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No. 8867

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 1885.

26 August 1983

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

No. 101 of 1983: Insolvency Amendment Act, 1983.

No. 1885.

26 Augustus 1983

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

No. 101 van 1983: Insolvensiewysigingswet, 1983.

Act No. 101, 1983

INSOLVENCY AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:**[]**

Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Insolvency Act, 1936, so as to further regulate the power of the Master of the Supreme Court concerned to order the sale, in terms of a writ of execution or other process, of certain goods of an estate in respect of which a notice of surrender has been published; to further regulate the calculation of a debt which became due in consequence of the publication of a notice of intended alienation of a business; to increase the amount of money payable by any creditor of an insolvent estate registering his name and address with the trustee concerned; to delete an unnecessary provision in section 44 of the said Act; to further regulate the calculation of an amount payable in respect of a debt of an insolvent estate which was incurred before the sequestration thereof and which became due after the confirmation of the distribution account concerned; to further regulate the right of a creditor to vote at any meeting of creditors; to make other provision for a trustee to be absent from the Republic; to regulate more clearly the duty of a trustee to open a banking account in the name of an estate, and to better regulate the power of a trustee to transfer any such account or to invest moneys in any such account; to further regulate the power of a trustee to accept any part of a debt to an insolvent estate in discharge of the whole debt or grant any debtor an extension of time for payment without the authorization of the creditors of the estate concerned; to extend the provision providing for the sale, before the second meeting of creditors, of certain goods in an insolvent estate; to replace certain obsolete expressions in section 84 of the said Act; to increase the amounts which may be applied for certain purposes from the free residue of an insolvent estate; to make better provision for the extension of the period for submission of a liquidation account or a plan of distribution or of contribution; to increase the security to be furnished by an insolvent applying for rehabilitation; to further regulate the presumption by virtue of which it may be presumed that an insolvent has, for the purposes of section 134 of the said Act, not kept a proper record of his transactions in connection with his business, and to delete an obsolete expression in that section; to increase the amounts of fines for contraventions of the said Act; and to repeal the power of the Minister of Justice to cause certain persons to be removed from the Republic; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 18 August 1983.)

Act No. 101, 1983

INSOLVENCY AMENDMENT ACT, 1983

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

Amendment of section 5 of Act 24 of 1936, as amended by section 4 of Act 16 of 1943 and section 1 of Act 99 of 1965.

1. Section 5 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the proviso to subsection (1) of the following proviso: 5
- “Provided that the Master, if in his opinion the value of any such property does not exceed **[one thousand pounds]** R5 000, or the Court, if it exceeds that amount, may order the sale of the property attached and direct how the proceeds of the sale shall be applied.”. 10

Amendment of section 34 of Act 24 of 1936, as amended by section 12 of Act 32 of 1952.

2. Section 34 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:
- “Provided that if such liability bears no interest, the amount of such liability which would have been payable at 15 such future date if such demand had not been made, shall be reduced at the rate of **[six] eight** per cent per annum of that amount, over the period between the date when payment is made and that future date.”.

Amendment of section 43 of Act 24 of 1936, as substituted by section 10 of Act 99 of 1965.

3. Section 43 of the principal Act is hereby amended by the substitution for the first sentence of the following sentence: 20
- “Any person who claims to be a creditor of an insolvent estate may register his name and address in the Republic, with the trustee of that estate upon payment to the trustee of a fee of **[one pound]** R25.”. 25

Amendment of section 44 of Act 24 of 1936, as amended by section 15 of Act 16 of 1943 and section 11 of Act 99 of 1965.

4. Section 44 of the principal Act is hereby amended by the deletion of subsection (2).

Amendment of section 50 of Act 24 of 1936.

5. Section 50 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso: 30
- “Provided that if the debt bears no interest and a distribution account in the estate in question is confirmed by the Master in terms of section 112 before the due date, an amount shall be paid on that claim equal to the amount which would have been paid thereon under the distribution 35 account if the debt had been payable on the date of sequestration, less **[six] eight** per cent of that amount per annum, reckoned from the date of sequestration to the due date.”.

Amendment of section 52 of Act 24 of 1936, as amended by section 16 of Act 16 of 1943.

