

No. 99, 1965.]

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.

(Afrikaans text signed by the State President.)  
(Assented to 18th June, 1965.)

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

Amendment of section 5 of Act 24 of 1936, as amended by section 4 of Act 16 of 1943.

1. Section *five* of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for sub-section (1) of the following sub-section:

“(1) After the publication of a notice of surrender in the *Gazette* in terms of section *four*, it shall not be lawful to sell any property of the estate in question, which has been attached under writ of execution or other process, unless the person charged with the execution of the writ or other process could not have known of the publication: Provided that the Master, if in his opinion the value of any such property does not exceed one thousand pounds, or the Court, if it exceeds that amount, may order the sale of the property attached and direct how the proceeds of the sale shall be applied.”.

Amendment of section 9 of Act 24 of 1936, as amended by section 6 of Act 16 of 1943.

2. Section *nine* of the principal Act is hereby amended by the substitution for sub-section (3) of the following sub-section:

“(3) Such a petition shall set forth the amount, cause and nature of the claim in question, shall state whether the claim is or is not secured and, if it is, the nature and value of the security, and shall set forth the debtor's act of insolvency upon which the petition is based or otherwise allege that the debtor is in fact insolvent. The facts stated in the petition shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master given not more than ten days before the date of such petition that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed, of all fees and charges necessary for the discharge of the estate from sequestration.”.

Amendment of section 13 of Act 24 of 1936, as amended by section 7 of Act 16 of 1943.

3. Section *thirteen* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:

“(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 assets of the estate of the partnership.”.

Substitution of section 16 of Act 24 of 1936, as amended by section 9 of Act 16 of 1943.

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

“Insolvent and spouse whose separate estate has not been sequestered must deliver his business records and lodge statement of his affairs with Master. 16. (1) The registrar of the court granting a final order of sequestration (including an order on acceptance of surrender) shall without delay cause a copy thereof to be served by the deputy sheriff, in the manner provided by the rules of court, on the insolvent concerned and if such order relates to the separate estate of one of two spouses who are not living apart under a judicial order of separation, also on the spouse whose estate has not been sequestered, and file with the Master a copy of the deputy sheriff's return of service.

(2) An insolvent upon whom a copy of such order has been served shall—

- (a) forthwith deliver to the deputy sheriff all books and records relating to his affairs, which have not yet been taken into custody in terms of paragraph (a) of sub-section (1) of section *nineteen* and obtain from the deputy sheriff a detailed receipt therefor; and
- (b) within seven days of such service lodge, in duplicate, with the Master a statement of his affairs as at the date of the sequestration order, framed in a form corresponding substantially with Form B of the First Schedule to this Act, containing the particulars for which provision is made in the said Form and verified by an affidavit (which shall be free from stamp duty) in the form set forth therein.

(3) A spouse whose separate estate has not been sequestrated and upon whom a copy of an order referred to in sub-section (1) has been served shall within seven days of such service lodge, in duplicate, with the Master a statement of his affairs, as at the date of the sequestration order, framed in a form corresponding substantially with Form B of the First Schedule to this Act containing the particulars for which provision is made in the said Form and verified by affidavit (which shall be free from stamp duty) in the form set forth therein.

(4) In the statement referred to in paragraph (b) of sub-section (2) or in sub-section (3) any merchandise mentioned therein shall be valued at its cost price or at its market value, at the time of the making of the said affidavit, whichever is the lower.

(5) If the Master is satisfied that the insolvent or a spouse referred to in sub-section (3) was unable to prepare, without assistance, such a statement which he lodged as aforesaid, the person who assisted the insolvent or such spouse with the preparation of the statement shall be entitled to a reasonable fee, to be determined by the Master, which shall be deemed to be part of the costs of the sequestration."

Amendment of section 19 of Act 24 of 1936, as amended by section 11 of Act 50 of 1956.

5. Section *nineteen* of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of sub-section (1) of the following paragraph:

"(a) he shall take into his own custody all books of account, invoices, vouchers, business correspondence, and any other records relating to the affairs of the insolvent, cash, share certificates, bonds, bills of exchange, promissory notes, and other securities, and remit all such cash to the Master;"

- (b) by the insertion after paragraph (c) of the said sub-section of the following paragraphs:

"(d) he shall make a detailed list of all such books and records and endorse thereon any explanation offered by the insolvent in respect thereof or in respect of any books or records relating to his affairs which the insolvent is unable to produce;

(e) if the insolvent is present he shall enquire from him whether the list referred to in paragraph (d) is a complete list of the books and records relating to his affairs and record his reply thereto."

