



MONTSERRAT

## CHAPTER 2.17

### **DEBTORS ACT** and Subsidiary Legislation

#### **Revised Edition**

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

#### **DEBTORS ACT**

Act 2 of 1888 .. in force 31 December 1888

Amended by S.R.O. 15/1956

Amended by Act 10 of 1984

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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#### **DEBTORS (COMMITTAL) RULES – Section 8**

Leeward Islands Gazette 4.12.1890

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**CHAPTER 2.17**

**DEBTORS ACT**

**ARRANGEMENT OF SECTIONS**

SECTION

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**ABOLITION OF IMPRISONMENT FOR DEBT**

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## CHAPTER 2.17

### DEBTORS ACT

*(Act 2 of 1888, S.R.O. 15/1956, Acts 10 of 1984 and 9 of 2011)*

#### Commencement

*[31 December 1888]*

#### Short title

1. This Act may be cited as the Debtors Act.

#### Interpretation

2. In Part 1 of this Act—

“**Court**” means the High Court;

“**receiving order**” means a receiving order made under the provisions of any Bankruptcy Act.

### PART 1

#### ABOLITION OF IMPRISONMENT FOR DEBT

#### Abolition of imprisonment for debt

3. With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money; except for—

- (a) default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract;
- (b) default in payment of any sum recoverable summarily before a Magistrate;
- (c) default by a trustee or person acting in a fiduciary capacity, and ordered by a Court to pay any sum in his possession or under his control;
- (d) default by a solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the Court making the order;
- (e) default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any Court having jurisdiction in bankruptcy is authorised to make an order;

- (f) default in payment of sums in respect of payment of which orders are in this Act authorised to be made:

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any Court for payment of money, except as regards the arrest and imprisonment of the person making default in paying such money.

### **Saving of power of committal for judgment debts**

4. (1) Subject to the provisions hereinafter mentioned, and to the prescribed rules, the Court may commit to prison for a term of six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent Court:

Provided—

- (a) that the jurisdiction by this section given of committing a person to prison shall, subject to any rules, be exercised only by a Judge, and by an order made in open Court, and showing on its face the ground on which it is issued;

*(Amended by Act 10 of 1984)*

- (b) that such jurisdiction shall only be exercised where it is proved to the satisfaction of the Court that the person making default either has, or has had since the date of the order or judgment, the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

(2) Proof of the means of the person making default may be given in such manner as the Court thinks just; and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined on oath according to the prescribed rules.

(3) Any jurisdiction by this section given to the Court may be exercised by a Judge sitting in Chambers, or otherwise, in the prescribed manner.

(4) For the purposes of this section, any Court may direct any debt due from any person, in pursuance of any order or judgment of that or any other competent Court, to be paid by instalments, and may from time to time rescind or vary such order.

(5) No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands, goods, or chattels of the person imprisoned in the same manner as if such imprisonment had not taken place.



(6) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of the debt in respect of which he was imprisoned, together with the prescribed costs (if any).

### **Court may make a receiving order**

5. The Court may, if it thinks fit, on any application, made to it under section 4, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made.

### **Power under certain circumstances to arrest defendant about to quit Montserrat**

6. (1) After the commencement of this Act, a person shall not be arrested upon mesne process in any action.

(2) Where the plaintiff in any action in the Court in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath, to the satisfaction of a judge, that the plaintiff has good cause of action against the defendant to the amount of \$200 upwards, and that there is probable cause for believing that the defendant is about to quit Montserrat unless he be apprehended, and that the absence of the defendant from Montserrat will materially prejudice the plaintiff in the prosecution of his action, such judge may, in the prescribed manner, order such defendant to be arrested and imprisoned for a period of six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of Montserrat without the leave of the Court. *(Amended by Act 10 of 1984)*

(3) Where the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from Montserrat will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of Montserrat) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.

### **Saving for Bankruptcy Act**

7. Nothing in this Part shall in any way affect any right or power under any Bankruptcy Act in force in Montserrat to arrest or imprison any person.

## Rules

8. All general rules and orders may, respectively, be made by the Governor acting on the advice of Council, for the purpose of carrying into effect this Part.

*(Amended by Act 9 of 2011)*

## PART 2

### PUNISHMENT OF FRAUDULENT DEBTORS

#### **Punishment of fraudulent debtors**

9. Any person adjudged bankrupt shall, in each of the cases following, be deemed guilty of an offence, and shall be liable to be imprisoned for a term of two years; that is to say—

- (a) if he does not, to the best of his knowledge and belief fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud;
- (b) if he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud;
- (c) if he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writing in his custody, or under his control, relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals any part of his property to the value of \$400 or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud;  
*(Amended by Act 10 of 1984)*
- (e) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently removes any part of his property of the value of \$400 or upwards; *(Amended by Act 10 of 1984)*

- (f) if he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud;
- (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails, for the period of a month, to inform such trustee as aforesaid thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
- (j) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law;
- (k) if, after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs;
- (l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
- (m) if, within four months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;
- (n) if, within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the jury is satisfied that he had no intent to defraud;

- (o) if, within four months next before the presentation of a bankruptcy petition by or against him, he being a trader, pawns, pledges, or disposes of otherwise than in the ordinary way of his trade, any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud;
- (p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors, or any of them, to any agreement with reference to his affairs or his bankruptcy.

