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STAATSKOERANT

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[No. 3407.

DEPARTEMENT VAN DIE EERSTE MINISTER.

DEPARTMENT OF THE PRIME MINISTER.

No. 356.

8 Maart 1972.

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

No. 6 van 1972: Insolvensiewysigingswet, 1972.

No. 356.

8th March, 1972.

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

No. 6 of 1972: Insolvency Amendment Act, 1972.

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 1972

ACT

To amend the provisions of the Insolvency Act, 1936, so as to determine in greater detail the manner in which special meetings of creditors shall be convened; to extend the classes of institutions where trustees may deposit or invest moneys belonging to insolvent estates; to consolidate certain statutory provisions relating to preferent claims against insolvent estates; to provide for the rehabilitation of an insolvent by effluxion of time; and to determine in greater detail the manner in which a record of transactions shall be kept; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 2nd March, 1972.)*

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

1. Section 2 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "account" of the following definitions:

"banking institution" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965), and registered or provisionally registered or deemed to be registered as a banking institution in terms of section 4 of that Act, but does not include a provisionally registered banking institution which is so registered provisionally after the coming into operation of the Insolvency Amendment Act, 1972;

"building society" means a building society as defined in section 1 of the Building Societies Act, 1965 (Act No. 24 of 1965), and finally registered or deemed to be finally registered as a building society in terms of section 5 of that Act;"

Amendment of section 2 of Act 24 of 1936, as amended by section 2 of Act 16 of 1943, and section 48 of Act 99 of 1965.

2. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(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 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."

Amendment of section 25 of Act 24 of 1936.

3. The following section is hereby substituted for section 42 of the principal Act:

"Special meetings of creditors. 42. After the second meeting of creditors the trustee shall convene by notice in the *Gazette* a special meeting of creditors for the proof of claims against the estate in question whenever he is thereto

Substitution of section 42 of Act 24 of 1936.

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required by any interested person who at the same time tenders to the trustee payment of all expenses to be incurred in connection with such a meeting.”.

4. The following section is hereby substituted for section 70 of the principal Act:

Substitution of section 70 of Act 24 of 1936, as amended by section 48 of Act 99 of 1965.

“Banking accounts and investments.

70. (1) The trustee of an insolvent estate—

(a) shall open an account 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.

(2) Whenever required by the Master to do so, the trustee shall in writing notify the Master of the banking institution or building society and the office, branch office or agency thereof with which he has opened an account referred to in subsection (1) and furnish the Master with a bank statement or other sufficient evidence of the state of the account.

(3) A trustee shall not transfer any such account from any such office, branch office or agency to any other such office, branch office or agency except after written notice to the Master.

(4) All cheques or orders drawn upon any such account shall contain the name of the payee and the cause of payment and shall be drawn to order and be signed by every trustee or his duly authorized agent.

(5) The Master and any surety for the trustee, or any person authorized by such surety, shall have the same right to information in regard to that account as the trustee himself possesses, and may examine all vouchers in relation thereto, whether in the hands of the banking institution or building society or of the trustee.

(6) The Master may, after notice to the trustee, in writing direct the manager of any office, branch office or agency with which an account referred to in subsection (1) has been opened, to pay over into the Guardians' Fund all moneys standing to the credit of that account at the time of the receipt, by the said manager, of that direction, and all moneys which may thereafter be paid into that account, and the said manager shall carry out that direction.”.

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5. The following section is hereby substituted for section 99 of the principal Act:

"Preference in regard to certain statutory obligations.

99. (1) Thereafter any balance of the free residue shall be applied in defraying—

Substitution of section 99 of Act 24 of 1936, as substituted by section 30 of Act 99 of 1965.