- (c) by the insertion after sub-section (1) of the following sub-section:

"(1)*bis*. If an insolvent has in reply to the deputy sheriff's enquiry intimated that the list referred to in paragraph (d) of sub-section (1) is a complete list of the books and records relating to his affairs, the books and records referred to in such list shall, unless the contrary is proved, in any criminal proceedings against him under this Act, be deemed to be the only books and records maintained by him;" and

- (d) by the substitution for sub-section (3) of the following sub-section:

"(3) The deputy-sheriff shall—

- (a) immediately after effecting the attachment, report to the Master in writing that the attachment has been effected and mention in his report any

property which to his knowledge is in the lawful possession of a pledgee or of a person who is entitled to retain such property by virtue of a right of retention and shall submit with such report a copy of the inventory made by him under sub-section (1);

(b) as soon as possible after the appointment of the trustee, submit a copy of such inventory to him.”.

Amendment of section 29 of Act 24 of 1936, as amended by section 17 of Act 16 of 1960 and section 9 of Act 64 of 1960.

6. Section *twenty-nine* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

“(1) Every disposition of his property made by a debtor not more than six months before the sequestration of his estate or, if he is deceased and his estate is insolvent, before his death, which has had the effect of preferring one of his creditors above another, may be set aside by the Court if immediately after the making of such disposition the liabilities of the debtor exceeded the value of his assets, unless the person in whose favour the disposition was made proves that the disposition was made in the ordinary course of business and that it was not intended thereby to prefer one creditor above another.”.

Amendment of section 39 of Act 24 of 1936.

7. Section *thirty-nine* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:

“(2) All meetings of creditors held in the district wherein there is a Master's office shall be presided over by the Master or an officer in the public service, designated, either generally or specially, by the Master for that purpose. Meetings of creditors held in any other district shall be held in accordance with the direction of the Master and shall be presided over by the magistrate of the district, or by an officer in the public service, designated, either generally or specially, by the magistrate for that purpose.”.

Amendment of section 40 of Act 24 of 1936.

8. Section *forty* of the principal Act is hereby amended by the substitution for sub-section (3) of the following sub-section:

“(3) (a) After the first meeting of creditors and the appointment of a trustee, the Master shall appoint a second meeting of creditors for the proof of claims against the estate, and for the purpose of receiving the report of the trustee on the affairs and condition of the estate and giving the trustee directions in connection with the administration of the estate.

(b) The trustee shall convene the second meeting of creditors by notice in the *Gazette* and in one or more newspapers circulating in the district in which the insolvent resides or his principal place of business is situate.

(c) Whenever the notice referred to in paragraph (b) is published in any newspaper, the publication shall take place simultaneously in the Afrikaans language and in the English language and in the case of each such language in a newspaper circulating in the district referred to in the said paragraph which appears mainly in that language and the publication in each such language shall as far as practicable occupy the same amount of space: Provided that where in the district in question any newspaper appears substantially in both such languages publication in both such languages may take place in that newspaper.”.

Substitution of section 41 of Act 24 of 1936.

9. The following section is hereby substituted for section *forty-one* of the principal Act:

“41. The trustee of an insolvent estate may at any time and shall, whenever he is so required by the Master or by a creditor or creditors representing one-fourth of the value of all claims proved against the estate, convene in the manner prescribed by sub-section (3) of section *forty*, a meeting of creditors (hereinafter called a general meeting of creditors) for the purpose of giving him directions concerning any matter relating to the administration of the estate and shall state in such notice the matters to be dealt with at that meeting.”.

Substitution of section 43 of Act 24 of 1936.

10. The following section is hereby substituted for section *forty-three* of the principal Act:

"A creditor may register his name and address with trustee. 43. Any person who claims to be a creditor of an insolvent estate may register his name and address in the Republic, with the trustee of that estate upon payment to the trustee of a fee of one pound. Thereupon the trustee shall send to that address a notice of every meeting of creditors of that estate, a copy of every account which he is submitting to the Master and a notice of the date, time and place of the sale of any property over which the creditor has a preferent right by virtue of a special mortgage, pledge or right of retention or a landlord's tacit or legal hypothec. Failure on the part of the trustee to comply with a provision of this section shall constitute a failure to perform his duties but shall not invalidate anything done under this Act."

Amendment of section 44 of Act 24 of 1936, as amended by section 15 of Act 16 of 1943.

