

## CHAPTER 69

### THE BULK SALES ACT.

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## CHAPTER 69

### THE BULK SALES ACT.

*Commencement:* 30 November, 1933.

#### **An Act relating to the sale of goods in bulk. 1.**

##### **Interpretation.**

In this Act, unless the context otherwise requires—

- (a) “creditor” means a person to whom the vendor of any stock as defined by this Act is indebted, whether the debt is due and owing or not yet payable, and includes any surety and the endorser of any promissory note or bill of exchange who would upon payment by him or her of the debt, promissory note or bill of exchange in respect of which the suretyship was entered into or the endorsement was given, become a creditor of such vendor;
- (b) “proceeds of sale” includes the purchase price or consideration payable to the vendor, or passing from the purchaser to the vendor, on a sale in bulk, and the monies realised by a trustee under any security, or by the sale or other disposition of any property coming into his or her hands as the consideration, or part of the consideration, for the sale;
- (c) “sale in bulk” means any sale, transfer, conveyance, barter or exchange of stock or a part of stock, out of the usual course of business or trade of the vendor; a sale, transfer, conveyance, barter or exchange of substantially the entire stock of the vendor; and a sale, transfer, conveyance, barter or exchange of an interest in the business of the vendor; and the word “sale”, whether used alone or in the expression “sale in bulk”, includes a transfer, conveyance, barter or exchange, and an agreement to sell, transfer, convey, barter or exchange;
- (d) “stock” means any stock of goods, wares and merchandise ordinarily the subject of trade and commerce, and the goods, chattels and fixtures ordinarily used in connection with any business;
- (e) “stock in bulk” means any stock or portion of stock, which is the subject of a sale in bulk;
- (f) “vendor” includes any person who barter or exchanges any stock in bulk with any other person for other property, real or personal,

and “purchaser” includes the person who gives such other property in barter or exchange.

## **2. Application.**

This Act shall apply to sales by traders and merchants, defined as follows—

- (a) persons who, as their ostensible occupation or part of their occupation, buy and sell goods, wares and merchandise ordinarily the subject of trade and commerce;
- (b) commission merchants;
- (c) manufacturers.

## **3. Inapplicability of Act to sale by executors, etc.**

Nothing in this Act shall apply to or affect any sale by executors, administrators, receivers, assignees or trustees for the benefit of creditors, any public official acting under judicial process, or traders or merchants selling exclusively by wholesale, or an assignment by a trader or merchant for the general benefit of his or her creditors.

## **4. Duty of purchaser and vendor of stock in bulk as to written statement.**

(1) Except as hereafter provided, each purchaser of any stock in bulk shall, before paying to the vendor any part of the purchase price, or giving any promissory note or any security for the purchase price or part of the purchase price, or executing any transfer, conveyance or incumbrance of other property, demand of and receive from the vendor, and each vendor of such stock in bulk shall furnish to the purchaser, a written statement verified by the statutory declaration of the vendor or his or her duly authorised agent or, if the vendor is a corporation, by the statutory declaration of its chairperson, secretary or manager, which statement shall contain the names and addresses of all the creditors of the vendor, together with the amount of the indebtedness or liability due, owing, payable or accruing due or to become due and payable by the vendor to each of the creditors, which statement and declaration may be in the form set forth in the First Schedule to this Act or to the like effect; except that any purchaser may before obtaining the statement pay to the vendor a sum not exceeding two hundred shillings on account of the purchase price.

(2) From and after the furnishing of the statement and declaration

provided for by this section, no preference or priority shall be obtainable by any creditor of the vendor in respect of such stock in bulk or the proceeds of sale of that stock in bulk by attachment, garnishee proceedings, contract or otherwise.

(3) The vendor shall immediately after furnishing the statement and declaration to the purchaser send by registered post to each creditor appearing on the statement a copy of the statement and declaration.

#### **5. Additional necessary acts on completion of sale.**

At the time of the completion of every sale in bulk, some one of the following provisions shall also be complied with—

- (a) the claims of all the creditors of the vendor as shown by the written statement shall be paid in full;
- (b) the vendor shall produce and deliver to the purchaser a written waiver of the provisions of this Act, other than the provisions contained in section 4, from creditors of the vendor representing not less than 60 percent in number of the total number of claims and not less than 60 percent in amount of the claims exceeding two hundred shillings as shown by the written statement, which waiver may be in the form set forth in the Second Schedule to this Act, or to the like effect; or
- (c) the vendor shall produce and deliver to the purchaser the written consent to the sale in bulk of creditors of the vendor representing not less than 60 percent in number of the total number of claims and not less than 60 percent in amount of the claims exceeding two hundred shillings as shown by the written statement.

#### **6. Disposition of proceeds of sale made with written consent of creditors.**

Where a sale in bulk is made with the written consent of the creditors of the vendor, under section 5(c), the entire proceeds of the sale shall be paid, delivered and conveyed to the person named as trustee by the creditors in the written consent, or, if no trustee is named in the written consent, then to the trustee named by the vendor or appointed under section 12, to be dealt with by any such trustee as provided by section 7.

## **7. Duties of trustee receiving proceeds of sale.**

In case the proceeds of sale are paid, delivered or conveyed to a trustee under section 6, the trustee shall be a trustee for the general benefit of the creditors of the vendor and shall distribute the proceeds of the sale pro rata among the creditors of the vendor as shown by the statement, and such other creditors of the vendor as file claims with the trustee in accordance with the Bankruptcy Act; and the distribution shall be made in like manner as monies are distributed by a trustee under the Bankruptcy Act, and in making the distribution all creditors' claims shall be proved in like manner, shall be subject to the like contestation and entitled to the like priorities as in the case of a distribution under that Act, and the creditors, trustee and vendor shall in all respects have the same rights, liabilities and powers as the creditors, debtor and trustee respectively have under the Deeds of Arrangement Act, the vendor being for that purpose deemed to be a debtor under the provisions of the Deeds of Arrangement Act, and the trustee a trustee under that Act.

