Republic of Namibia
Annotated Statutes

Insolvency Act 24 of 1936 (SA)

(SA GG 2365)
came into force in South West Africa on 1 July 1943
when Act 16 of 1943 was brought into force in South West Africa
(see also section 158*ter* of Act, inserted by Act 99 of 1965 and
deemed to have come into force on 1 July 1943)

APPLICABILITY TO SOUTH WEST AFRICA: The Act was initially applied to South West Africa by the *Insolvency Amendment Act 16 of 1943*, which stated in section 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." ***Act 16 of 1943* also made various amendments to Act 24 of 1936 to make it appropriate to South West Africa, including defining "**Union**" to include "**the mandated territory of South-West Africa**". Section 39 of *Act 16 of 1943* stated "**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 **[16 April 1943]**." ***Act 16 of 1943* was brought into force in South West Africa on 1 July 1943 by *SA Proc. 112/1943* (SA GG 3209). Although *Act 16 of 1943* did not refer to the application of subsequent amendments of the Act to South West Africa, they appear to have applied by virtue of the definition of "Union" (and later "Republic") to include South West Africa. *Act 99 of 1965* subsequently made this clear by inserting section 158*ter,* which was deemed to have come into operation on 1 July 1943 and which states "**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)." (*Act 99 of 1965* also repealed section 37 of *Act 16 of 1943*.)**

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979), dated 12 November 1979. One amendment to the Act in South Africa after the date of transfer, the *Insolvency Amendment Act 78 of 1980* (RSA GG 7083), was made expressly applicable to South West Africa by the South West Africa Insolvency Amendment Act 18 of 1980. None of the other South African amendments after the date of transfer and prior to Namibian independence were applicable to South West Africa because none were made expressly so applicable.

Section 3(1)(a) of the transfer proclamation excluded the references to the Republic in the Act from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, except where this word occurs for the second and third times in section 148 of the Act. This means that, prior to Namibian independence, the designated references to the Republic in section 148 were to be construed as references to South West Africa only, while elsewhere the term retained the meaning given to it in the definition section of the Act (South Africa and South West Africa).

as amended by

Finance Act 17 of 1938 (SA) (SA GG 2572)
came into force on date of publication: 30 September 1938
Income Tax Act 25 of 1940 (SA) (SA GG 2764)
came into force on date of publication: 20 May 1940

Income Tax Act 31 of 1941 (SA) (SA GG 2906)
came into force on 1 July 1941 (section 97 of Act 31 of 1941)
Hire-Purchase Act 36 of 1942 (SA) (SA GG 3050)
came into force on date of publication: 1 May 1942
Insolvency Law Amendment Act 16 of 1943 (SA) (SA GG 3180)
brought into force in South West Africa on 1 July 1943 by
SA Proc. 112/1943 (SA GG 3209) (see section 39 of Act 16 of 1943);
(amended by Act 99 of 1965 to delete section 37)
Insurance Act 27 of 1943 (SA) (SA GG 3191)
brought into force on 1 April 1944 by SA Proc. 44/1944 (SA GG 3312)
Merchant Shipping Act 57 of 1951 (SA) (SA GG 4684)
brought into force in relevant part on 1 January 1960 by SA Proc. 298/1959 (SA GG 6337)
General Law Amendment Act 32 of 1952 (SA) (SA GG 4856)
came into force on date of publication: 4 June 1952
General Law Amendment Act 62 of 1955 (SA) (SA GG 5512)
came into force in relevant part on date of publication: 6 July 1955
General Law Amendment Act 50 of 1956 (SA) (SA GG 5703)
came into force on date of publication: 22 June 1956
SA Proclamation 229 of 1956 (SA GG 5757)
under the authority of section 63(1)*bis*;
came into force on date of publication: 19 October 1956
(repealed by RSA Proc. R.159 of 1961)
Farmers' Assistance Amendment Act 16 of 1960 (SA) (SA GG 6402)
came into force on date of publication: 1 April 1960
Finance Act 64 of 1960 (SA) (SA GG 6462)
came into force on date of publication: 1 June 1960
SA Proclamation R.210 of 1960 (SA GG 6479)
under the authority of section 19(6);
came into force on date of publication: 1 July 1960
Income Tax Act 80 of 1961 (RSA) (RSA GG 37)
came into force on date of publication: 7 July 1961
RSA Proclamation R.159 of 1961 (RSA GG 136)
under the authority of section 63(1)*bis*;
came into force on date of publication: 15 December 1961
Income Tax Amendment Act 6 of 1963 (RSA) (RSA GG 438)
came into force on date of publication: 20 February 1963
Insolvency Amendment Act 99 of 1965 (RSA) (RSA GG 1171)
except as otherwise indicated in the annotations to individual sections,
came into force on date of publication: 7 July 1965
RSA Proclamation R.155 of 1971 (RSA GG 3179)
under the authority of section 153(1)*bis*;
came into force on 1 August 1971 (in terms of the Proclamation)
Insolvency Amendment Act 6 of 1972 (RSA) (RSA GG 3407)
came into force on date of publication: 8 March 1972
Income Tax Act 90 of 1972 (RSA) (RSA GG 3593)
came into force on date of publication: 28 June 1972
RSA Proclamation R.282 of 1972 (RSA GG 3695)
under the authority of section 19(6);
came into force on 1 December 1972 (in terms of the Proclamation)
RSA Proclamation R.87 of 1973 (RSA GG 3826)
under the authority of section 63(1)*bis*;
came into force on 1 April 1973 (in terms of the Proclamation)
General Law Amendment Act 62 of 1973 (RSA) (RSA GG 3947)
came into force on date of publication: 27 June 1973
General Law Amendment Act 29 of 1974 (RSA) (RSA GG 4220)
came into force on date of publication: 15 March 1974
Income Tax Act 85 of 1974 (RSA) (RSA GG 4516)
came into force on date of publication: 29 November 1974
Sales Tax Proclamation, AG 40 of 1978 (OG 3774)

came into force on date of publication: 28 June 1978

Sales Tax Act 103 of 1978 (RSA) (RSA GG 6085)
came into force on date of publication: 28 June 1978;
the amendment to Act 24 of 1936 does not appear to have been intended to apply to South West Africa as it is to a great extent a duplicate of the amendment by AG 40 of 1978 (see annotation to section 99(1)(cC))

Insolvency Amendment Act 78 of 1980 (RSA) (RSA GG 7083)
applied to South West Africa by the Insolvency Act Amendment Act 18 of 1980 (OG 4292), which is deemed to have come into force on 25 June 1980 (section 2 of Act 18 of 1980)

RSA Proclamation R.118 of 1980 (RSA GG 7119)
under the authority of section 153(1)*bis*;
came into force on date of publication: 11 July 1980;
issued after the date of transfer but made explicitly applicable to South West Africa

RSA Proclamation R.120 of 1980 (RSA GG 7119)
under the authority of section 19(6);
came into force on date of publication: 11 July 1980;
issued after the date of transfer but made explicitly applicable to South West Africa

Insolvency Amendment Act 14 of 1985 (OG 5114)
came into force on date of publication: 9 October 1985

AG Proclamation 17 of 1986 (OG 5179)
under the authority of section 19(6);
came into force on 1 April 1986 (in terms of the Proclamation)

Proclamation 12 of 1999 (GG 2051)
under the authority of sections 19(6), 63(1)*bis* and 153(1)*bis*;
came into force on date of publication: 23 February 1999

Repeal of Obsolete Laws Act 12 of 2022 (GG 7991)
brought into force on 15 February 2023 by GN 21/2023 (GG 8031)

Abolition of Payment by Cheque Act 16 of 2022 (GG 7995)
brought into force on 15 March 2023 by GN 47/2023 (GG 8050)

The Act is also substantially amended by the Insolvency Amendment Act 12 of 2005 (GG 3551), which has not yet been brought into force. Therefore, the amendments made by it are not reflected here.

The Act is amended by the Financial Institutions and Markets Act 2 of 2021 (GG 7645), which has not yet been brought into force. Therefore, the amendment made by that Act is not reflected here.

Graham v Master of the High Court of Namibia (HC-MD-CIV-MOT-REV-2022-00053) [2024] NAHCMD 408 (19 July 2024) holds that section 66(3), read with section 39(2), is unconstitutional to the extent that it authorises a presiding officer who is not a magistrate to issue a warrant committing to prison a person being examined at a creditors' meeting held under section 65.

ACT

To consolidate and amend the law relating insolvent persons and to their estates.

[The *Government Gazette* does not state the date of assent or which language version was signed.]

ARRANGEMENT OF SECTIONS

1. Repeal of laws
2. Definitions
3. Petition for acceptance of surrender of estate

4. Notice of surrender and lodging at Master's office of statement of debtor's affairs
5. Prohibition of sale in execution of property of estate after publication of notice of surrender and appointment of *curator bonis*
6. Acceptance by Court of surrender of estate
7. Withdrawal of notice of surrender
8. Acts of insolvency
9. Petition for sequestration of estate
10. Provisional sequestration
11. Service of rule *nisi* upon the debtor
12. Final sequestration or dismissal of petition for sequestration
13. Sequestration of partnership estate
14. Petitioning creditor to prosecute sequestration proceedings until trustee appointed
15. Compensation to debtor if petition malicious or vexatious
16. Insolvent and spouse whose separate estate has not been sequestrated must deliver his business records and lodge statement of his affairs with Master
17. Notice of sequestration
18. Appointment of provisional trustee by Master
19. Attachment of property by deputy sheriff
20. Effect of sequestration on insolvent's property
21. Effect of sequestration on property of spouse of insolvent
22. Payment of debts after sequestration
23. Rights and obligations of insolvent during sequestration
24. Provisions relating to property in possession of insolvent after sequestration
25. Estate to remain vested in trustee until composition or rehabilitation
26. Dispositions without value
27. Antenuptial contracts
28. **[deleted]**
29. Voidable preferences
30. Undue preference to creditors
31. Collusive dealings before sequestration
32. Proceedings to set aside improper disposition
33. Improper disposition does not affect certain rights
34. Voidable sale of business
35. Uncompleted acquisition of immovable property before sequestration
36. Goods not paid for which debtor purchased not on credit
37. Effect of sequestration upon a lease
38. Contract of service terminated by insolvency of employer
39. Time and place of meetings of creditors
40. First and second meetings of creditors
41. General meetings of creditors
42. Special meetings of creditors
43. A creditor may register his name and address with trustee
44. Proof of liquidated claims against estate
45. Trustee to examine claims
46. Set-off
47. Right of retention and landlord's legal hypothec
48. Proof of conditional claim
49. Claims against partnership distinct from claims against partners
50. Arrear interest Debt due after sequestration
51. Withdrawal of claim already proved against estate
52. Voting at meeting of creditors
53. Questions upon which creditors may vote
54. Election of trustee
55. Persons disqualified from being trustees
56. Appointment of trustee. Security for his administration.

[The punctuation of the heading is reproduced as it appears in the *Government Gazette*.]

57. Appointment of trustee or co-trustee by Master
58. Vacation of office of trustee
59. Court may declare a person disqualified from being a trustee, or remove a trustee
60. Removal of trustee by Master
61. Leave of absence or resignation of trustee
62. Election of new trustee
63. Remuneration of trustee or *curator bonis*
64. Insolvent and others to attend meetings of creditors
65. Interrogation of insolvent and other witnesses
66. Enforcing summonses and giving of evidence
67. Steps to be taken on suspicion of an offence
68. Presumption as to record of proceedings and validity of acts at meetings of creditors
69. Trustee must take charge of property of estate
70. Banking accounts and investments
71. Record of all receipts
72. Unlawful retention of moneys or use of property by trustee
73. Trustee may obtain legal advice
74. Improper advising or conduct of legal proceedings
75. Legal proceedings against estate
76. Continuance of pending legal proceedings by surviving or new trustee
77. Recovery of debts due to estate
78. Extension of time for payment or compounding of debts due to estate, and arbitration
79. Subsistence allowance for insolvent and family
80. Continuation of insolvent's business
80*bis*. Sale of movable or immovable property on authorization of Master
81. Trustees report to creditors
82. Sale of property after second meeting and manner of sale
83. Realization of securities for claims
84. Special provision in case of goods delivered to a debtor in terms of an instalment sale transaction
85. Exclusion or limitation of preference under legal hypothec
86. Effect of general bond and general clause
87. Ranking of mortgages for future debts
88. Certain mortgages are invalid
89. Costs to which securities are subject
90. Land Bank not affected by this Act
91. Liquidation account and plan of distribution or contribution
92. Manner of framing liquidation account
93. Trading account
94. Form of plan of distribution
95. Application of proceeds of securities
96. Funeral and death-bed expenses
97. Cost of sequestration
98. Costs of execution
99. Preference in regard to certain statutory obligations
100. Salary or wages of former employees of insolvent
101. Preference in regard to taxes on persons or the incomes or profits of persons
102. Preference under a general bond
103. Non-preferent claims
104. Late proof of claims
105. Form of plan of contribution
106. Contributions by creditors towards cost of sequestration when free residue insufficient
107. Trustee's account to be signed and verified
108. Inspection of trustee's accounts by creditors

109. Extension of period for submission of account by trustee
110. Compelling trustee to submit accounts
111. Objections to trustee's account
112. Confirmation of trustee's accounts
113. Distribution of estate and collection of contributions from creditors
114. Trustee to produce acquittances for dividends or to pay over unpaid dividends to Master
115. **[deleted]**
116. Surplus to be paid into Guardians' Fund until rehabilitation of insolvent
116*bis*. Failure by trustee to submit account or to perform duties
117. Enforcement of order of Court
118. Enforcing payment of contributions
119. Composition
120. Effect of composition
121. If insolvent partner enters into composition, trustee of partnership estate may take over his estate
122. Effect of composition on spouse of the insolvent
123. Functions of trustee under composition
124. Application for rehabilitation
125. Security to be furnished prior to application for rehabilitation
126. Facts to be averred on application for rehabilitation
127. Opposition to or refusal by Court of rehabilitation
127A. Rehabilitation by effluxion of time
128. Partnership cannot be rehabilitated
129. Effect of rehabilitation
130. Illegal inducements to vote for composition or not to oppose rehabilitation
131. Recovery of penalty
132. Concealing or destroying books or assets
133. Concealment of liabilities or pretext to existence of assets
134. Failure to keep proper records
135. Undue preferences, contracting debts without expectation of ability to pay, etc.
136. Failure to give information or to deliver assets, books, etc.
137. Obtaining credit during insolvency, offering inducements, etc.
138. Failure to attend meetings of creditors or give certain information
138*bis*. Presumption in case of prosecution for failure to notify change of address
139. Failure to appear or to give evidence or giving false evidence
140. Failure of insolvent or spouse to appear to give evidence
141. Acceptance of consideration for certain illegal acts or omissions
142. Removing or concealing property to defeat an attachment or failure to disclose property
143. Criminal liability of partners, administrators, servants or agents
144. Criminal liability of trustee for neglect of certain duties
145. Obstructing trustee
146. Evidence of liability incurred by insolvent
147. Offences committed by insolvent in different provinces may be tried at his place of business or residence
148. Deportation of certain persons for certain offences
149. Jurisdiction of the Court
150. Appeal
151. Review
151*bis*. Costs of review
152. Master may direct trustee to deliver documents or property or call upon any person to furnish certain information
153. Fees of office and certain costs
154. Custody of documents. Admissibility of copies or certificates.
[The punctuation of the heading is reproduced as it appears in the *Government Gazette*.]
155. Destruction of Documents

[The capitalisation in the heading is reproduced as it appears in the *Government Gazette*.]

156. Insurer obliged to pay third party's claim against insolvent
157. Formal defects
158. Regulations
158*bis*. State President may amend First Schedule
158*ter*. Application of Act to South-West Africa
159. Short title and date of commencement

First Schedule

FORMS

FORM A
Notice of Surrender of a Debtor's Estate (*Section* 4(1))

FORM B
Statement of Debtor's Affairs (*Sections* 4(3) *and* 16))

FORM C
Affidavit for the Proof of any Claim other than a Claim based on a Promissory Note or other Bill of Exchange (*Section* 44(4))

FORM D
Affidavit for the Proof of a Claim based on a Promissory Note or other Bill of Exchange (*Section* 44(4))

Second Schedule

TARIFF A
DEPUTY SHERIFF'S FEES
(Section 19(5))

TARIFF B
REMUNERATION OF TRUSTEE
(Section 63)

Third Schedule

MASTER'S FEES OF OFFICE
(Section 153)

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:-

**[Act 99 of 1963 makes the following substitutions throughout the Act:
* "State President" for "Governor-General"; and
* "Republic" for "Union".]**

Repeal of laws

1. The Insolvency Act, 1916 (Act No. 32 of 1916), the Insolvency Act, 1916, Amendment Act, 1926 (Act No. 29 of 1926) (except the title and preamble thereof and sections *one, seventy-one, seventy-two* and *seventy-four* thereof) and section *twenty* of the Land Bank Amendment Act, 1934 (Act No. 58 of 1934) are hereby repealed: Provided that if an estate was sequestrated or assigned 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 Act No. 32 of 1916 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 this Act, in so far as this Act makes provision therefor.

[Act 16 of 1943 provides for the following additional repeals in section 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."

Additional repeals of specific sections of various laws made by section 8 of Act 6 of 1972:

Schedule
LAWS REPEALED

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

]

Definitions

2. In this Act unless inconsistent with the context -

"account", in relation to a trustee, means a liquidation, account or a plan of distribution or of contribution, or any supplementary liquidation account or plan of distribution or contribution, as the case may require;

""banking institution" means a banking institution as defined in section 1 of the Banks Act, 1965 (Act No. 23 of 1965), and registered or provisionally registered or deemed to be registered as a

banking institution in terms of section 4 of that Act, but does not include a provisionally registered banking institution which is so registered provisionally after the coming into operation of the Insolvency Amendment Act, 1972;

**[The definition of "banking institution" is inserted by Act 6 of 1972.
The Banks Act 23 of 1965 has been replaced by the Banking Institutions Act 2 of 1998, which has been replaced in turn by the Banking Institutions Act 13 of 2023.]**

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

**[The definition of "building society" is inserted by Act 6 of 1972.
The Building Societies Act 24 of 1965 has been replaced by the Building Societies Act 2 of 1986.]**

"Court" or "the Court", in relation to any matter means the provincial or local division of the Supreme Court which has jurisdiction in that matter in terms of section *one hundred and forty-nine* or *one hundred and fifty-one,* or any judge of that division; and in relation to any offence under this Act or in section *eight, twenty-six, twenty-nine, thirty, thirty-one, thirty-two,* paragraph (a) of sub-section (3) of section *thirty-four, seventy-two, seventy-three, seventy-five, seventy-six, seventy-eight* or *one hundred and forty-seven* the expression "Court" or "the Court" includes a magistrate's court which has jurisdiction in regard to the offence or matter in question;

"debtor", in connection with the sequestration of the debtor's estate, means a person or a partnership or the estate of a person or partnership which is a debtor in the usual sense of the word, except a body corporate or a company or other association of persons which may be placed in liquidation under the law relating to companies;

"disposition" means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the Court;

"free residue", in relation to an insolvent estate, means that portion of the estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention;

[definition of "free residue" amended by Act 16 of 1943 to delete the proviso]

"*Gazette*" means the Republic 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.

