

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

---

---

# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

Price 20c Prys  
Overseas 30c Oorsee  
POST FREE—POSVRY

---

Vol. 131]

CAPE TOWN, 14 MAY 1976

No. 5120

KAAPSTAD, 14 MEI 1976

---

DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 823.

14 May 1976.

No. 823.

14 Mei 1976.

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

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

No. 63 of 1976: Magistrates' Courts Amendment Act, 1976.

No. 63 van 1976: Wysigingswet op Landdroshowe, 1976.

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

**ACT**

To amend the Magistrates' Courts Act, 1944, so as to make further provision for the recovery of debts and the granting of administration orders; to regulate the recovery from a debtor of fees or remuneration in connection with the collection of any debt; to further regulate the manner of execution of judgments of magistrates' courts; to extend the provisions with regard to change of address by certain judgment debtors; and to provide for the amendment of court records with reference to misnomers in regard to names and women married in community of property; and to provide for matters connected therewith.

*(English text signed by the State President.)*

*(Assented to 4 May 1976.)*

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

1. The following Chapter is hereby substituted for Chapter VIII of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act):

Substitution of Chapter VIII of Act 32 of 1944.

**"CHAPTER VIII****RECOVERY OF DEBTS**

**Definition.** 55. In this Chapter, unless the context otherwise indicates—  
'debt' means any liquidated sum of money due.

**Recovery of costs of letter of demand.** 56. If any person (in this section called the debtor) pays any debt due by him to any other person (in this section called the creditor) after the creditor has caused a registered letter of demand to be sent to the debtor through an attorney demanding payment of the debt, the creditor shall be entitled to recover from the debtor the fees and costs prescribed in the rules for a registered letter of demand: Provided that the amount of such fees and costs was stated in the letter of demand.

**Admission of liability and undertaking to pay debt in instalments or otherwise.** 57. (1) If any person (in this section called the defendant) has received a letter of demand or has been served with a summons demanding payment of any debt, the defendant may in writing—  
(a) admit liability to the plaintiff for the amount of the debt and costs claimed in the letter of demand or summons or for any other amount;  
(b) offer to pay the amount of the debt and costs for which he admits liability, in instalments or otherwise;

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(c) undertake on payment of any instalment in terms of his offer to pay the collection fees for which the plaintiff is liable in respect of the recovery of such instalment; and

(d) agree that in the event of his failure to carry out the terms of his offer the plaintiff shall, without notice to the defendant, be entitled to apply for judgment for the amount of the outstanding balance of the debt for which he admits liability, with costs, and for an order of court for payment of the judgment debt and costs in instalments or otherwise in accordance with his offer,

and if the plaintiff or his attorney accepts the said offer, he shall advise the defendant of such acceptance in writing by registered letter.

(2) If, after having been advised by the plaintiff or his attorney in writing that his offer has been accepted, the defendant fails to carry out the terms of his offer, the clerk of the court shall, upon the written request of the plaintiff or his attorney accompanied by—

(a) if no summons has been issued, a copy of the letter of demand;

(b) the defendant's written acknowledgment of debt and offer and a copy of the plaintiff's or his attorney's written acceptance of the offer;

(c) an affidavit or affirmation by the plaintiff or a certificate by his attorney stating in what respects the defendant has failed to carry out the terms of his offer and, if the defendant has made any payments since the date of the letter of demand or summons, showing how the balance claimed is arrived at—

(i) enter judgment in favour of the plaintiff for the amount or the outstanding balance of the amount of the debt for which the defendant has admitted liability, with costs; and

(ii) order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

(3) When the judgment referred to in subsection (2) has been entered and an order made, and if the judgment debtor was not present or represented when the judgment was entered by the clerk of the court and the order made, the judgment creditor or his attorney shall forthwith advise the judgment debtor by registered letter of the terms of the judgment and order and of the consequences of his failure to satisfy them.

(4) Any judgment entered in favour of the plaintiff under subsection (2) shall have the effect of a judgment by default.

Consent to judgment or to judgment and an order for payment of judgment debt in instalments.

58. (1) If any person (in this section called the defendant), upon receipt of a letter of demand or service upon him of a summons demanding payment of any debt, consents in writing to judgment in favour of the creditor (in this section called the plaintiff) for the amount of the debt and the costs claimed in the letter of demand or summons, or for any other amount, the clerk of the court shall, on the written request of the plaintiff or his attorney accompanied by—

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

- (a) if no summons has been issued, a copy of the letter of demand; and
- (b) the defendant's written consent to judgment,
- (i) enter judgment in favour of the plaintiff for the amount of the debt and the costs for which the defendant has consented to judgment; and
- (ii) if it appears from the defendant's written consent to judgment that he has also consented to an order of court for payment in specified instalments or otherwise of the amount of the debt and costs in respect of which he has consented to judgment, order the defendant to pay the judgment debt and costs in specified instalments or otherwise in accordance with his consent, and such order shall be deemed to be an order of the court mentioned in section 65A (1).
- (2) The provisions of section 57 (3) and (4) shall apply in respect of the judgment and court order referred to in subsection (1) of this section.

Written request constitutes first document in an action.

59. If no summons is issued in an action the written request referred to in sections 57(2) and 58(1) shall constitute the first document to be filed in the action and shall contain the particulars prescribed in the rules.

Prohibition of recovery of fees or remuneration by certain persons in connection with the collection of debts.

60. Unless expressly otherwise provided in this Act or the rules no person other than an attorney or an agent referred to in section 22 shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt."

2. The following sections are hereby substituted for section 65 of the principal Act:

"Offer by judgment debtor after judgment.

65. If at any time after a court has given judgment for the payment of a sum of money and before the issue of a notice under section 65A (1), the judgment debtor makes a written offer to the judgment creditor to pay the judgment debt in specified instalments or otherwise and such offer is accepted by the judgment creditor or his attorney, the clerk of the court shall, at the written request of the judgment creditor or his attorney, accompanied by the offer, order the judgment debtor to pay the judgment debt in specified instalments or otherwise in accordance with his offer, and such order shall be deemed to be an order of the court mentioned in section 65A (1).

Substitution of section 65 of Act 32 of 1944, as substituted by section 15 of Act 40 of 1952 and amended by section 1 of Act 14 of 1954, section 20 of Act 50 of 1956, section 10 of Act 19 of 1963, section 30 of Act 70 of 1968 and section 2 of Act 17 of 1969.

Notice to judgment debtor if judgment remains unsatisfied.

65A. (1) If a court has given judgment for the payment of a sum of money or has ordered the payment in specified instalments or otherwise of such an amount, and such judgment or order has remained unsatisfied for a period of 10 days from the date on which it was given or on which such an amount became payable or from the expiry of the period of suspension ordered in terms of section 48 (e), as the case may be, the judgment creditor may issue, from the court of the district in which the judgment debtor resides, carries on business or is employed, or if the judgment debtor is a juristic person, from the court of the district in which the registered office or main place of business of the juristic person



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

is situate, a notice calling upon the judgment debtor or, if the judgment debtor is a juristic person, a director or officer of the juristic person as representative of the juristic person and in his personal capacity, to appear before the court in chambers on a date specified in such notice to show cause why he should not be committed for contempt of court and why the judgment debtor should not be ordered to pay the judgment debt in instalments or otherwise.

(2) If the minutes of the proceedings do not show that the judgment debtor was present in person or represented by any person when judgment was given, no notice under subsection (1) shall be issued unless the judgment creditor or his attorney provides proof to the satisfaction of the clerk of the court that he has advised the judgment debtor by registered letter of the terms of the judgment or of the expiry of the period of suspension ordered under section 48 (e), as the case may be, and of the consequences of his failure to satisfy the judgment, and a period of 10 days has elapsed since the date on which the said letter was posted.

(3) The court may, at any stage of the proceedings, if a director or officer mentioned in subsection (1) ceases to be a director or officer of the juristic person concerned or absconds, at the request of the judgment creditor, from time to time replace such director or officer by any other person who at the time of such replacement may be a director or officer of the juristic person, and the proceedings shall then continue as if there has been no replacement.

(4) If the court has given judgment for the payment of an amount of money in instalments, no notice under subsection (1) shall be issued unless the judgment creditor has delivered an affidavit or affirmation or his attorney has delivered a certificate to the clerk of the court in which is mentioned the outstanding balance of the judgment debt, in what respects the judgment debtor has failed to comply with the court order, to what extent he is in arrear with the payment of the instalments and that the judgment debtor was advised by registered letter of the terms of the judgment and of the consequences of his failure to satisfy it.