## **8. Fees or commission of trustee.**

The fees or commission of any such trustee shall not exceed 3 percent of the total proceeds of the sale which come to his or her hands, and, in the absence of an agreement by the vendor to the contrary, the fees or commission, together with any disbursements made by the trustee, shall be paid by being deducted out of the monies to be received by the creditors and shall not be charged to the vendor.

## **9. Effect of noncompliance with Act.**

(1) Every sale in bulk in respect of which the provisions of this Act have not been complied with shall be deemed to be fraudulent and void as against the creditors of the vendor; and every payment made on account of the purchase price, and every delivery of any note or other security therefor, and every transfer, conveyance and incumbrance of property by the purchaser, shall be fraudulent and void, as between the purchaser and the creditors of the vendor.

(2) Notwithstanding subsection (1), if the purchaser has received or taken possession of the stock which is the subject of the sale in bulk, or any part of the stock, he or she shall be personally liable to account to the creditors of the vendor for all monies, security or property realised or taken by him or her from, out of, or on account of the sale or other disposition by

him or her of the stock, or any part of it; and in any action brought or proceedings had or taken by a creditor of the vendor within the time limited by section 11 to set aside or have declared void a sale in bulk, or in the event of a seizure of the stock in the possession of the purchaser, or some part of the stock, under judicial process issued by or on behalf of a creditor of the vendor within such period, the purchaser shall be estopped from denying that the stock in his or her possession at the time of such action, proceedings or seizure is the stock purchased or received by him or her from the vendor.

(3) If the stock then in the possession of the purchaser, or some part of it, was in fact purchased by him or her subsequent to the sale in bulk from someone other than the vendor of the stock in bulk and has not been paid for in full, the creditors of the purchaser, to the extent of the amounts owing to them for such goods so supplied, shall be entitled to share pro rata with the creditors of the vendor in the amount realised on the sale or other disposition of the stock in the possession of the purchaser at the time of such action, proceedings or seizure, in like manner and within the same time as if they were creditors of the vendor.

#### **10. Burden of proof in action respecting sale in bulk.**

In any action, issue or proceeding in which a sale in bulk is attacked or comes in question, whether directly or collaterally, the burden of proof that the provisions of this Act have been complied with shall rest upon the person upholding the sale in bulk.

#### **11. Limitation of action respecting sale in bulk.**

No action shall be brought or proceedings had or taken to set aside or have declared void any sale in bulk for failure to comply with the provisions of this Act, unless the action is brought within six months from the date of the sale.

#### **12. Appointment of trustee by judge.**

Upon the application of any person interested, if the creditors of the vendor in their written consent to a sale in bulk have not named a trustee and the vendor has not named one, a judge of the High Court shall by order appoint a trustee and fix the security, if any, to be given by him or her.

## SCHEDULES

### *First Schedule.*

s. 4.

#### **Statement and Declaration.**

Statement showing names and addresses of all creditors of \_\_\_\_\_ .

Name of creditor	Post office address	Nature of indebtedness	Amount	When due

I, \_\_\_\_\_, of \_\_\_\_\_  
in Uganda, solemnly declare that the above is a true and correct statement of  
the names and addresses of all \_\_\_\_\_  
creditors, and shows correctly the amount of indebtedness or liability due,  
owing, payable or accruing due, or to become due and payable by  
\_\_\_\_\_ to each of the creditors. (*If the  
declaration is made by an agent, add: I am the duly authorised agent of the  
vendor and have a personal knowledge of the matter herein declared to.*)

*(Or, if the vendor is a corporation)—*

I, \_\_\_\_\_, of \_\_\_\_\_  
in Uganda, solemnly declare that the above is a true and correct statement of  
the names and addresses of all the creditors of the  
\_\_\_\_\_ company, and shows correctly the  
amount of the indebtedness or liability due, owing, payable or accruing due,  
or to become due and payable by the company to each of the creditors, and  
that I am the \_\_\_\_\_ of the company, and have

a personal knowledge of the matters herein declared to.

And I make this solemn declaration conscientiously believing it to be true and by virtue of the provisions of the Statutory Declarations Act.

Declared before me at \_\_\_\_\_ of \_\_\_\_\_ in Uganda this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Commissioner, etc.

*Second Schedule.*

s. 5.

**Waiver.**

We, the undersigned creditors of \_\_\_\_\_ of \_\_\_\_\_ in Uganda, waive the provisions of the Bulk Sales Act, insofar as the Act would apply to, affect or cause to make fraudulent or void the sale in bulk by \_\_\_\_\_ (*name*) of his or her stock of goods, wares, merchandise and fixtures, or part thereof, or an interest in his or her business (*as the case may be*) to \_\_\_\_\_ of \_\_\_\_\_, and we admit having received notice of the intended sale and agree not to disturb, dispute or question the validity of the sale in any way under the provisions of that Act.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Signed in the presence of

**History:** Cap. 78; Act 10/2000, s.13.

**Cross References**

Bankruptcy Act, Cap. 67.

Deeds of Arrangement Act, Cap. 75.

Statutory Declarations Act, Cap. 22.