**[The definition of "*Gazette*" is inserted by Act 16 of 1943.
The full stop at the end should be a semicolon.]**

"good faith", in relation to the disposition of property, means the absence of any intention to prejudice creditors in obtaining payment of their claims or to prefer one creditor above another;

"immovable property" means land and every right or interest in land or minerals which is registrable in any office in the Republic intended for the registration of title to land or the right to mine;

"insolvent" when used as a noun, means a debtor whose estate is under sequestration and includes such a debtor before the sequestration of his estate, according to the context;

"insolvent estate" means an estate under sequestration;

"magistrate" includes an additional magistrate and an assistant magistrate;

"Master" in relation to any matter, means the Master of the Supreme Court within whose area of jurisdiction that matter is to be dealt with and includes an Assistant Master;

"messenger" means a messenger of a magistrate's court and includes a deputy-messenger;

"movable property" means every kind of property and every right or interest which is not immovable property;

"preference", in relation to any claim against an insolvent estate, means the right to payment of that claim out of the assets of the estate in preference to other claims; and "preferent" has a corresponding meaning;

"property" means movable or immovable property wherever situate within the Republic, and includes contingent interests in property other than the contingent interests of a *fidei commissary* heir or legatee;

"Republic" includes the mandated territory of South-West Africa.

[The definition of "Union" was inserted by Act 16 of 1943 and changed to a definition of "Republic" by virtue of the global substitution made by Act 99 of 1965, thus necessitating a change of placement to maintain correct alphabetical order. The full stop at the end should accordingly now be a semicolon.]

"security", in relation to the claim of a creditor of an insolvent estate, means property of that estate over which the creditor has a preferent right by virtue of any special mortgage, landlord's legal hypothec, pledge or right of retention;

"sequestration order" means any order of Court whereby an estate is sequestrated and includes a provisional order, when it has not been set aside;

"sheriff" includes a deputy 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;

[The definition of "special mortgage" is inserted by Act 16 of 1943.]

"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 definition of "Supreme Court", "Division of the Supreme Court" and "Provincial or Local Division of the Supreme Court" is inserted by Act 16 of 1943.]

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

[The definition of "the Territory" is inserted by Act 16 of 1943. The full stop at the end should be a semicolon.]

"trader" means any person who carries on any trade, business, industry or undertaking in which property is sold, or is bought, exchanged or manufactured for purpose of sale or exchange, or in which building operations of whatever nature are performed, or an object whereof is public

entertainment, or who carries on the business of an hotel keeper or boarding-house keeper, or who acts as a broker or agent of any person in the sale or purchase of any property or in the letting or hiring of immovable property; and any person shall be deemed to be a trader for the purpose of this Act (except for the purposes of sub-section (10) of section *twenty-one)* unless it is proved that he is not a trader as hereinbefore defined: Provided that if any person carries on the trade, business, industry or undertaking of selling property which he produced (either personally or through any servant) by means of farming operations, the provisions of this Act relating to traders only shall not apply to him in connection with his said trade, business, industry or undertaking;

"trustee" means the trustee of an estate under sequestration, and includes a provisional trustee.

[The definition of "Union" was inserted by Act 16 of 1943 and changed to a definition of "Republic" by virtue of the global substitution made by Act 99 of 1965, thus necessitating a change of placement to maintain correct alphabetical order.]

Petition for acceptance of surrender of estate

3. (1) An insolvent debtor or his agent or a person entrusted with the administration of the estate of a deceased insolvent debtor or of an insolvent debtor who is incapable of managing his own affairs, may petition the Court for the acceptance of the surrender of the debtor's estate for the benefit of his creditors.

(2) All the members of a partnership (other than partners *en commandite* or special partners as defined in the Special Partnerships Limited Liability Act, 1861 (Act No. 24 of 1861) of the Cape of Good Hope or in Law No. 1 of 1865 of Natal) who reside in the Republic, or their agent, may petition the Court for the acceptance of the surrender of the estate of the partnership and of the estate of each such member.

(3) Before accepting or declining the surrender, the Court may direct the petitioner or any other person to appear and be examined before the Court.

Notice of surrender and lodging at Master's office of statement of debtor's affairs

4. (1) Before presenting a petition mentioned in section *three* the person who intends to present the petition (in this section referred to as the petitioner) shall cause to be published in the *Gazette* and in a newspaper circulating in the district in which the debtor resides, or, if the debtor is a trader, in the district in which his principal place of business is situate, a notice of surrender in a form corresponding substantially with Form A in the First Schedule to this Act. The said notice shall be published not more than thirty days and not less than fourteen days before the date stated in the notice of surrender as the date upon which application will be made to the Court for acceptance of the surrender of the estate of the debtor:

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.

[Subsection (1) is amended by Act 16 of 1943 to insert the provisos. A colon has accordingly been inserted before the first proviso.]

(2) Within a period of seven days as from the date of publication of the said notice in the *Gazette,* the petitioner shall deliver or post a copy of the said notice to every one of the creditors of the debtor in question whose address he knows or can ascertain.

[Subsection (2) is amended by Act 16 of 1943.]

(3) The petitioner shall lodge at the office of the Master a statement in duplicate of the debtor's affairs, framed in a form corresponding substantially with Form B in the First Schedule to this Act. That statement shall contain the particulars for which provision is made in the said Form, shall comply with any requirements contained therein and shall be verified by an affidavit (which shall be free from stamp duty) in the form set forth therein.

(4) Upon receiving the said statement, the Master may direct the petitioner to cause any property set forth therein to be valued by a sworn appraiser or by any person designated by the Master for the purpose.

(5) If the debtor resides or carries on business as a trader in any district (other than the district of Wynberg, Simonstown or Bellville in the Province of the Cape of Good Hope) wherein there is no Master's office, the petitioner shall also lodge a copy of the said statement at the office of the magistrate of the district or, if the debtor resides or so carries on business in a portion of such district in respect of which an additional or assistant magistrate permanently carries out the functions of the magistrate of the district at a place other than the seat of magistracy of that district, at the office of such additional or assistant magistrate.

[Subsection (5) is amended by Act 62 of 1955.]

(6) The said statement shall be open to the inspection of any creditor of the debtor during office hours for a period of fourteen days from a date to be mentioned in the notice of surrender.

Prohibition of sale in execution of property of estate after publication of notice of surrender and appointment of *curator bonis*

5. (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 R5 000, or the Court, if it exceeds that amount, may order the sale of the property attached and direct how the proceeds of the sale shall be applied,

[Subsection (1) is substituted by Act 99 of 1965 and amended by Act 14 of 1985.]

(2) After the publication of a notice of surrender as aforesaid in the *Gazette* the Master may appoint a *curator bonis* to the debtor's estate, who shall forthwith take the estate into his custody and take over the control of any business or undertaking of the debtor, as if he were the debtor, as the Master may direct. 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*.

[Subsection (2) is amended by Act 16 of 1943 to insert the phrase beginning with the word "Including"; punctuation and capitalisation are as in the *Government Gazette*.]

Acceptance by Court of surrender of estate

6. (1) If the Court is satisfied that the provisions of section *four* have been complied with, that the estate of the debtor in question is insolvent, that he owns realizable property of a sufficient value to defray all costs of the sequestration which will in terms of this Act be payable out of the free residue of his estate and that it will be to the advantage of creditors of the debtor if his estate is sequestrated, it may accept the surrender of the debtor's estate and make an order sequestrating that estate.

(2) If the Court does not accept the surrender or if the notice of surrender is withdrawn in terms of section *seven,* or if the petitioner fails to make the application for the acceptance of the surrender of the debtor's estate before the expiration of a period of fourteen days as from the date specified in the notice of surrender, as the date upon which application will be made to the Court for the acceptance of the surrender of the debtor's estate, the notice of surrender shall lapse and if a *curator bonis* was appointed, the estate shall be restored to the debtor as soon as the Master is satisfied that sufficient provision has been made for the payment of all costs incurred under subsection (2) of section *five.*

Withdrawal of notice of surrender

7. (1) A notice of surrender published in the *Gazette* may not be withdrawn without the written consent of the Master.

(2) A person who has published a notice of surrender in the *Gazette* may apply to the Master for his consent to the withdrawal of the notice, and if it appears to the Master that the notice was published in good faith and that there is good cause for its withdrawal, he shall give his written consent thereto. Upon the publication, at the expense of the applicant, of a notice of withdrawal and of the Master's consent thereto, in the *Gazette* and in the newspaper in which the notice of surrender appeared, the notice of surrender shall be deemed to have been withdrawn.

Acts of insolvency

8. A debtor commits an act of insolvency -

(a) if he leaves the Republic or being out of the Republic remains absent therefrom, or departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts;

(b) if a Court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient disposable property to satisfy the judgment;

(c) if he makes or attempts to make any disposition of any of his property which has or would have the effect of prejudicing his creditors or of preferring one creditor above another;

(d) if he removes or attempts to remove any of his property with intent to prejudice his creditors or to prefer one creditor above another;

(e) if he makes or offers to make any arrangement with any of his creditors for releasing him wholly or partially from his debts;

(f) if, after having published a notice of surrender of his estate which has not lapsed or been withdrawn in terms of section *six* or *seven,* he fails to comply with the requirements of sub-section (3) of section *four* or lodges, in terms of that sub-section, a statement which is incorrect or incomplete in any material respect or fails to apply for the acceptance of the surrender of his estate on the date mentioned in the aforesaid notice as the date on which such application is to be made;

(g) if he gives notice in writing to any one of his creditors that he is unable to pay any of his debts;

(h) if, being a trader, he gives notice in the *Gazette* in terms of sub-section (1) of section *thirty-four,* and is thereafter unable to pay all his debts.

Petition for sequestration of estate

9. (1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds against a debtor who has committed an act of insolvency or is insolvent, may petition the Court for the sequestration of the estate of the debtor.

[Subsection (1) is amended by Act 16 of 1943. An amount of fifty pounds is equivalent to N$100, and an amount of one hundred pounds is equivalent to N$200.]

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition, shall be reckoned as a liquidated claim for the purposes of sub-section (1).

(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.

[Subsection (3) is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

(4) Before such a petition is presented to the Court, a copy of the petition and of every affidavit confirming the facts stated in the petition shall be lodged with the Master, or, if there is no Master at the seat of the Court, with an officer in the public service designated for that purpose by the Master by notice in the *Gazette,* and the Master or such officer may report to the Court any facts ascertained by him which would appear to him to justify the Court in postponing the hearing or in dismissing the petition. The Master or the said officer shall transmit a copy of that report to the petitioning creditor or his agent.

(5) The Court, on consideration of the petition, the Master's or the said officer's report thereon and of any further affidavit which the petitioning creditor may have submitted in answer to that report, may act in terms of section *ten* or may dismiss the petition, or postpone its hearing or make such other order in the matter as in the circumstances appears to be just.

Provisional sequestration

10. If the Court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie* -

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in sub-section (1) of section *nine;* and

(b) the debtor has committed an act of insolvency or is insolvent; and

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated,

it may make an order sequestrating the estate of the debtor provisionally.

Service of rule *nisi* upon the debtor

11. (1) If the Court sequestrates the estate of a debtor provisionally it shall simultaneously grant a rule *nisi* calling upon the debtor upon a day mentioned in the rule to appear and to show cause why his estate should not be sequestrated finally.

(2) If the debtor has been absent during a period of twenty-one days from his usual place of residence and of his business (if any) within the Republic, the Court may direct that it shall be sufficient service of that rule if a copy thereof is affixed to or near the outer door of the buildings where the Court sits and published in the *Gazette,* or may direct some other mode of service.

(3) Upon the application of the debtor the Court may anticipate the return day for the purpose of discharging the order of provisional sequestration if twenty-four hours' notice of such application has been given to the petitioning creditor.

Final sequestration or dismissal of petition for sequestration

12. (1) If at the hearing pursuant to the aforesaid rule *nisi* the Court is satisfied that -

(a) the petitioning creditor has established against the debtor a claim such as is mentioned in sub-section (1) of section *nine;* and

(b) the debtor has committed an act of insolvency or is insolvent; and

(c) there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated,

it may sequestrate the estate of the debtor.

(2) If at such hearing the Court is not so satisfied, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing for any reasonable period but not *sine die.*

Sequestration of partnership estate

13. (1) If the Court sequestrates the estate of a partnership (whether provisionally or finally or on acceptance of surrender), it shall simultaneously sequestrate the estate of every member of that partnership other than a partner *en commandite* or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act No. 24 of 1861) of the Cape of Good Hope or in Law No. 1 of 1865 of Natal, who has not held himself out as an ordinary or general partner of the partnership in question: Provided that if a partner has undertaken to pay the debts of the partnership within a period determined by the Court and has given security for such payment to the satisfaction of the registrar, the separate estate of that partner shall not be sequestrated by reason only of the sequestration of the estate of the partnership.

[Subsection (1) is amended by Act 16 of 1943.]

(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.

[Subsection (2) is inserted by Act 16 of 1943 and substituted by Act 99 of 1965.]

(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.

[Subsection (3) is inserted by Act 16 of 1943.]

Petitioning creditor to prosecute sequestration proceedings until trustee appointed

14. (1) The creditor upon whose petition a sequestration order has been made shall, at his own cost, prosecute all the proceedings in the sequestration until a provisional trustee has been appointed or if no provisional trustee has been appointed until a trustee has been appointed.

(2) The trustee shall pay to the said creditor out of the first funds of the estate available for that purpose under section *ninety-seven* his costs, taxed according to the tariff applicable in the Court which made the sequestration order.

(3) In the event of a contribution by creditors under section *one hundred and six,* the petitioning creditor, whether or not he has proved a claim against the estate in terms of section *fort y-four,* shall be liable to contribute not less than he would have had to contribute if he had proved the claim stated in his petition.

Compensation to debtor if petition malicious or vexatious

15. Whenever the Court is satisfied that a petition for the sequestration of a debtor's estate is malicious or vexatious, the Court may allow the debtor forthwith to prove any damage which he may have sustained by reason of the provisional sequestration of his estate and award him such compensation as it may deem fit.

Insolvent and spouse whose separate estate has not been sequestrated 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 sequestrated, 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.

[Section 16 is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

Notice of sequestration

17. (1) The registrar shall without delay transmit -

(a) one original of every sequestration order and of every order relating to an insolvent estate or to a trustee or to an insolvent, made by the Court, to the Master;

(b) one original of every provisional sequestration order or if a final sequestration order was not preceded by a provisional sequestration order, then of that final order, and of every order amending or setting aside any prior order so transmitted, which was made by the Court to -

(i) the deputy-sheriff of every district in which it appears that the insolvent resides or owns property;

(ii) every officer charged with the registration of title to any immovable property in the Republic;

(ii)*bis* every officer having charge of a register of ships kept at a port of registry appointed as such in terms of paragraph (c) of section *four* of the Merchant Shipping Act, 1951, for the registration of ships

**[Subparagraph (ii)*bis* is inserted by Act 57 of 1951.
There should be a semicolon at the end. No words appear to be missing.]**

(iii) every sheriff and every messenger who or whose deputy holds under attachment any property belonging to the insolvent estate.

(2) Every officer who has received an order transmitted to him in terms of sub-section (1) shall register it and note thereon the day and hour when it was received in his office.

(3) Upon the receipt by any officer referred to in sub-paragraph (ii) of paragraph (b) of sub-section (1) of a sequestration order he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent or to his or her spouse.

(3)*bis* Upon the receipt by any officer referred to in subparagraph (ii)*bis* of paragraph (b) of sub-section (1) of a sequestration order he shall enter a caveat against the transfer of every ship or share in a ship or the cancellation or cessation of every deed of mortgage of a ship or share in a ship registered in the name of or belonging to the insolvent or his or her spouse.

[Subsection (3)*bis* is inserted by Act 57 of 1951.]

(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.

[Subsection (4) is substituted by Act 16 of 1943.]

Appointment of provisional trustee by Master

18. (1) As soon as an estate has been sequestrated (whether provisionally or finally) or when a person appointed as trustee ceases to be trustee or to function as such, the Master may appoint a provisional trustee to the estate in question who shall give security to the satisfaction of the Master for the proper performance of his duties as provisional trustee and shall hold office until the appointment of a trustee.

(2) At any time before the first meeting of the creditors of an insolvent estate in terms of section *forty,* the Master may, subject to the provisions of sub-section (3) of this section, give such directions to the provisional trustee as could be given to a trustee by the creditors at a meeting of creditors.

(3) A provisional trustee shall have the powers and the duties of a trustee, as provided in this Act, except that without the authority of the Court or for the purpose of obtaining such authority he shall not bring or defend any legal proceedings and that without the authority of the Court or Master he shall not sell any property belonging to the estate in question. Such sale shall furthermore be after such notices and subject to such conditions as the Master may direct.

[Subsection (3) is amended by Act 16 of 1943.]

(4) When a meeting of creditors for the election of a trustee has been held in terms of section *forty* and no trustee has been elected, and the Master has appointed a provisional trustee in the estate in question, the Master shall appoint him as trustee on his finding such additional security as the Master may have required.