**Drawing up and service of notice on judgment debtor.** 65B. The notice referred to in section 65A (1) shall be drawn up by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court and shall be served by the messenger of the court on the judgment debtor or, if the judgment debtor is a juristic person, on the director or officer summonsed as the representative of the juristic person and in his personal capacity, in the manner prescribed by the rules for the service of process in general and at least 7 days before the date specified therein for the hearing of the proceedings.

**Joinder of proceedings.** 65C. If, under section 65A (1), two or more notices have been served on any judgment debtor or director or officer to show cause on the same day as provided in that section, the proceedings in terms of such notices may be heard concurrently.

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

Determina-  
tion of  
judgment  
debtor's  
financial  
position.

65D. (1) On the appearance before the court of the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summoned as the representative of the juristic person or in his personal capacity, on the return day of the notice referred to in section 65A (1) or on any date to which the proceedings have been postponed, the court in chambers shall, subject to the provisions of subsection (2) of this section, call upon him to give evidence under oath or affirmation on his financial position or the financial position of the juristic person, as the case may be, and the court shall permit the examination or cross-examination of the judgment debtor or the said director or officer on all matters relevant to the judgment debtor's financial position and his ability to pay the judgment debt and his failure to do so, and the court shall receive such further evidence as may be adduced either orally or by affidavit or in such other manner as the court may deem just, by or on behalf of either the judgment debtor or the judgment creditor, as is material to the determination of the judgment debtor's financial position and his ability to pay the judgment debt and his failure so to do, and for the purposes of such evidence witnesses may be summoned in the manner prescribed in the rules.

(2) The court may at any time in the presence of the judgment debtor or the said director or officer postpone the proceedings to such date as the court may determine.

(3) When postponing the proceedings under subsection (2) the court—

- (a) shall inform the judgment debtor or the director or officer concerned of the provisions of section 65E (1) (c);
- (b) may order the judgment debtor or the director or officer to produce such documents as the court may specify at the hearing on the date determined by the court; and
- (c) may determine such conditions as it may deem fit.

(4) In determining the ability of the judgment debtor to satisfy the judgment the court shall take into consideration—

- (a) in the case of a judgment debtor who is a natural person, the nature of his income, the amounts needed by him for his necessary expenses and those of the persons dependent on him, and for the making of periodical payments which he is obliged to make in terms of an order of court, agreement or otherwise in respect of his other commitments as disclosed in the evidence presented at the hearing of the proceedings; or
- (b) in the case of a judgment debtor who is a juristic person, the amounts required by such juristic person to meet its necessary administrative expenses and for the making of periodical payments which it is obliged to make in terms of an order of court, agreement or otherwise in respect of its other commitments as disclosed in the evidence presented at the hearing of the proceedings.

(5) The court may, in its discretion, refuse to take account of the periodical payments that a judgment debtor has undertaken to make in terms of a hire-purchase agreement for the purchase of goods

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

which have not been exempted from seizure in terms of section 67 or which cannot, in the opinion of the court, be regarded as the judgment debtor's household requirements.

Postpone-  
ment of  
proceedings  
pending  
execution.

65E. (1) If at the hearing of the proceedings in terms of a notice under section 65A (1) the court is satisfied—

(a) that the judgment debtor has movable or immovable property which may be attached and sold in order to satisfy the judgment debt or any part thereof, the court may—

(i) authorize the issue of a warrant of execution against such movable or immovable property or such part thereof as the court may deem fit; or

(ii) authorize the issue of such a warrant, together with an order in terms of section 73; or

(b) that there is a debt due to the judgment debtor which may be attached in terms of section 72 to satisfy the judgment debt and costs or a part thereof, the court may authorize the attachment of that debt in terms of that section; or

(c) that the judgment debtor or, if the judgment debtor is a juristic person, the director or officer summoned as representative of the juristic person, at any time after receipt of a notice referred to in section 65A (1), has made an offer in writing to the judgment creditor or his attorney to pay the judgment debt and costs in specified instalments or otherwise, whether by way of an emoluments attachment order or otherwise, or, if such an offer has not been made, that the judgment debtor is able to pay the judgment debt and costs in reasonable instalments, the court may order the judgment debtor to pay the judgment debt and costs in specified instalments and, if the judgment debtor is employed by any person who resides, carries on business or is employed in the district, or if the judgment debtor is employed by the State in the district, in addition authorize the issue of an emoluments attachment order by virtue of section 65J (1) for the payment of the judgment debt and costs by the employer of the judgment debtor,

and postpone the further hearing of the proceedings.

(2) Any authorization under subsection (1) (a) shall, pending the execution of the warrant, serve as an interdict against the alienation of the property concerned by the judgment debtor.

(3) Proceedings postponed under subsection (1) may again be placed on the roll by the judgment creditor or his attorney by notice delivered personally or served by registered letter addressed to the judgment debtor or, if the judgment debtor is a juristic person, to the director or officer summoned as the representative of the juristic person and in his personal capacity and delivered or posted at least 10 days before the day appointed therein for the hearing.

(4) If the judgment creditor issues or causes to be issued a warrant of execution against movable property belonging to any judgment debtor before

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

the hearing of proceedings in terms of a notice under section 65A (1) and a *nulla bona* return is made, the judgment creditor shall not be entitled to costs in connection with the issue and execution of such warrant unless the court on good cause shown orders otherwise at the hearing of the proceedings.

(5) The court may from time to time suspend, amend or rescind an order for the payment of a judgment debt and costs in specified instalments made in terms of subsection (1) (c) of this section or section 57, 58 or 65.

(6) Upon an order referred to in subsection (1) (c) of this section or section 57, 58 or 65 having been made and if the judgment debtor was not present or represented in court when the order was made, the judgment creditor or his attorney shall forthwith by registered letter advise the judgment debtor of the terms of the order and of the consequences of his failure to satisfy it.

Committal  
for con-  
tempt of  
court.

65F. (1) Subject to the provisions of this section and of sections 65E and 65I, the court may, at the hearing of the proceedings in terms of a notice under section 65A (1), and whether or not the judgment debtor is present or is represented in court, in its discretion grant an order for the committal of the judgment debtor for contempt of court or, if the judgment debtor is a juristic person, of the director or officer of the judgment debtor summoned in his personal capacity, for a period not exceeding 90 days or may in lieu thereof sentence him, in accordance with the provisions of any law relating to prisons, to periodical imprisonment for a period not exceeding 2 160 hours for failing to satisfy the judgment, and may authorize the issue of a warrant for his arrest and detention in any prison specified in the warrant.

(2) The court may at any time on good cause shown suspend any such order or sentence or any warrant so issued on such conditions, including conditions relating to the payment of the judgment debt and costs in specified instalments or otherwise out of present means or out of any future emoluments or income, as the court may deem just and reasonable, or may set aside such order, sentence or warrant on payment in full of the said judgment debt and costs.

(3) No order shall be granted and no sentence shall be imposed and no warrant shall be authorized in terms of subsection (1) of this section if the judgment debtor or, if the judgment debtor is a juristic person, the director or officer of the juristic person summoned in his personal capacity, proves to the satisfaction of the court—

- (a) that he is under the age of 18 years; or
- (b) that before the notice referred to in section 65A (1) was served on him he had in fact been unaware of the judgment or of the expiry of the period of suspension ordered under section 48 (e); or
- (c) that he has or, if the judgment debtor is a juristic person, such juristic person has, no means of satisfying the judgment debt and costs either wholly or in part and that such lack

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

of means is not due to the fact that the judgment debtor—

- (i) has wilfully disposed of his goods in order to defeat or delay payment of the judgment debt and costs; or
- (ii) although he is able to earn sufficient to satisfy the judgment debt and costs in instalments or otherwise to pay such debt and costs, wilfully refuses to do so in order to evade or delay payment of the judgment debt and costs; or
- (iii) is squandering his money or is apparently living beyond his means; or
- (iv) incurred debts other than for household requirements after the judgment date.

