

No. 16, 1943.]

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.

ACT

To amend the Insolvency Act, 1936, and to apply it to the Mandated Territory of South-West Africa and the port and settlement of Walvis Bay.

(Signed by the Officer Administering the Government in Afrikaans.)

(Assented to 6th April, 1943.)

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Definition.

Amendment of section 2 of Act No. 24 of 1936.

1. In this Act the expression "the principal Act" shall mean the Insolvency Act, 1936, as amended from time to time.

2. Section *two* of the principal Act is hereby amended—

(a) by the deletion of the proviso to the definition of "free residue";

(b) by the insertion of the following definition after the definition of "free residue":

" 'Gazette' means the Union of South Africa Government Gazette, but in the application of this Act to the mandated territory of South-West Africa, means the *Official Gazette* of the said mandated territory." ;

(c) by the insertion of the following definitions after the definition of "sheriff":

" 'special mortgage' means a mortgage bond hypothecating any immovable property or a notarial mortgage bond hypothecating specially described movable property in terms of section *one* of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932), but excludes any other mortgage bond hypothecating movable property ; 'Supreme Court', 'Division of the Supreme Court' and 'Provincial or Local Division of the Supreme Court', include the High Court of South-West Africa ;

'the Territory' means the mandated territory of South-West Africa."

(d) by the addition at the end thereof of the following definition:

" 'Union' includes the mandated territory of South-West Africa."

Amendment of section 4 of Act No. 24 of 1936.

3. Section *four* of the principal Act is hereby amended—

(a) by the addition of the following provisos at the end of sub-section (1):

" Provided that when a petition is presented as aforesaid in the High Court of South-West Africa the periods to be observed as aforesaid shall be thirty-five days and twenty-one days respectively, instead of thirty days and fourteen days :

Provided further that if the last seven days of the said period of thirty-five days do not fall wholly within a term for the dispatch of civil work of the High Court of South-West Africa then the said period shall be extended so as to embrace the first seven days of the next succeeding term."

(b) by the deletion of the words "in a registered letter" occurring in sub-section (2).

Amendment of section 5 (2) of Act No. 24 of 1936.

4. Sub-section (2) of section *five* of the principal Act is hereby amended by the addition of the following words at the end thereof:

" Including any business the debtor is licensed to carry on in terms of the Liquor Act, 1928, but subject in every case, *mutatis mutandis*, to the provisions of section *seventy*."

Amendment of section 8 (g) of Act No. 24 of 1936.

5. The Afrikaans text of paragraph (g) of section *eight* of the principal Act is hereby amended by inserting the words "een of ander van" after the word "om".

Amendment of section 9 of Act No. 24 of 1936.

6. Section *nine* of the principal Act is hereby amended—

(a) by the insertion of the words "or is insolvent" after the words "act of insolvency" occurring in sub-section (1);

(b) by the addition of the following words at the end of the first sentence in sub-section (3):

"or otherwise allege that the debtor is in fact insolvent."

- Amendment of section 13 of Act No. 24 of 1936. 7. Section *thirteen* of the principal Act is hereby amended—
 (a) by the substitution of the words “ finally or on acceptance of surrender ”, for the word “ finally ”;
 (b) by the addition of the following new sub-sections as sub-sections (2) and (3), the present section becoming sub-section (1):
 “ (2) Where the individual estate of a partner is unable fully to meet the costs of sequestration, the balance shall be paid out of the estate of the partnership.
 (3) The surrender of the estate of a partnership shall not be accepted unless and until the Court is satisfied that petitions have been presented for the acceptance of the surrender of the separate estates of all the partners in the partnership concerned, and that in this regard the requirements of section *four* have been observed. The petitions *re* the surrender of the separate estates of the several partners may be incorporated in the petition *re* the surrender of the estate of the partnership.”
- Amendment of section 15 of Act No. 24 of 1936. 8. The Afrikaans text of section *fifteen* of the principal Act is hereby amended by the deletion of the words “ van oordeel ” and the substitution therefor of the word “ oortuig ”.
- Amendment of section 16 (1) of Act No. 24 of 1936. 9. Sub-section (1) of section *sixteen* of the principal Act is hereby amended by the insertion in brackets of the words “ (including an order on acceptance of surrender) ” after the word “ sequestration ”.
- Amendment of section 17 (4) of Act No. 24 of 1936. 10. Sub-section (4) of section *seventeen* of the principal Act is hereby deleted and the following new sub-section substituted therefor:
 “ (4) When the Master has received a sequestration order or an order setting aside a provisional sequestration order he shall in each case give notice in the *Gazette* of such order.”
- Amendment of section 18 (3) of Act No. 24 of 1936. 11. Sub-section (3) of section *eighteen* of the principal Act is hereby amended by the addition of the following words at the end thereof:
 “ Such sale shall furthermore be after such notices and subject to such conditions as the Master may direct.”
- Amendment of section 21 (2) (d) of Act No. 24 of 1936. 12. Paragraph (d) of sub-section (2) of section *twenty-one* of the principal Act is hereby amended by the insertion of the following words before the word “ or ” occurring at the end thereof:
 “ or by the Insurance Ordinance, 1927 (Ordinance No. 12 of 1927 of the Territory),”.
- Amendment of section 23 of Act No. 24 of 1936. 13. Section *twenty-three* of the principal Act is hereby amended by the insertion of the following sub-section as sub-section (3)*bis* after sub-section (3):
 “ (3)*bis*. Where a trustee has given his written consent to an insolvent to enter into a contract, or to carry on a trade in terms of sub-section (2) or sub-section (3), as the case may be, he shall forthwith forward to the Master a copy of such consent. Any trustee who does not so forward such consent within one week after it has been granted, shall be deemed to have contravened the provisions of paragraph (b) of section *sixty*.”
- Amendment of section 37 (5) of Act No. 24 of 1936. 14. Sub-section (5) of section *thirty-seven* of the principal Act is hereby deleted and the following new sub-section substituted therefor:
 “ (5) A stipulation in a lease that the lease shall terminate or be varied upon the sequestration of the estate of either party shall be null and void, but a stipulation in a lease which restricts or prohibits the transfer of any right under the lease or which provides for the termination or cancellation of the lease by reason of the death of the lessee or of his successor in title, shall bind the trustee of the insolvent estate of the lessee or of his successor in title, as if he were the lessee or the said successor, or the executor in the estate of the lessee or his said successor, as the case may be.”
- Amendment of section 44 (4) of Act No. 24 of 1936. 15. Sub-section (4) of section *forty-four* of the principal Act is hereby amended—
 (a) by the deletion of the words “ and if he has not realized the security ” and the substitution therefor of the words:

- “ and if it consists of movable property in his possession which he has not realized ” ;
- (b) by the insertion of the words “ or proved ” after the word “ submitted ” in the proviso.
- Amendment of section 52 of Act No. 24 of 1936. 16. Section *fifty-two* of the principal Act is hereby amended by the addition of the following sub-section at the end thereof :
“ (6) A creditor may not vote on the question as to whether steps should be taken to contest his claim or preference.”
- Amendment of section 55 (d) of Act No. 24 of 1936. 17. Paragraph (d) of section *fifty-five* of the principal Act is hereby amended by the deletion of the words “ or in the mandated territory of South-West Africa ”.
- Amendment of section 56 (2) of Act No. 24 of 1936. 18. Sub-section (2) of section *fifty-six* of the principal Act is hereby amended by the deletion of the words “ and the mandated territory of South-West Africa ”.
- Amendment of section 67 (1) of Act No. 24 of 1936. 19. Sub-section (1) of section *sixty-seven* of the principal Act is hereby amended by the addition of the following definition at the end thereof :
“ For the purposes of this sub-section the word ‘ Province ’ shall include the Territory.”
- Amendment of section 73 (1) of Act No. 24 of 1936. 20. Sub-section (1) of section *seventy-three* of the principal Act is hereby amended by the deletion of the words “ institute or defend any legal proceedings on behalf of the estate ”, and the substitution therefor of the words “ act as aforesaid ”.
- Amendment of section 78 (3) of Act No. 24 of 1936. 21. Sub-section (3) of section *seventy-eight* of the principal Act is hereby amended by the deletion of the words “ was tendered at a meeting of creditors but the claim was wholly or partly rejected ” and the substitution therefor of the words “ has been duly tendered at a meeting of creditors ”.
- Amendment of section 80 (1) of Act No. 24 of 1936. 22. Section *eighty* of the principal Act is hereby amended by the addition of the following words at the end of sub-section (1) thereof :
“ Such authorization may be given by the Master at any time, whether before or after the second meeting of creditors ”.
- Insertion of new section 80bis in Act No. 24 of 1936. 23. The principal Act is hereby amended by the insertion of the following section as section *eighty bis* after section *eighty* :
“ Sale of movable property on authorization of Master. 80bis. (1) At any time before the second meeting of creditors the trustee shall, if satisfied that any movable property of the estate ought forthwith to be sold, recommend to the Master in writing accordingly stating his reasons for such recommendation.
(2) The Master may thereupon authorize the sale of such property, or of any portion thereof, on such conditions and in such manner as he may direct: Provided that, if the Master has notice that such property or a portion thereof is subject to a right of preference, he shall not authorize the sale of such property or such portion, unless the person entitled to such right of preference has given his consent thereto in writing or the trustee has guaranteed that person against loss by such sale.”
- Amendment of section 83 of Act No. 24 of 1936. 24. Section *eighty-three* of the principal Act is hereby amended—
(a) by the deletion of the words “ (whether that property be movable or immovable) ” and the words “ or mortgage ” occurring in sub-section (11) thereof ;
(b) by the deletion of sub-section (13) and the substitution therefor of the following new sub-section :
“ (13) The preceding provisions of this section shall apply *mutatis mutandis* in respect of any creditor for value of a solvent spouse mentioned in section *twenty-one*, who holds as security for his claim against that spouse any movable property belonging to that spouse.”
- Amendment of section 85 (2) of Act No. 24 of 1936. 25. Sub-section (2) of section *eighty-five* of the principal Act is hereby amended by the deletion of the word “ due ”, and the substitution therefor of the word “ calculated ”.
- Amendment of section 86 of Act No. 24 of 1936. 26. Section *eighty-six* of the principal Act is hereby amended by the deletion of the words “ special mortgage bond ” and the substitution therefor of the words “ mortgage bond hypothecating immovable property ”.
- Amendment of section 89 of (5) of Act No. 24 of 1936. 27. Sub-section (5) of section *eighty-nine* of the principal Act is hereby amended by the insertion of the words “ or the Administration of the Territory ” after the word “ administration ”.