6. Section 52 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 40
- “(3) The vote of a creditor shall in no case be reckoned in number, unless his claim is of the value of at least **[thirty pounds]** R100.”.

Substitution of section 61 of Act 24 of 1936.

7. The following section is hereby substituted for section 61 of the principal Act: 45
- “Leave of absence or resignation of trustee. 61. At the request of a trustee the Master may permit him to be absent **[himself]** from the Republic for a period longer than 60 days or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice of his intention to be so absent **[him-** 50

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self] from the Republic or to resign as the Master may direct.”.

Amendment of section 70 of Act 24 of 1936, as substituted by section 4 of Act 6 of 1972.

8. Section 70 of the principal Act is hereby amended—

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

- “(1) The trustee of an insolvent estate—
 (a) shall open an account from which amounts are withdrawable by cheque, in the name of the estate with a banking institution within the Republic, and shall deposit therein to the credit of the estate from time to time all sums received by him on behalf of the estate;
 (b) may **[with the written consent of the Master]** open a savings account in the name of the estate with a banking institution or a building society within the Republic, and may transfer thereto moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate;
 (c) may **[with the written consent of the Master]** place moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a banking institution or building society within the Republic.”; and

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

“(3) A trustee referred to in subsection (2) shall not transfer any **[such]** account so referred to from any such office, branch office or agency to any other such office, branch office or agency except after written notice to the Master.”.

Amendment of section 78 of Act 24 of 1936, as amended by section 21 of Act 16 of 1943.

9. Section 78 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that if the debt exceeds **[fifty pounds]** R1 000, the trustee shall not accept a part of the debt in discharge of the whole debt, unless he has been authorized thereto by the creditors of the estate, or if no creditor has proved a claim against the estate, by the Master.”.

Substitution of section 80bis of Act 24 of 1936, as inserted by section 23 of Act 16 of 1943.

10. The following section is hereby substituted for section 80bis of the principal Act:

“Sale of movable or immovable property on authorization of Master. 80bis. (1) At any time before the second meeting of creditors the trustee shall, if satisfied that any movable or immovable property of the estate ought forthwith to be sold, recommend to the Master in writing accordingly, stating his reasons for such recommendation.

(2) The Master may thereupon authorize the sale of such property, or of any portion thereof, on such conditions and in such manner as he may direct: Provided that, if the Master has notice that such property or a portion thereof is subject to a right of preference, he shall not authorize the sale of such property or such portion, unless the person entitled to such right of preference has given his consent thereto in writing or the trustee has guaranteed that person against loss by such sale.”.

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Substitution of section 84 of Act 24 of 1936, as amended by section 23 of Act 36 of 1942.

11. The following section is hereby substituted for section 84 of the principal Act:

"Special provision in case of goods delivered to a debtor in terms of an instalment sale transaction.

84. (1) If any property was delivered to a person (hereinafter referred to as the debtor) under **[an agreement]** a transaction which is **[a hire-purchase agreement in terms of section 1 of the Hire-Purchase Act, 1942]** an instalment sale transaction contemplated in paragraphs (a) and (b) of the definition of 'instalment sale transaction' in section 1 of the Credit Agreements Act, 1980, such **[agreement]** a transaction shall be regarded on the sequestration of the debtor's estate as creating in favour of the other party to the **[agreement]** transaction (hereinafter referred to as the creditor) a hypothec over that property whereby the amount still due to him under the **[agreement]** transaction is secured. The trustee of the debtor's insolvent estate shall, if required by the creditor, deliver the property to him, and thereupon the creditor shall be deemed to be holding that property as security for his claim and the provisions of section 83 shall apply.

(2) If the debtor returned the property to the creditor within a period of one month prior to the sequestration of the debtor's estate, the trustee may demand that the creditor deliver to him that property or the value thereof at the date when it was so returned to the creditor, subject to payment to the creditor by the trustee or to deduction from the value (as the case may be) of the difference between the total amount payable under the said **[agreement]** transaction and the total amount actually paid thereunder. If the property is delivered to the trustee the provisions of subsection (1) shall apply."

Amendment of section 96 of Act 24 of 1936, as amended by section 29 of Act 99 of 1965.

