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GOVERNMENT GAZETTE

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1289.

20 July 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 122 of 1993: Insolvency Amendment Act, 1993.

No. 1289.

20 Julie 1993

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 122 van 1993: Insolvensiewysigingswet, 1993.

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Insolvency Act, 1936, so as to further regulate the particulars to be furnished in an application for sequestration; to provide for further notices to officers charged with the registration of title to immovable property and for the registration of such notices; to regulate the expiration of certain caveats; to place obligations on a trustee with regard to the transmission of particulars in respect of the insolvent and his spouse to certain officers; to authorize a trustee, with the consent of the Master of the Supreme Court, to cause a caveat to be registered; to further regulate the registration of transactions in respect of immovable property after the expiry of caveats; to provide for the recovery of the value of immovable property disposed of unlawfully; and to amplify the particulars to be furnished in a statement of affairs; to amend the Deeds Registries Act, 1937, so as to authorize the Registrar of Deeds to destroy records relating to a caveat which has expired; to amend the Matrimonial Property Act, 1984, so as to further regulate an application for the sequestration of a joint estate; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 9 July 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 9 of Act 24 of 1936, as amended by section 6 of Act 16 of 1943 and section 2 of Act 99 of 1965

1. Section 9 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) (a) Such a petition shall **[set forth]**, subject to the provisions of paragraph (c), contain the following information, namely—

- | | | |
|---|----|----|
| <ul style="list-style-type: none"> (i) the full names and date of birth of the debtor and, if an identity number has been assigned to him, his identity number; (ii) the marital status of the debtor and, if he is married, the full names and date of birth of his spouse and, if an identity number has been assigned to his spouse, the identity number of such spouse; (iii) the amount, cause and nature of the claim in question [,shall state]; (iv) whether the claim is or is not secured and, if it is, the nature and value of the security; and [shall set forth] (v) the debtor's act of insolvency upon which the petition is based or otherwise allege that the debtor is in fact insolvent. | 10 | 15 |
|---|----|----|

(b) The facts stated in the petition shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master given not more than ten days before the date of such petition that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed, of all fees and charges necessary for the discharge of the estate from sequestration. 5

(c) The particulars contemplated in paragraph (a)(i) and (ii) shall also be set out in the heading to the petition, and if the creditor is unable to set out all such particulars he shall state the reason why he is unable to do so. 10

(d) In issuing a sequestration order the registrar shall reflect any of the said particulars that appear in the heading to the petition on such order.”

Amendment of section 17 of Act 24 of 1936, as amended by section 10 of Act 16 of 1943 and section 1 of Act 57 of 1951

2. Section 17 of the principal Act is hereby amended— 15

(a) by the substitution for subsection (2) of the following subsection:

“(2) Every officer who has received an order transmitted to him in terms of subsection (1), or a certificate and a copy of an order transmitted to him in terms of section 18A, shall register [it] each such order, certificate or copy and note thereon the day and hour when it was received in his office.”; and 20

(b) by the substitution for subsection (3) of the following subsection:

“(3) (a) Upon the receipt by any officer referred to in subparagraph (ii) of paragraph (b) of subsection (1) of a sequestration order, or of a certificate and a copy of an order referred to in section 18A, he shall, if he has not yet entered such a caveat, enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent [or to his or her spouse], and if the sequestration order or the certificate referred to in section 18A contains the name of the spouse of the insolvent, he shall in like manner enter a caveat in respect of such spouse. 25 30

(b) A caveat contemplated in this subsection, whether it was entered before or after the commencement of the Insolvency Amendment Act, 1993, shall expire ten years after the date of the sequestration order in question, or six months after the commencement of the said Act, whichever date is the later.”. 35