Attachment of property by deputy sheriff

19. (1) As soon as a deputy-sheriff has received a sequestration order he shall attach, as hereinafter provided and make an inventory of the movable property of the insolvent estate which is in his district and is capable of manual delivery and not in the possession of a person who claims to be entitled to retain it under a right of pledge or a right of retention or under attachment by a messenger, that is to say -

(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;

[Paragraph (a) is substituted by Act 99 of 1965.]

(b) he shall leave movable property other than animals in a room or other suitable place properly sealed up or appoint some suitable person to hold any movable property in his custody;

(c) he shall hand to the person so appointed a copy of the inventory, with a notice that the property has been attached by virtue of a sequestration order. That notice shall contain a statement of the offence constituted by section *one hundred and forty-two* and the penalty provided therefor.

(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;

[Paragraph (d) is inserted by Act 99 of 1965.]

(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.

[Paragraph (e) is inserted by Act 99 of 1965.]

(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.

[Subsection (1)*bis* is inserted by Act 99 of 1965.]

(2) Any person interested in the insolvent estate or in the property attached may be present or may authorize another person to be present when the deputy-sheriff is making his inventory.

(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.

[Subsection (3) is substituted by Act 99 of 1965.]

(4) A messsenger shall transmit to the Master without delay an inventory of all property attached by him which he knows to belong to an insolvent estate.

[The word "messenger" is misspelt in the *Government Gazette*, as reproduced above.]

(5) The deputy-sheriff shall be entitled to fees taxed by the Master according to tariff A in the Second Schedule to this Act and the rules for the construction of that tariff.

(6) The State President may by proclamation in the *Gazette* amend the said tariff A and rules.

[Subsection (6) is inserted by Act 50 of 1956.]

Effect of sequestration on insolvent's property

20. (1) The effect of the sequestration of the estate of an insolvent shall be -

(a) to divest the insolvent of his estate and to vest it in the Master until a trustee has been appointed, and, upon the appointment of a trustee, to vest the estate in him;

(b) to stay, until the appointment of a trustee, any civil proceedings instituted by or against the insolvent save such proceedings as may, in terms of section *twenty-three,* be instituted by the insolvent for his own benefit or be instituted against the insolvent: Provided that if any claim which formed the subject of legal proceedings against the insolvent which were so stayed, has been proved and admitted against the insolvent's estate in terms of section *forty-four* or *seventy-eight,* the claimant may also prove against the estate a claim for his taxed costs, incurred in connection with those proceedings before the sequestration of the insolvent's estate;

(c) as soon as any sheriff or messenger, whose duty it is to execute any judgment given against an insolvent, becomes aware of the sequestration of the insolvent's estate, to stay that execution, unless the Court otherwise directs;

(d) to empower the insolvent, if in prison for debt, to apply to the Court for his release, after notice to the creditor at whose suit he is so imprisoned, and to empower the Court to order his release, on such conditions as it may think fit to impose.

(2) For the purposes of sub-section (1) the estate of an insolvent shall include -

(a) all property of the insolvent at the date of the sequestration, including property or the proceeds thereof which are in the hands of a sheriff or a messenger under a writ of attachment;

(b) all property which the insolvent may acquire or which may accrue to him during the sequestration, except as otherwise provided in section *twenty-three.*

Effect of sequestration on property of spouse of insolvent

21. (1) The additional effect of the sequestration of the separate estate of one of two spouses who are not living apart under a judicial order of separation shall be to vest in the Master, until a trustee has been appointed, and, upon the appointment of a trustee, to vest in him all the property (including property or the proceeds thereof which are in the hands of a sheriff or a messenger under a writ of attachment) of the spouse whose estate has not been sequestrated (hereinafter referred to as the solvent spouse) as if it were property of the sequestrated estate, and to empower the Master or trustee to deal with such property accordingly, but subject to the following provisions of this section.

(2) The trustee shall release any property of the solvent spouse which is proved -

(a) to have been the property of that spouse immediately before her or his marriage to the insolvent or before the first day of October, 1926; or

(b) to have been acquired by that spouse under a marriage settlement; or

(c) to have been acquired by that spouse during the marriage with the insolvent by a title valid as against creditors of the insolvent; or

(d) to be safeguarded in favour of that spouse by section *twenty-eight* of this Act or by the Insurance Act, 1923 (Act No. 37 of 1923); or by the Insurance Ordinance, 1927 (Ordinance No. 12 of 1927 of the Territory), or

[Paragraph (d) is amended by Act 16 of 1943. The punctuation of paragraph (d) is reproduced as it appears in the *Government Gazette*. The Insurance Ordinance 12 of 1927 was replaced by the Insurance Act 27 of 1943, which has been replaced by the Short-term Insurance Act 4 of 1998 and the Long-term Insurance Act 5 of 1998.]

(e) to have been acquired with any such property as aforesaid or with the income or proceeds thereof.

(3) If the solvent spouse is in the Republic and the trustee is able to ascertain his or her address, the trustee shall not, except with the leave of the Court, realise property which ostensibly belonged to the solvent spouse, until the expiry of six weeks' written notice of his intention to do so, given to that spouse. Such notice shall also be published in the *Gazette* and in a newspaper circulating in the district in which the solvent spouse resides or carries on business, and shall invite all separate creditors for value of that spouse to prove their claims as provided in sub-section (5).

(4) The solvent spouse may apply to the Court for an order releasing any property vested in the trustee of the insolvent estate under sub-section (1) or for an order staying the sale of such property or, if it has already been sold, but the proceeds thereof not yet distributed among creditors, for an order declaring the applicant to be entitled to those proceeds; and the Court may make such order on the application as it thinks just.

(5) Subject to any order made under sub-section (4) any property of the solvent spouse realised by the trustee shall bear a proportionate share of the costs of the sequestration as if it were property of the insolvent estate but the separate creditors for value of the solvent spouse having claims which could have been proved against the estate of that spouse if it had been the estate under sequestration, shall be entitled to prove their claims against the estate of the insolvent spouse in the same manner and, except as in this Act is otherwise provided, shall have the same rights and remedies and be subject to the same obligations as if they were creditors of the insolvent estate; and the creditors who have so proved claims shall be entitled to share in the proceeds of the property so realised according to their legal priorities *inter se* and in priority to the separate creditors of the insolvent estate, but shall not be entitled to share in the separate assets of the insolvent estate.

(6) If any property of the solvent spouse (other than property mentioned in paragraph (d) of sub-section (2)) has been released by virtue of sub-section (2) or (4) the separate creditors of that spouse shall only be entitled to share in the proceeds of any property of the solvent spouse which has been realised by the trustee, after the property so released and any property of that spouse acquired by her or him since the sequestration, have been excussed.

(7) Before awarding any such creditor a share in such proceeds, the trustee may require the creditor to lodge with him, within a period to be determined by the Master, an affidavit, supported by such evidence as may be available, setting forth the result of such excussion and disclosing the balance of his claim which remains unpaid. He shall then be entitled to share as aforesaid in respect of that balance only: Provided that any creditor who has incurred costs in excussing the separate property of the solvent spouse and has been unable to recover those costs from the proceeds of that property shall be entitled to add the amount of those costs to the amount of his claim as proved.

(8) If, during the period determined by the Master, any such creditor has failed either to lodge with the trustee such an affidavit as aforesaid, or to excuss any separate property of the

solvent spouse still available for the satisfaction of his claim, he shall be debarred from sharing as aforesaid unless the Court otherwise orders.

(9) A creditor of the solvent spouse who has proved a claim as provided in sub-section (5) shall not be liable to make any contribution under section *one hundred and six,* and shall not be entitled to vote at any meeting of the creditors of the insolvent estate held in terms of section *forty, forty-one* or *forty-two;* but any direction of the creditors of the insolvent estate which infringes the rights of any such first-mentioned creditor may be set aside by the Court on the application of such creditor.

(10) If the solvent spouse is carrying on business as a trader, apart from the insolvent spouse or if it appears to the Court that the solvent spouse is likely to suffer serious prejudice through the immediate vesting of the property of that spouse in the Master or the trustee, and the Court is satisfied in either case that the solvent spouse is willing and able to make arrangements whereby the interest therein of the insolvent estate in the said property will be safeguarded without such a vesting, the Court, either when making the sequestration order or at some later date, but subject to the immediate completion of such arrangement as aforesaid, may exclude that property or any part thereof from the operation of the order, for such period as it thinks fit. During that period the solvent spouse shall lay before the trustee the evidence available in support of her or his claim to such property and within that period the trustee shall notify the solvent spouse in writing whether or not he will release such property in accordance with subsection (2). If the property has not been so released, then upon the expiry of the said period that property shall vest in the Master or in the trustee, but subject to the provisions of this section.

(11) If application is made to the Court for the sequestration of the estate of the solvent spouse on the ground of an act of insolvency committed by that spouse since the vesting of her or his property in the Master or the trustee of the insolvent estate, and the Court is satisfied that the act of insolvency alleged in that application was due to such vesting, then if it appears -

(a) that an application is being or, if necessary, will be made under sub-section (4) for the release of any property of the solvent spouse; or

(b) that any property of the solvent spouse has been released since the making of the sequestration order, and that the solvent spouse is now in a position to discharge her or his liabilities,

the Court may postpone the hearing of the said application or may make such interim order thereon as to it may seem just.

(12) If the trustee has in accordance with the preceding provisions of this section released any property alleged to belong to the solvent spouse, he shall not be debarred thereby from proving that it belongs to the insolvent estate and from recovering accordingly.

(13) In this section the word "spouse" means not only a wife or husband in the legal sense, but also a wife or husband by virtue of a marriage according to any law or custom, and also a woman living with a man as his wife or a man living with a woman as her husband, although not married to one another.

Payment of debts after sequestration

22. Every satisfaction in whole or in part of any obligation the fulfilment whereof was due or the cause of which arose before the sequestration of the creditor's estate shall, if made to the insolvent after such sequestration, be void, unless the debtor proves that it was made in good faith and without knowledge of the sequestration.

Rights and obligations of insolvent during sequestration

23. (1) Subject to the provisions of this section and of section *twenty-four,* all property acquired by an insolvent shall belong to his estate.

(2) The fact that a person entering into any contract is an insolvent, shall not affect the validity of that contract: Provided that the insolvent does not thereby purport to dispose of any property of his insolvent estate; and provided further that an insolvent shall not, without the consent in writing of the trustee of his estate, enter into any contract whereby his estate or any contribution towards his estate which he is obliged to make, is or is likely to be adversely affected, but in either case subject to the provisions of sub-section (1) of section *twenty-four.*

(3) An insolvent may follow any profession or occupation or enter into any employment, but he may not, during the sequestration of his estate without the consent in writing of the trustee of his estate, either carry on, or be employed in any capacity or have any direct or indirect interest in, the business of a trader who is a general dealer or a manufacturer: Provided that any one of the creditors of the insolvent's estate or the insolvent himself may, if the trustee gives or refuses such consent, appeal to the Master, whose decision shall be final.

(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*.

[Subsection (3)*bis* is inserted by Act 16 of 1943.]

(4) The insolvent shall keep a detailed record of all assets received by him from whatever source, and of all disbursements made by him in the course of his profession, occupation or employment, and, if required thereto by the trustee, shall transmit to the trustee in the first week of every month a statement verified by affidavit of all assets received and of all disbursements made by him during the preceding month. The trustee may inspect such record at all reasonable times and may demand the production of reasonable vouchers in support of any item in such accounts and of the expenditure of the insolvent for the support of himself and those dependent upon him.

(5) The trustee shall be entitled to any moneys received or to be received by the insolvent in the course of his profession, occupation or other employment which in the opinion of the Master are not or will not be necessary for the support of the insolvent and those dependent upon him, and if the trustee has notified the employer of the insolvent that the trustee is entitled, in terms of this sub-section, to any part of the insolvent's remuneration due to him at the time of such notification, or which will become due to him thereafter, the employer shall pay over that part to the trustee.

(6) The insolvent may sue or may be sued in his own name without reference to the trustee of his estate in any matter relating to status or any right in so far as it does not affect his estate or in respect of my claim due to or against him under this section, but no cession of his earnings after the sequestration of his estate, whether made before or after the sequestration shall be of any effect so long as his estate is under sequestration.

(7) The insolvent may for his own benefit recover any pension to which he may be entitled for services rendered by him.

(8) The insolvent may for his own benefit recover any compensation for any loss or damage which he may have suffered, whether before or after the sequestration of his estate, by

reason of any defamation or personal injury: Provided that he shall not, without the leave of the Court, institute an action against the trustee of his estate on the ground of malicious prosecution or defamation.

(9) Subject to the provisions of sub-section (5) the insolvent may recover for his own benefit, the remuneration or reward for work done or for professional services rendered by or on his behalf after the sequestration of his estate.

(10) The insolvent may be sued in his own name for any delict committed by him after the sequestration of his estate, and his insolvent estate shall not be liable therefor.

(11) Any property claimable by the trustee from the insolvent under this section may be recovered from the insolvent by writ of execution to be issued by the registrar upon the production to him of a certificate by the Master that the property stated therein is so claimable.

(12) The insolvent shall at any time before the second meeting of the creditors of his estate held in terms of section *forty,* at the request of the trustee assist the trustee to the best of his ability in collecting, taking charge of or realising any property belonging to the estate: Provided that the trustee shall, during the period of such assistance, give to the insolvent out of the estate such an allowance in money or goods as is, in the opinion of the Master, necessary to support the insolvent and his or her dependants.

(13) The insolvent shall keep the trustee of his estate informed of his residential and postal addresses.

(14) Any notice or information which is to be conveyed to an insolvent in terms of this Act, may be delivered to him personally or may be delivered at or sent in a registered letter by post to an address given by the insolvent to the trustee in terms of sub-section (13).

Provisions relating to property in possession of insolvent after sequestration

24. (1) If an insolvent purports to alienate, for valuable consideration, without the consent of the trustee of his estate any property which he acquired after the sequestration of his estate (and which by virtue of such acquisition became part of his sequestrated estate) or any right to any such property to a person who proves that he was not aware and had no reason to suspect that the estate of the insolvent was under sequestration the alienation shall nevertheless be valid.

(2) Whenever an insolvent has acquired the possession of any property, such property shall, if claimed by the trustee of the insolvent's estate, be deemed to belong to that estate unless the contrary is proved; but if a person who became the creditor of the insolvent after the sequestration of his estate, alleges (whether against the trustee or against the insolvent) that any such property does not belong to the said estate and claims any right thereto, the property shall be deemed not to belong to the estate, unless the contrary is proved.

Estate to remain vested in trustee until composition or rehabilitation

25. (1) The estate of an insolvent shall remain vested in the trustee until the insolvent is reinvested therewith pursuant to a composition as in section 119 provided, or until the rehabilitation of the insolvent in terms of section 127 or 127A: Provided that any property which immediately before the rehabilitation is vested in the trustee shall remain vested in him after the rehabilitation for the purposes of realization and distribution

[Subsection (1) is substituted by Act 6 of 1972.]

(2) When a trustee has vacated his office or has been removed from office or has resigned or died the estate shall vest in the remaining trustee, if any; otherwise it shall vest in the Master until another trustee has been appointed.

Dispositions without value

26. (1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by an insolvent -

(a) more than two years before the sequestration of his estate, and it is proved that, immediately after the disposition was made, the liabilities of the insolvent exceeded his assets;

(b) within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately after the disposition was made, the assets of the insolvent exceeded his liabilities:

Provided that if it is proved that the liabilities of the insolvent at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, it may be set aside only to the extent of such excess.

(2) A disposition of property not made for value, which was set aside under this section or which was uncompleted by the insolvent, shall not give rise to any claim in competition with the creditors of the insolvent's estate.

Antenuptial contracts

27. (1) No immediate benefit under a duly registered antenuptial contract given in good faith by a man to his wife or any child to be born of the marriage shall be set aside as a disposition without value, unless that man's estate was sequestrated within two years of the registration of that antenuptial contract.

(2) In sub-section (1) the expression "immediate benefit" means a benefit given by a transfer, delivery, payment, cession, pledge, or special mortgage of property completed before the expiration of a period of three months as from the date of the marriage.

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28.

[Section 28 is deleted by Act 27 of 1943.]

Voidable preferences

29. (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.

[Subsection (1) is amended by Act 64 of 1960 and substituted by Act 99 of 1965.]

(2)

[Subsection (2) is deleted by Act 64 of 1960.]

(3) Every disposition of property made under a power of attorney whether revocable or irrevocable, shall for the purposes of this section and of section *thirty* be deemed to be made at the time at which the transfer or delivery or mortgage of such property takes place.

(4) For the purposes of this section any period during which the provisions of sub-section (1) of section *eleven* of the Farmers' Assistance Act, 1935 (Act No. 48 of 1935), applied in respect of any debtor as an applicant in terms of the said Act, shall not be taken into consideration in the calculation of any period of six months.

[Subsection (4) is inserted by Act 16 of 1960. The Farmers' Assistance Act 48 of 1935 was repealed by the Agricultural Credit Act 28 of 1966, which was repealed by the Agricultural Bank Amendment Act 27 of 1991.]

Undue preference to creditors

30. (1) If a debtor made a disposition of his property at a time when his liabilities exceeded his assets, with the intention of preferring one of his creditors above another, and his estate is thereafter sequestrated, the Court may set aside the disposition.

(2) For the purposes of this section and of section *twenty-nine* a surety for the debtor and a person in a position by law analogous to that of a surety shall be deemed to be a creditor of the debtor concerned.

Collusive dealings before sequestration

31. (1) After the sequestration of a debtor's estate the Court may set aside any transaction entered into by the debtor before the sequestration, whereby he, in collusion with another person, disposed of property belonging to him in a manner which had the effect of prejudicing his creditors or of preferring one of his creditors above another.

(2) Any person who was a party to such collusive disposition shall be liable to make good any loss thereby caused to the insolvent estate in question and shall pay for the benefit of the estate, by way of penalty, such sum as the Court may adjudge, not exceeding the amount by which he would have benefited by such dealing if it had not been set aside; and if he is a creditor he shall also forfeit his claim against the estate.

(3) Such compensation and penalty may be recovered in any action to set aside the transaction in question.

Proceedings to set aside improper disposition

32. (1) Proceedings to set aside any disposition of property under section *twenty-six, twenty-nine, thirty* or *thirty-one,* or for the recovery of compensation or a penalty under section *thirty-one,* may be taken by the trustee. If the trustee fails to take any such proceedings they may be taken by any creditor in the name of the trustee upon his indemnifying the trustee against all costs thereof.