(4) A director or officer summoned as the representative of a juristic person in such representative capacity may on conviction of contempt of court in terms of this section be sentenced to a fine not exceeding R100, which fine shall be payable by the juristic person and be recoverable by the attachment and sale of property belonging to the juristic person by warrant in terms of section 337 of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), and the court may on good cause shown at any time suspend such sentence or warrant on such conditions, including conditions relating to the payment of the judgment debt and costs in specified instalments or otherwise from present means or from any future income of the judgment debtor as the court may deem just and reasonable, or set aside the sentence or warrant on payment of the full amount of the said judgment debt and costs.

(5) The provisions of the Criminal Procedure Act, 1955, relating to periodical imprisonment shall *mutatis mutandis* apply to any periodical imprisonment imposed under this section.

(6) If any order or warrant referred to in subsection (1) has been suspended and the judgment debtor, or if the judgment debtor is a juristic person, the director or officer of the juristic person summoned in his personal capacity, has, during the period of suspension, complied with all the conditions specified in the suspension order, the order for the committal of the judgment debtor or the said director or officer, as the case may be, shall not be executed.

(7) If a sentence of a fine imposed on any director or officer of a juristic person under subsection (4) is suspended and the said director or officer has, during the period of suspension, complied with all the conditions specified in the suspension order, the sentence shall not be enforced.

Non-compliance with conditions of suspension order.

65G. (1) If the execution of an order, sentence or warrant has been suspended in terms of section 65F (2) and the judgment debtor or director or officer concerned has failed to comply with the conditions mentioned in the suspension order, the judgment creditor may lodge an affidavit or affirmation or his attorney may lodge a certificate with the clerk of the court specifying in which respects the judgment debtor or director or officer has failed to comply with the conditions of the suspension order and to what extent he is in arrear, and may,



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

subject to the provisions of subsection (2), have the warrant for the arrest and detention of the judgment debtor or the director or officer issued or re-issued without any further order of court.

(2) The court in its discretion may—

(a) if the judgment debtor satisfies the court that his failure to comply with the conditions mentioned in the suspension order in question is due to lack of means and that such lack is not due to circumstances mentioned in section 65F (3) (c); or

(b) if the said director or officer satisfies the court that his failure to comply with the conditions mentioned in the suspension order concerned was not due to any fault of his own,

make an order suspending or further suspending the execution of a warrant referred to in subsection (1) on such conditions relating to the payment, in instalments or otherwise, of the outstanding balance of the judgment debt as the court may deem just and reasonable.

Warrant for arrest and detention of judgment debtor.

65H. A warrant for the arrest and detention of a judgment debtor or, if a judgment debtor is a juristic person, of the director or officer of the juristic person summoned in his personal capacity, shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be executed by the messenger of the court.

Application for administration order has preference.

65I. (1) If, before or during the hearing of the proceedings in terms of a notice under section 65A (1) a judgment debtor has lodged or lodges with the court an application for an administration order for hearing on a date not later than the earliest date on which such application may be heard and it appears that he has complied with the provisions of section 74, the court shall postpone the hearing of the proceedings until the application for an administration order has been disposed of.

(2) If a judgment debtor has not lodged or does not lodge with the court an application for an administration order before or during the hearing of such proceedings and it appears at the hearing that the judgment debtor has other debts as well, the court shall consider whether all the judgment debtor's debts should be treated collectively and if it is of opinion that they should be so treated, it may, with a view to granting an administration order, postpone further hearing of the proceedings to a date determined by the court and order the judgment debtor to submit to the court a full statement of his affairs in the form prescribed in the rules, and containing the particulars for which the said rules make provision and to cause a copy thereof to be delivered by registered post to each of his creditors at least 3 days before the date appointed for the further hearing.

(3) If upon receipt of the statement referred to in subsection (2) it appears that the judgment debtor's total debts do not exceed R4 000, the court may grant an administration order under section 74 in respect of the judgment debtor's estate.

(4) If the court grants an administration order in respect of the judgment debtor's estate, it shall stay the proceedings in terms of the notice under section

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976.

65A (1), but may grant the judgment creditor costs already incurred in connection with such proceedings, and such costs may be added to the judgment debt.

Emoluments attachment orders.

65J. (1) Whenever—

- (a) a court has, under section 65F (2), suspended the execution of any order or warrant for the committal of the judgment debtor pending the payment by him of the judgment debt and costs in specific instalments laid down in the suspension order; or
- (b) a court has ordered the judgment debtor to pay the judgment debt and costs in specific instalments laid down in the order; or
- (c) notwithstanding the fact that the judgment debtor has served the term of imprisonment or periodical imprisonment imposed by the court for his failure to comply with the order, the judgment debt remains unpaid; or
- (d) the judgment debtor has consented thereto in writing; or
- (e) the court has so authorized,

the judgment creditor may, subject to the provisions of subsection (2), issue an order (hereinafter called an emoluments attachment order) from the court of the district in which the employer of the judgment debtor resides, carries on business or is employed, or, if the judgment debtor is employed by the State, in which he is employed, attaching the emoluments at present or in future owing or accruing to the judgment debtor by or from such employer (in this section called the garnishee) to the amount necessary to cover the judgment and the costs of the attachment, whether such judgment was obtained in that court or in any other magistrate's court, and obliging the garnishee to pay from time to time to the judgment creditor or his attorney at the address of such judgment creditor or his attorney specific amounts out of the emoluments of the judgment debtor in accordance with the order of court laying down the specific instalments payable by the judgment debtor, until such judgment debt and costs have been paid in full.

(2) Unless the judgment debtor has consented thereto in writing, or the court has so authorized and such authorization has not been suspended, any emoluments attachment order shall not be issued unless the judgment creditor or his attorney has first—

- (a) sent a registered letter to the judgment debtor at his last known address advising him of the amount of the judgment debt and costs as yet unpaid and warning him that an emoluments attachment order will be issued if the said amount is not paid within 7 days of the date on which the said registered letter was posted; and
- (b) filed with the clerk of the court an affidavit or affirmation by the judgment creditor or a certificate by his attorney—
  - (i) setting forth the amount of the judgment debt at the date of the order laying down the specific instalments, the costs, if any, which have accumulated since that date, the payments received since that date and the balance owing, and declaring that the

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

provisions of paragraph (a) have been complied with and giving the date of such compliance; and

(ii) stating, in a case referred to in subsection (1) (c), that the judgment debtor has served the term of imprisonment or the periodical imprisonment imposed by the court.

(3) Any emoluments attachment order shall be prepared by the judgment creditor or his attorney, shall be signed by the judgment creditor or his attorney and the clerk of the court, and shall be served by registered letter on the garnishee by the messenger of the court.

(4) Deductions in terms of an emoluments attachment order shall be made, if the emoluments of the judgment debtor are paid monthly, at the end of the month following the month in which it is served on the garnishee, or, if the emoluments of the judgment debtor are paid weekly, at the end of the second week of the month following the month in which it is so served on the garnishee, and all payments thereunder to the judgment creditor or his attorney shall be made monthly with effect from the end of the month following the month in which the said order is served on the garnishee.

(5) An emoluments attachment order may be executed against the garnishee as if it were a court judgment, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order or the correctness of the balance claimed.

(6) If, after the service of such an emoluments attachment order on the garnishee, it is shown that the judgment debtor, after satisfaction of the emoluments attachment order, will not have sufficient means for his own and his dependants' maintenance, the court shall rescind the emoluments attachment order or amend it in such a way that it will affect only the balance of the emoluments of the judgment debtor over and above such sufficient means.

(7) Any emoluments attachment order may at any time on good cause shown be suspended, amended or rescinded by the court, and when suspending any such order the court may impose such conditions as it may deem just and reasonable.

(8) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of a garnishee before the judgment debt has been paid in full, such judgment debtor shall forthwith advise the judgment creditor in writing of the name and address of his new employer, and the judgment creditor may cause a certified copy of such emoluments attachment order to be served on the said new employer, together with an affidavit or affirmation by him or a certificate by his attorney specifying the payments received by him since such order was issued, the costs, if any, incurred since the date on which that order was issued and the balance outstanding.

(b) An employer on whom a certified copy referred to in paragraph (a) has been so served, shall thereupon be bound thereby and shall then be deemed to have been substituted for the original

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

garnishee, subject to the right of the judgment debtor, the garnishee or any other interested party to dispute the existence or validity of the order and the correctness of the balance claimed.