Insertion of sections 18A and 18B in Act 24 of 1936

3. The following sections are hereby inserted in the principal Act after section 18: 40

“Trustee to furnish particulars of insolvent

18A. Any person appointed as provisional trustee after the commencement of the Insolvency Amendment Act, 1993, or if no provisional trustee has been appointed, or if the provisional trustee has failed to perform the duties mentioned below, a trustee appointed after the said commencement shall as soon as possible after his appointment determine whether the particulars referred to in section 9(3)(a)(i) and (ii) are correctly reflected in the sequestration order, and if any of such particulars are not so reflected or are incorrectly reflected he shall forthwith take all reasonable steps to obtain the correct particulars and shall transmit a certificate containing such particulars, a copy of the sequestration order and of his appointment to every officer charged with the registration of title to any immovable property in the Republic and to the Master. 45 50

Trustee may cause caveat to be entered

18B. (1) A trustee may, before or after the rehabilitation of an insolvent, with the written consent of the Master, by notice to the officer charged with the registration of title to immovable property in the Republic, in respect of immovable property or a bond registered in the name of the insolvent or of his spouse contemplated in section 21(13), cause a caveat to be entered against the transfer of the immovable property or the cancellation or cession of the bond referred to in the notice. 5

(2) The notice referred to in subsection (1) shall be accompanied by the written consent of the Master contemplated in that subsection and shall identify sufficiently the person in respect of whom and the property or bond in respect of which the caveat is to be entered so as to enable the officer charged with the registration to enter the caveat as contemplated in the said subsection. 10 15

(3) The caveat shall remain in force until the date indicated by the Master in his consent.”

Amendment of section 25 of Act 24 of 1936, as amended by section 2 of Act 6 of 1972**4. Section 25 of the principal Act is hereby amended—**

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) The estate of an insolvent shall remain vested in the trustee until the insolvent is reinvested therewith pursuant to a composition as in section 119 provided, or until the rehabilitation of the insolvent in terms of section 127 or 127A: Provided that, subject to the provisions of subsection (3), any property which immediately before the rehabilitation is vested in the trustee shall remain vested in him after the rehabilitation for the purposes of realization and distribution.”; and 25

(b) by the addition of the following subsections:

“(3) After the expiry of every caveat entered in terms of section 17(3), 18B or 127A in respect of the property of an insolvent any act of registration in respect of such property brought about by him shall be valid in spite of the fact that the property formed part of his insolvent estate. 30

(4) If a person who is or was insolvent unlawfully disposes of immovable property or a right to immovable property which forms part of his insolvent estate, the trustee may, notwithstanding the provisions of subsection (3), recover the value of the property or right so disposed of— 35

(a) from the insolvent or former insolvent; 40

(b) from any person who, knowing such property or right to be part of the insolvent estate, acquired such property or right from the insolvent or former insolvent; or

(c) from any person who acquired such property or right from the insolvent or former insolvent without giving sufficient value in return, in which case the amount so recovered shall be the difference between the value of the property or right and any value given in return.”. 45 50

Amendment of section 32 of Act 24 of 1936**5. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50**

“(1) (a) Proceedings to recover the value of property or a right in terms of section 25(4), to set aside any disposition of property under section 26, 29, 30 or 31, or for the recovery of compensation or a penalty under section 31, may be taken by the trustee. 55

(b) If the trustee fails to take any such proceedings they may be taken by any creditor in the name of the trustee upon his indemnifying the trustee against all costs thereof.”

Amendment of section 104 of Act 24 of 1936

6. Section 104 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) If any creditor has under subsection (1) of section 32 taken proceedings to recover the value of property or a right under section 25(4), to set aside any disposition of or dealing with property under section 26,29, 30 or 31 or for the recovery of damages or a penalty under section 31, no creditor who was not a party to the proceedings shall derive any benefit from any moneys or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every creditor who was a party to such proceedings have been paid in full.” 10

Substitution of section 127A of Act 24 of 1936, as inserted by section 6 of Act 6 of 1972 15

7. The following section is hereby substituted for section 127A of the principal Act:

“Rehabilitation by effluxion of time

127A. (1) Any insolvent not rehabilitated by the court within a period of ten years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period unless a court upon application by an interested person after notice to the insolvent orders otherwise prior to the expiration of the said period of ten years [or before the 31st December, 1972, whichever date is the later]. 20 25

(2) If a court issues an order contemplated in subsection (1), the registrar shall transmit a copy of the order to every officer charged with the registration of title to any immovable property in the Republic. 30

(3) Upon receipt of the order by such officer he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent. 35

(4) The caveat shall remain in force until the date upon which the insolvent is rehabilitated.”