(2) In any such proceedings the insolvent may be compelled to give evidence on a subpoena issued on the application of any party to the proceedings or he may be called by the Court to give evidence. When giving such evidence he may not refuse to answer any question on the ground that the answer may tend to incriminate him or on the ground that he is to be tried on a criminal charge and may be prejudiced at such a trial by his answer.

(3) When the Court sets aside any disposition of property under any of the said sections, it shall declare the trustee entitled to recover any property alienated under the said disposition or in default of such property the value thereof at the date of the disposition or at the date on which the disposition is set aside, whichever is the higher.

Improper disposition does not affect certain rights

33. (1) A person who, in return for any disposition which is liable to be set aside under section *twenty-six, twenty-nine, thirty* or *thirty-one,* has parted with any property or security which he held or who has lost any right against another person, shall, if he acted in good faith, not be obliged to restore any property or other benefit received under such disposition, unless the trustee has indemnified him for parting with such property or security or for losing such right.

(2) Section *twenty-six, twenty-nine, thirty* or *thirty-one* shall not affect the rights of any person who acquired property in good faith and for value from any person other than a person whose estate was subsequently sequestrated.

Voidable sale of business

34. (1) If a trader alienates any business belonging to him, or the goodwill of such business or any goods or property forming part thereof (except in the ordinary course of that business) and such trader does not publish a notice of such intended alienation in the *Gazette*, and in two issues of an Afrikaans and two issues of an English newspaper circulating in the district in which that business is carried on, within a period not less than thirty days and not more than sixty days before the date of such alienation, the said alienation shall be void as against his creditors for a period of six months after such alienation, and shall be void against the trustee of his estate, if his estate is sequestrated at any time within the said period.

[Subsection (1) is substituted by Act 32 of 1952.]

(2) As soon as any such notice is published, every liquidated liability of the said trader in connection with the said business, which would become due at some future date, shall fall due forthwith, if the creditor concerned demands payment of such liability: Provided that if such liability bears no interest, the amount of such liability which would have been payable at such future date if such demand had not been made, shall be reduced at the rate of eight per cent per annum of that amount, over the period between the date when payment is made and that future date.

[Subsection (2) is amended by Act 14 of 1985.]

(3) If any person who has any claim against the said trader in connection with the said business, has before such alienation, for the purpose of enforcing his claim, instituted proceedings against the said trader -

(a) in any court of law, and the person to whom the said business was alienated knew at the time of the alienation that those proceedings had been instituted; or

(b) in a Division of the Supreme Court having jurisdiction in the district in which the said business is carried on or in the magistrate's court of that district,

the alienation shall be void as against him for the purpose of such enforcement.

Uncompleted acquisition of immovable property before sequestration

35. If an insolvent, before the sequestration of his estate, entered into a contract for the acquisition of immovable property which was not transferred to him, the trustee of his insolvent estate may enforce or abandon the contract. The other party to the contract may call upon the trustee by notice in writing to elect whether he will enforce or abandon the contract, and if the trustee has after the expiration of six weeks as from the receipt of the notice, failed to make his election as aforesaid and inform the other party thereof, the other party may apply to the Court by motion for cancellation of the contract and for an order directing the trustee to restore to the applicant the possession of any immovable property under the control of the trustee, of which the insolvent or the trustee gained possession or control by virtue of the contract, and the Court may make such order on the application as it thinks fit: Provided that this section shall not affect any right which the other party may have to establish against the insolvent estate, a non-preferent claim for compensation for any loss suffered by him as a result of the non-fulfilment of the contract.

Goods not paid for which debtor purchased not on credit

36. (1) If a person, before the sequestration of his estate, by virtue of a contract of purchase and sale which provided for the payment of the purchase price upon delivery of the property in question to the purchaser, received any movable property without paying the purchase price in full, the seller may, after the sequestration of the purchaser's estate, reclaim that property if within ten days after delivery thereof he has given notice in writing to the purchaser or to the trustee of the purchaser's insolvent estate or to the Master, that he reclaims the property: Provided that if the trustee disputes the seller's right to reclaim the property, the seller shall not be entitled to reclaim it, unless he institutes, within fourteen days after having received notice that the trustee so disputes his right, legal proceedings to enforce his right.

(2) For the purposes of sub-section (1) a contract of purchase and sale shall be deemed to provide for the payment of the purchase price upon delivery of the property in question to the purchaser, unless the seller has agreed that the purchase price or any part thereof shall not be claimable before or at the time of such delivery.

(3) The trustee of the purchaser's insolvent estate shall not be obliged to restore any property reclaimed by the seller in terms of sub-section (1) unless the seller refunds to him every part of the purchase price which he has already received.

(4) Except as in this section provided, a seller shall not be entitled to recover any property which he sold and delivered to a purchaser whose estate was sequestrated after the sale, only by reason of the fact that the purchaser failed to pay the purchase price.

(5) The owner of the movable property which was in the possession or custody of a person at the time of the sequestration of that person's estate, shall not be entitled to recover that property if it has, in good faith, been sold as part of the said person's insolvent estate, unless the owner has, by notice in writing, given, before the sale, to the *curator bonis* if one has been appointed or to the trustee of the insolvent estate, or if there is no such *curator bonis* or trustee, to the Master, demanded a return of the property.

(6) If any such property has been sold as part of the insolvent estate, the former owner of that property may recover from the trustee, before the confirmation of any trustee's account in the estate in terms of section *one hundred and twelve,* the nett proceeds of the sale of that property (unless he has recovered the property itself from the purchaser), and thereupon he shall lose any right which he may have had to recover the property itself in terms of sub-section (5).

Effect of sequestration upon a lease

37. (1) A lease entered into by any person as lessee shall not be determined by the sequestration of his estate, but the trustee of his insolvent estate may determine the lease by notice in writing to the lessor: Provided that the lessor may claim from the estate, compensation for any loss which he may have sustained by reason of the non-performance of the terms of such lease.

(2) If the trustee does not, within three months of his appointment notify the lessor that he desires to continue the lease on behalf of the estate, he shall be deemed to have determined the lease at the end of such three months.

(3) The rent due under any such lease, from the date of the sequestration of the estate of the lessee to the determination or the cession thereof by the trustee, shall be included in the costs of sequestration.

(4) The determination of the lease by the trustee in terms of this section shall deprive the insolvent estate of any right to compensation for improvements, other than improvements made in terms of an agreement with the lessor, made on the leased property during the period of the lease.

(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.

[Subsection (5) is substituted by Act 16 of 1943.]

Contract of service terminated by insolvency of employer

38. The sequestration of the estate of an employer shall terminate the contract of service between him and his employees, but any employee whose contract of service has been so terminated shall be entitled to claim compensation from the insolvent estate of his former employer for any loss which he may have suffered by reason of the termination of his contract of service prior to its expiration.

Time and place of meetings of creditors

39. (1) Whenever the Master convenes any meeting of creditors as hereinafter provided, he shall appoint it to be held at such time and place as he considers to be most convenient for all parties concerned and may, if necessary, alter the time and place of any such meeting: Provided that he shall publish in the *Gazette* sufficient notice of any such alteration.

(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.

[Subsection (2) is substituted by Act 99 of 1965.]

(3) The officer presiding at such a meeting shall keep a record of the proceedings, which he shall certify at the conclusion of the proceedings, and if he is not the Master, he shall transmit the record to the Master.

(4) If at a meeting of creditors held in a district where there is no Master, an officer other than the Magistrate presides, the presiding officer shall state in the record of the proceedings the reason for the magistrate's absence.

[The inconsistent capitalisation of "magistrate" in subsection (4) is reproduced as it appears in the *Government Gazette*.]

(5) The officer presiding at a meeting of creditors may, if necessary or desirable, adjourn the meeting from time to time.

(6) The place where a meeting of creditors is held shall be accessible to the public and the publication of any statement made at such a meeting shall be privileged to the same extent as is the publication of a statement made in a court of law.

First and second meetings of creditors

40. (1) On the receipt of an order of the Court sequestrating an estate finally, the Master shall immediately convene by notice in the *Gazette,* a first meeting of the creditors of the estate for the proof of their claims against the estate and for the election of a trustee.

(2) The Master shall publish such notice on a date not less than ten days before the date upon which the meeting is to be held and shall in such notice state the time and place at which the meeting is to be held.

(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.

[Subsection (3) is substituted by Act 99 of 1965.]

General meetings of creditors

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.

[Section 41 is substituted by Act 99 of 1965.]

Special meetings of creditors

42. After the second meeting of creditors the trustee shall convene by notice in the *Gazette* a special meeting of creditors for the proof of claims against the estate in question whenever he is thereto required by any interested person who at the same time tenders to the trustee payment of all expenses to be incurred in connection with such a meeting.

[Section 42 is substituted by Act 6 of 1972.]

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 R25. 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.

[Section 43 is substituted by Act 99 of 1965 and amended by Act 14 of 1985.]

Proof of liquidated claims against estate

44. (1) Any person or the representative of any person who has a liquidated claim against an insolvent estate, the cause of which arose before the sequestration of that estate, may, at any time before the final distribution of that estate in terms of section *one hundred and thirteen,* but subject to the provisions of section *one hundred and four,* prove that claim in the manner hereinafter provided: Provided that no claim shall be proved against an estate after the expiration of a period of three months as from the conclusion of the second meeting of creditors of the estate, except with leave of the Court or the Master, and on payment of such sum to cover the cost or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct.

(2)

[Subsection (2) is deleted by Act 14 of 1985.]

(3) A claim made against an insolvent estate shall be proved at a meeting of the creditors of that estate to the satisfaction of the officer presiding at that meeting, who shall admit or reject the claim: Provided that the rejection of a claim shall not debar the claimant from proving that claim at a subsequent meeting of creditors or from establishing his claim by an action at law, but subject to the provisions of section *seventy-five;* 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.

[Subsection (3) is amended by Act 99 of 1965.]

(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.

[Subsection (4) is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

(5) Any document by this section required to be delivered before a meeting of creditors at the office of the officer who is to preside at that meeting, shall be open for inspection at such office during office hours free of charge by any creditor, the trustee or the insolvent or the representative of any of them.

(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.

[Subsection (6) is substituted by Act 99 of 1965.]

(7) The officer presiding at any meeting of creditors may of his own motion or at the request of the trustee or his agent or at the request of any creditor who has proved his claim, or his agent, call upon any person present at the meeting who wishes to prove or who has at any time proved a claim against the estate to take an oath, to be administered by the said officer, and to submit to interrogation by the said officer or by the trustee or his agent or by a creditor or the agent of a creditor whose claim has been proved, in regard to the said claim.

(8) If any person who wishes to prove or who has at any time proved a claim against the estate is absent from a meeting of creditors the officer who presided or who presides thereat, may summon him in writing to appear befores him at a place and time stated in the summons, for the purpose of being interrogated by the said officer or by the trustee or his agent or by a creditor or the agent of a creditor whose claim has been proved, and if he appears in answer to the summons the provisions of sub-section (7) shall apply.

[The word "before" in the phrase "to appear before him" is misspelt in the *Government Gazette*, as reproduced above.]

(9) If any such person fails without reasonable excuse to appear in answer to such summons or having appeared or when present at any meeting of creditors refuses to take the oath or to submit to the said interrogation or to answer fully and satisfactorily any lawful question put to him, his claim, if already proved, may be expunged by the Master, and if not yet proved, may be rejected.

Trustee to examine claims

45. (1) After a meeting of creditors the officer who presided thereat shall deliver to the trustee every claim proved against the insolvent estate at that meeting and every document submitted in support of the claim.

(2) The trustee shall examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.

(3) If the trustee disputes a claim after it has been proved against the estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in his report his reasons for disputing the claim. Thereupon the Master may confirm the claim, or he may, after having afforded the claimant an opportunity to substantiate his claim, reduce or disallow the claim, and if he has done so, he shall forthwith notify the claimant in writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his claim by an action at law, but subject to the provisions of section *seventy-five.*

Set-off

46. If two persons have entered into a transaction the result whereof is a set-off, wholly or in part, of debts which they owe one another and the estate of one of them is sequestrated within a period of six months after the taking place of the set-off, or if a person who had a claim against another person (hereinafter in this section referred to as the debtor) has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set-off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is sequestrated; then the trustee of the sequestrated estate may in either case abide by the set-off or he may, if the set-off was not effected in the ordinary course of business, with the approval of the Master disregard it and call upon the person concerned to pay to the estate the debt which he would owe it but for the set-off, and thereupon that person shall be obliged to pay that debt and may prove his claim against the estate as if no set-off had taken place.

Right of retention and landlord's legal hypothec

47. If a creditor of an insolvent estate who is in possession of any property belonging to that estate, to which he has a right of retention or over which he has a landlord's legal hypothec, delivers that property to the trustee of that estate, at the latter's request, he shall not thereby lose the security afforded him by his right of retention or lose his legal hypothec, if, when delivering the property, he notifies the trustee in writing of his rights and in due course proves his claim against the estate: Provided, that a right to retain any book or document of account which belongs to the insolvent estate or relates to the insolvent's affairs shall not afford any security or preference in connection with any claim against the estate.

Proof of conditional claim

48. A creditor whose claim against an insolvent estate is dependent upon a condition, may prove that claim in the manner set forth in section *forty-four* but subject to the following provisions:-

(a) If the condition is of such a nature that it will be fulfilled, if at all, within a year of the sequestration, the creditor may prove his claim, but he shall have no vote in respect of that claim at a meeting of creditors. If a dividend is awarded on such a claim it shall be paid by the trustee to the Master, who shall pay it to the creditor, if the condition has been fulfilled, and otherwise shall return it to the trustee for distribution among the other creditors.

(b) If the condition is not such as is described in paragraph (a), the creditor may call upon the trustee at a meeting of creditors to place a value upon the claim and the trustee shall thereupon lay before the officer presiding at that meeting a written valuation of the claim with the reasons therefor, and the presiding officer shall admit

that claim at such value as he may determine, or reject it: Provided that when the condition has been fulfilled, before the confirmation, by the Master, in terms of section *one hundred and twelve,* of a trustee's account in the liquidation of the estate, the creditor may prove his claim as if it had been unconditional.

Claims against partnership distinct from claims against partners

49. (1) When the estate of a partnership and the estates of the partners in that partnership are under sequestration simultaneously, the creditors of the partnership shall not be entitled to prove claims against the estate of a partner and the creditors of a partner shall not be entitled to prove claims against the estate of the partnership; but the trustee of the estate of the partnership shall be entitled to any balance of a partner's estate that may remain over after satisfying the claims of the creditors of the partner's estate in so far as that balance is required to pay the partnership's debts and the trustee of the estate of a partner shall be entitled to any balance of the partnership's estate that may remain over after satisfying the claims of the creditors of the partnership estate, so far as that partner would have been entitled thereto, if his estate had not been sequestrated.

(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.

[Subsection (2) is inserted by Act 6 of 1963 and substituted by Act 99 of 1965. Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Inland Revenue must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner *for* Inland Revenue.]

Arrear interest Debt due after sequestration

50. (1) When a debt bearing interest became due before the sequestration of the debtor's estate, the creditor to whom that debt is owing may include in his claim against the debtor's estate in respect of the debt any interest thereon, which is in arrear, to the date of the sequestration.

(2) If a person, before the sequestration of his estate, incurred a debt which is payable upon a date (hereinafter referred to as the due date) after the date of the sequestration, the creditor, towards whom the debt was incurred, may claim from the insolvent estate the full amount of that debt as if it were payable on the date of sequestration: Provided that if the debt bears no interest and a distribution account in the estate in question is confirmed by the Master in terms of section 112 before the due date, an amount shall be paid on that claim equal to the amount which would have been paid thereon under the distribution account if the debt had been payable on the date of sequestration, less eight per cent of that amount per annum, reckoned from the date of sequestration to the due date.

[Subsection (2) is amended by Act 14 of 1985.]

Withdrawal of claim already proved against estate

51. (1) A creditor who has proved a claim against an insolvent estate may withdraw his claim by registered letters addressed to the Master and to the trustee and the latter shall in writing notify the other creditors of the withdrawal: Provided that the creditor so withdrawing his claim shall remain liable in terms of section *one hundred and six* for his pro rata share of the costs of sequestration and all costs lawfully incurred by the trustee in connection with the sequestration up to the time when he received the creditor's letter of withdrawal.

(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.

[Subsection (2) is substituted by Act 99 of 1965.]

Voting at meeting of creditors

52. (1) Save as in this section and in section *forty-eight* is otherwise provided, every creditor of an insolvent estate shall be entitled to vote at any meeting of the creditors of that estate as soon as his claim against the estate has been proved.

(2) The vote of any creditor shall be reckoned according to the value of his claim, except when it is provided in this Act that votes shall be reckoned in number.

(3) The vote of a creditor shall in no case be reckoned in number, unless his claim is of the value of at least R100.

[Subsection (3) is substituted by Act 14 of 1985.]

(4) A creditor may not vote in respect of any claim which was ceded to him after the commencement of the proceedings by which the estate was sequestrated.

(5) A creditor holding any security for his claim shall, except in the election of a trustee and upon any matter affecting that security, be entitled to vote only in respect of the amount by which his claim exceeds the amount at which he valued his security when proving his claim, or if he did not value his security, in respect of the amount by which his claim exceeds the amount of the proceeds of the realization of his security in terms of section *eighty-three.*

(6) A creditor may not vote on the question as to whether steps should be taken to contest his claim or preference.

[Subsection (6) is inserted by Act 16 of 1943.]

Questions upon which creditors may vote

53. (1) A creditor may vote at a meeting of creditors upon all matters relating to the administration of the estate, but may not vote in regard to matters relating to the distribution of the assets of the estate, except for the purpose of directing the trustee to contest, compromise or admit any claim against the estate.

(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).

[Subsection (2) is substituted by Act 99 of 1965.]

(3) Every resolution of creditors at a meeting of creditors and the result of the voting on any matter as declared by the officer presiding at that meeting, shall be recorded upon the minutes of the meeting and shall be binding upon the trustee in so far as it is a direction to him; and no other direction of creditors shall be binding upon him.

(4) Any direction by creditors which infringes the rights of any creditor may be set aside by the Court on the application of the creditor whose rights are affected or of the trustee with the consent of the Master.

