurisdiction  
and powers  
of courts in  
bankruptcy.

“(1) The Federal Court of Australia and each State Court invested with jurisdiction in bankruptcy by section 27 has jurisdiction in bankruptcy throughout Australia.”.

Transfer of  
certain  
pending  
proceedings.

5. Where, immediately before the date of commencement of this Act, proceedings were pending in the Federal Court of Bankruptcy but the hearing of the proceedings had not commenced—

- (a) the proceedings are, by force of this Act, transferred to the Federal Court of Australia on the date of commencement of this Act;
- (b) the Federal Court of Australia may hear and determine the proceedings;
- (c) all documents filed or lodged, or moneys lodged, with a Registrar in Bankruptcy in relation to the proceedings shall be deemed to have been filed or lodged in relation to the proceedings as so transferred to the Federal Court of Australia; and
- (d) all things done in and in relation to the proceedings in the Federal Court of Bankruptcy shall be deemed to have been done in and in relation to the proceedings in the Federal Court of Australia.

6. (1) Sections 38 and 39 of the Principal Act are repealed and the following section substituted:—

Appeals to  
Federal  
Court of  
Australia.

“38. An appeal from a judgment, order or sentence given or pronounced after the commencement of this section by a State Court exercising jurisdiction in bankruptcy or by the Federal Court of Bankruptcy may be brought to the Federal Court of Australia and not otherwise.”

(2) An appeal to the High Court from a judgment, order or sentence of a State Court exercising jurisdiction in bankruptcy or of the Federal Court of Bankruptcy given or pronounced before the date of commencement of this Act shall not be brought except in accordance with leave given in accordance with section 39 of the Principal Act before that date.

(3) Where, immediately before the date of commencement of this Act, a person had a right of appeal, otherwise than in accordance with leave referred to in sub-section (2), or to seek leave to appeal, to the High Court from a judgment of a State Court exercising jurisdiction in bankruptcy or of the Federal Court of Bankruptcy given before that date, that right is, by force of this section, converted into a corresponding right to appeal or to seek leave to appeal to the Federal Court of Australia.

Transfer  
of certain  
jurisdiction.

7. (1) On and after the date of commencement of this Act, no proceedings shall be instituted in the Federal Court of Bankruptcy.

(2) In sub-section (1), “proceedings” does not include proceedings incidental to proceedings instituted in the Federal Court of Bankruptcy before the date of commencement of this Act.

8. Upon a day to be fixed by Proclamation, being a day on which no person holds office as a Judge of the Federal Court of Bankruptcy, the Federal Court of Bankruptcy is, by force of this Act, abolished.

Abolition of  
Federal  
Court of  
Bankruptcy.

9. (1) In this section—

“former court” means the Federal Court of Bankruptcy;

“proclaimed day” means the day on which the Federal Court of Bankruptcy is abolished under section 8.

Transitional  
provisions.

(2) Where, immediately before the proclaimed day, proceedings in the former court were uncompleted—

(a) the proceedings are, by force of this Act, transferred to the Federal Court of Australia on the proclaimed day;

(b) the Federal Court of Australia may hear, or further hear, the proceedings, if the hearing was not completed before the proclaimed day, and may determine the proceedings, and, for those purposes, a Judge exercising the jurisdiction of the Federal Court of Australia may have regard to any evidence or argument in the proceedings as proceedings in the former court;

(c) all documents filed or lodged, or moneys lodged, with a Registrar in Bankruptcy in relation to the proceedings shall be deemed to have been filed or lodged in relation to the proceedings as so transferred to the Federal Court of Australia; and

(d) all things done in or in relation to the proceedings as proceedings in the former court shall be deemed to have been done in or in relation to the proceedings as proceedings in the Federal Court of Australia.

(3) An order, direction or warrant made, given or issued by the former court or a Judge of the former court and in force immediately before the proclaimed day continues in force, and may be enforced, rescinded, varied, suspended or discharged, and proceedings for contempt of court may be had in relation to such an order or direction, as if the order, direction or warrant had been made, given or issued by the Federal Court of Australia or a Judge of that Court.

(4) Where—

(a) a bankruptcy notice issued under the *Bankruptcy Act* 1966 before the proclaimed day specified the former court as the court to the satisfaction of which payment of a sum could be secured by the judgment debtor; and

(b) the time for compliance with the bankruptcy notice had not expired before the proclaimed day,

the notice has effect on and after that day as if the Federal Court of Australia were the same court as the former court.

(5) Where an order or a notice, summons or other document made or issued by or in relation to proceedings in the former court before the

proclaimed day refers to the former court, the reference shall, for the purposes of the operation of the order or document on or after that day, and for the purposes of proceedings to which this section applies, be deemed to be a reference to the Federal Court of Australia.

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#### NOTES

1. Act No. 161, 1976; assented to 9 December 1976.
2. Act No. 33, 1966, as amended. For previous amendments *see* Act No. 121, 1968; No. 40, 1969; No. 122, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; and No. 91, 1976.