12. Section 96 of the principal Act is hereby amended—

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

"(1) Any free residue of an insolvent estate shall be applied in the first place in defraying the expenses of the funeral of the insolvent, if he died before the trustee's first plan of distribution was submitted to the Master in terms of section 91, and the expenses of the funeral of the insolvent's wife or minor child, if those expenses were incurred within the period of three months immediately preceding the sequestration of the insolvent's estate, but the amount payable under this subsection shall not exceed **[fifty pounds]** R300 in all."; and

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

"(2) Thereafter any balance of the free residue shall be applied in defraying the death-bed expenses of the insolvent if they were incurred before the trustee's first plan of distribution was submitted to the Master in terms of section 91, and the death-bed expenses of the debtor's wife or minor child, if those expenses were incurred within the period of three months immediately preceding the sequestration of the insolvent's estate, but the amount payable under this subsection shall not exceed **[fifty pounds]** R300 in all."

Amendment of section 98 of Act 24 of 1936.

13. Section 98 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) any other taxed costs in those proceedings not exceeding a sum of **[five pounds]** R50."

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Amendment of
section 100 of
Act 24 of 1936,
as amended by
section 13 of
Act 32 of 1952 and
section 31 of
Act 99 of 1965.

14. Section 100 of the principal Act is hereby amended—

- (a) by the substitution for the proviso to paragraph (a) of subsection (1) of the following proviso:
“Provided that not more than **[two hundred pounds]** **R2 000** shall be paid out under this subsection to any employee, nurse, accountant or auditor.”; and
- (b) by the substitution for the proviso to subsection (2) of the following proviso:
“Provided that not more than **[one hundred pounds]** **R1 000** shall be paid out under this subsection to any such employee in respect of such salary or wages and bonus.”.

Amendment of
section 103 of
Act 24 of 1936.

15. Section 103 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The interest mentioned in subsection (1) shall be calculated at the rate of **[six]** **eight** per cent per annum, unless the amount of any claim bears a higher rate of interest by virtue of a lawful stipulation in writing, when the interest on that amount shall be calculated at the stipulated rate of interest.”.

Substitution of
section 109 of
Act 24 of 1936.

16. The following section is hereby substituted for section 109 of the principal Act:

- “Extension of period for submission of account by trustee.”
109. (1) If a trustee is unable to submit an account to the Master within the period prescribed therefor by section 91, he **[may give notice in the Gazette of his intention to apply to the Master for an extension of that period]** shall before the expiration of such period or within the further period as the Master may allow—
- (a) submit to the Master an affidavit in which he shall state—
- (i) the reasons for his inability so to submit the account concerned;
 - (ii) those affairs, transactions or matters of importance relating to the insolvent or the estate as the master may require;
 - (iii) the amount of money available for payment to creditors or, if there is no free residue or the free residue is insufficient to meet all the costs referred to in section 97, the deficiency the creditors are liable to make good;
- (b) send to each creditor of the estate who proved a claim against the estate, by registered post a copy of the affidavit referred to in paragraph (a),
- and the Master may thereupon extend such period to a date determined by him.
- (2) If a trustee fails to submit an account to the Master within the period prescribed therefor by section 91 or before the date determined under subsection (1), the Master, subject to the provisions of section 110, or any person having an interest in the insolvent estate may serve a notice on the trustee in which he is required—
- (a) to submit the account concerned to the Master;
 - or
 - (b) if he is unable to submit such account, to submit an affidavit as contemplated in subsection (1) to the Master and to send a copy thereof to each

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creditor of the estate who proved a claim against that estate,
within a period of 14 days from the date of the notice and the Master may, if the account concerned is not submitted and the said affidavit is submitted to him, after the expiration of the said period of 14 days extend such period to a date determined by him.

(3) If the Master refuses **[the application]** to extend the said period under subsection (1) or (2) or does not so extend such period within a period of 14 days as from the date on which the affidavit referred to in subsection (1) has been submitted to him, the trustee may apply by motion to the court (after having given the Master notice of his intention to make the application) for an order extending the said period and the court may thereupon make such order as it thinks fit.”.

Substitution of section 125 of Act 24 of 1936.