(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.

[Subsection (5) is substituted by Act 99 of 1965.]

Election of trustee

54. (1) At the first meeting of the creditors of an insolvent estate the creditors who have proved their claims against the estate may elect one or two trustees.

(2) Any person who has obtained a majority in number and in value of the votes of the creditors entitled to vote, who voted at such meeting, shall be elected trustee.

(3) If no person has obtained such a majority of votes then -

(a) the person who has obtained a majority of votes in number, when no other person has obtained a majority of votes in value, or has obtained a majority of votes in value, when no other person has obtained a majority of votes in number, shall be deemed to be elected sole trustee;

(b) if one person has obtained a majority of votes in value and another a majority of votes in number, both such persons shall be deemed to be elected trustees, and if either person declines a joint trusteeship, the other shall be deemed to be elected sole trustee.

(4) For the purposes of this section "majority of votes in number" means a greater number of votes (apart from the value of the claims which they represent, but subject to the provisions of sub-section (3) of section *fifty-two)* than has been obtained by any competitor and "majority of votes in value" means votes representing claims of a greater aggregate value than the votes obtained by any competitor.

(5) If at any meeting of creditors convened for the purpose of electing a trustee, no trustee is elected and the estate is not vested at the time of that meeting in a provisional trustee, the Master may appoint a trustee and if he does not so appoint a trustee, the Master or the insolvent with the Master's consent, may apply, at the cost of the estate, to the Court by petition to set aside the sequestration and the Court may make such order thereon as it thinks fit.

Persons disqualified from being trustees

55. Any of the following persons shall be disqualified from being elected or appointed a trustee:-

(a) Any insolvent;

(b) any person related to the insolvent concerned by consanguinity or affinity within the third degree;

(c) a minor or any other person under legal disability;

(d) any person who does not reside in the Republic;

[Paragraph (d) is amended by Act 16 of 1943.]

(e) any person who has an interest opposed to the general interest of the creditors of the insolvent estate;

(f) a former trustee disqualified under section *seventy-two;*

(g) any person declared under section *fifty-nine* to be incapacitated for election as trustee, while any such incapacity lasts, or any person removed by the Court, on account of misconduct, from an office of trust.

(h) a corporate body,

(i) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefor to serve a term of imprisonment without the option of a fine, or to a fine exceeding ten pounds;

[A fine of ten pounds is equivalent to a fine of N$20.]

(j) any person who was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he undertook that he would, when performing the functions of a trustee or assignee, grant or endeavour to grant to, or obtain or endeavour to obtain for any debtor or creditor any benefit not provided for by law;

(k) any person who has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to vote for him as trustee or to effect or assist in effecting his election as trustee of any insolvent estate.

[The full stop at the end of paragraph (k) should be a semicolon now that it is no longer the last paragraph in the section.]

(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;

[Paragraph (l) is inserted by Act 99 of 1965.]

(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.

[Paragraph (m) is inserted by Act 99 of 1965.]

Appointment of trustee. Security for his administration.

[The punctuation of the heading is reproduced as it appears in the *Government Gazette*.]

56. (1) If a trustee was elected at a meeting of creditors at which a person other than the Master presided, the election shall not be valid unless it has been confirmed by the Master.

(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.

[Subsection (2) is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

(3) On receipt of his certificate of appointment the trustee shall notify his appointment and address in the *Gazette.*

(4) When two trustees have been appointed or when the Master has appointed a co-trustee in terms of sub-section (5) of section *fifty-seven,* both or all three trustees shall act jointly in performing their functions as trustees and each of them shall be jointly and severally liable for every act performed by them jointly.

(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.

[Subsection (5) is substituted by Act 99 of 1965.]

(6) Subject to the provisions of sub-section (1) of section *eighty-nine* the cost of giving the security mentioned in subsection (2), to an amount which the Master considers reasonable, shall be paid out of the estate in question as part of the costs of sequestration.

(7) When a trustee has, in the course of liquidating an insolvent estate accounted to the Master, to his satisfaction, for any property in the estate, the Master may consent to a reduction of the security mentioned in sub-section (2) if he is satisfied that the reduced security will suffice to indemnify the estate or the creditors thereof against any maladministration by the trustee of the remaining property in the estate.

Appointment of trustee or co-trustee by Master

57. (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.

[Subsection (1) is substituted by Act 99 of 1965.]

(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 subsections (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.

[Subsection (2) is substituted by Act 99 of 1965.]

(3) A meeting mentioned in sub-section (2) shall be deemed to be the continuation of a first meeting of creditors held after an adjournment thereof.

(4) If the Master declines, for any reason mentioned in subsection (1), to confirm the election of a person who was elected as trustee at a meeting mentioned in sub-section (2), or to appoint a person so elected, he shall act in accordance with the provisions of sub-section (1) and thereupon, if the person whose election the Master declined to confirm or whom the Master declined to appoint, was elected as sole trustee, or if two trustees were elected and the Master did not appoint both or one of them, the Master shall appoint as trustee of the estate in question any other person who is not disqualified from being a trustee of that estate.

(5) Whenever the Master considers it desirable, he may appoint a person not disqualified from holding the office of trustee who has given the security mentioned in sub-section (2) of section *fifty-six* as a co-trustee with the trustee or trustees of an insolvent estate.

(6) All the provisions of this Act, relating to a trustee shall apply to a trustee or a co-trustee appointed by the Master under this section.

(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.

[Subsection (7) is inserted by Act 99 of 1965.]

(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.

[Subsection (8) is inserted by Act 99 of 1965.]

(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.

[Subsection (9) is inserted by Act 99 of 1965.]

(10) The decision of the Minister under subsection (9) shall be final.

[Subsection (10) is inserted by Act 99 of 1965.]

Vacation of office of trustee

58. A trustee shall vacate his office -

(a) if his estate is sequestrated under this Act; or

(b) if an order is issued under the law relating to mental disorders for his reception and detention in an institution, or if he is declared by a competent court to be incapable of managing his own affairs; or

(c) if he is convicted of any offence and sentenced to serve any term of imprisonment without the option of a fine, or if he is convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury.

Court may declare a person disqualified from being a trustee, or remove a trustee

59. On the application of any person interested the Court may either before or after the appointment of a trustee, declare that the person appointed or proposed is disqualified from holding the office of trustee, and, if he has been appointed, may remove him from office and may in either case declare him incapable of being elected or appointed trustee under this Act during the period of his life or such other period as it may determine, if -

(a) he has accepted or expressed his willingness to accept from any person engaged to perform any work on behalf of the estate in question, any benefit whatever in connection with any matter relating to that estate; or

(b) in order to induce a creditor to vote for him at the election of a trustee or in return for his vote at such election, or in order to exercise any influence upon his election as trustee, he has -

(i) wrongfully omitted or included or been privy to the wrongful omission or inclusion of the name of a creditor from any record by this Act required; or

(ii) directly or indirectly given or offered or agreed to give to any person any consideration; or

(iii) offered to or agreed with any person to abstain from investigating any previous transactions of the insolvent concerned; or

(iv) been guilty of or privy to the splitting of claims for the purpose of increasing the number of votes.

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.

[Section 60 is substituted by Act 99 of 1965.]

Leave of absence or resignation of trustee

61. At the request of a trustee the Master may permit him to absent himself from the Republic for a period longer than 60 days or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice of his intention to be so absent from the Republic or to resign as the Master may direct.

[Section 61 is substituted by Act 14 of 1985.]

Election of new trustee

62. (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.

[Subsection (1) is substituted by Act 99 of 1965.]

(2) When a sole trustee has vacated his office or has been removed from office, has resigned or died, the Master shall convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee, and in the meantime the Master may appoint a provisional trustee for the preservation of the estate.

(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.

[Subsection (3) is substituted by Act 99 of 1965.]

(4) The provisions of section *fifty-four* shall apply in connection with the election of a new trustee in terms of this section.

Remuneration of trustee or *curator bonis*

63. (1) Every trustee or *curator bonis* shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to tariff B in the Second Schedule to this Act: Provided that the Master may, for good cause, reduce or increase his remuneration, or may disallow his remuneration either wholly or in part on account of any failure of or delay in the discharge of his duties or on account of any improper performance of his duties.

(1)*bis* The State President may by proclamation in the *Gazette* amend the said tariff B.

[Subsection (1)*bis* is inserted by Act 50 of 1956.]

(2) A person who employs or is a fellow employee or is ordinarily in the employment of the trustee shall not be entitled to any remuneration out of the insolvent estate for services rendered to the estate, and a trustee or his partner shall not be entitled to any remuneration out of the estate for services rendered to the estate, except the remuneration to which under this Act he is entitled as trustee.

Insolvent and others to attend meetings of creditors

64. (1) An insolvent shall attend the first and second meetings of the creditors of his estate and every adjourned first and second meeting, unless he has previously obtained the written permission of the officer who is to preside or who presides at such meeting granted after consultation with the trustee to absent himself. The insolvent shall also attend any subsequent meeting of creditors if required so to do by written notice of the trustee of his estate.

(2) The officer who is to preside or who presides at any meeting of creditors may summon any person who is known or upon reasonable grounds believed to be or to have been in possession of any property which belonged to the insolvent before the sequestration of his estate or which belongs or belonged to the insolvent estate or to the spouse of the insolvent or to be indebted to the estate, or any person (including the insolvent's spouse) who in the opinion of said officer may be able to give any material information concerning the insolvent or his affairs (whether before or after the sequestration of his estate) or concerning any property belonging to the estate or concerning the business, affairs or property of the insolvent's spouse, to appear at such meeting or adjourned meeting for the purpose of being interrogated under section *sixty-five.*

(3) The said officer may also summon any person who is known or upon reasonable grounds believed to have in his possession or custody or under his control any book or document containing any such information as is mentioned in subsection (2), to produce that book or document, or an extract therefrom at any such meeting of creditors.

Interrogation of insolvent and other witnesses

65. (1) At any meeting of the creditors of an insolvent estate the officer presiding thereat may call and administer the oath to the insolvent and any other person present at the meeting who was or might have been summoned in terms of sub-section (2) of section *sixty-four* and the said officer, the trustee and any creditor who has proved a claim against the estate or the agent of any of them may interrogate a person so called and sworn concerning all matters relating to the insolvent or his business or affairs, whether before or after the sequestration of his estate, and concerning any property belonging to his estate, and concerning the business, affairs or property of his or her spouse: Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(2) In connection with the production of any book or document in compliance with a summons issued under subsection (3) of section sixty-four or at an interrogation of a person under

subsection (1) of this section, the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law, shall apply: Provided that a banker at whose bank the insolvent in question or his or her spouse keeps or at any time kept an account, shall be obliged to produce, if summoned to do so under subsection (3) of section sixty-four, any payment instrument in his possession which was used by the insolvent or his or her spouse within one year before the sequestration of the insolvent's estate, or if any payment instrument so used is not available, then any record of the payment, date of payment and amount of that payment which may be available to him, or a copy of such record and if called upon to do so, to give any other information available to him in connection with such payment or the account of the insolvent or his or her spouse; and provided further that a person interrogated under subsection (1) shall not be entitled at such interrogation to refuse to answer any question upon the ground that the answer would tend to incriminate him.

[Subsection (2) is substituted with amendment markings by Act 16 of 2022.]

(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: Provided that if a person who may be required to give evidence under this section made to the trustee or his agent a statement which was reduced to writing, or delivered a statement in writing to the trustee or his agent, that statement may he read by or read over to that person when he is called as a witness under this section and if then adhered to by him, shall be deemed to be evidence given under this section.

[Subsection (3) is amended by Act 99 of 1965.]

(4) The insolvent shall at such interrogation be required to make a declaration that he has made a full and true disclosure of all his affairs.

(5) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave that evidence.

(6) Any person called upon to give evidence under this section may be assisted at his interrogation by counsel, an attorney or agent.

(7) Any person summoned to attend a meeting of creditors for the purpose of being interrogated under this section (other than the insolvent and his or her spouse) shall be entitled to witness fees to be paid out of the estate, to which he would be entitled if he were a witness in any civil proceedings in a Court of law.

(8) If the insolvent or his or her spouse is called upon to attend any meeting of creditors held after the second meeting or an adjourned second meeting, he or she shall be entitled to an allowance out of the insolvent estate to defray his or her necessary expenses in connection with such attendance.

Enforcing summonses and giving of evidence

66. (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.

[Subsection (1) is substituted by Act 99 of 1965.]

(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.

[Subsection (2) is substituted by Act 99 of 1965.]

(3) If a person summoned as aforesaid, appears in answer to the summons but fails to produce any book or document which he was summoned to produce, or if any person who may be interrogated at a meeting of creditors in terms of sub-section (1) of section *sixty-five* refuses to be sworn by the officer presiding at a meeting of creditors at which he is called upon to give evidence or refuses to answer any question lawfully put to him under the said section or does not answer the question fully and satisfactorily, the officer may issue a warrant committing the said person to prison, where he shall be detained until he has undertaken to do what is required of him, but subject to the provisions of sub-section (5).

[*Graham v Master of the High Court of Namibia* (HC-MD-CIV-MOT-REV-2022-00053) [2024] NAHCMD 408 (19 July 2024) holds that subsection (3), read with section 39(2), is unconstitutional to the extent that it authorises a presiding officer who is not a magistrate to issue a warrant committing to prison a person being examined at a creditors' meeting held under section 65.]

(4) If a person who has been released from prison after having undertaken in terms of sub-section (3) to do what is required of him, fails to fulfil his undertaking, the said officer may commit him to prison as often as may be necessary to compel him to do what is required of him.

(5) Any person committed to prison under this section may apply to the Court for his discharge from custody and the Court may order his discharge if it finds that he was wrongfully committed to prison or is being wrongfully detained.

(6) In connection with the apprehension of a person or with the committal of a person to prison under this section, the officer who issued the warrant of apprehension or committal to prison shall enjoy the same immunity which is enjoyed by a judicial officer in connection with any act performed by him in the exercise of his functions.

Steps to be taken on suspicion of an offence

67. (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.

[Subsection (1) is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

(2) When any such statement has been made at a meeting at which an officer other than the Master presided, the presiding officer, when transmitting the record of the proceedings to the Master, in terms of sub-section (3) of section *thirty-nine,* shall direct the attention of the Master to what appears to him to be reasonable grounds for suspecting that the insolvent has been guilty of a contravention of this Act.

(3) For the purposes of this section and sections *sixty-four* and *sixty-five,* a person who was, before the sequestration of an estate, an executor, curator or administrator of that estate, shall after the sequestration of that estate, be deemed to be an insolvent in relation to that estate.

Presumption as to record of proceedings and validity of acts at meetings of creditors

68. (1) Any record purporting to be a record of any proceedings at a meeting of the creditors of an insolvent estate held under this Act and purporting to have been signed by a person describing himself as Master, magistrate or other presiding officer shall, upon its mere production by any person, be received as *prima facie* evidence of the proceedings recorded therein.

(2) Unless the contrary is proved, it shall be presumed that any meeting, of the proceedings whereat there was kept and signed such a record as is mentioned in sub-section (1), was duly convened and held and that all acts performed thereat were validly performed.

Trustee must take charge of property of estate

69. (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.

[Subsection (1) is substituted by Act 99 of 1965.]

(2) If the trustee has reason to believe that any such property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in sub-section (3).

(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

(4) Such a warrant shall be executed in a like manner as a warrant to search for stolen property, and the person executing the wrarant shall deliver any article seized thereunder to the trustee.

[The word "warrant" in the phrase "the person executing the warrant" is misspelt in the *Government Gazette*, as reproduced above.]

Banking accounts and investments

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

(a) shall open a current account in the name of the estate with a banking institution within Namibia, and shall deposit therein to the credit of the estate from time to time all sums received by him on behalf of the estate;

[Paragraph (a) is substituted with amendment markings by Act 16 of 2022. Not all of the changes are marked.]

(b) may open a savings account in the name of the estate with a banking institution or a building society within the Republic, and may transfer thereto moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate;

(c) may place moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a banking institution or building society within the Republic.

[Subsection (1) is substituted by Act 14 of 1985.]

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

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

[Subsection (3) is substituted by Act 14 of 1985.]

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

[Subsection (4) is substituted with amendment markings by Act 16 of 2022. Not all of the changes are marked.]

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

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

[Section 70 is substituted by Act 6 of 1972.]

Record of all receipts

71. (1) Immediately after his appointment the trustee of an insolvent estate shall open a book wherein he shall enter as soon as possible a statement of all moneys, goods, books, accounts and other documents received by him on behalf of the estate.

(2) The Master may at any time direct the trustee in writing to produce the said book for inspection and every creditor who has proved his claim against the estate, and, if the Master so orders, every person claiming to be a creditor or a surety for the trustee may inspect the said book at all reasonable times.

Unlawful retention of moneys or use of property by trustee

72. (1) A trustee who, without lawful cause, retains any money exceeding twenty pounds belonging to the estate of which he is trustee, or knowingly permits his co-trustee to retain such a sum of money longer than the earliest day after its receipt on which it was possible for him or his co-trustee to pay that money into a bank, or who uses or knowingly permits his co-trustee to use any property of the estate except for the benefit of the estate, shall, in addition to any other

penalty to which he may be liable, be liable to pay into the estate an amount equal to double the amount so retained or double the value of the property so used.

[An amount of twenty pounds is equivalent to an amount of N$40.]

(2) The amount which a trustee is so liable to pay may be deducted from any claim which the said trustee may have against the estate in question or may be recovered from him by action in a court of law at the instance of his co-trustee, the Master or any creditor of the estate who has proved his claim.

(3) A person whose estate is sequestrated while he is, in terms of sub-section (1) indebted to an estate of which he was trustee for any sum of money which he misappropriated from that estate, shall be for ever incapable of holding the office of trustee, provisional trustee, liquidator, curator dative, tutor dative, *curator bonis,* or executor dative.

Trustee may obtain legal advice

73. (1) A trustee may obtain legal advice on any question of law affecting the administration or distribution of the estate of which he is trustee and may employ an attorney or an attorney and counsel for the institution or defence of legal proceedings on behalf of or against the estate, and all costs incurred by the trustee under this section as well as costs awarded against the estate in those legal proceedings, in so far as they result from any action taken by the trustee under this sub-section, shall be included in the cost of the sequestration of the estate: Provided that, subject to the provisions of subsection (4) of section *fifty-three,* the trustee shall not act as aforesaid, unless he has been authorized thereto by the creditors or by the Master.