Amendment of First Schedule to Act 24 of 1936

8. The First Schedule to the principal Act is hereby amended by the substitution for Annexure VIII of Form B of the following Annexure:

“ANNEXURE VIII 40

PERSONAL INFORMATION

State whether the debtor is married, widowed or divorced

.....
If the debtor is or was married, state—

(a) name or names of spouse or spouses (a ‘spouse’ means not only a wife or husband in the legal sense, but also a wife or husband by virtue of a marriage according to any law or custom, and also a woman living with a man as his wife or a man living with a woman as her husband, although not married to one another) 45

..... 50
.....;

[and]

(b) whether the debtor is or was married in or without community of property and whether the accrual system applies 5

(c) date of marriage 5

(d) whether the matrimonial property system has been changed since entering into the marriage and, if so, the nature of the change 10

(e) full names and date of birth of the spouse and, if an identity number has been assigned, the identity number of the spouse 10

State the debtor's [race and] nationality 15

State the debtor's place of birth, date of birth and, if an identity number has been assigned, the identity number 15

Was the debtor's estate or the estate of a partnership in which the debtor is or was a partner previously sequestrated or placed in bankruptcy, whether in the Republic or elsewhere? 20

If the preceding answer is in the affirmative, state—

(a) whether the debtor's own estate or his partnership's estate was (i) sequestrated; or (ii) placed in bankruptcy 25

(b) the place where and the date when that estate was sequestrated or placed in bankruptcy 30

(c) whether the debtor has been rehabilitated or his estate released; if so, when 35

The foregoing balance sheet and statements shall be verified by an affidavit in the subjoined form, made by the debtor or by the person who on behalf of the debtor presented the petition tendering the surrender of the debtor's estate, or who is the representative of the debtor or his estate. 40

AFFIDAVIT

I, declare under oath/solemnly and sincerely declare* that to the best of my knowledge and belief the statements contained in the foregoing balance sheet and the Annexures thereto are true and complete, and that every estimated amount therein contained is fairly and correctly estimated. 45

Signature of declarant
Sworn * before me on the 50
Solemnly declared
day of at

.....
Commissioner of Oaths

*Delete inappropriate words.”. 55

Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980, section 3 of Act 27 of 1982 and section 28 of Act 88 of 1984

9. Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5

“(a) take charge of and, except as provided in subsection (2) or (3), preserve or cause to be preserved all records which were prior to the commencement of this Act, or may become after such commencement, records of any deeds registry in respect of which he has been appointed: 10
Provided that the registrar may destroy or otherwise dispose of any record as prescribed which has been cancelled in terms of this subsection or any record in connection with a caveat that has expired in terms of section 17(3), 18B or 127A of the Insolvency Act, 1936 (Act No. 24 of 1936);” 15

Amendment of section 58 of Act 47 of 1937, as substituted by section 17 of Act 27 of 1982

10. Section 58 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) Immovable property which has vested in a trustee in accordance with the law relating to insolvency and which has not in terms of that law been re-vested in the insolvent may, subject to the provisions of section 25(3) of the Insolvency Act, 1936 (Act No. 24 of 1936), whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee: 25
Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.”; and 30

(b) by the substitution for subsection (2) of the following subsection:

“(2) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-vested with the ownership of any property, such property may not, subject to the provisions of section 25(3) of the Insolvency Act, 1936 (Act No. 24 of 1936), be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement that the property has been restored to him, has been made by the registrar on the title deed of the property.” 35 40

Amendment of section 17 of Act 88 of 1984

11. Section 17 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) An application for the surrender of a joint estate shall be made by both spouses. [and] 45

(b) [an] An application for the sequestration of a joint estate shall be made against both spouses: Provided that no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the applicant satisfies the court that despite reasonable steps taken by him he was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.” 50

Short title and commencement

12. (1) This Act shall be called the Insolvency Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette. 55

(2) Different dates may be so fixed in respect of different provisions of this Act.