- Amendment of section 90 of Act No. 24 of 1936.
28. Section *ninety* of the principal Act is hereby amended by the insertion of the words "or the Land and Agricultural Bank of South West Africa" after the words "South Africa".
- Amendment of section 99 of Act No. 24 of 1936.
29. Section *ninety-nine* of the principal Act is hereby amended by the deletion at the end thereof of the words "Workmen's Compensation Act, 1934 (Act No. 59 of 1934)" and the substitution therefor of the words "Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or the Workmen's Compensation (Accidents and Industrial Diseases) Proclamation, 1924 (Proclamation by the Administrator of the Territory No. 27 of 1924), as amended from time to time".
- Amendment of section 101 of Act No. 24 of 1936 as substituted by section 87 of Act No. 31 of 1941.
30. Section *one hundred and one* of the principal Act is hereby amended by the addition of the following paragraph at the end thereof:
 "For the purposes of this section the expression 'Act of Parliament' shall include an Ordinance of the Territory."
- Amendment of section 119 (7) of Act No. 24 of 1936.
31. Sub-section (7) of section *one hundred and nineteen* of the principal Act is hereby amended by the deletion of the words "or in terms of sub-section (8)".
- Amendment of section 124 of Act No. 24 of 1936.
32. Section *one hundred and twenty-four* of the principal Act is hereby amended—
 (a) by the deletion of the word and symbol "or (8)" occurring in sub-section (1) thereof;
 (b) by the addition at the end of paragraph (c) of sub-section (2) thereof of the words:
 "or of the Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928), of the Territory".
- Amendment of section 134 (1) of Act No. 24 of 1936.
33. Sub-section (1) of section *one hundred and thirty-four* of the principal Act is hereby amended by the insertion of the words "or, in the case of an insolvent whose estate has been sequestrated by an order of the High Court of South-West Africa, the German language" after the word "language".
- Amendment of section 148 of Act No. 24 of 1936.
34. Section *one hundred and forty-eight* of the principal Act is hereby amended by the insertion of the words "or under the Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928 of the Territory)" after the words "Insolvency Act, 1916".
- Amendment of section 150 of Act No. 24 of 1936.
35. Section *one hundred and fifty* of the principal Act is hereby amended by the addition of the following new sub-section as sub-section (5):
 "(5) There shall be no appeal against any Order made by the Court in terms of this Act, except as provided in this section".
- Amendment of Tariff A in the Second Schedule to Act No. 24 of 1936.
36. Tariff "A" in the Second Schedule to the principal Act is hereby amended by the addition of the following words at the end thereof:
 "For a Deputy Sheriff's Fees in the Territory ten per cent. shall be added to the fees set out above, except in the case of the travelling allowance per mile".
- Application of Act No. 24 of 1936 to South-West Africa and Walvis Bay.
37. The principal Act as amended by this Act, shall apply to the mandated territory of South-West Africa and the port and settlement of Walvis Bay, and for the purposes of such application the said port and settlement shall be deemed to be a portion of the said mandated territory.
- Repeal of S.W.A. Ordinance No. 7 of 1928.
38. The Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928), of the Territory, the Insolvency Law Amendment Proclamation, 1932 (Proclamation by the Administrator of the Territory No. 24 of 1932), and the Insolvency Ordinance Amendment Proclamation, 1933 (Proclamation by the Administrator of the Territory No. 21 of 1933), are hereby repealed: Provided that, if an estate was sequestrated or assigned in the Territory before the commencement of this Act, the sequestration or assignment and all proceedings in connection therewith shall be completed, and a person whose estate was sequestrated or assigned before such commencement and any matter relating to such sequestration, assignment or person shall be dealt with as if this Act had not been passed; and provided further that, if, before the said commencement, any action was taken under the said Ordinance No. 7 of 1928, with a view to the surrender or sequestration of an estate but the surrender or sequestration was not effected before the said commencement, such action shall, after such commencement, be deemed to have been taken under the principal Act, as amended by this Act, in so far as the principal Act so amended makes provision therefor.
- Short title and date of commencement.
39. This Act shall be called the Insolvency Law Amendment Act, 1943, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*, in so far as its application to the mandated territory of South-West Africa and the port and settlement of Walvis Bay is concerned, but shall otherwise be in force as from the date of promulgation.