11. Section *forty-four* of the principal Act is hereby amended—

(a) by the substitution for the second proviso to sub-section (3) of the following proviso:

"and provided further that if a creditor has twenty-four or more hours before the time advertised for the commencement of a meeting of creditors submitted to the officer who is to preside at that meeting the affidavit and other documents mentioned in sub-section (4), he shall be deemed to have tendered proof of his claim at that meeting.";

(b) by the substitution for sub-section (4) of the following sub-section:

"(4) Every such claim shall be proved by affidavit in a form corresponding substantially with Form C or D in the First Schedule to this Act. That affidavit may be made by the creditor or by any person fully cognizant of the claim, who shall set forth in the affidavit the facts upon which his knowledge of the claim is based and the nature and particulars of the claim, whether it was acquired by cession after the institution of the proceedings by which the estate was sequestrated, and if the creditor holds security therefor, the nature and particulars of that security and in the case of security other than movable property which he has realized in terms of section *eighty-three*, the amount at which he values the security. The said affidavit or a copy thereof and any documents submitted in support of the claim shall be delivered at the office of the officer who is to preside at the meeting of creditors not later than twenty-four hours before the advertised time of the meeting at which the creditor concerned intends to prove the claim, failing which the claim shall not be admitted to proof at that meeting, unless the presiding officer is of opinion that through no fault of the creditor he has been unable to deliver such evidences of his claim within the prescribed period: Provided that if a creditor has proved an incorrect claim, he may, with the consent in writing of the Master given after consultation with the trustee and on such conditions as the Master may think fit to impose, correct his claim or submit a fresh-correct claim."; and

(c) by the substitution for sub-section (6) of the following sub-section:

"(6) A claim against an insolvent's estate for payment of the purchase price of goods sold and delivered to the insolvent on an open account shall not be admitted to proof unless a statement is submitted in support of such claim showing the monthly total and a brief description of the purchases and payments for the full period of trading or for the period of twelve months immediately before the date of sequestration, whichever is the lesser."

Amendment of section 49 of Act 24 of 1936, as amended by section 21 of Act 6 of 1963.

12. Section *forty-nine* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:

“(2) Nothing in this section shall be construed as preventing the Secretary for Inland Revenue or the Commissioner for Inland Revenue of the Territory from proving in the manner provided in this Act a claim against the estate of a partnership in respect of any sum referred to in paragraph (b) of section *one hundred and one*, or any interest due on such sum.”

Amendment of section 51 of Act 24 of 1936.

13. Section *fifty-one* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:

“(2) A creditor who has so withdrawn his claim may, by registered notice addressed to the Master and to the trustee, cancel his withdrawal, but if he does so, he shall not become liable for any costs in connection with the sequestration for which he was not liable at the time of cancellation and he shall not be entitled to any payment out of the estate in respect of his claim until all the other creditors who have proved their claims have been paid in full.”

Amendment of section 53 of Act 24 of 1936.

14. Section *fifty-three* of the principal Act is hereby amended—

(a) by the substitution for sub-section (2) of the following sub-section:

“(2) Subject to the provisions of section *fifty-four* and sub-section (7) of section *one hundred and nineteen*, every matter upon which a creditor may vote shall be determined by the majority of votes reckoned in accordance with sub-section (2) of section *fifty-two*, and every creditor may vote either personally or by an agent specially authorized thereto or acting under his general power of attorney: Provided that no creditor shall vote by any agent being—

- (a) the trustee or a person nominated for election as trustee in the estate concerned;
- (b) the employer or employee of such trustee or person;
- (c) the employee of any person or association of persons, whether corporate or unincorporate, by whom or by which such trustee or the person referred to in paragraph (a) is employed;
- (d) the spouse of or a person related to such trustee or the person referred to in paragraph (a) by consanguinity or affinity within the third degree; or
- (e) a person directly or indirectly having a pecuniary interest in the remuneration of such trustee or the person referred to in paragraph (a).”; and

(b) by the substitution for sub-section (5) of the following sub-section:

“(5) The majority of creditors (reckoned in number and in value) may direct the trustee to employ or not to employ a particular attorney or auctioneer in connection with the administration of the estate and if the trustee has reason to believe that it will not be in the interests of the estate to carry out such direction, he may submit the matter to the Master, whose decision, after considering any representations in writing by the trustee and the creditors, shall be final.”

Amendment of section 55 of Act 24 of 1936, as amended by section 17 of Act 16 of 1943.

15. Section *fifty-five* of the principal Act is hereby amended by the insertion after paragraph (k) of the following paragraphs:

- “(l) any person who at any time during a period of twelve months immediately preceding the date of sequestration acted as the bookkeeper, accountant or auditor of the insolvent;
- (m) any agent authorized specially or under a general power of attorney to vote for or on behalf of a creditor at a meeting of creditors of the estate concerned and acting or purporting to act under such special authority or general power of attorney.”

Amendment of section 56 of Act 24 of 1936, as amended by section 18 of Act 16 of 1943.

