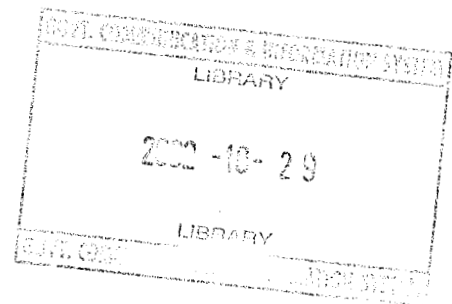


REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
INSOLVENCY SECOND
AMENDMENT BILL**

[B 53—2002]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*



[B 53A—2002]

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AMENDMENTS AGREED TO

INSOLVENCY SECOND AMENDMENT BILL
[B 53—2002]

CLAUSE 2

1. On page 3, in line 5, to omit all the words after “(a)” up to and including “petition,” in line 6 and to substitute:

When a petition is presented to the court, the petitioner must

2. On page 3, in line 8, to omit “to the debtor’s knowledge” and to substitute:

as far as the petitioner can reasonably ascertain

3. On page 3, in line 11, after the second “the” to insert “petitioner and the”.

4. On page 3, in line 13, after the second “the” to insert “petitioner and the”.

5. On page 3, in line 16, to omit “immediately prior to” and to substitute “at the time of”.

6. On page 3, after line 17, to insert:

(iv) to the debtor, unless the court, at its discretion, dispenses with the furnishing of a copy where the court is satisfied that it would be in the interest of the debtor or of the creditors to dispense with it.

7. On page 3, from line 18, to omit paragraphs (b) and (c) and to substitute:

(b) The petitioner must, before or during the hearing, file an affidavit by the person who furnished a copy of the petition which sets out the manner in which paragraph (a) was complied with.

CLAUSE 3

1. On page 3, in line 40, to omit “contemplated in section 4(2)” and to substitute “referred to in subsection (4)”.

2. On page 3, in line 41, to omit “in the manner contemplated in section 4(2)” and to substitute:

by affixing a copy of the petition to any notice board to which the employees have access inside the debtor’s premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the petition

CLAUSE 4

1. On page 4, from line 6, to omit “provisional sequestration of his or her estate” and to substitute:

[provisional sequestration of his estate] presentation of the petition

CLAUSE 5

Clause rejected.

CLAUSE 6

1. On page 4, in line 17, to omit "The directors of a company in respect of which" and to substitute "When".
2. On page 4, in line 18, to omit all the words after "section" up to and including "application," in line 19 and to substitute ", the applicant must".
3. On page 4, in line 21, to omit "any" and to substitute "every".
4. On page 4, in line 21, to omit "to the knowledge of the directors" and to substitute:

as far as the applicant can reasonably ascertain
5. On page 4, in line 24, after the second "the" to insert "applicant and the".
6. On page 4, in line 26, after the second "the" to insert "applicant and the".
7. On page 4, in line 29, to omit "immediately prior to" and to substitute "at the time of".
8. On page 4, after line 30, to insert:

(iv) to the company, unless the application is made by the company, or the court at its discretion, dispenses with the furnishing of a copy where the court is satisfied that it would be in the interests of the company or of the creditors to dispense with it.
9. On page 4, from line 31, to omit paragraphs (b), (c) and (d) and to substitute:

(b) The applicant must, before or during the hearing, file an affidavit by the person who furnished a copy of the application which sets out the manner in which paragraph (a) was complied with.

CLAUSE 7

1. On page 4, in line 45, to omit "any" and to substitute "every".
2. On page 4, in line 45, to omit "contemplated in section 346(4A)" and to substitute "referred to in subsection (2)".
3. On page 4, from line 46, to omit "in the manner contemplated in section 346(4A); and" and to substitute:

by affixing a copy of the application to any notice board to which the employees have access inside the debtor's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application;
4. On page 4, after line 48, to insert:

(d) the company, unless the application was made by the company.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 347 of Act 61 of 1973

7. Section 347 of the Companies Act, 1973, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Whenever the court is satisfied that an application for the winding-up of a company is an abuse of the court’s procedure or is malicious or vexatious, the court may allow the company forthwith to prove any damages which it may have sustained by reason of the application and award it such compensation as the court may deem fit.”.

CLAUSE 8

Clause rejected.

CLAUSE 9

1. On page 5, in line 14, to omit “a date determined by the President” and to substitute:

1 January 2003 or such earlier date as the President may determine

LONG TITLE

1. On page 2, in the fourth line, after “Service” to insert “and the debtor”.
2. On page 2, in the fifth line, to omit “on”.
3. On page 2, in the ninth line, after “Service” to insert “and the company”.
4. On page 2, in the eleventh line, after “Service” to insert:
and the company; and to make provision regarding a company’s rights to compensation
5. On page 2, in the eleventh line, to omit “to provide for a penalty;”.