(9) (a) Whenever any judgment debtor to whom an emoluments attachment order relates leaves the service of the garnishee before the judgment debt has been paid in full and becomes self-employed or is employed by someone else he shall, or shall pending the service of the emoluments attachment order on his new employer, again be obliged to comply with the relevant order referred to in subsection 1 (a) or (b) and may, subject to the provisions of section 65G, be committed for contempt of court for failing to comply with the said order.

(b) The provisions of section 65A shall apply *mutatis mutandis* to any failure contemplated in paragraph (a) in respect of which the judgment debtor may be so committed.

(10) Any garnishee may, in respect of the services rendered by him in terms of an emoluments attachment order, recover from the judgment creditor a commission of up to 5 per cent of all amounts deducted by him from the judgment debtor's emoluments by deducting such commission from the amount payable to the judgment creditor.

Orders as to costs relating to certain proceedings.

65K. (1) Unless at the hearing of any proceedings in terms of a notice under section 65A (1) it appears to the court that the judgment debtor, after learning of the judgment upon which such proceedings were founded, made an offer to pay the judgment debt in instalments which the court deems reasonable, or notified the judgment creditor that he was not able to make an offer and the court finds this to be true, the court may order the judgment debtor to pay the costs of such proceedings, but if it appears that the judgment creditor refused such offer, the court may order the judgment creditor to pay such costs, including the loss of wages suffered by the judgment debtor through having to appear in court in connection with the proceedings.

(2) At any proceedings for the suspension or rescission of any order or warrant for the committal of a judgment debtor or a director or an officer of any juristic person or of any sentence imposing a fine on any director or officer representing a judgment debtor who is a juristic person, the court may order the judgment debtor to pay the costs of such proceedings, unless it appears that the proceedings were due to any act or omission on the part of the judgment creditor.

(3) The provisions of this section shall not preclude the court from making such order regarding costs as it may deem just in any proceedings in terms of a notice under section 65A (1).

Releasing of judgment debtor from prison.

65L. The officer in charge of a prison shall forthwith release from the prison a judgment debtor or director or an officer of any juristic person—

(a) upon the expiry of the period for which the judgment debtor, director or officer was committed;

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

- (b) when the judgment creditor or his attorney or the messenger of the court certifies in writing that the judgment debt and costs mentioned in the warrant have been paid, or in the case where a court has given judgment for the payment of an amount of money in specified instalments, that the amount of any arrear instalment and costs have been paid, which certificate shall be handed by the judgment creditor or his attorney or the messenger to the officer in charge of the prison as soon as practicable after any such payment;
- (c) upon an order given by a judge of the Supreme Court of South Africa or by any judicial officer of the district in which the order for committal was made or of the district in which the prison is situate.

Enforcement  
of certain  
judgments  
of Supreme  
Court.

65M. If a judgment for the payment of any amount of money has been given by a division of the Supreme Court of South Africa, the judgment creditor may file with the clerk of the court from which the judgment creditor is required to issue a notice in terms of section 65A (1), a certified copy of such judgment and an affidavit or affirmation by the judgment creditor or a certificate by his attorney specifying the amount still owing under the judgment and how such amount is arrived at, and thereupon such judgment, whether or not the amount of such judgment would otherwise have exceeded the jurisdiction of the court, shall have all the effects of a judgment of such court and any proceedings may be taken thereon as if it were a judgment lawfully given in such court in favour of the judgment creditor for the amount mentioned in the affidavit or affirmation or the certificate as still owing under such judgment, subject however to the right of the judgment debtor to dispute the correctness of the amount specified in the said affidavit or affirmation or certificate."

3. Section 66 of the principal Act is hereby amended—

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

Amendment of  
section 66 of  
Act 32 of 1944,  
as amended by  
section 16 of  
Act 40 of 1952.

"(1) (a) Whenever a court gives judgment for the payment of money or makes an order for the payment of money in instalments, such judgment, in case of failure to pay such money forthwith, or such order in case of failure to pay any instalment at the time and in the manner ordered by the court, shall be enforceable by execution against the movable property and, if there is not found sufficient movable property to satisfy the judgment or order, or the court, on good cause shown, so orders, then against the immovable property of the party against whom such judgment has been given or such order has been made.

- (b) Upon such failure to pay any instalment in accordance with any court order, execution may be effected in respect of the whole of the judgment debt and of costs then still unpaid, unless the court, on the application of the party that is liable, orders otherwise."; and

- (b) by the addition of the following subsections:

"(4) If a sale referred to in subsection (3) does not take place or the immovable property concerned is not released from attachment within a period of one year



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

from the date of attachment; such attachment shall lapse.

(5) The court may, upon the application and at the expense of the judgment creditor, after due notice of such application has been given to the judgment debtor, extend the period of one year referred to in subsection (4) by further periods of one year each.

(6) A judgment creditor (whether by virtue of a judgment given in the Supreme Court of South Africa or in a magistrate's court) desiring to attach immovable property that is already under attachment (whether made by a deputy sheriff or by a messenger) and in respect of which a sale in execution is not pending, and who has lodged a warrant of execution with the deputy sheriff or messenger of the court, may, after notifying the interested parties, apply to the court for an order to the effect that the property may be sold in terms of his warrant.

(7) A messenger who is directed to attach immovable property, shall not be precluded merely by the absence of the execution debtor from his place of residence or business, from discharging his duties, but may discharge his duties if he is able to do so and shall endorse a return of service to the court on the warrant.

(8) If the execution debtor, having been requested by the messenger of the court to point out property in order to satisfy a warrant of execution against movable property, declares that he has no movable property or insufficient movable property and the messenger is unable to find sufficient movable property to satisfy the warrant, the messenger shall request the execution debtor to declare whether he has immovable property which is executable and shall enter the execution debtor's reply in his return of service endorsed on such warrant."

4. The following section is hereby substituted for section 72 of the principal Act:

"Attach-  
ment of  
debts.

72. (1) The court may, on *ex parte* application by the judgment creditor or under section 65E (1) (b), order the attachment of any debt at present or in future owing or accruing to a judgment debtor by or from any other person (excluding the State), residing, carrying on business or employed in the district, to an amount sufficient to satisfy the judgment and the costs of the proceedings for attachment, whether such judgment has been obtained in such court or in any other magistrate's court, and may make an order (hereinafter called a garnishee order) against such person (hereinafter called the garnishee) to pay to the judgment creditor or his attorney at the address of the judgment creditor or his attorney, so much of the debt as may be sufficient to satisfy the judgment and costs, and may enforce such garnishee order as if it were a judgment of the court.

(2) If, after any such garnishee order in respect of any debt has been granted, it is shown to the satisfaction of the court that sufficient means to maintain himself and those dependent upon him will not, after satisfaction of the garnishee order, be left to the judgment debtor, the court shall set aside the garnishee order or amend it in such manner that it will affect only the balance of the debt over and above such sufficient means.

(3) Any order under this section may at any time for good cause be suspended, amended or rescinded by the court.

(4) The court may, if it appears that there are unsatisfied claims owing to other creditors, postpone the application to enable the judgment debtor to

Substitution of section 72 of Act 32 of 1944, as substituted by section 17 of Act 40 of 1952 and amended by section 26 of Act 93 of 1962 and section 11 of Act 19 of 1963.

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

make application for an administration order under section 74."

5. Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 73 of Act 32 of 1944, as amended by section 18 of Act 40 of 1952.

"(1) The court may, upon the application of any judgment debtor or under section 65E (1) (a) (ii) or 65E (1) (c) and if it appears to the court that the judgment debtor is unable to satisfy the judgment debt in full at once, but is able to pay reasonable periodical instalments towards satisfaction thereof or if the judgment debtor consents to an emoluments attachment order or a garnishee order being made against him, suspend execution against that debtor either wholly or in part on such conditions as to security or otherwise as the court may determine."

6. The following sections are hereby substituted for section 74 of the principal Act:

Substitution of section 74 of Act 32 of 1944, as amended by section 19 of Act 40 of 1952, section 2 of Act 14 of 1954, section 27 of Act 93 of 1962 and section 12 of Act 19 of 1963.

"Granting of administration orders. 74. (1) Where a debtor—

- (a) is unable forthwith to pay the amount of any judgment obtained against him in court, or to meet his financial obligations, and has not sufficient assets capable of attachment to satisfy such judgment or obligations; and
- (b) states that the total amount of all his debts due does not exceed R4 000,

such court or the court of the district in which the debtor resides or carries on business or is employed may, upon application by the debtor or under section 65I, subject to such conditions as the court may deem fit with regard to security, preservation or disposal of assets, realization of movables subject to hypothec (except movables referred to in section 34bis of the Land Bank Act, 1944 (Act No. 13 of 1944), or otherwise, make an order (in this Act called an administration order) providing for the administration of his estate and for the payment of his debts in instalments or otherwise.