16. Section *fifty-six* of the principal Act is hereby amended—

- (a) by the substitution for sub-section (2) of the following sub-section:

“(2) Subject to the provisions of section *fifty-seven*, the Master shall, when a person so elected has given security to his satisfaction for the proper performance of his duties as trustee, confirm his election and appoint him as trustee by delivering to him a certificate of appointment, which shall be valid throughout the Republic.”; and

- (b) by the substitution for sub-section (5) of the following sub-section:

“(5) Whenever the trustees in the estate disagree on any matter relating to the estate of which they are trustees, the matter shall be referred to the Master who shall determine the question in issue or give directions as to the procedure to be followed for the determination thereof.”.

Amendment of section 57 of Act 24 of 1936.

17. Section *fifty-seven* of the principal Act is hereby amended—

- (a) by the substitution for sub-sections (1) and (2) of the following sub-sections:

“(1) If a person who has been elected as trustee was not properly elected or is disqualified, under section *fifty-five*, from being elected or appointed a trustee or is disqualified from being a trustee of the estate in question or has failed to give within a period of seven days as from the date upon which he was notified that the Master had confirmed his election, or within such further period as the Master may allow, the security mentioned in sub-section (2) of section *fifty-six* or if in the opinion of the Master the person elected as trustee should not be appointed as trustee to the estate in question, the Master shall give notice in writing to the person so elected that he declines to confirm his election or to appoint him as trustee and shall, in that notice, state his reason for declining to confirm his election or to appoint him: Provided that if the Master declines to confirm the election of a trustee because he is of the opinion that the person elected should not be appointed as trustee, it shall be sufficient if the Master states, in that notice, as such reason, that he is of the opinion that the person elected should not be appointed as trustee to the estate in question.”;

(2) When the Master has declined to confirm the election of a trustee or to appoint a person elected as a trustee, or the Minister has under sub-section (9) set aside the appointment of a trustee, the Master shall in accordance with the provisions of sub-sections (1) and (2) of section *forty* convene a meeting of creditors of the estate in question for the purpose of electing another trustee in the place of the person whose election as a trustee the Master declined to confirm or whom the Master declined to appoint or whose appointment as trustee has been so set aside. In the notice convening the meeting the Master shall state that he has declined to confirm the election of the person previously elected as trustee, or to appoint the person so elected, and the reasons therefor (but subject to the proviso to sub-section (1)), or that the appointment of the person previously appointed as trustee has been set aside by the Minister, as the case may be, and that the meeting is convened for the purpose of electing another trustee. The Master shall post a copy of the notice to every creditor whose claim against the estate was previously proved and admitted.”; and

- (b) by the insertion after sub-section (6) of the following sub-sections:

“(7) Any person aggrieved by the appointment of a trustee or the refusal of the Master to confirm the election of a trustee or to appoint a person elected as a trustee, may within a period of seven days from

the date of such appointment or refusal request the Master in writing to submit his reasons for such appointment or refusal to the Minister of Justice.

(8) The Master shall within seven days of the receipt by him of the request referred to in sub-section (7) submit to the Minister, in writing, his reasons for such appointment or refusal together with any relevant documents, information or objections received by him.

(9) The Minister may after consideration of the reasons referred to in sub-section (8) and any representations made in writing by the person who made the request referred to in sub-section (7) and of all relevant documents, information or objections submitted to him or the Master by any interested person, confirm, uphold or set aside the appointment or the refusal by the Master and, in the event of the refusal by the Master being set aside, direct the Master to confirm the election of the trustee concerned and to appoint him as trustee to the estate in question.

(10) The decision of the Minister under sub-section (9) shall be final.”.

Substitution of section 60 of Act 24 of 1936.

18. The following section is hereby substituted for section *sixty* of the principal Act:

“Removal of trustee by Master. 60. The Master may remove a trustee from his office on the ground—

- (a) that he was not qualified for election or appointment as trustee or that his election or appointment was for any other reason illegal, or that he has become disqualified from election or appointment as a trustee or has been authorized, specially or under a general power of attorney, to vote for or on behalf of a creditor at a meeting of creditors of the insolvent estate of which he is the trustee and has acted or purported to act under such special authority or general power of attorney; or
- (b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master; or
- (c) that he is mentally or physically incapable of performing satisfactorily his duties as trustee; or
- (d) that the majority (reckoned in number and in value) of creditors entitled to vote at a meeting of creditors has requested him in writing to do so; or
- (e) that, in his opinion, the trustee is no longer suitable to be the trustee of the estate concerned.”.

Amendment of section 62 of Act 24 of 1936.

19. Section *sixty-two* of the principal Act is hereby amended—

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

“(1) When a Court or the Master has removed one of two joint trustees from office, the Master may convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee in the place of the trustee who was removed.”; and

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

“(3) When one of two joint trustees has vacated his office or has resigned or died the Master may convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee in the place of the trustee who has vacated his office or has resigned or died.”.

Amendment of section 65 of Act 24 of 1936.