17. The following section is hereby substituted for section 125 of the principal Act:

“Security to be furnished prior to application for rehabilitation.
125. Not less than three weeks before applying to the court for his rehabilitation an insolvent shall furnish to the registrar of the court security, to the amount or value of **[twenty-five pounds]** **R500**, for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the court.”.

Amendment of section 134 of Act 24 of 1936, as amended by section 33 of Act 16 of 1943 and section 7 of Act 6 of 1972.

18. Section 134 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:

“Provided that a trader who proves that his turnover for the two years immediately preceding the sequestration of his estate or since the commencement of the business (whichever period is the less), was at the rate of less than **[one thousand pounds]** **R10 000** per annum shall be deemed to have kept a proper record, if the court **[or jury]** dealing with the matter in question, having regard to the nature and circumstances of the business, is satisfied that he has kept a sufficient record of his transactions and that the record complies with the requirements of subparagraph (iv) of paragraph (b).”.

Amendment of section 139 of Act 24 of 1936.

19. Section 139 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person shall be guilty of an offence and liable to a fine not exceeding **[fifty pounds]** **R500** or to imprisonment without the option of a fine for a period not exceeding six months if he is guilty of an act or omission for which he has been or might have been lawfully committed to prison in terms of subsection (2) or (3) of section 66.”.

Substitution of section 141 of Act 24 of 1936.

20. The following section is hereby substituted for section 141 of the principal Act:

“Acceptance of consideration for certain illegal acts or omissions.
141. Any person shall be guilty of an offence and liable to a fine not exceeding **[fifty pounds]** **R500** or to imprisonment without the option of a fine for a period not exceeding six months if he accepts any benefit or the promise or offer of any benefit as a consideration for having refrained from or discontinued, or for his undertaking to refrain from or to discontinue any proceedings for the sequestration of an estate or for having agreed to, or not opposed, or for his undertaking to agree to or not to oppose a composition in an insolvent estate or the rehabilitation of

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an insolvent, or for having refrained or undertaken to refrain from investigating any matter relating to an insolvent or an insolvent estate or from disclosing any information in regard to an insolvent or an insolvent estate.”.

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Amendment of
section 142 of
Act 24 of 1936.

21. Section 142 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any person who has in his possession or custody or under his control any property belonging to an insolvent estate and who knows of the sequestration of the estate and that the property belongs to it, shall be guilty of an offence and liable to a fine not exceeding **[three hundred pounds]** **R1 000** or to imprisonment without the option of a fine for a period not exceeding one year if he fails to inform the trustee of the estate as soon as possible of the existence and whereabouts of the property and (subject to the provisions of section 83) to deliver it to, or place it at the disposal of, the trustee.”.

Substitution of
section 144 of
Act 24 of 1936.

22. The following section is hereby substituted for section 144 of the principal Act:

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“Criminal liability of trustee for neglect of certain duties.

144. If it was the duty of a trustee to submit an account to the Master or to pay a sum of money to the Master or to a creditor, and he failed to submit that account or to pay that sum of money within a period of two months as from the time when that duty arose, he shall (apart from any other offence which he may have committed in connection with such sum of money) be guilty of an offence and liable to a fine not exceeding **[fifty pounds]** **R500**.”.

Substitution of
section 145 of
Act 24 of 1936.

23. The following section is hereby substituted for section 145 of the principal Act:

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“Obstructing trustee.

145. Any person who obstructs or hinders a *curator bonis* appointed under this Act or a trustee or a representative of either in the performance of his functions as such shall be guilty of an offence and liable to a fine not exceeding **[fifty pounds]** **R500**, or to imprisonment without the option of a fine for a period not exceeding six months.”.

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Repeal of
section 148 of
Act 24 of 1936,
as amended by
section 34 of
Act 16 of 1943.

24. Section 148 of the principal Act is hereby repealed.

Saving.

25. The provisions of sections 2, 3, 5, 6, 12, 13, 14 and 15 shall not apply to any estate sequestrated provisionally or finally before the commencement of this Act.

Short title and
commencement.

26. (1) This Act shall be called the Insolvency Amendment Act, 1983.

(2) The provisions of section 24 shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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