(2) An administration order shall not be invalid merely because at some time or other the total amount of the debtor's debts are found to exceed R4 000, but in such a case the court may, if it deems fit, rescind the order.

Documents to be submitted with application for administration order.

74A. (1) With an application referred to in section 74 (1) the debtor shall submit a full statement of his affairs in the form prescribed in the rules.

(2) In the form referred to in subsection (1) provision shall be made for the following particulars, *inter alia*, namely—

- (a) the name and business address of the debtor's employer or, if the debtor is not employed, the reason why he is unemployed;
- (b) a detailed list of the debtor's assets and their current market values and full particulars of interests in property and claims in his favour, including moneys in a savings or other account with a bank or elsewhere;
- (c) the debtor's trade or occupation and his gross weekly or monthly income and that of his wife living with him, and particulars of all deductions from such income by stop order or otherwise,

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

- supported as far as possible by written statements by the employers of the debtor and his wife;
- (d) a detailed list of the debtor's essential weekly or monthly expenses and those of the persons dependent on him, including his own transport expenses and those of his wife to and from work, and those of his children to and from school;
  - (e) a complete list of all the debtor's creditors and their addresses, and the amount owing to each creditor, in which a clear distinction shall be made between—
    - (i) debts the whole amount of which is owing, including judgment debts payable in instalments in terms of a court order, an emoluments attachment order or a garnishee order; and
    - (ii) obligations which are payable *in futuro* in periodical payments or otherwise or which will become payable under a maintenance order, agreement, stop order or otherwise, and in which the nature of such periodical payments is specified in each case or when the obligations will be payable and how they are then to be paid, the balance owing in each case and when, in each case, the obligation will terminate;
  - (f) the security and the estimated value of the security that a creditor has or the name and address of any other person who, in addition to the debtor, is liable for any debt;
  - (g) full particulars, supported as far as possible by a statement and a copy of the agreement referred to in section 9 (1) of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), of goods purchased under a hire-purchase agreement, the purchase price, the instalments payable, the balance owing and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the remaining instalments;
  - (h) full particulars of any mortgage bond on immovable property owned by the debtor, the instalments payable, the balance owing, the date on which the mortgage debt will be paid in full and the reasons adduced by the debtor why provision should be made for the payment of the instalments payable in terms of such mortgage bond;
  - (i) full particulars of any asset purchased under a written agreement other than a hire-purchase agreement, the instalments payable, the balance owing, and the date on which the purchase price will be paid in full, and the reasons adduced by the debtor why provision should be made for the payment of the instalments that become payable under such agreement;
  - (j) whether any administration order was made at any time in respect of the debtor's estate and, if so, whether such order lapsed or was set aside and, if so, when and for what reasons;

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

- (k) the number and ages of the persons dependent on the debtor and his wife and their kinship with them;
- (l) if an administration order is made, the amount of the weekly or monthly or other instalments which the debtor offers to pay towards settlement of the debts referred to in paragraph (e) (i).
- (3) The statement referred to in subsection (1) shall be confirmed by an affidavit in which the debtor declares that to the best of his knowledge the names of all his creditors and the amounts owed by him to each of them severally are set forth in the statement and that the declarations made therein are true.
- (4) The clerk of the court shall, if requested there-to by an illiterate debtor and upon payment of the fee prescribed in the rules, assist the debtor in completing the statement referred to in subsection (1).
- (5) The debtor shall lodge an application for an administration order and the statement referred to in subsection (1) with the clerk of the court and shall deliver to each of his creditors, at least 3 days before the date appointed for the hearing, personally or by registered post a copy of such application and statement on which shall appear the case number under which the original application was filed.

Hearing of  
application  
for admini-  
stration  
order.

74B. (1) At the hearing of an application for an administration order—

- (a) any creditor, whether he has received notice in terms of section 74A (5) or not, may attend the hearing and provide proof of his debt and object to any debt listed by the debtor in the statement of his affairs referred to in section 74A (1);
- (b) every debt listed by the debtor in the said statement shall be deemed to be proved, subject to any amendments made thereto by the court, unless any creditor raises objections thereto or the court rejects it or requires substantiation thereof by evidence;
- (c) any creditor to whose debt an objection is raised by the debtor or any other creditor or who is required by the court to substantiate his debt with evidence shall provide proof of debt;
- (d) the court may defer proof of debt and postpone consideration of the application for an administration order or proceed to deal with such application and, if an administration order is granted, the debt shall subsequently when proved be added to the debts listed;
- (e) the debtor may be interrogated by the court and by any creditor whose debt has been acknowledged or proved, or, by leave of the court, by any creditor the proof of whose debt has been deferred, or by the legal representative of such creditor with regard to—
- (i) his assets and liabilities;
  - (ii) his present and future income and that of his wife living with him;
  - (iii) his standard of living, and the possibility of economising; and
  - (iv) any other matter that the court may deem relevant.

(2) If at the hearing it appears to the court that any debt other than a debt on the ground of or arising from any judgment debt is a matter of con-

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

attention between the debtor and the creditor or between the creditor and any other creditor of the debtor, the court may, upon inquiry into the objection, allow or reject the debt or a part thereof.

(3) Any person whose debt has been rejected in accordance with subsection (2) may, notwithstanding the provisions of section 74P, institute proceedings or proceed with an action already instituted in respect of such debt.

(4) If any person referred to in subsection (3) has obtained judgment in respect of any debt referred to in that subsection, the amount of the judgment shall be added to the list of proved debts referred to in subsection (1).

(5) No administration order shall be granted at the request of any debtor if it is proved that any administration order was rescinded within the preceding period of 6 months because of the debtor's non-compliance therewith, unless the debtor proves to the satisfaction of the court that his non-compliance with the order was not wilful.

Contents of  
adminis-  
tration  
order.

74C. (1) An administration order shall be in the form prescribed by the rules and—

(a) shall lay down the amount of the weekly or monthly or other payments to be made in terms thereof; and

(b) may specify—

(i) the assets, if any, of the estate under administration which may be realized by the administrator for the purpose of distributing the proceeds among the creditors: Provided that no such asset that is the subject of any agreement regulated by the Hire-Purchase Act, 1942 (Act No. 36 of 1942), shall be realized without the written permission of the seller;

(ii) the assets, if any, of the estate under administration which may be returned by the administrator to the seller in terms of section 14 of the Hire-Purchase Act, 1942;

(iii) the debtor's obligations which the court took account of in determining the amount of the weekly or monthly or other instalments to be paid by the debtor to the administrator;

(iv) the assets, if any, which shall not be disposed of by the debtor except by leave of the administrator or the court;

(v) such other provisions or conditions as the court may deem necessary or expedient.

(2) The amount of the weekly or monthly or other payments to be made by the debtor to the administrator, in terms of the administration order shall, as nearly as possible, approximate the difference between the debtor's future income and the sum of—

(a) the amount determined by the court as the reasonable amount required by the debtor for his necessary expenses and those of the persons dependent on him;

(b) the periodical payments which the debtor is obliged to make under a hire-purchase agreement: Provided that the court may in its discretion refuse to take into account the



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

periodical payments which the debtor undertook to pay under such an agreement for the purchase of goods which are not exempt from execution in terms of section 67 or which, in the opinion of the court, cannot be regarded as the debtor's household requirements, unless the court is of opinion that in all the circumstances it is desirable to safeguard the goods concerned;

(c) the periodical payments to be made by the debtor in terms of an existing maintenance order;

(d) the periodical payments to be made by the debtor under a mortgage bond or any other written agreement for the purchase of any asset in terms of which the liabilities thereunder are payable in instalments, if in all the circumstances the court is of opinion that the instalments payable are reasonable in view of the judgment debtor's income and the sums of money due by him to other creditors or that it is desirable to safeguard the mortgaged property or the asset to which the written agreement relates; and

(e) the payments to be made by the debtor by virtue of any other obligation referred to in section 74A (2) (e) (ii).

(3) The court may take into account the income of the debtor's wife, who is living with him, in determining the amount referred to in subsection (2) (a) and, where the debtor is married in community of property, in determining the debtor's income.