(a) any amount which in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), was, immediately prior to the sequestration of the estate, due to the Workmen's Compensation Commissioner by the insolvent in his capacity as an employer, in respect of any assessment, penalty or other payment, or the compensation then due in respect of any workman, including the cost of medical aid and any amount paid or payable in terms of section 40 (2), 44, 76 (2) or 86 (2) of that Act, and in the case of a continuing liability, also the capitalized value, as determined by the Workmen's Compensation Commissioner, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49 of that Act), periodical payment or allowance, as the case may be, which constitutes the liability;

(b) any amount which the insolvent—

(i) has under the provisions of section 35 (2) of the Income Tax Act, 1962 (Act No. 58 of 1962), deducted or withheld from any amount referred to in section 9 (1) (b) of that Act in respect of any other person's obligation to pay normal tax;

(ii) has under the provisions of section 64E of that Act deducted or withheld from any amount of interest referred to in section 64A of that Act in respect of the non-residents tax on interest payable in respect of such amount of interest;

(iii) is under the provisions of section 99 of that Act required to pay in respect of any tax due by any other person and has deducted or withheld from any moneys, including pensions, salary, wages or any other remuneration held by him for or due by him to such person; or

(iv) has under the provisions of paragraph 2 of the Fourth Schedule to that Act deducted or withheld by way of employees' tax from remuneration paid or payable by him to any other person,

but did not pay to the Secretary for Inland Revenue prior to the sequestration of the estate, and any interest payable under that Act in respect of such amount in respect of any period prior to the date of sequestration of the estate;

(c) any amount which in terms of the Pneumococcosis Compensation Act, 1962 (Act No. 64 of 1962), was, immediately prior to the sequestration of the estate, due to the General Council for Pneumoconiosis Compensation by the insolvent in his capacity as an owner or a former owner of a mine, and any interest due thereon in respect of any period prior to the date of sequestration of the estate;

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- (d) the amount of any appreciation contribution which in terms of the Community Development Act, 1966 (Act No. 3 of 1966), was, immediately prior to the sequestration of the estate, due to the Community Development Board by the insolvent;
- (e) any amount which in terms of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), was, immediately prior to the sequestration of the estate, due to the Unemployment Insurance Fund by the insolvent in his capacity as an employer, in respect of any contribution, penalty or other payment; and
- (f) any other contributions payable by the insolvent (including any such contributions payable in respect of any of his employees) under the provisions of any law, which, immediately prior to the sequestration of the estate, were due by the insolvent, in his capacity as an employer, to any pension, sick, medical, unemployment, holiday, provident or other insurance fund.

(2) The claims referred to in subsection (1) shall rank *pari passu* and abate in equal proportion, if necessary."

6. The following section is hereby inserted in the principal Act after section 127:

"Rehabilitation by effluxion of time.

127A. 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."

Insertion of section 127A in Act 24 of 1936.

7. Section 134 of the principal Act is hereby amended by the substitution in subsection (2)—

- (a) for the words preceding paragraph (a) of the following words:

"For the purposes of this section a proper record of transactions includes all such records, wherein is set forth clearly the nature of all such person's transactions, as (regard being had to his occupation) he can reasonably be expected to have kept. A trader shall be deemed not to have kept a proper record of his transactions unless he kept a record which includes—"

- (b) for the words in paragraph (b) preceding subparagraph (i) of the following words:

"records exhibiting for the period since the commencement of his business or since the commencement of his financial or business year next but one before the financial or business year in which his estate was sequestrated (whichever period is the less) the following particulars—"

Amendment of section 134 of Act 24 of 1936, as amended by section 33 of Act 16 of 1943.

8. The laws specified in the Schedule are hereby repealed to the extent set out in the third column thereof.

Repeal of laws.

9. This Act shall be called the Insolvency Amendment Act, 1972.

Short title.

INSOLVENCY AMENDMENT ACT, 1972.

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Schedule.**LAWS REPEALED.**

No. and year of Law.	Short title.	Extent of repeal.
Act 24 of 1922	South West Africa Affairs Act, 1922	Section 5 (2)
Act 30 of 1941	Workmen's Compensation Act, 1941	Section 99
Act 27 of 1945	Workmen's Compensation Amendment Act, 1945	Section 35
Act 51 of 1956	Workmen's Compensation Amendment Act, 1956	Section 27
Act 58 of 1962	Income Tax Act, 1962	Section 93 <i>bis</i>
Act 64 of 1962	Pneumoconiosis Compensation Act, 1962	Section 123
Act 6 of 1963	Income Tax Amendment Act, 1963	Section 17
Act 3 of 1966	Community Development Act, 1966	Section 47
Act 30 of 1966	Unemployment Insurance Act, 1966	Section 59
Act 95 of 1967	Income Tax Act, 1967	Section 24