20. Section *sixty-five* of the principal Act is hereby amended by the substitution in sub-section (3) for all the words preceding the proviso of the following words:

“(3) The presiding officer shall record or cause to be recorded in the manner provided by the rules of court for the recording of evidence in a civil case before a magistrate’s

court the statement of any person giving evidence under this section:".

Amendment of section 66 of Act 24 of 1936.

21. Section *sixty-six* of the principal Act is hereby amended by the substitution for sub-sections (1) and (2) of the following sub-sections:

"(1) If a person summoned under section *sixty-four* fails to appear at a meeting of creditors, in answer to the summons, or if an insolvent fails to attend any meeting of creditors in terms of sub-section (1) of section *sixty-four*, or fails to remain in attendance at that meeting, the officer presiding at such meeting may issue a warrant, authorizing any member of the police force to apprehend the person summoned or the insolvent, as the case may be, and to bring him before the said officer.

(2) Unless the person summoned or the insolvent, as the case may be, satisfies the said officer that he had a reasonable excuse for his failure to appear at or attend such meeting, or for absenting himself from the meeting, the said officer may commit him to prison to be detained there until such time as the said officer may appoint, and the officer in charge of the prison to which the said person or insolvent was committed, shall detain him and produce him at the time and place appointed by the first-mentioned officer for his production."

Amendment of section 67 of Act 24 of 1936, as amended by section 19 of Act 16 of 1943.

22. Section *sixty-seven* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

"(1) If it appears from any statement made at an interrogation under section *sixty-five* that there are reasonable grounds for suspecting that any person has committed any offence the Master shall transmit the said statement, or a certified copy thereof, and all necessary documents to the Attorney-General in whose area of jurisdiction the interrogation was held or the offence is suspected to have been committed, to enable him to determine whether any criminal proceedings shall be instituted in the matter.

Amendment of section 69 of Act 24 of 1936.

23. Section *sixty-nine* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:

(1) A trustee shall, as soon as possible after his appointment, but not before the deputy-sheriff has made the inventory referred to in sub-section (1) of section *nineteen*, take into his possession or under his control all movable property, books and documents belonging to the estate of which he is trustee and shall furnish the Master with a valuation of such movable property by an appraiser appointed under any law relating to the administration of the estates of deceased persons or by a person approved of by the Master for the purpose."

Amendment of section 73 of Act 24 of 1936, as amended by section 20 of Act 16 of 1943.

24. Section *seventy-three* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-sections:

"(2) (a) All costs incurred under this section which are not subject to taxation by the taxing officer of the Court, shall, after fourteen days' notice by the trustee to each creditor who has proved a claim against the estate and to the insolvent, be taxed by the Master according to a tariff framed by him.

(b) The Master may disallow any costs, including any costs taxed by the taxing officer of the Court, incurred under this section if in his opinion, the trustee acted *mala fide*, negligently or unreasonably, in incurring such costs.

(3) Any creditor referred to in sub-section (2) or the insolvent may, either personally or by his agent, not being a person referred to in the proviso to sub-section (2) of section *fifty-three*, be present at the taxation and object to any costs or part of such costs included in such bill of costs."



Amendment of  
section 81 of Act  
24 of 1936.

25. Section *eighty-one* of the principal Act is hereby amended—

(a) by the substitution in sub-section (1) for all the words preceding paragraph (a) of the following words:

“(1) A trustee shall investigate the affairs and transactions of the insolvent concerned before the sequestration of his estate and shall, at the second meeting or, with the written permission of the Master obtained before the second meeting, at an adjourned second meeting of the creditors of that estate, or, if an offer of composition has been accepted by creditors in terms of section *one hundred and nineteen*, within one month after the acceptance of such offer of composition, submit a full written report on those affairs and transactions and on any matter of importance relating to the insolvent or the estate, and more especially in regard to—”;

(b) by the insertion after sub-section (1) of the following sub-section:

“(1)*bis* (a) The trustee shall, at least fourteen days before the date specified in the notice in the *Gazette* for the holding of the meeting at which the report referred to in sub-section (1) is to be submitted, send by registered post to each creditor of the estate whose name and address is known to him a copy of such report and of the inventory transmitted to him by the deputy sheriff under section *nineteen* and of the valuation furnished by him to the Master under section *sixty-nine* and shall submit therewith any recommendation in respect of any resolution or direction which in his opinion ought to be passed or given at such meeting.

(b) The trustee shall at least twenty-four hours before the time advertised for the commencement of the meeting referred to in paragraph (a) submit to the officer who is to preside at that meeting an affidavit setting out the names and addresses of the creditors to whom copies of the report, inventory and valuation have been sent in terms of paragraph (a) and containing full particulars of each resolution and direction recommended by him to such creditors under the said paragraph.”;

(c) by the substitution for sub-section (3) of the following sub-section:

“(3) (a) The creditors may, at the meeting in question, direct what action shall be taken by the trustee in respect of any matter reported to them under paragraph (e), (f), (g), (h) or (i) of sub-section (1).