Authorizing  
of issue of  
emoluments  
attachment  
order or  
garnishee  
order.

74D. Where the administration order provides for the payment of instalments out of future emoluments or income, the court shall authorize the issue of an emoluments attachment order in terms of section 65J in order to attach emoluments at present or in future owing or accruing to the debtor by or from his employer, or shall authorize the issue of a garnishee order under section 72 in order to attach any debt at present or in future owing or accruing to the debtor by or from any other person (excluding the State), in so far as either of the said sections is applicable, and the court may suspend such an authorization on such conditions as the court may deem just and reasonable.

Appoint-  
ment of  
administra-  
tor.

74E. (1) When an administration order has been granted under section 74 (1), the court shall appoint a person as administrator, which appointment shall become effective only after a copy of the administration order has been handed or sent to him by registered post and, in the event of his being required as administrator to give security, after he has given such security,

(2) An administrator may on good cause shown be relieved of his appointment by the court, and the court may appoint any other person in his place.

(3) An administrator who is not an officer of the court or a practitioner shall, before a copy of the administration order is handed or sent to him by registered post, give security to the satisfaction of the court and thereafter as required by the court for the due and prompt payment by him to the parties

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

entitled thereto of all moneys which come into his possession by virtue of his appointment as an administrator.

(4) An administrator shall not be obliged to give security in respect of his appointment as an administrator of the estate of any particular debtor if he has given or gives security to the satisfaction of the court for the due and prompt payment by him to the parties entitled thereto of all moneys which may come into his possession by virtue of his appointment as administrator of the estate of any debtor, irrespective of whether such appointment was made before or after the date on which the said security was given.

Notice of  
and  
objections  
to ad-  
ministration  
orders.

74F. (1) A copy of an administration order shall be handed or sent by registered post to the debtor and the administrator by the clerk of the court.

(2) The administrator shall forward a copy of the administration order by registered post to each creditor whose name is mentioned by the debtor in the statement of his affairs or who has given proof of a debt.

(3) A creditor who has not received notice of the application for an administration order and who wishes to object to any debt listed with the order or to the manner in which payments shall be made in terms of the order shall, within a reasonable time as laid down in the rules, give notice of his objection and the grounds therefor to the clerk of the court, the debtor and the administrator and, if he objects to the inclusion of any debt, also to the creditor concerned.

(4) In considering the objection referred to in subsection (3) the court may—

- (a) uphold it;
- (b) refuse it; or
- (c) postpone consideration thereof for hearing after notice given to the persons concerned and on such conditions as to costs or otherwise as the court may deem fit.

List of  
creditors  
and debts  
and addi-  
tions  
thereto.

74G. (1) The administrator shall as soon as may be draw up and lodge with the clerk of the court a complete list on which shall appear the case number under which the application for an administration order has been filed, and which shall contain the names of the creditors and the amounts owing to them severally as at the date on which the administration order was granted.

(2) Any creditor who wishes to provide proof of a debt owing before the making of an administration order and not listed in such order, shall lodge his claim in writing with the administrator, who shall thereupon give the debtor notice thereof in the form prescribed in the rules.

(3) If, within the period allowed in the notice referred to in subsection (2), the debtor admits the claim or does not dispute it, the claim shall be deemed to be proved, subject to the right of any other creditor who has not received notice of the claim to object to the debt, and the administrator shall by notice lodged with the clerk of the court add the name of the creditor and the amount of the debt owing to him to the list referred to in subsection (1) and shall inform the creditor in the form prescribed in the rules that this has been done.

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(4) If, within the period allowed in the notice referred to in subsection (2), the debtor gives notice in writing to the administrator that he disputes the claim, the administrator shall notify the creditor thereof and the creditor may request the clerk of the court to appoint a day and time for the hearing of the objection by the court and shall notify the debtor in writing of such day and time.

(5) At the hearing of the objection referred to in subsection (4) the court may—

- (a) refuse the claim as a whole;
- (b) allow the claim as a whole or in part;
- (c) require that the claim be supported by evidence;
- or
- (d) postpone the hearing on such conditions as it may deem fit.

(6) If the court allows a claim as a whole or in part under subsection (5), the debt shall, to the extent to which it has been allowed, be added to the list referred to in subsection (1).

(7) If any person who sold and delivered goods to the debtor under a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), before the administration order was granted, is entitled or becomes entitled, by reason of the debtor's failure to fulfil any obligation under such agreement, to demand immediate payment of the sum of the purchase price then still owing, and if such person advises the administrator in writing that he elects so to do, such agreement shall be deemed to create a hypothec on the goods in favour of the seller whereby the amount still owing to him in terms of the agreement is secured, and any term or condition of the agreement with regard to the seller's right to dissolve or terminate such agreement or his right to the return of the goods to which the agreement relates shall not, in consequence of the debtor's non-compliance with any term or condition thereof, notwithstanding anything to the contrary in any law contained, be enforceable.

(8) The court may by order of court authorize the seller referred to in subsection (7) to take possession of the goods referred to in that subsection and to sell them by public auction by an auctioneer nominated by the court after giving the administrator and all the creditors written notice of the time and place of the sale and, if the court has so ordered, after publishing the notice or notices in the manner prescribed by the court, in one or more newspapers designated by the court or, if the seller, buyer and administrator so agree, to sell them by private treaty.

(9) Where the seller has sold the goods in terms of a court order referred to in subsection (8) he shall, if the sale was by public auction, forthwith lodge the auction list with the administrator and pay to the administrator the amount of the proceeds of the sale in excess of the amount of his debt and the costs connected with the sale or, if the net proceeds of the sale are insufficient to pay his debt in full, he may lodge a claim with the administrator in respect of the balance of the purchase price owing to him for inclusion in the list of creditors who are entitled to share in the *pro rata* distribution of funds received by the administrator.

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

- (10) (a) The list of creditors referred to in subsection (1) shall be open to inspection by the creditors or their attorneys in the office of the clerk of the court and the office of the administrator at any time during office hours.
- (b) Any creditor may, in the manner and within the period prescribed in the rules, object to any debt included in the list of creditors.

Inclusion of creditors in list after granting of administration order.

- 74H. (1) Any person who becomes a creditor of the judgment debtor after an administration order has been granted and who is desirous of providing proof of debt, shall lodge his claim in writing with the administrator, who shall thereupon advise the debtor thereof in the form prescribed in the rules.
- (2) If the debtor admits the claim or does not dispute it within the period allowed in the notice referred to in subsection (1), the provisions of section 74G (3) shall, *mutatis mutandis*, apply, but the creditor shall not be entitled to a dividend in terms of the administration order until the creditors who were creditors on the date of the granting of the order have been paid in full.
- (3) If the debtor disputes the claim within the period allowed in the notice referred to in subsection (1), the provisions of section 74G (4), (5) and (6) shall, *mutatis mutandis*, apply but if the court allows the claim as a whole or in part, such claim shall be subject to the rights referred to in subsection (2), of creditors who were creditors on the date on which the administration order was granted.
- (4) The provisions of section 74G (7), (8) and (9) and of subsections (1), (2) and (3) of this section shall, *mutatis mutandis*, apply to any person who after the granting of an administration order sold and delivered goods to the debtor under a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), and is desirous of providing proof of debt.

Payments by debtor in terms of administration order.

- 74I. (1) The debtor shall, subject to the provisions of this section, pay the administrator the amounts of the weekly or monthly or other payments that he is required to make in terms of the administration order.
- (2) If a debtor fails to make the payments to the administrator that he is required to make in terms of the administration order, the provisions of sections 65A to 65L shall *mutatis mutandis* apply, while any reference in the said provisions to the judgment concerned, the judgment creditor or the judgment debtor shall be construed as a reference to the administration order concerned, the administrator or the debtor, respectively.
- (3) If, in addition to the administration order, the court has authorized the issue of an emoluments attachment order or a garnishee order and has suspended such authorization conditionally and the debtor fails to comply with the conditions of suspension, the administrator may lodge a certificate to this effect with the clerk of the court, and the clerk of the court shall thereupon issue the emoluments attachment order or garnishee order, as the case may be.
- (4) An emoluments attachment order or garnishee order referred to in subsection (3) shall be prepared

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

by the administrator or his attorney, shall be signed by the administrator or his attorney and the clerk of the court, and shall be served on the garnishee by the messenger of the court by registered post.