[Subsection (1) is amended by Act 16 of 1943.]

(1A) Whenever a trustee with the prior approval of the Master engages an attorney or an attorney and an advocate to interrogate on his behalf any person at a meeting of creditors in terms of section 65(1), the costs incurred in connection with such engagement shall be included in the cost of the sequestration of the estate.

[Subsection (1A) is inserted by Act 78 of 1980.]

(2) (a) All costs incurred under this section which are not subject to taxation by the taxing officer of the Court, shall be taxed by the Master according to a tariff framed by him and the Master may, if he deems it necessary that the insolvent or any creditor who has proved a claim against the estate be afforded the opportunity of attending the taxation and of objecting to any costs included in the bill of costs, direct the trustee to give the insolvent or such a creditor notice of the taxation in accordance with the directions stipulated by the Master.

(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.

[Subsection (2) is substituted by Act 99 of 1965 and amended by Act 78 of 1980.]

(3)

[Subsection (3) is inserted by Act 99 of 1965 and deleted by Act 78 of 1980.]

Improper advising or conduct of legal proceedings

74. If it appears to the Court that any attorney or counsel has, with intent to benefit himself, improperly advised the institution, defence or conducting of legal proceedings by or against an insolvent estate or has incurred any unnecessary expense therein, the Court may order the whole or part of the expense thereby incurred to be borne by that attorney or counsel personally.

Legal proceedings against estate

75. (1) Any civil legal proceedings instituted against a debtor before the sequestration of his estate shall lapse upon the expiration of a period of three weeks as from the date of the first meeting of the creditors of that estate, unless the person who instituted those proceedings gave notice, within that period, to the trustee of that estate, or if no trustee has been appointed, to the Master, that he intends to continue those proceedings, and after the expiration of a period of three weeks as from the date of such notice, prosecutes those proceedings with reasonable expedition: Provided that the Court in which the proceedings are pending may permit the said person (on such conditions as it may think fit to impose) to continue those proceedings even though he failed to give such notice within the said period, if it finds that there was a reasonable excuse for such failure.

(2) After the confirmation, by the Master, of any trustee's account in an insolvent estate in terms of section *one hundred and twelve,* no person shall institute any legal proceedings against that estate in respect of any liability which arose before its sequestration: Provided that the Court in which it is sought to institute proceedings may, on such conditions as it may think fit to impose, but subject to the provisions of the said section, permit the institution of such proceedings after the said confirmation, if it finds that there was a reasonable excuse for the delay in instituting such proceedings.

Continuance of pending legal proceedings by surviving or new trustee

76. (1) Whenever a trustee of an insolvent estate has vacated his office or has been removed from office or has resigned or died, no legal proceedings previously instituted, in which the said estate is involved, shall lapse merely by reason of the vacating, removal, resignation or death.

(2) The Court in which any such proceedings are pending may, upon receiving notice of the vacating, removal, resignation or death, allow the name of the surviving or new trustee to be substituted for the name of the former, and the proceedings shall thereupon continue as if the surviving or new trustee had originally represented the estate in those proceedings.

Recovery of debts due to estate

77. A trustee shall, in the notification of his appointment in the *Gazette,* in terms of sub-section (3) of section *fifty-six,* call upon all persons indebted to the estate of which he is trustee to pay their debts within a period and at a place mentioned in that notice, and if any such person fails to do so, the trustee shall forthwith recover payment from him, if need be by legal proceedings.

Extension of time for payment or compounding of debts due to estate, and arbitration

78. (1) The trustee may accept from a debtor of the insolvent estate who is unable to pay his debt in full, any reasonable part of the debt in discharge of the whole debt or grant any debtor of the estate an extension of time for the payment of his debt in so far as this is compatible with the provisions of section *ninety-one*: Provided that if the debt exceeds R1 000, the trustee shall not accept a part of the debt in discharge of the whole debt, unless he has been authorized thereto by the creditors of the estate, or if no creditor has proved a claim against the estate, by the Master.

[Subsection (1) is amended by Act 14 of 1985.]

(2) If authorized thereto by the creditors, or if no creditor has proved a claim against the estate, by the Master, the trustee may submit to the determination of arbitrators any dispute concerning the estate or any claim or demand upon the estate, when the opposite party consents to arbitration.

(3) If authorized thereto by the creditors or if no creditor has proved a claim against the estate, by the Master, the trustee may compromise or admit any claim against the estate, whether liquidated or unliquidated if proof thereof has been duly tendered at a meeting of creditors. When a claim has been so compromised or admitted, or when it has been settled by a judgment of a court, it shall be deemed to have been proved and admitted against the estate in the manner set forth in section *forty-four,* unless the creditor informs the trustee in writing within seven days of the compromise or admission or judgment that he abandons his claim: Provided that the preceding provisions of this sub-section shall not debar the trustee from appealing against such judgment, if authorized thereto by the creditors.

[Subsection (3) is amended by Act 16 of 1943.]

Subsistence allowance for insolvent and family

79. At any time before the second meeting of creditors the trustee may, with the consent of the Master, allow the insolvent such moderate sum of money or such moderate quantity of goods out of the estate as may appear to the trustee to be necessary for the support of the insolvent and his dependants.

Continuation of insolvent's business

80. (1) A trustee shall not carry on the business of the insolvent concerned or any part thereof unless authorized thereto by the creditors of the insolvent's estate or, in the absence of instructions from the creditors, by the Master. Such authorization may be given by the Master at any time, whether before or after the second meeting of creditors

[Subsection (1) is amended by Act 16 of 1943.
There should be a full stop at the end.]

(2) If the trustee is authorized to carry on any such business, he shall, unless the creditors have otherwise directed him, purchase for cash only and only out of the takings of that business any goods which he may require for that business.

Sale of movable or immovable property on authorization of Master

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

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

[Section 80*bis* is inserted by Act 16 of 1943 and substituted by Act 14 of 1985.]

Trustees report to creditors

81. (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 -

(a) the assets and liabilities of the estate;

(b) the cause of the debtor's insolvency;

(c) the books relating to the insolvent's affairs, and the question whether the insolvent appears to have kept a proper record of his transactions, and if not, in what respect the record is insufficient, defective or incorrect;

(d) the question whether the insolvent appears to have contravened this Act or to have committed any other offence;

(e) any allowance he has made to the insolvent in terms of section *seventy-nine* and the reasons therefor;

(f) any business which he may have been carrying on on behalf of the estate, any goods he may have purchased for that business, and the result of carrying on that business;

(g) any legal proceedings instituted by or against the insolvent which were suspended by the sequestration of his estate which may be pending or threatened against the estate;

(h) any matter mentioned in section *thirty-five* or *thirty-seven;*

(i) any matter in regard to the administration or realization of the estate requiring the direction of the creditors.

[Subsection (1) is amended by Act 99 of 1965.]

(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.

[Subsection (1)*bis* is inserted by Act 99 of 1965.]

(2) For the purpose of any investigation mentioned in subsection (1) the Commissioner for Inland Revenue and the officers under him shall (notwithstanding the provisions of the law relating to income tax) permit a trustee to inspect any return rendered to the Commissioner by or on behalf of the insolvent in question in connection with income tax, and shall permit the trustee to make copies of any such return. At the request of the trustee the said Commissioner or any officer under him who is in charge of any such return shall certify as correct any such copy which is correct, and if any entry in such return is relevant in any proceedings, whether civil or criminal, in which the insolvent estate or the insolvent is involved, that return or a copy thereof, purporting to have been certified as aforesaid, shall be admissible in evidence in those proceedings, on its mere production by any person and any such certified copy shall have the same force and effect as the original return.

(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.

[Subsection (3) is substituted by Act 99 of 1965. Section 26 and section 39(11) of the Namibia Revenue Agency Act 12 of 2017 both provide that a reference in any law to the Commissioner of Inland Revenue must now be construed as a reference to the Commissioner of the Revenue Agency. This presumably also applies to references to the Commissioner *for* Inland Revenue.]

(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.

[Subsection (4) is substituted by Act 99 of 1965.]

Sale of property after second meeting and manner of sale

82. (1) Subject to the provisions of sections *eighty-three* and *ninety* the trustee of an insolvent estate shall, as soon as he is authorized to do so at the second meeting of the creditors of that estate, sell all the property in that estate in such manner and upon such conditions as the creditors may direct: Provided that if any rights acquired from the State under a lease, licence, purchase, or allotment of land is an asset in that estate, the trustee shall, in his administration of

the estate, act in accordance with those provisions (if any) which by the law under which the rights were acquired, are expressed to apply in the event of the sequestration of the estate of the person who acquired those rights: Provided that if the creditors have not prior to the final closing of the second meeting of creditors of that estate given any directions the trustee shall sell the property by public auction or public tender. A sale by public auction or public tender shall be after notice in the *Gazette* and after such other notices as the Master may direct and in the absence of directions from creditors as to the conditions of sale, upon such conditions as the Master may direct.

(2) When the sale is by public tender, every tenderer shall transmit his tender in duplicate in a sealed envelope to the Master, or if the Master has so directed, to a magistrate specified by him. The Master or such magistrate shall keep each tender unopened until the expiry of the period for the lodging of tenders. He shall then open the sealed envelopes and, in the case of the Master, file one duplicate of each tender or, in the case of the magistrate, transmit one duplicate of each tender to the Master. The Master or the magistrate (as the case may be) shall forthwith transmit the other duplicate of each tender to the trustee. The trustee or his representative shall have the right to be present when the Master or the magistrate opens the tenders.

(3)

[Subsection (3) is deleted by Act 99 of 1965.]

(4)

[Subsection (4) is deleted by Act 99 of 1965.]

(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.

[Subsection (5) is substituted by Act 99 of 1965.]

(6) From the sale of the movable property shall be excepted the wearing apparel and bedding of the insolvent and the whole or such part of his household furniture, and tools and other essential means of subsistence as the creditors, or if no creditor has proved a claim against the estate, as the Master may determine and the insolvent shall be allowed to retain, for his own use any property so excepted from the sale.

(7) The trustee or an auctioneer employed to sell property of the estate in question, or the trustee's or the auctioneer's spouse, partner, employer, employee or agent shall not acquire any property of the estate unless the acquisition is confirmed by an order of the Court.

(8) If any person other than a person mentioned in subsection (7) has purchased in good faith from an insolvent estate any property which was sold to him in contravention of this section, or if any person in good faith and for value acquired from a person mentioned in sub-section (7) any property which the lastmentioned person acquired from an insolvent estate in contravention of that sub-section, the purchase or other acquisition shall nevertheless be valid, but the person who sold or otherwise disposed of the property shall be liable to make good to the estate twice the amount of the loss which the estate may have sustained as a result of the dealing with the property in contravention of this section.

Realization of securities for claims

83. (1) A creditor of an insolvent estate who holds as security for his claim any movable property shall, before the second meeting of the creditors of that estate, give notice in writing of that fact to the Master, and to the trustee if one has been appointed.

(2) If such property consists of a marketable security or a bill of exchange, the creditor may, after giving the notice mentioned in sub-section (1) and before the second meeting of creditors, realise the property in the manner and on the conditions mentioned in sub-section (8).

(3) If such property does not consist of a marketable security or a bill of exchange, the trustee may, within seven days as from the receipt of the notice mentioned in sub-section (1) or within seven days as from the date upon which the certificate of appointment issued by the Master in terms of sub-section (1) of section *eighteen* or sub-section (2) of section *fifty-six* reached him, whichever be the later, take over the property from the creditor at a value agreed upon between the trustee and the creditor or at the full amount of the creditor's claim, and if the trustee does not so take over the property the creditor may, after the expiration of the said period but before the said meeting, realise the property in the manner and on the conditions mentioned in sub-section (8).

(4) If no trustee has been appointed before the said meeting, the creditor may, with the permission in writing of the Master and before the said meeting, realise in manner and on the conditions mentioned in sub-section (8) any such property which he is not entitled to realise in terms of sub-section (2).

(5) The creditor shall, as soon as possible after he has realized such property, prove in terms of section *forty-four* the claim thereby secured and he shall attach to the affidavit submitted in proof of his claim a statement of the proceeds of the realization and of the facts on which he relies for his preference.

(6) If he has not so realized such property before the second meeting of creditors, he shall as soon as possible after the commencement of that meeting deliver the property to the trustee, for the benefit of the insolvent estate and if the creditor has not delivered the said property to the trustee within a period of three days as from the commencement of the said meeting the trustee may demand from him delivery of such property. If the creditor fails to comply with such demand of the trustee, the Master, at the request of the trustee and after notice to the creditor shall direct the deputy-sheriff within whose area of jurisdiction the property is situate to attach the property and to deliver it to the trustee, and in that case the creditor shall be liable for the deputy-sheriff's costs, as taxed and allowed by the Master. If those costs cannot be recovered from the creditor, they shall be paid out of the estate as part of the costs of the sequestration.

(7) When the trustee has received the property mentioned in sub-section (6), the said creditor may prove his claim and place a value upon the said property in terms of sub-section (4) of section *forty-four.*

(8) The creditor may realise such property in the manner and on the conditions following, that is to say -

(a) if it is any property of a class ordinarily sold through a stockbroker the creditor may forthwith sell it through a broker approved of by the trustee or the Master;

(b) if it is a bill of exchange, the creditor may realise it in any manner approved of by the trustee or by the Master;

(c) if it consists of a right of action, the creditor shall not realise it except with the approval of the trustee or of the Master;

(d) if it is any other property, the creditor may sell it by public auction after affording the trustee a reasonable opportunity to inspect it and after giving such notice of the time and place of the sale as the trustee directed.

(9) As soon as the trustee has directed a creditor in terms of paragraph (d) of sub-section (8) to give notice of a sale by public auction, the trustee shall give notice in writing to all the other creditors of the estate in question of the time and place of the proposed sale.

(10) Whenever a creditor has realised his security as hereinbefore provided he shall forthwith pay the nett proceeds of the realization to the trustee, or if there is no trustee, to the Master and thereafter the creditor shall be entitled to payment, out of such proceeds, of his preferent claim if such claim was proved and admitted as provided by section *forty-four* and the trustee or the Master is satisfied that the claim was in fact secured by the property so realised. If the trustee disputes the preference, the creditor may either lay before the Master an objection under section *one hundred and eleven* to the trustee's account, or apply to Court, after notice of motion to the trustee, for an order compelling the trustee to pay him forthwith. Upon such application the Court may make such order as to it seems just.

(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.

[Subsection (11) is amended by Act 16 of 1943 and substituted by Act 99 of 1965.]

(12) If the claim of a secured creditor exceeds the sum payable to him in respect of his security he shall be entitled to rank against the estate in respect of the excess, as an unsecured creditor, and if the nett proceeds of any such property exceed all claims secured thereby the balance, after payment of those claims, shall be added to the other free residue (if any) in the estate in question.

(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.

[Subsection (13) is substituted by Act 16 of 1943.]

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

84. (1) If any property was delivered to a person (hereinafter referred to as the debtor) under an agreement which is an instalment sale transaction contemplated in paragraphs (a) and (b) of the definition of "instalment sale transaction" in section 1 of the Credit Agreements Act, 1980, such a transaction shall be regarded on the sequestration of the debtor's estate as creating in favour of the other party of the transaction (hereinafter referred to as the creditor) a hypothec over that property whereby the amount still due to him under the transaction is secured. The trustee of the debtor's insolvent estate shall, if required by the creditor, deliver the property to

him, and thereupon the creditor shall be deemed to be holding that property as secuity for his claim and the provisions of section 83 shall apply.

[The word "security" is misspelt in the *Official Gazette*, as reproduced above.]

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

[Section 84 is amended by Act 36 of 1942 and substituted by Act 14 of 1985.]

Exclusion or limitation of preference under legal hypothec

85. (1) A tacit or legal hypothec (other than a landlord's legal hypothec or the hypothec mentioned in sub-section (1) of section *eighty-four)* shall not confer any preferent right against an insolvent estate.

(2) A landlord's legal hypothec shall confer a preference with regard to any article subject to that hypothec for any rent calculated in respect of any period immediately prior to and up to the date of sequestration but not exceeding -

(a) three months, if the rent is payable monthly or at shorter intervals than one month;

(b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months;

(c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months;

(d) fifteen months in any other case.

[Subsection (2) is amended by Act 16 of 1943.]

Effect of general bond and general clause

86. No general mortgage bond registered after the thirty-first day of December, 1916, shall confer any preference in respect of immovable property, and no general clause in a mortgage bond hypothecating immovable property registered after the said date shall confer any preference in respect of any property: Provided that the preceding provisions of this section shall not affect any preference conferred by a general clause in any mortgage bond passed before the commencement of this Act by a widower or widow in favour of a Master, for the purpose of securing the payment to his or her child of any sum of money due to the child from the estate of the widower's or widow's deceased spouse.

[Section 86 is amended by Act 16 of 1943.]

Ranking of mortgages for future debts

87. Priority under any mortgage bond to secure the payment of future debts shall depend on the date of the registration of that mortgage bond, and not on the date upon which any such debt comes into existence.

Certain mortgages are invalid

88. A mortgage bond, other than a kustingsbrief, whether special or general, passed for the purpose of securing the payment of a debt not previously secured, which was incurred more than two months prior to the lodging of the bond with the registrar of deeds concerned for registration or for the purpose of securing the payment of a debt incurred in novation of or substitution for any such first-mentioned debt, shall not confer any preference if the estate of the mortgage debtor is sequestrated within a period of six months after such lodging: Provided that a mortgage bond shall be deemed not to have been lodged as aforesaid, if it was withdrawn from registration.

Costs to which securities are subject

89. (1) The cost of maintaining, conserving, and realizing any property shall be paid out of the proceeds of that property, if sufficient, and if insufficient and that property is subject to a special mortgage, landlord's legal hypothec, pledge, or right of retention the deficiency shall be paid by those creditors, *pro rata,* who have proved their claims and who would have been entitled, in priority to other persons, to payment of their claims out of those proceeds if they had been sufficient to cover the said cost and those claims. The trustee's remuneration in respect of any such property and a proportionate share of the costs incurred by the trustee in giving security for his proper administration of the estate, calculated on the proceeds of the sale of the property, a proportionate share of the Master's fees, and if the property is immovable, any tax as defined in sub-section (5) which is or will become due thereon in respect of any period not exceeding two years immediately preceding the date of the sequestration of the estate in question and in respect of the period from that date to the date of the transfer of that property by the trustee of that estate, with any interest or penalty which may be due on the said tax in respect of any such period, shall form part of the costs of realization.