(b) If no directions have been given by the creditors at the second meeting of creditors, any resolution or direction alleged in the affidavit referred to in paragraph (a) of sub-section (1)*bis* to have been recommended to the creditors of the estate and which could lawfully have been passed or given by the creditors at such meeting shall, if the Master so approves, be deemed to have been passed or given, as the case may be, by the creditors at such meeting.

(c) Subject to the provisions of this Act, the Master may, if no directions have been given by the creditors at the second meeting of creditors, in addition to any resolution or direction approved of by him under paragraph (b) or if no such resolution or direction has been so approved of, give such directions relating to any matter reported to the creditors under sub-section (1) or to the administration or realization of the estate as he thinks fit.

(d) Notwithstanding the provisions of sub-section (3) of section *fifty-three*, any resolution or direction approved under paragraph (b) and any direction given by the Master under paragraph (c) shall be binding upon the trustee.”; and

(d) by the substitution for sub-section (4) of the following sub-section:

“(4) The report referred to in sub-section (1) shall contain full particulars of all the facts relating to any alleged contravention of this Act by the insolvent or the alleged commission by him of any offence reported in terms of paragraph (d) of that sub-section and the trustee shall furnish such further information in regard thereto as the Master or the Attorney-General may require.”.

Amendment of section 82 of Act 24 of 1936.

26. Section *eighty-two* of the principal Act is hereby amended—

- (a) by the deletion of sub-sections (3) and (4); and  
(b) by the substitution for sub-section (5) of the following sub-section:

“(5) After the opening of the tenders no further offer for the property in question shall be considered and unless the creditors have otherwise directed, or if they have given no directions, unless the Master has otherwise directed, the trustee shall accept the best tender or reject all the tenders and sell the property by public auction.”.

Amendment of section 83 of Act 24 of 1936, as amended by section 24 of Act 16 of 1943.

27. Section *eighty-three* of the principal Act is hereby amended by the substitution for sub-section (11) of the following sub-section:

“(11) If a creditor has valued his security when proving his claim, the trustee, if authorized by the creditors, may, unless the creditor has realized his security in terms of sub-section (2) or (3), within three months as from the date of his appointment or as from the date of the proof of the claim (whichever is the later) take over the property (whether movable or immovable) which constitutes the security at the value placed thereon by the creditor when his claim was proved: Provided that if two or more creditors have a pledge or special mortgage of the same property, a creditor who has valued his security shall be deemed to have valued, and the trustee shall be entitled to take over, only the preferent rights of the creditor in respect of the property, and not the property itself. If the trustee does not, within that period, take over the said property or security he shall realize it for the benefit of all creditors whose claims are secured thereby, according to their respective rights.”.

Substitution of section 91 of Act 24 of 1936.

28. The following section is hereby substituted for section *ninety-one* of the principal Act:

“Liquidation account and plan of distribution or contribution. 91. Subject to the provisions of sections *one hundred and nine* and *one hundred and ten*, a trustee shall within a period of six months as from the date of his appointment, submit to the Master a liquidation account and a plan of distribution of the proceeds of the property in the estate available for payment to creditors, or, if all realizable property in the estate has been realized and brought to account and the proceeds are insufficient to cover the costs and charges mentioned in section *ninety-seven*, a plan of contribution apportioning the liability for the deficiency among the creditors who are liable to contribute.”.

Amendment of section 96 of Act 24 of 1936.

29. Section *ninety-six* of the principal Act is hereby amended by the substitution for sub-sections (1), (2) and (3) of the following sub-sections:

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

(2) Thereafter any balance of the free residue shall be applied in defraying the death-bed expenses of the insolvent if they were incurred before the trustee's first plan of distribution was submitted to the Master in terms of section *ninety-one* and the death-bed expenses of the debtor's wife or minor child, if those expenses were incurred

within the period of three months immediately preceding the sequestration of the insolvent's estate, but the amount payable under this sub-section shall not exceed fifty pounds in all.

(3) In sub-section (2) 'death-bed expenses' means expenses incurred for medical attendance, nursing otherwise than by a nurse referred to in section *one hundred*, medicines and medical necessaries, and claims for those expenses shall rank *pari passu* and abate in equal proportion, if necessary."

Substitution of section 99 of Act 24 of 1936, as amended by section 29 of Act 16 of 1943.

30. The following section is hereby substituted for section *ninety-nine* of the principal Act:

"Compensation under the Workmen's Compensation Act, 1941 and contributions to certain funds. 99. Thereafter any balance of the free residue shall be applied in defraying any compensation which the estate owes to a workman or to any dependant of a workman under the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), and in defraying any contributions by any employer and by his employees payable by such employer under the provisions of any law and which the estate owes to any pension, sick, medical, unemployment, holiday, provident or other insurance fund."