(5) (a) When an emoluments attachment order or garnishee order referred to in subsection (3) has been served on the garnishee, he shall be obliged to pay to the administrator the amounts concerned as provided by the order and such payments shall constitute a first preference against the debtor's income.

(b) The provisions of section 65J (4) to (8) shall *mutatis mutandis* apply to the emoluments attachment order referred to in paragraph (a), and in such application any reference in the said provisions to the judgment creditor shall be construed as a reference to the administrator and any reference therein to the relevant order referred to in section 65J (1) (a) or (b) shall be construed as a reference to the relevant administration order referred to in section 74 (1).

Duties of  
administrator.

74J. (1) An administrator shall collect the payments to be made in terms of the administration order concerned and shall keep up to date a list (which shall be available for inspection, free of charge, by the debtor and creditors or their attorneys during office hours), of all payments and other funds received by him from or on behalf of the debtor, indicating the amount and date of each payment, and shall, subject to section 74L, distribute such payments *pro rata* among the creditors at least once every three months, unless all the creditors otherwise agree, or the court otherwise orders in any particular case.

(2) If any debt or the balance of a debt be less than R10, the administrator may in his discretion pay such debt in full if such action will facilitate the distribution of funds in his possession.

(3) Claims that would enjoy preference under the laws relating to insolvency shall be paid out in the order prescribed by those laws.

(4) An administrator may, out of the moneys which he controls, pay any urgent or extraordinary medical, dental or hospital expenses incurred by the debtor after the date of the administration order.

(5) Every distribution account in respect of the periodical payments and other funds received by an administrator shall be numbered consecutively, shall bear the case number under which the administration order has been filed, shall be in the form prescribed in the rules, shall be signed by the administrator and shall be lodged at the office of the clerk of the court where it may be inspected free of charge by the debtor and the creditors or their attorneys during office hours.

(6) A distribution account referred to in subsection (5) shall at the request of any interested party be subject to review free of charge by any judicial officer whose decision shall be final.

(7) An administrator shall deposit all moneys received by him from or on behalf of debtors whose estates are under administration—



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No: 63, 1976

(a) if he is not a practising attorney, in a separate trust account with any bank in the Republic, and no amount with which any such account is credited shall be deemed to be part of the administrator's assets or, in the event of his death or insolvency, of his deceased or insolvent estate;

(b) if he is a practising attorney, in the trust account that he keeps in terms of section 33 of the Attorneys, Notaries, and Conveyancers Admission Act, 1934 (Act No. 23 of 1934).

(8) If a debtor should at any time, despite a registered letter of demand from the administrator, be 14 days in arrear with the payment of any instalment and if steps in terms of section 74I (3) cannot be taken or have been taken unsuccessfully, or if the debtor had disappeared, the administrator shall forthwith notify the creditors in writing thereof and request their instructions.

(9) If within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, or fail to respond, the administrator shall institute legal proceedings against the debtor for his committal for contempt of court or take such steps as may be necessary to trace the debtor who has disappeared, as the circumstances may require.

(10) If, within the period allowed in a notice contemplated in subsection (8) the majority of the creditors instruct him to do so, the administrator shall apply to the court for the rescission of the administration order.

(11) If an administrator fails to lodge a distribution account with the clerk of the court within one month from the time his obligation to do so commenced, any interested party may apply to the court for an order directing him to lodge a distribution account with the clerk of the court within the time laid down in the order or relieving him of his office as administrator.

(12) If an administrator has lodged a distribution account with the clerk of the court but has failed to pay any amount of money due to any creditor in terms of such account within one month thereafter, the court may upon the application of the creditor order the administrator to pay the creditor the amount concerned within such period as may be fixed in the order and furthermore to pay to the debtor's estate an amount which is double the amount which he failed so to pay.

(13) The court may order an administrator to pay the costs of an application in terms of subsection (11) or (12) *de bonis propriis*.

(14) If any debt which was due at the time of the granting of an administration order in respect of a debtor's estate is paid in full or in part to the creditor by the debtor after the granting of the order, otherwise than by way of payments in terms of the administration order, such payment shall be invalid and the administrator may recover the amount paid from the creditor, unless the creditor proves that the payment was effected without his knowledge of the administration order, and, in

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(1) In addition, the creditor shall forfeit his claim against the estate of the debtor if the payment was effected at the request of the creditor whilst he had knowledge of the administration order.

**Realization of assets by administrator.** 74K. (1) An administrator may, if authorized thereto by the court, realize any asset of the estate under administration or return such asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942 (Act No. 36 of 1942), and in granting such authorization the court may impose such conditions as it may deem fit.

(2) An asset mentioned in subsection (1) that is the subject of any agreement regulated by the Hire-Purchase Act, 1942, shall not be realized except with the written permission of the seller.

(3) If an administrator returns any asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942, the seller shall pay to the administrator the amount that he is required to refund to the buyer in terms of section 15 of the said Act for *pro rata* distribution among the creditors, and if the buyer is required to pay the seller any amount in terms of the said section 15 the seller shall be entitled to lodge a claim for the said amount with the administrator for payment in terms of the relevant provisions of this Act.

(4) Whenever the court authorizes the administrator to realize any asset or to return any asset to the seller in terms of section 14 of the Hire-Purchase Act, 1942, and has, in determining the amount that the debtor shall pay each week or each month in terms of the administration order, taken account of the periodical payments to be made by the debtor in respect of such an asset, the court may amend the payments to be made in terms of the order accordingly.

**Remuneration and expenses of administrator.** 74L. (1) An administrator may, before making a distribution—

(a) deduct from the money collected his necessary expenses and a remuneration determined in accordance with a tariff prescribed in the rules;

(b) retain a portion of the money collected, in the manner and up to an amount prescribed in the rules, to cover the costs that he may have to incur if the debtor is in default or disappears.

(2) The expenses and remuneration mentioned in subsection 1 (a) shall not exceed 12½ per cent of the amount of collected moneys received and such expenses and remuneration shall, upon application by any interested party, be subject to taxation by the clerk of the court and review by any judicial officer.

**Furnishing of information by administrator.** 74M. The administrator shall upon payment of the fees prescribed in the rules—

(a) furnish any creditor applying therefor with such information about the progress made in regard to the administration as he may desire; and

(b) furnish any person applying therefor with a copy of the debtor's application and statement of his affairs mentioned in sections 74 and 74A

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(1), or with a list or account mentioned in section 74G (1) or 74J, or with the debtor's statement of his affairs mentioned in section 65I (2).

**74N.** An administrator shall take the proper steps to enforce an administration order, and if he fails to do so, any creditor may, by leave of the court, take those steps, and the court may thereupon order the administrator to pay the costs of the creditor *de bonis propriis*.

**74O.** Unless the court otherwise orders or this Act otherwise provides, no costs in connection with any application in terms of section 74 (1) shall be recovered from any person other than the administrator concerned, and then as a first claim against the moneys controlled by him.

**74P. (1)** As long as any administration order is of force and effect in respect of the estate of any debtor, no creditor shall have any remedy against the debtor or his property for collecting money owing, except in regard to any mortgage bond or any debt referred to in section 74B (3), or by leave of the court and on such conditions as the court may impose.

**(2)** Any court in which proceedings have been instituted against a debtor in respect of any debt except a debt due under a mortgage bond or a debt referred to in section 74B (3) shall, upon receiving notice of the administration order, suspend such proceedings but may grant costs already incurred by the creditor, and such costs may be added to the judgment debt.

**74Q. (1)** The court under whose supervision any administration order is being executed, may at any time upon application by the debtor or any interested party re-open the proceedings and call upon the debtor to appear for such further examination as the court may deem necessary, and the court may thereupon on good cause shown suspend, amend or rescind the administration order, and when it suspends such an order it may impose such conditions as it may deem just and reasonable.

**(2)** The court may at any time at the request of the administrator in writing and with the written consent of the debtor, amend any administration order.

**(3)** Upon any application for the rescission of an administration order the court may—

- (a) rescind the order under subsection (1); or
- (b) if it appears to the court that the debtor is unable to pay any instalment, suspend the order for such period and on such conditions as it may deem fit or amend the instalments to be paid in terms thereof and make the necessary amendments to any emoluments attachment order or garnishee order issued so as to ensure payment in terms of the administration order, or set aside the said emoluments attachment order or garnishee order; or
- (c) authorize the issue of an emoluments attachment order or garnishee order to ensure the payments in terms of the administration order;
- (d) set aside or amend any emoluments attachment order or garnishee order issued so as to ensure payments in terms of the administration order.