(2) If a seemed creditor (other than a secured creditor upon whose petition the estate in question was sequestrated) states in his affidavit submitted in support of his claim against the estate that he relies for the satisfaction of his claim solely on the proceeds of the property which constitutes his security, he shall not be liable for any costs of sequestration other than the costs specified in sub-section (1), and other than costs for which he may be liable under paragraph (a) or (b) of the proviso to section *one hundred and six.*

(3) Any interest due on a secured claim in respect of any period not exceeding two years immediately preceding the date of sequestration shall be likewise secured as if it were part of the capital sum.

(4) Notwithstanding the provisions of any law which prohibits the transfer of any immovable property unless any tax as defined in sub-section (5) due thereon has been paid, that law shall not debar the trustee of an insolvent estate from transferring any immovable property in that estate for the purpose of liquidating the estate, if he has paid the tax which may have been due on that property in respect of the periods mentioned in sub-section (1) and no preference shall be accorded to any claim for such a tax in respect of any other period.

(5) For the purposes of sub-sections (1) and (4) "tax" in relation to immovable property means any amount payable periodically in respect of that property to the State or for the benefit of a provincial administration or the Administration of the Territory or to a body established by or under the authority of any law in discharge of a liability to make such periodical payments, if that liability is an incident of the ownership of that property.

[Subsection (5) is amended by Act 16 of 1943.]

Land Bank not affected by this Act

90. The provisions of this Act shall not affect the provisions of any other law which confer powers and impose duties upon the Land and Agricultural Bank of South Africa or the Land and Agricultural Bank of South West Africa in relation to any property belonging to an insolvent estate.

[Section 90 is amended by Act 16 of 1943.]

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.

[Section 91 is substituted by Act 99 of 1965.]

Manner of framing liquidation account

92. (1) A liquidation account shall contain an accurate record of all moneys received and of all moneys disbursed by the trustee otherwise than in the course of a business which he carried on for the insolvent estate in question.

(2) The record of each such receipt and disbursement shall set forth the amount and date thereof and sufficient particulars to explain its nature.

(3) The liquidation account shall be accompanied by the trustee's bank pass book and by vouchers in support of the record of receipts and disbursements.

(4) If a liquidation account is not the final liquidation account, the trustee shall further set forth therein-

(a) all property still unrealized;

(b) all outstanding debts due to the estate;

(c) the reasons why that property has not been realized or those debts have not been collected.

In that event the trustee shall, from time to time and as the Master may direct, but at least once in every six months, unless he has received an extension of time as provided in section *one hundred and nine,* frame and submit to the Master periodical accounts in form and in all other respects similar to the account mentioned in sub-sections (1) and (2).

(5) If the estate of a partnership is under sequestration, separate trustees' accounts shall be framed in the estate of the partnership and in the estate of each member of that partnership whose estate is under sequestration.

Trading account

93. If the trustee has carried on any business on behalf of the estate, he shall submit to the Master, in addition to the liquidation account, a trading account containing the following data and no others, namely -

(a) a record of the value of the stock on hand at the date of sequestration;

(b) a record of the value of the stock on hand on the date up to which the account is made up;

(e) the daily totals of receipts and payments in connection with the business;

(d) the result of his conduct of the business.

Form of plan of distribution

94. A plan of distribution shall show in parallel columns under separate headings -

(a) every claim or the part of every claim against the estate in question which is secured or otherwise preferent;

(b) every claim or the part of every claim against the estate which is unsecured and otherwise non-preferent;

(e) the amount awarded under that plan and under any previous plan of distribution to every creditor of the estate;

(d) the deficiency in respect of each claim;

and shall make provision for the division of the proceeds of the property in the insolvent estate in the order of preference and in the manner set forth in sections *ninety-five* to *one hundred and four* inclusive.

Application of proceeds of securities

95. (1) The proceeds of any property which was subject to a special mortgage, landlord's legal hypothec, pledge or right of retention, after deduction therefrom of the costs mentioned in sub-section (1) of section *eighty-nine,* shall be applied in satisfying the claims secured by the said property, in their order of preference, with interest thereon calculated in manner provided in sub-section (2) of section *one hundred and three* from the date of sequestration to the date of payment, but subject to the provisions of sub-section (4) of section *ninety-six.*

(2) If a creditor whose claim is secured by a mortgage over immovable property belonging to the insolvent estate has not proved his claim and the trustee is not satisfied that the debt in question has been discharged or abandoned, he shall deposit with the Master for payment into the Guardian's Fund the proceeds of the sale of any such property to an amount not exceeding such capital amount of the said mortgage and such arrears of interest as the mortgagee would have had a preferent right to claim, after deduction of an amount equal to the costs which he would have had to pay if he had proved his claim and had stated in the affidavit submitted in support of his claim that he relied for the satisfaction of his claim solely on the proceeds of the sale of the said property. The amount so deposited or the part thereof to which the former mortgagee may be entitled shall be paid to him if, within a period of one year after confirmation in terms of section *one hundred and twelve* of the distribution account under which the money is distributed, he applies therefor to the Master and the Master is satisfied after proof of his claim, that he is entitled to the amount or part thereof.

(3) Any amount deposited with the Master in terms of subsection (2) which has not been paid out to the former mortgagee, as in that sub-section provided, shall after the expiry of the year mentioned in that sub-section be distributed among the creditors who have proved claims against the insolvent estate prior to the confirmation of the said distribution account, as if the amount had, at the time of such confirmation, been available for distribution among them.

(4) Any creditor claiming to be entitled to share in the said distribution shall make written application to the Master for payment of his share, and the Master may pay out to such creditor or may hand the money to the trustee, if any, for distribution among the creditors entitled thereto, or, if there is no trustee, may appoint a trustee on such conditions as he may think fit to impose for the purpose of making such distribution.

(5) Any trustee charged with the duty of making such a distribution shall submit to the Master a supplementary plan of distribution in respect thereof, and the provisions of this Act relating to a plan of distribution shall apply in respect of such supplementary plan.

Funeral and death-bed expenses

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

[Subsection (1) is substituted by Act 99 of 1965 and by Act 14 of 1985.]

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

[Subsection (2) is substituted by Act 99 of 1965 and by Act 14 of 1985.]

(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.

[Subsection (3) is substituted by Act 99 of 1965.]

(4) If the free residue of the estate is insufficient to defray the expenses mentioned in sub-sections (1) and (2), the deficiency shall be defrayed out of the proceeds of any other assets of the estate in proportion to their value.

Cost of sequestration

97. (1) Thereafter any balance of the free residue shall be applied in defraying the costs of the sequestration of the estate in question with the exception of the costs mentioned in subsection (1) of section *eighty-nine.*

(2) The costs of the sequestration shall rank according to the following order of priority -

(a) The sheriff's charges incurred since the sequestration;

(b) fees payable to the Master in connection with the sequestration;

(c) the following costs which shall rank *pari passu* and abate in equal proportions if necessary, that is to say: the taxed costs of sequestration (as defined in subsection (3)), the fee mentioned in sub-section (4) of section *sixteen,* the remuneration of the *curator bonis* and of the trustee and all other costs of administration and liquidation including such costs incurred by the trustee in giving security for his proper administration of the estate as the Master considers reasonable, in so far as they are not payable by a particular creditor in terms of sub-section (1) of section *eighty-nine,* any expenses incurred by the Master or by a presiding officer in terms of sub-section (2) of section *one hundred and fifty-three* and the salary or wages of any person who was engaged by the *curator bonis* or the trustee in connection with the administration of the insolvent estate.

(3) In paragraph (c) of sub-section (2) the expression "taxed costs of sequestration" means the costs (as taxed by the registrar of the Court) incurred in connection with the petition of the debtor for acceptance of the surrender of his estate or of a creditor for the sequestration of the debtor's estate, but it does not include the costs of opposition to such a petition, unless the Court directs that they shall be included.

Costs of execution

98. (1) Thereafter any balance of the free residue shall be applied, in defraying -

(a) the taxed fees of the sheriff or messenger in connection with any execution upon any property of the insolvent and in connection with any proceedings which resulted in that execution; and

(b) any other taxed costs in those proceedings not exceeding a sum of R50,

to a total amount not exceeding the proceeds of that property if that property was still under attachment or if the proceeds of the sale in execution of that property were still in the hands of the sheriff or messenger at the time of the sequestration of the insolvent's estate.

[Subsection (1) is amended by Act 14 of 1985.]

(2) The attachment of any property in execution of any judgment shall, after the sequestration of the estate of the judgment debtor, not have the effect of conferring upon the judgment creditor any other preference than the preference provided for in sub-section (1).

Preference in regard to certain statutory obligations

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

(a) any amount which in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), was, immediately prior to the sequestration of the estate, due to the Workmen's Compensation Commissioner by the insolvent in his capacity as an employer, in respect of any assessment, penalty or other payment, or the compensation then due in respect of any workman, including the cost of medical aid and any amount paid or payable in terms of section 40(2), 44, 76 (2) or 86 (2) of that Act, and in the case of a continuing liability, also the capitalized value, as determined by the Workmen's Compensation Commissioner, of the pension (irrespective of

whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49 of that Act), periodical payment or allowance, as the case may be, which constitutes the liability;

[Act 30 of 1941 has been renamed the Employees' Compensation Act.]

(b) any amount which the insolvent -

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

[The Income Tax Act 58 of 1962 was repealed by the Income Tax Act 24 of 1981.]

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

(iii) is under the provisions of section 99 of the said Act or section 76 of the Income Tax Ordinance, 1974 (Ordinance No. 5 of 1974), of the Territory, required to pay in respect of any tax due by any other person and has deducted or withheld from any moneys, including pensions, salary, wages, remuneration and amounts of any other nature, held by him for or due by him to such person;

[The Income Tax Ordinance 5 of 1974 was repealed by the Income Tax Act 24 of 1981.]

(iv) has under the provisions of the Fourth Schedule to the said Act or Schedule 3 to the said Ordinance deducted or withheld by way of employees' tax from remuneration or any other amount paid or payable by him to any other person; or

(v) has under the provisions of the Sixth Schedule to the said Act deducted or withheld from any insurance benefit under any insurance policy, in respect of the liability of any person for normal tax,

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

[Paragraph (b) is amended by Act 90 of 1972 and by Act 85 of 1974.]

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

[The Pneumoconiosis Compensation Act 64 of 1962 was repealed by the Occupational Diseases in Mines and Works Act 78 of 1973, which was repealed in turn by the Labour Act 6 of 1992, which has been replaced by the Labour Act 11 of 2007.]

(cA) the amount of any customs, excise or sales duty or interest, fine or penalty which in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964), was, immediately prior to the sequestration of the estate, due by the insolvent;

[Paragraph (cA) is inserted by Act 62 of 1973. The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

(cB)

[Paragraph (cB) is inserted by Act 29 of 1974 and deleted by Act 12 of 2022.]

(cC) the amount of any sales tax, interest, fine or penalty which in terms of the Sales Tax Act, 1978, or, in the case of the territory, the Sales Tax Proclamation, 1978, of the Administrator-General, was, immediately prior to the sequestration of the estate, due by the insolvent;

[Paragraph (cC) is inserted by AG 40 of 1978 and also inserted by Act 103 of 1978. The insertion by Act 103 of 1978 does not appear to have been intended to apply to South West Africa, as the insertion made by AG 40 of 1978 was made on the same date and is more appropriate to South West Africa. The text provided in AG 40 of 1978 is inserted above. The Sales Tax Proclamation, AG 40 of 1978, was replaced by the Sales Tax Act 5 of 1992, which was repealed by the Value-Added Tax Act 10 of 2000.]

(d) the amount of any appreciation contribution which in terms of the Community Development Act, 1966 (Act No. 3 of 1966), was, immediately prior to the sequestration of the estate, due to the Community Development Board by the insolvent;

[The Community Development Act 3 of 1966 was not applicable to South West Africa.]

(e) any amount which in terms of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), was, immediately prior to the sequestration of the estate, due to the Unemployment Insurance Fund by the insolvent in his capacity as an employer, in respect of any contribution, penalty or other payment; and

[The Unemployment Insurance Act 30 of 1966 was not applicable to South West Africa.]

(f) any other contributions payable by the insolvent (including any such contributions payable in respect of any of his employees) under the provisions of any law, which, immediately prior to the sequestration of the estate, were due by the insolvent, in his capacity as an employer, to any pension, sick, medical, unemployment, holiday, provident or other insurance fund.

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

[Section 99 is amended by Act 16 of 1943, and substituted by Act 99 of 1965 and by Act 6 of 1972.]

Salary or wages of former employees of insolvent

100. (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 R2 000 shall be paid out under this subsection 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.

[Subsection (1) is amended by Act 32 of 1952, substituted by Act 99 of 1965, and amended by Act 14 of 1985.]

(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 R1 000 shall be paid out under this subsection to any such employee in respect of such salary or wages and bonus.

[Subsection (2) is amended by Act 32 of 1952, substituted by Act 99 of 1965, and amended by Act 14 of 1985.]

(3) An employee shall be entitled to salary or wages in terms of sub-section (1) or (2) even though he has not proved his claim therefor in terms of section *forty-four;* but the trustee may require such employee to submit an affidavit in support of his claim for such salary or wages.

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

[Subsection (4) is inserted by Act 99 of 1965.]

Preference in regard to taxes on persons or the incomes or profits of persons

101. Thereafter any balance of the free residue shall be applied in paying -

(a) any tax on persons or the incomes or profits of persons for which the insolvent was liable under any Act of Parliament or Ordinance of the Territory or a Provincial Council in respect of any period prior to the date of sequestration of his estate, whether or not that tax has become payable after that date;

(a)*bis* any amount payable by the insolvent under any Act of Parliament by way of interest in respect of any period prior to the date of sequestration of his estate in respect of any tax referred to in paragraph (a);

[Paragraph (a)*bis* is inserted by Act 6 of 1963.]

(b) in the case of an insolvent partnership, so much of any tax due and payable by any partner as is referable to the taxable income derived by him from the partnership, the amount so referable being deemed to be a sum which bears to the total amount due by him as tax the same ratio as his taxable income derived from the partnership bears to his total taxable income from all sources within the Republic.

[Section 101 is substituted by Act 25 of 1940 and by Act 31 of 1941, amended by Act 16 of 1943 and substituted by Act 80 of 1961.]

Preference under a general bond

102. Thereafter any balance of the free residue shall be applied in the payment of any claims proved against the estate in question which were secured by a general mortgage bond, in t

heir order of preference, with interest thereon calculated in manner provided in sub-section (2) of section *one hundred and three.*

Non-preferent claims

103. (1) Any balance of the free residue after making provision for the expenditure mentioned in sections *ninety-six* to *one hundred and two* inclusive, shall be applied -

(a) in the payment of the unsecured or otherwise non-preferent claims proved against the estate in question in proportion to the amount of each such claim;

(b) if the unsecured or otherwise non-preferent claim have been paid in full, in the payment, thereafter, of interest on such claims from the date of sequestration to the date of payment, in proportion to the amount of each such claim.

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

[Subsection (2) is substituted by Act 14 of 1985. The word "stipulation" in the phrase "a lawful stipulation" is misspelt in the *Government Gazette*, as reproduced above.]

Late proof of claims

104. (1) Subject to the provisions of sub-section (2) of section *ninety-five* and sub-section (3) of section *one hundred,* a creditor of an insolvent estate who has not proved a claim against that estate before the date upon which the trustee of that estate submitted to the Master a plan of distribution in that estate, shall not be entitled to share in the distribution of assets brought up for distribution in that plan: Provided that the Master may, at any time before the confirmation of the said plan permit any such creditor who has proved his claim after the said date to share in the distribution of the said assets, if the Master is satisfied that the creditor has a reasonable excuse for the delay in proving his claim.

(2) A creditor of an insolvent estate who proved a claim against that estate after the date upon which the trustee submitted to the Master a plan of distribution in that estate and who was not permitted to share in the distribution of assets under that plan, in terms of sub-section (1), shall be entitled to be awarded under any further plan of distribution submitted to the Master after the proof of his claim, the amount which would have been awarded to him under the previous plan of distribution, if he had proved his claim prior to the submission of that plan to the Master: Provided that the Master is satisfied that the creditor had a reasonable excuse for the delay in proving his claim; and provided further that any creditor who was aware that proceedings had been instituted under section *twenty-six, twenty-nine, thirty* or *thirty-one* and who delayed proving his claim until the Court had given judgment in those proceedings, shall not be entitled to share in the distribution of any money or the proceeds of any property recovered as a result of such proceedings.

(3) If any creditor has, under sub-section (1) of section *thirty-two* taken proceedings to set aside any disposition of or dealing with property under section *twenty-six, twenty-nine, thirty* or *thirty-one* or for the recovery of damages or a penalty under section *thirty-one,* no creditor who was not a party to the proceedings shall derive any benefit from any moneys or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every creditor who was a party to such proceedings have been paid in full.

Form of plan of contribution

105. A plan of contribution shall show in parallel columns -

(a) each claim in respect of which the claiming creditor is liable to contribute; and

(b) the amount which he is liable to contribute,

and shall make provision for all such contributions in accordance with the provisions of section *one hundred and six.*

Contributions by creditors towards cost of sequestration when free residue insufficient

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; Provided that -

[The *Government Gazette* uses a semicolon rather than a colon before the proviso.]

(a) if all the creditors who have proved claims against the estate are secured creditors who would not have ranked upon the surplus of the free residue, if there had been any, such creditors shall be liable to make good the whole of the deficiency, each in proportion to the amount of his claim;

(b) if a creditor has withdrawn his claim, he shall be liable to contribute in respect of any deficiency only so far as is provided in section *fifty-one,* and if a creditor has withdrawn his claim within five days after the date of any resolution of creditors he shall be deemed to have withdrawn the claim before anything was done in pursuance of that resolution;

(c) if all the creditors who would have ranked upon the surplus of the free residue, if there had been any, have withdrawn their claims and, after payment of their contribution in terms of paragraph (b) there is still a deficiency, the remaining creditors whose claims have been proved against the estate shall, notwithstanding the fact that they would not have ranked upon the surplus of the free residue, if there had been any, be liable to make good such deficiency, each in proportion to the amount of his claim.