Amendment of section 100 of Act 24 of 1936, as amended by section 13 of Act 32 of 1952.

31. Section *one hundred* of the principal Act is hereby amended—

(a) by the substitution for sub-sections (1) and (2) of the following sub-sections:

"(1) (a) Thereafter any balance of the free residue shall be applied in paying the salary or wages, for a period not exceeding two months prior to the date of sequestration of the estate, due to an employee who was engaged by the insolvent and in paying any fee due to a nurse or an accountant or auditor registered under the Public Accountants and Auditors Act, 1951 (Act No. 51 of 1951), who was engaged, whether full-time or part time, by the insolvent before the said date to nurse himself, his wife or minor child or to keep or write up or audit the books relating to the insolvent's affairs, as the case may be: Provided that not more than two hundred pounds shall be paid out under this sub-section to any employee, nurse, accountant, or auditor.

(b) For the purposes of paragraph (a) a commercial traveller engaged on a commission basis or on a salary and commission basis shall be deemed to be an employee engaged by the insolvent, and any commission earned by him shall be regarded as his salary or wages or part of his salary or wages, as the case may be.

(2) If on the date of sequestration any leave is due to any such employee or any bonus in respect of leave or holiday due to him has accrued to such employee, he shall be entitled to salary or wages in respect of any period, not exceeding twenty-one days of leave due to him or to such bonus whether or not payment thereof is then due or to both such salary or wages and such bonus, as the case may be: Provided that not more than one hundred pounds shall be paid out under this sub-section to any such employee in respect of such salary or wages and bonus."; and

(b) by the insertion after sub-section (3) of the following sub-section:

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

Amendment of section 106 of Act 24 of 1936.

32. Section *one hundred and six* of the principal Act is hereby amended by the substitution for all the words preceding the proviso of the following words:

"106. Where there is no free residue in an insolvent estate or when the free residue is insufficient to meet all the expenses, costs and charges mentioned in section *ninety-seven*, all creditors who have proved claims against the estate shall be liable to make good any deficiency, the non-preferent creditors each in proportion to the amount

of his claim and the secured creditors each in proportion to the amount for which he would have ranked upon the surplus of the free residue, if there had been any;”.

- Amendment of section 108 of Act 24 of 1936, as amended by section 20 of Act 62 of 1955.
33. Section *one hundred and eight* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:  
“(2) The trustee shall, as soon as possible after he has submitted an account to the Master, give notice in the manner prescribed by paragraphs (b) and (c) of sub-section (3) of section *forty* that he has so submitted such account and that the account will lie open for inspection by the creditors of the estate at the place or places and during the period stated in the notice.”.
- Amendment of section 110 of Act 24 of 1936.
34. Section *one hundred and ten* of the principal Act is hereby amended by the deletion of sub-section (3).
- Amendment of section 111 of Act 24 of 1936.
35. Section *one hundred and eleven* of the principal Act is hereby amended by the substitution in sub-section (2) for all the words preceding the proviso of the following words:  
“(2) If the Master is of the opinion that any such objection is well founded or if, apart from any objection, he is of the opinion that the account is in any respect incorrect or contains any improper charge or that the trustee acted *mala fide*, negligently or unreasonably in incurring any costs included in the account and that the account should be amended, he may direct the trustee to amend the account or may give such other direction in connection therewith as he may think fit:”.
- Amendment of section 114 of Act 24 of 1936.
36. Section *one hundred and fourteen* of the principal Act is hereby amended—  
(a) by the addition to sub-section (1) of the following proviso:  
“Provided that a cheque purporting to be drawn payable to a creditor in respect of any dividend due to him and paid by the banker on whom it is drawn, may be accepted by the Master in lieu of any such receipt.”; and  
(b) by the deletion of sub-section (3).
- Repeal of section 115 of Act 24 of 1936.
37. Section *one hundred and fifteen* of the principal Act is hereby repealed.
- Amendment of section 116 of Act 24 of 1936.
38. Section *one hundred and sixteen* of the principal Act is hereby amended by the deletion of sub-section (2).
- Insertion of section 116bis in Act 24 of 1936.
39. The following section is hereby inserted in the principal Act after section *one hundred and sixteen*:  
“Failure by trustee to submit account or to perform duties. 116bis. (1) If any trustee fails to submit any account to the Master as and when required by or under this Act, or to submit any vouchers in support of such account or to perform any other duty imposed upon him by this Act or to comply with any reasonable demand of the Master for information or proof required by him in connection with the liquidation or distribution of an estate, the Master or any person having an interest in the liquidation or distribution of the estate may, after giving the trustee not less than fourteen days’ notice, apply to the court for an order directing the trustee to submit such account or any vouchers in support thereof or to perform such duty or to comply with such demand.  
(2) The costs adjudged to the Master or to such person shall, unless otherwise ordered by the Court, be payable by the trustee *de bonis propriis*.”.
- Amendment of section 117 of Act 24 of 1936.
40. Section *one hundred and seventeen* of the principal Act is hereby amended by the substitution for sub-section (1) of the following sub-section:  
“(1) If a trustee has failed to comply with any order of the Court made under section *one hundred and sixteen bis* the Court may direct that any sum of money which that trustee was ordered to pay be recovered by attachment and sale of the goods of the trustee and may further commit him to prison for contempt of the Court.”.