### **Penalty for absconding with property**

**10.** If any person who is adjudged a bankrupt, after the presentation of a bankruptcy petition by or against him, or within four months before such presentation, quits Montserrat and takes with him, or attempts or makes preparation for quitting Montserrat and for taking with him, any part of his property to the amount of \$800 or upwards, which ought by law to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of an offence, punishable with imprisonment for a term of two years.

*(Amended by Act 10 of 1984)*

### **Penalty for fraudulently obtaining credit, etc.**

**11.** Any person shall, in each of the cases following, be deemed guilty of an offence, and shall be liable to be imprisoned for a term of one year; that is to say—

- (a) if, in incurring any debt or liability, he has obtained credit under false pretences, or by means of any other fraud;
- (b) if he has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property;
- (c) if he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

### **False claim etc., an offence**

**12.** If any creditor in any bankruptcy wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is untrue in any material particular, he shall be guilty of an offence, punishable with imprisonment for a term of one year.

### **Debts incurred by fraud**

**13.** Where a debtor makes any arrangement or composition with his creditors under the provisions of any Bankruptcy Act in force in Montserrat, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof, before the date of the arrangement or composition, he obtained forbearance, by any fraud; provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

### **Order by Court for prosecution on report of trustee**

**14.** Where a trustee or official receiver in any bankruptcy reports to any Court exercising jurisdiction in bankruptcy that, in his opinion, a bankrupt has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor, or member of the committee of inspection, that there is ground to believe that the bankrupt has been guilty of any offence under this Act, the Court shall, if it appears to the Court that there is a reasonable probability that the bankrupt may be convicted, order the trustee to prosecute the bankrupt for such offence.

### **Power for Court to commit for trial**

**15. (1)** Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by statute made a misdemeanour in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

**(2)** For the purpose of committing the bankrupt or such other person for trial, the Court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail, or otherwise.

### **Expenses of prosecution**

**16.** Where the prosecution of the bankrupt under this Act is ordered by any Court, then, on the production of the order of the Court, the expenses of the prosecution shall be allowed, paid, and borne as expenses of prosecutions for arrestable offences are allowed, paid, and borne.

### **Form of indictment**

**17.** In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceeding in, or order, warrant, or document of any Court acting under any Bankruptcy Act.

**Criminal liability after discharge or composition**

**18.** Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor, by reason that he has obtained his discharge, or that a composition or scheme of arrangement has been accepted or approved.

**Punishments under this Act not cumulative**

**19.** Where any person is liable under any other Act or at common law, to any punishment or penalty for any offence made punishable by this Act, such person may be proceeded against under such other Act, or at common law, or under this Act, so that he be not punished twice for the same offence.

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**DEBTORS (COMMITTAL) RULES**

ARRANGEMENT OF RULES

RULE

1. Short title
2. Application for Committal
3. Service of Summons
4. Proof of means
5. Order of Committal
6. Certificate to be given to debtor on payment of debt
7. Procedure for obtaining order of arrest
8. Endorsement of plaintiff's address for service on order
9. Nature of security to be given by defendant
10. Control of security
11. Costs
12. Payment into Court
13. Endorsement on order of date of arrest

SCHEDULE: Forms

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**DEBTORS (COMMITTAL) RULES – SECTION 8**

*(Leeward Islands Gazette 4.12.1890)*

**Short title**

1. These Rules may be cited as the Debtors (Committal) Rules.

**Application for Committal**

2. All applications to commit to prison under section 4 of the Debtors Act shall in the first instance be made by summons before a Judge of the High Court which shall specify the date and other particulars of the judgment or order, for non-payment of which the application is made, together with the amount due, and be endorsed with the following particulars—

- (a) where the summons is taken out by a solicitor, with the name, place of abode, or office of business of such solicitor; and
- (b) where no solicitor is employed to take out such summons then with a memorandum expressing that the same has been taken out by the plaintiff in person and setting forth the full name and address of such plaintiff.

**Service of summons**

3. The service of the summons wherever it may be practicable shall be personal, but if it appears to the Judge that reasonable efforts have been made to effect personal service, and either that the summons has come to the knowledge of the debtor, or that he wilfully evades service, an order may be made as if personal service had been effected, upon such terms as to the Judge may seem fit.