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(4) Any order rescinding an administration order shall be in the form prescribed in the rules and a copy thereof shall be delivered personally or sent by post by the administrator to the debtor and to each creditor, who shall also be informed of the debtor's last known address by the administrator.

(5) When an order of court for the payment of any judgment debt in instalments or any emoluments attachment order or garnishee order has lapsed in consequence of the granting of an administration order and such judgment debt has not been paid in full upon the rescission of the administration order, such court order, emoluments attachment order or garnishee order shall revive in respect of such judgment debt, unless the court otherwise orders.

**Administration order no bar to sequestration.** 74R. The granting of an order under section 74 (1) shall be no bar to the sequestration of the debtor's estate.

**Incurring of debts by person subject to administration order.** 74S. (1) Any person who is subject to an administration order and who during the currency of such order incurs any debt without disclosing that he is subject to an administration order shall be guilty of an offence and on conviction liable to imprisonment for a period not exceeding 90 days or to periodical imprisonment for a period not exceeding 2 160 hours in accordance with the laws relating to prisons and, in addition, the court may, upon application by any interested person, set aside the administration order.

(2) The provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), with regard to periodical imprisonment shall *mutatis mutandis* apply to periodical imprisonment imposed in terms of subsection (1).

**Change of address by debtor subject to administration order.** 74T. (1) Any debtor subject to an administration order who changes his place of residence, business or employment shall forthwith notify the clerk of the court and the administrator of his new place of residence, business or employment.

(2) When any debtor subject to an administration order moves to any other district, the court under whose supervision the administration order is being executed may transfer the proceedings to the court of that district.

**Lapsing of administration order.** 74U. As soon as the costs of the administration and the listed creditors have been paid in full, an administrator shall lodge a certificate to that effect with the clerk of the court and send copies thereof to the creditors (who shall also be informed therein of the debtor's last known address), and thereupon the administration order shall lapse.

**Interruption of prescription.** 74V. (1) In the case of any debt mentioned in the statement referred to in section 74A (1), prescription shall be interrupted on the date on which such statement is lodged and, in the case of any debt not mentioned in such statement, prescription shall be interrupted on the date on which any claim against the debtor is lodged with the court or the administrator.

MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

(2) If the relevant prescriptive period of a debt referred to in subsection (1), had it not been for the provisions of subsection (1), would be completed on or before or within one year of, the day on which the restriction referred to in subsection 74P (1) has ceased to exist, the prescriptive period shall not be completed until a year after the said day has elapsed.

**Failure of administrator to carry out certain duty.** 74W. Any administrator who fails to carry out the duty assigned to him by subsection 74J (7) shall be guilty of an offence and on conviction liable to a fine not exceeding R200 or in default of payment to imprisonment for a period not exceeding 6 months."

7. The following section is hereby substituted for section 77 of the principal Act: **Substitution of section 77 of Act 32 of 1944.**

**"Saving of existing laws prohibiting attachment of moneys or property specially declared by any law not to be liable to attachment."** 77. Save where under section 65E (1) an order may be granted against the State, nothing in this Act contained shall be construed as authorizing the attachment of any debt or emoluments or any moneys or property specially declared by any law not to be liable to attachment."

8. The following sections are hereby substituted for section 106 of the principal Act: **Substitution of section 106 of Act 32 of 1944, as amended by section 27 of Act 40 of 1952 and section 21 of Act 19 of 1963.**

**"Penalty for disobedience of order of court."** 106. Any person wilfully disobeying or neglecting to comply with any order of a court or with a notice lawfully endorsed on a summons for rent prohibiting the removal of any furniture or effects, shall be guilty of contempt of court and shall, upon conviction, be liable to a fine not exceeding R200 or, in default of payment, to imprisonment for a period not exceeding 6 months or to such imprisonment without the option of a fine: Provided that for the purposes of this section the word 'order' shall not include an order referred to in section 65, 65E, 65G, 65I, 65J, 65K, 72, 74 or 74J.

**Offence by garnishee.** 106A. Any garnishee who, by reason of an emoluments attachment order having been served on him in respect of the emoluments of a judgment debtor not occupying a position of trust in which he handles or has at his disposal moneys, securities or other articles of value, dismisses or otherwise terminates the service of such judgment debtor, shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding 3 months.

**Offence by employer.** 106B. Any employer who, having been requested by an employee to furnish a written statement containing full particulars of such employee's emoluments, fails or neglects to do so within a reasonable time, or who wilfully or negligently furnishes incorrect relevant particulars, shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or, in default of payment, to imprisonment for a period not exceeding 3 months."



## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

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

Substitution of section 109 of Act 32 of 1944, as substituted by section 28 of Act 40 of 1952 and amended by section 24 of Act 19 of 1963.

“Judgment debtor to inform court of his address.”

109. (1) Any person against whom a court has, in a civil case, given any judgment or made any order, who has not satisfied in full such judgment or order and paid all costs for which he is liable in connection therewith, shall, if he has changed his place of residence, business or employment, within 14 days from the date of every such change notify the clerk of the court which gave such judgment or made such order and the judgment creditor or the judgment creditor's attorney or, if his estate is under administration, the administrator or his attorney, fully and correctly in writing of his new place of residence, business or employment.

(2) A judgment creditor or an administrator may, if the judgment debtor concerned fails to comply with the provisions of subsection (1), issue a notice from the court of the district in which the judgment debtor resides, carries on business or is employed, calling upon the judgment debtor to appear before such court in chambers to adduce reasons why he should not be committed for such failure.

(3) A notice referred to in subsection (2) shall be prepared by the judgment creditor or the administrator or his attorney, shall be signed by the judgment creditor or the administrator or his attorney and the clerk of the court, and shall be served by the messenger of the court in the manner prescribed in the rules for the service of process in general at least 7 days before the date of the hearing mentioned therein.

(4) At the hearing of the proceedings in terms of a notice referred to in subsection (2) the court may, whether the judgment debtor is present in court or not, make an order, in its discretion, for the committal of the judgment debtor for a period not exceeding 30 days or sentence him to periodical imprisonment, in accordance with the laws relating to prisons, for a period not exceeding 720 hours, for failure to comply with the provisions of subsection (1), and the court may authorize the issue of a warrant for his arrest and committal to a prison specified in the warrant.

(5) The court may at any time on good cause shown suspend any order or warrant referred to in subsection (4), on such conditions as it may deem just and reasonable.

(6) No order shall be made under subsection (4) and no warrant authorized under that subsection if the judgment debtor proves to the satisfaction of the court that he is under the age of 18 years or that his failure to comply with the provisions of subsection (1) was not wilful.

(7) The provisions of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), relating to periodical imprisonment shall, *mutatis mutandis*, apply to periodical imprisonment imposed in terms of this section.

(8) In proceedings under this section the court may make such order with regard to costs as it may deem just and reasonable.”

## MAGISTRATES' COURTS AMENDMENT ACT, 1976

Act No. 63, 1976

## 10. Section 111 of the principal Act is hereby amended—

Amendment of  
section 111 of  
Act 32 of 1944.

## (a) by the substitution for subsection (3) of the following subsection:

“(3) No misnomer in regard to the name of any person or place shall vitiate any proceedings of the court if the person or place is described as commonly known, and the court may, on application, correct such misnomer at any time before or after judgment is given.”; and

## (b) by the addition of the following subsection:

“(4) If an unmarried woman is summoned for a contractual debt and is thereafter married in community of property or if a married woman is summoned for such a debt and it subsequently appears that she was married in community of property, the court may at any time, on application, before or after judgment is given, substitute the husband of such woman for such woman as defendant or judgment debtor.”.

11. The provisions of this Act shall not affect any proceedings, notice, appointment, judgment, order, warrant or anything else incidental thereto, commenced, effected, issued, made, granted or done prior to the commencement of this Act in terms of any provision of the principal Act replaced by this Act, and such proceedings, notice, appointment, judgment, order, warrant or thing shall be proceeded with, disposed of and given effect to, as the case may be, as if this Act had not been passed. Saving in respect of matters effected in terms of principal Act.

12. This Act shall be called the Magistrates' Courts Amendment Act, 1976, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*. Short title and commencement.