- Amendment of section 124 of Act 24 of 1936, as amended by section 32 of Act 16 of 1943.
41. Section *one hundred and twenty-four* of the principal Act is hereby amended by the substitution for the second proviso to sub-section (1) of the following proviso:  
 "and provided further that the said certificate shows that payment has been made or the security prescribed by sub-section (7) of section *one hundred and nineteen* has been given for the payment of not less than ten shillings for every pound of every claim proved or to be proved against the estate of the insolvent."
- Amendment of section 138 of Act 24 of 1936.
42. Section *one hundred and thirty-eight* of the principal Act is hereby amended by the deletion of paragraph (a).
- Insertion of section 138*bis* in Act 24 of 1936.
43. The following section is hereby inserted in the principal Act after section *one hundred and thirty-eight*:  
 "Presumption in case of prosecution for failure to notify change of address. 138*bis*. If in any prosecution for a contravention of paragraph (d) of section *one hundred and thirty-eight* it is proved that the insolvent has changed his residential or postal address it shall, unless the contrary is proved, be presumed that he has failed to notify the trustee of such change."
- Amendment of section 151 of Act 24 of 1936.
44. Section *one hundred and fifty-one* of the principal Act is hereby amended by the substitution for all the words preceding the first proviso of the following words:  
 "151. Subject to the provisions of section *fifty-seven* any person aggrieved by any decision, ruling, order or taxation of the Master or by a decision, ruling or order of an officer presiding at a meeting of creditors may bring it under review by the Court and to that end may apply to the Court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected:"
- Insertion of section 151*bis* in Act 24 of 1936.
45. The following section is hereby inserted in the principal Act after section *one hundred and fifty-one*:  
 "Costs of review. 151*bis*. If the court reviewing any matter referred to in section *one hundred and fifty-one* confirms any decision, ruling, order or taxation of the Master or officer referred to in that section the costs of the applicant for the review of that matter shall not be paid out of the assets of the estate concerned unless the Court otherwise directs."
- Amendment of section 152 of Act 24 of 1936.
46. Section *one hundred and fifty-two* of the principal Act is hereby amended by the substitution for sub-section (2) of the following sub-section:  
 "(2) If at any time after the sequestration of the estate of a debtor and before his rehabilitation, the Master is of the opinion that the insolvent or the trustee of that estate or any other person is able to give any information which the Master considers desirable to obtain, concerning the insolvent, or concerning his estate or the administration of the estate or concerning any claim or demand made against the estate, he may by notice in writing delivered to the insolvent or the trustee or such other person summon him to appear before the Master or before a magistrate or an officer in the public service mentioned in such notice, at the place and on the date and hour stated in such notice, and to furnish the Master or other officer before whom he is summoned to appear with all the information within his knowledge concerning the insolvent or concerning the insolvent's estate or the administration of the estate."
- Insertion of section 158*ter* in Act 24 of 1936.
47. (1) The following section is hereby inserted in the principal Act after section *one hundred and fifty-eight bis*:  
 "Application of Act to South-West Africa. 158*ter*. This Act and any amendment thereof shall apply also in the Territory, including that portion of the Territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951)."

(2) Sub-section (1) shall be deemed to have come into operation on the first day of July, 1943.

- Substitution for "Governor-General" and "Union" of "State President" and "Republic" respectively, in Act 24 of 1936.      48. The principal Act is hereby amended by the substitution for the word "Governor-General", wherever it occurs, of the words "State President" and for the word "Union", wherever it occurs, of the word "Republic".
- Savings.      49. The provisions of this Act shall not apply to any estate sequestrated provisionally or finally before the commencement of this Act. Any such estate shall in all respects be dealt with according to the provisions of the principal Act as they existed immediately before the commencement of this Act.
- Repeal of section 37 of Act 16 of 1943.      50. Section *thirty-seven* of the Insolvency Law Amendment Act, 1943, is hereby repealed.
- Short title.      51. This Act shall be called the Insolvency Amendment Act, 1965.