**Proof of means**

4. Proof of means of the debtor shall, whenever practicable, be given by affidavit, but if it appears to the Judge, either before or at the hearing that a *viva voce* examination, either of the debtor or any other person, or the production of any document, is necessary or expedient, an order may be made commanding the attendance of any such person before the Judge at a time and place to be therein mentioned, for the purpose of being examined on oath touching the matter in question, (or, and) for the production of any such document, subject to such terms and conditions as to the Judge may seem fit. The disobedience to any such order shall be deemed a contempt of Court and punishable accordingly.

**Order of Committal**

5. The order of committal (which may be in the Form A in the Schedule or to the like effect) shall, before delivery to the Bailiff be endorsed with the particulars required by rule 2. The Bailiff shall be entitled to the same fees in respect thereof as are payable for executing a writ of attachment.

**Certificate to be given to debtor on payment of debt**

6. Upon payment of the sum or sums mentioned in the order including the Bailiff's fees as aforesaid, the debtor shall be entitled to a certificate in Form B in the Schedule or to the like effect signed by the solicitor in the cause of the creditor, or signed by the creditor and attested by a solicitor on his behalf, or a Justice of the Peace.

**Procedure for obtaining order of arrest**

7. An order to arrest under section 6 of the Debtors Act (which shall be in the Form C in the Schedule with such variations as circumstances may require) shall be made upon affidavit and *ex parte*, but the defendant may at any time after arrest apply to the Court or a Judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just.

**Endorsement of plaintiff's address for service on order**

8. An order to arrest shall, before delivery to the Bailiff, be indorsed with the plaintiff's address for service. The Bailiff shall be entitled to the same fees as those mentioned in rule 5.

**Nature of security to be given by defendant**

9. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a Judge either one surety or more than two) or with the plaintiff's consent, any other form of security. The plaintiff may, within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objection. In such case the sufficiency of the security shall be determined by the Registrar who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within four days after giving notice of objection, the security shall be deemed sufficient.

**Control of security**

10. The money deposited and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a Judge.

**Costs**

11. Unless otherwise ordered, the costs of and incidental to an order of arrest shall be costs in the cause.

**Payment into Court**

12. Upon payment into Court of the amount mentioned in the order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor if he has one, or by the plaintiff if he sues in person. The delivery of such receipt or a certificate to the Bailiff shall entitle the defendant to be discharged out of such custody.

**Endorsement on order of date of arrest**

13. The Bailiff or the officer executing an order to arrest shall, within two days after the arrest, indorse on the order the true date of such arrest.

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**SCHEDULE**

**FORMS**

FORM A

(Rule 5)

In the Eastern Caribbean Supreme Court

Montserrat

Between A.B. Plaintiff

and

C.D. Defendant.

Suit No. of  
20.....



IN THE MATTER OF THE DEBTORS ACT

Upon hearing etc.

I do order that the said C.D. be for default in payment of the debt hereinafter mentioned committed to prison for the term of (..... ) weeks from the date of his arrest, including the day of such date, or until he shall pay \$ ..... being the amount of \*(an instalment due to the said A.B. upon), (or a judgment of the Court of ..... ) (or an order made by ..... ) bearing date the ..... day of ..... together with \$ ..... for costs of this order, and Bailiff's fees, for the execution thereof. And I order that the Bailiff of ..... do take the said C.D. for the purpose aforesaid, wherever he may be found within Montserrat.

Dated the ..... day of ....., 20..... .

\* Delete inapplicable phrase

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FORM B

(Rule 6)

I certify that C.D. now in the prison at .....  
upon an order of the Honourable Mr. Justice ..... at the suit of  
A.B. for non-payment of a debt of \$ ..... has satisfied the said debt,  
together with the costs mentioned in the said order, and Bailiff's fees.

Dated the ..... day of ....., 20..... .

E.F. of etc.  
Solicitor for the said A.B.  
or A.B. of etc.

Witness to the signature of A.B.  
G.H. of etc. his solicitor,  
or J.K. Justice of the Peace for

\_\_\_\_\_

FORM C

(Rule 7)

In the Eastern Caribbean Supreme Court

Montserrat

Between A.B. Plaintiff

and

C.D. Defendant.

Suit No. of  
20.....



IN THE MATTER OF THE DEBTORS ACT

Upon hearing ..... and upon reading the affidavit  
of ..... filed the ..... day of ....., 20..... .

It is ordered that the defendant be arrested and imprisoned for the term  
of ..... from the date of his arrest, including the day of such date,  
unless and until he shall sooner deposit in Court the sum of \$ ....., or  
give to the plaintiff a bond executed by him and two sufficient sureties in the penalty  
of \$ ..... or some other security satisfactory to the plaintiff that .....

And it is further ordered that the Bailiff of ..... do take the  
defendant for the purpose aforesaid wherever he may be found within Montserrat.

Dated the ..... day of ....., 20..... .

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