[Section 106 is amended by Act 99 of 1965.]

Trustee's account to be signed and verified

107. A trustee shall sign every account which he submits to the Master and he shall verify by his affidavit (which shall be free from stamp duty) that the account is a full and true account of the administration of the estate in question up to the date of the account and that, so far as he is aware, all the assets of the estate have been disclosed in the account.

Inspection of trustee's accounts by creditors

108. (1) If an insolvent resided or carried on business, before the sequestration of his estate, in a district (other than the district of Wynberg, Simonstown or Bellville in the Province of the Cape of Good Hope) in which there is no Master's office, the trustee of that estate shall transmit to the magistrate of that district or, if the insolvent resided or carried on business in a

portion of that district in respect of which an additional or assistant magistrate permanently carries out the functions of the magistrate of that district at a place other than the seat of magistracy of that district, to such additional or assistant magistrate, a duplicate of every account which he submitted to the Master as hereinbefore provided.

[Subsection (1) is amended by Act 62 of 1955.]

(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.

[Subsection (2) is substituted by Act 99 of 1965.]

(3) Every such account and every duplicate thereof transmitted to a magistrate shall be open for the inspection by creditors of the estate in question at the office of the Master and of such magistrate during a period of fourteen days as from the date of publication of the said notice in the *Gazette.*

(4) A magistrate who has received a trustee's account shall cause to be affixed in a public place in or about his office a notice that he has received the account and that it will lie open for inspection in his office during a period stated in that notice.

(5) After the expiration of the said period the magistrate shall endorse upon the account a certificate (which shall be free from stamp duty) that the account was open in his office for inspection as hereinbefore provided, and shall transmit the account to the Master.

Extension of period for submission of account by trustee

109. (1) If a trustee is unable to submit an account to the Master within the period prescribed therefor by section 91, he shall before the expiration of such period or within the further period as the Master may allow -

(a) submit to the Master an affidavit in which he shall state -

(i) the reasons for his inability so to submit the account concerned;

(ii) those affairs, transactions or matters of importance relating to the insolvent or the estate as the Master may require;

(iii) the amount of money available for payment to creditors or, if there is no free residue or the free residue is insufficient to meet all the costs referred to in section 97, the deficiency the creditors are liable to make good;

(b) send to each creditor of the estate who proved a claim against the estate, by registered post a copy of the affidavit referred to in paragraph (a),

and the Master may thereupon extend such period to a date determined by him.

(2) If a trustee fails to submit an account to the Master within the period prescribed therefor by section 91 or before the date determined under subsection (1), the Master, subject to the provisions of section 110, or any person having an interest in the insolvent estate may serve a notice on the trustee in which he is required -

(a) to submit the account concerned to the Master; or

(b) if he is unable to submit such account, to submit an affidavit as contemplated in subsection (1) to the Master and to send a copy thereof to each creditor of the estate who proved a claim against that estate,

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

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

[Section 109 is substituted by Act 14 of 1985.]

Compelling trustee to submit accounts

110. (1) If a trustee has funds in hand which, in the opinion of the Master, ought to be distributed among the creditors of the estate in question and the trustee has not submitted to the Master a plan for the distribution of those funds, the Master may direct him in writing to submit to him a plan for the distribution of those funds, although the period prescribed in section *ninety-one* may not have elapsed.

(2) If a trustee has failed to submit an account to the Master within the period and in the manner hereinbefore prescribed, the Master may direct the trustee in writing to submit his account.

(3)

[Subsection (3) is deleted by Act 99 of 1965.]

Objections to trustee's account

111. (1) The insolvent or any person interested in the estate may, at any time before the confirmation of the trustee's account, in terms of section *one hundred and twelve,* lay before the Master in writing any objection, with the reasons therefor, to that account.

(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: Provided that -

(a) any person aggrieved by any such direction of the Master or by the refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within fourteen days as from the date of the Master's direction, or as from the date of intimation to the objector of the Master's refusal to sustain his objection, after notice to the trustee, for an order to set aside the Master's decision and the Court may thereupon confirm the account or make such order as it thinks fit; and

(b) when any such direction affects the interests of a person who has not lodged an objection with the Master, the account so amended shall again lie open for inspection

by the creditors in the manner and with the notice hereinbefore prescribed, unless the person affected as aforesaid consents in writing to the immediate confirmation of the account.

[Subsection (2) is amended by Act 99 of 1965.]

Confirmation of trustee's accounts

112. When a trustee's account has been open to inspection by creditors as hereinbefore prescribed and -

(a) no objection has been lodged; or

(b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection if necessary as in paragraph (b) of sub-section (2) of section *one hundred and eleven* prescribed and no application has been made to the Court in terms of paragraph (a) of the said sub-section (2) to set aside the Master's decision; or

(c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to the Court in terms of the said paragraph (a),

the Master shall confirm the account and his confirmation shall be final save as against a person who may have been permitted by the Court before any dividend has been paid under the account, to reopen it.

Distribution of estate and collection of contributions from creditors

113. (1) Immediately after the confirmation of a trustee's account, the trustee shall give notice of the confirmation in the *Gazette* and shall state in that notice, according to the circumstances, that a dividend to creditors is in course of payment or that a contribution is in course of collection from the creditors and that every creditor liable to contribute is required to pay to the trustee the amount for which he is so liable.

(2) If any contribution is payable, the trustee shall specify fully in that notice the address at which the payment of the contribution is to be made, and shall deliver or post a copy of the notice to every creditor liable to contribute.

(3) Immediately after the confirmation of a trustee's account the trustee shall in accordance therewith distribute the estate or collect from each creditor liable to contribute the amount for which he is liable.

Trustee to produce acquittances for dividends or to pay over unpaid dividends to Master

114. (1) The trustee shall without delay lodge with the Master the receipts for dividends paid to creditors and if there is a contribution account the vouchers necessary to complete the account: Provided that a payment instrument purporting to be payable to a creditor in respect of any dividend due to him and paid by the banker on whom it is payable, may be accepted by the Master in lieu of any such receipt.

[Subsection (1) is amended by Act 99 of 1965 to add the proviso, and substituted with amendment markings by Act 16 of 2022. Not all of the amendment markings are accurate.]

(2) If any such dividend has at the expiration of a period of two months as from the confirmation of the account under which it is payable, not been paid out to the creditor entitled

thereto, the trustee shall immediately pay in the dividend to the Master who shall deposit it in the Guardians' Fund for account of the creditor.

(3)

[Subsection (3) is deleted by Act 99 of 1965.]

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115.

[Section 115 is deleted by Act 99 of 1965.]

Surplus to be paid into Guardians' Fund until rehabilitation of insolvent

116. (1) If after the confirmation of a final plan of distribution there is any surplus in an insolvent estate which is not required for the payment of claims, costs, charges or interest, the trustee shall, immediately after the confirmation of that account, pay that surplus over to the Master, who shall deposit it in the Guardians' Fund and after the rehabilitation of the insolvent shall pay it out to him at his request.

(2)

[Subsection (2) is deleted by Act 99 of 1965.]

Failure by trustee to submit account or to perform duties

116*bis.* (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.*

[Section 116*bis* is inserted by Act 99 of 1965.]

Enforcement of order of Court

117. (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.

[Subsection (1) is substituted by Act 99 of 1965.]

(2) If the Court has ordered a trustee to pay out of his own means the costs of any proceedings instituted under any provision of this Act, and the person in whose favour the order was made is unable to recover those costs from the trustee, those costs shall be paid as part of the costs of the sequestration out of any assets of the estate in question, which have not yet been distributed among the creditors.

Enforcing payment of contributions

118. (1) After the expiration of a period of thirty days as from the delivery or posting in a registered letter to any creditor of the notice mentioned in sub-section (2) of section *one hundred and thirteen,* the trustee may take out a writ of execution in the magistrate's court in which the creditor could be sued for the contribution in question against any such creditor who, being liable to contribute under the plan of contribution, has failed to pay the amount of his liability.

(2) Whenever a creditor liable to contribute under a plan of contribution is in the opinion of the Master and of the trustee unable to pay the contribution for which he is liable or whenever the trustee has incurred in connection with the recovery of any contribution any expenses which are in the opinion of the Master and of the trustee irrecoverable, the trustee shall as soon as practicable and in any event within such period as the Master may prescribe therefor, frame and submit to the Master a supplementary plan of contribution wherein he shall apportion the share of the creditor who is unable to pay or the expenses in question among the other creditors who are in the opinion of the Master and of the trustee able to pay.

(3) The provisions of sub-section (2) shall *mutatis mutandis* apply whenever a creditor liable to contribute under a first or further supplementary plan of distribution is, in the opinion of the Master and of the trustee, unable to pay the contribution for which he is liable, or whenever the trustee has incurred expenses in connection with the recovery of a contribution under a first or further supplementary plan of distribution which are, in the opinion of the Master and the trustee, irrecoverable by the trustee.

(4) A trustee may, in lieu of complying with the requirements of section *one hundred and eight* in connection with any supplementary plan of contribution, furnish a copy of that plan to every creditor liable to contribute thereunder and thereupon the provisions of sub-section (1) shall *mutatis mutandis* apply.

Composition

119. (1) At any time after the first meeting of the creditors of an insolvent estate, the insolvent may submit to the trustee of his estate a written offer of composition.

(2) If the trustee is of the opinion that the creditors will probably accept the offer of composition, he shall as soon as possible after receipt of the offer post in a registered letter or deliver to every creditor who has proved his claim, a copy of the offer with his report thereon.

(3) If the trustee is of the opinion that there is no likelihood that the creditors will accept the offer of composition, he shall inform the insolvent that the offer is unacceptable and that he does not propose to send a copy thereof to the creditors.

(4) The insolvent may thereupon appeal to the Master who, after having considered a report from the trustee, may, if he considers the offer of composition sufficient for submission to the creditors, direct the trustee to post or deliver a copy of the offer to every creditor who has proved his claim.

(5) Whenever the trustee posts or delivers to the creditors a copy of an offer of composition in terms of the preceding provisions of this section, he shall simultaneously convene and give notice to the creditors of a meeting for the purpose of considering the said offer and any other matter mentioned in the notice.

(6) The said meeting shall be convened for a date not earlier than fourteen days and not later than twenty-eight days after the date upon which the said notice is posted or delivered to any creditor.

(7) If the offer of composition has been accepted by creditors whose votes amount to not less than three-fourths in value and three-fourths in number (calculated in accordance with the provisions of section *fifty-two)* of the votes of all the creditors who proved claims against the estate, and payment under the composition has been made or security for such payment has been given as specified in the composition, the insolvent shall be entitled to a certificate under the hand of the Master of the acceptance of the offer: Provided that no offer may be so accepted if it contains any condition whereby any creditor would obtain as against another creditor any benefit to which he would not have been entitled upon the distribution of the estate in the ordinary way; and provided further that any condition which makes the offer of composition or the fulfilment thereof or of any part thereof subject to the rehabilitation or to the consent of the creditors to the rehabilitation of the insolvent shall be of no effect, and provided also that if the composition provides for the giving of any security, the nature of that security shall be fully specified, and if it is to consist of a surety bond or guarantee, every surety shall be named.

[Subsection (7) is amended by Act 16 of 1943.]

(8) In sub-section (7) the word "creditor" includes a creditor who has not proved a claim against the insolvent estate m question.

Effect of composition

120. (1) An offer of composition which has been accepted as aforesaid shall be binding upon the insolvent and upon all the creditors of the insolvent estate in so far as their claims are not secured or otherwise preferent but the right of any preferent creditor shall not be prejudiced thereby, except, in so far as he has expressly and in writing waived his preference.

(2) If it be a condition of the composition that any property in the insolvent estate shall be restored to the insolvent, the acceptance of the composition shall divest the trustee of such property and re-invest the insolvent therewith as from the date upon which such property is in pursuance of the composition to be restored to the insolvent, but subject to any condition provided for in the composition.

(3) A composition shall not affect the liability of a surety for the insolvent.

If insolvent partner enters into composition, trustee of partnership estate may take over his estate

121. (1) When the estate of a partnership and the estate of a partner in that partnership are simultaneously under sequestration, the acceptance of an offer of composition by the separate creditors of the partner shall not take effect until the expiration of a period of six weeks as from the date of a notice in writing of that acceptance given by the trustee of the partner's separate estate to the trustee of the partnership estate, or if the trustee of the partner's estate is also the trustee of the partnership estate, as from the date of the acceptance. The said notice shall be accompanied by a copy of the deed embodying the composition.

(2) At any time during the said period of six weeks the trustee of the partnership estate may take over the assets of the estate of the insolvent partner if he fulfils the obligations of the insolvent partner in terms of the composition except obligations to render any service or obligations which only the insolvent partner can fulfil: Provided that if the composition provides for the giving of any specific security, the Master shall determine what other security the trustee of the partnership estate may give in lieu thereof.

Effect of composition on spouse of the insolvent

122. A composition shall not be binding on the separate creditors of the spouse of the insolvent concerned; but upon the acceptance of the offer of composition the property or, if it has been realized, the proceeds of the property of that spouse shall be restored to her or him, without prejudice to the claims of the creditors of that spouse or to any right of preference of any of them at the time when the property was vested in the trustee: Provided that any movable property held as security by any such creditor when the property was vested in the trustee shall be restored to that creditor; and provided further that the proceeds of any security whatsoever which has been realized shall be paid to the person or persons entitled thereto, according to their rights.

Functions of trustee under composition

123. (1) Any moneys to be paid and anything to be done for the benefit of creditors in pursuance of a composition shall be paid and shall be done, as far as practicable, through the trustee: Provided that any creditor who has failed to prove his claim before the trustee has made a final distribution among those creditors who have proved their claims, shall be entitled to recover direct from the insolvent within six months as from the confirmation by the Master, of the account under which the distribution was made, any payments to which he may be entitled under the composition and the trustee shall have no duty in regard thereto and after the said distribution the creditor shall have no claim against the insolvent estate.

(2) When a composition has been entered into between an insolvent and the creditors of his estate, the trustee of that estate shall frame a liquidation account and plan of distribution of the assets which are or will become available for distribution among the creditors under the composition, and all the provisions of this Act which relate to a liquidation account and plan of distribution and to the distribution of assets among creditors shall apply in connection with the first-mentioned liquidation account and plan of distribution, and with the first-mentioned assets.

Application for rehabilitation

124. (1) An insolvent who has obtained from the Master the certificate mentioned in sub-section (7) of section *one hundred and nineteen* may apply to the Court for an order for his rehabilitation: Provided that he has not less than three weeks before making the application, given, by advertisement in the *Gazette,* notice of his intention to make the application and delivered or posted in a registered letter to the trustee of his estate a copy of that notice; 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.

[Subsection (1) is amended by Act 16 of 1943 and by Act 99 of 1965.]

(2) An insolvent who is not entitled under sub-section (1) to apply to the Court for his rehabilitation and who has previously given to the Master and to the trustee of his estate in writing and by advertisement in the *Gazette* not less than six weeks' notice of his intention to apply to the Court for his rehabilitation may so apply -

(a) after twelve months have elapsed from the confirmation by the Master, of the first trustee's account in his estate, unless he falls within the provisions of paragraph (b) or (c); or

(b) after three years have elapsed from such confirmation if his estate has either under this Act or a prior law been sequestrated prior to the sequestration to which he desires to put an end and if he does not fall within the provisions of paragraph (c); or

(c) after five years have elapsed from the date of his conviction of any fraudulent act in relation to his existing or any previous insolvency or of any offence under section *one hundred and thirty-two, one hundred and thirty-three* or *one hundred and thirty-four* of this Act or under any corresponding provision of the Insolvency Act, 1916 (Act No. 32 of 1916) or of the Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928), of the Territory:

Provided that no application for rehabilitation under this sub-section shall be granted before the expiration of a period of four years from the date of sequestration of the estate of of the applicant, except upon the recommendation of the Master.

[Subsection (2) is amended by Act 16 of 1943. The word "of" is repeated in the phrase "estate of the applicant" in the proviso. The Insolvency Ordinance 7 of 1928 is repealed by this Act.]

(3) After the expiration of a period of six months as from the sequestration of an estate, the insolvent concerned may apply to the Court for his rehabilitation -

(a) if he has, not less than six weeks before making the application, given to the Master and to the trustee, if any, of his estate notice in writing, and published in the *Gazette* a notice of his intention to make the application; and

(b) if, at the time of making the application, no claim has been proved against his estate; and

(c) if he has not been convicted of an offence mentioned in paragraph (c) of sub-section (2); and

(d) if his estate was not sequestrated under any law prior to the sequestration which he desires to end.

(4) A trustee who has received a notice mentioned in subsection (1), (2), or (3) shall report to the Master any facts which in his opinion would justify the Court in refusing, postponing, or qualifying the insolvent's rehabilitation.

(5) At any time after the confirmation by the Master, of a plan of distribution providing for the payment in full of all claims proved against an insolvent estate, with interest thereon from the date of sequestration, calculated in terms of sub-section (2) of section *one hundred and three* and of all the costs of sequestration, the insolvent concerned may apply to the Court for his rehabilitation: Provided that he has not less than three weeks before making the application given notice in writing to the Master and to the trustee of his estate of his intention to make the application.

Security to be furnished prior to application for rehabilitation

125. Not less than three weeks before applying to the court for his rehabilitation an insolvent shall furnish to the registrar of the court security, to the amount or value of R500, for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the court.

[Section 125 is substituted by Act 14 of 1985.]

Facts to be averred on application for rehabilitation

126. In support of an application for his rehabilitation, an insolvent shall submit his affidavit that he has made a complete surrender of his estate and has not granted or promised any benefit whatever to any person or entered into any secret agreement with intent to induce his trustee or any creditor not to oppose the rehabilitation. Such affidavit shall include a statement of his assets and liabilities and of his earnings at the date of the application. Information shall also be laid before the Court as to what dividend was paid to his creditors, what further assets in his estate are available for realization and the estimated value thereof, the total amount of all claims proved against his estate, and the total amount of his liabilities at the date of the sequestration of his estate. If application for rehabilitation is made pursuant to sub-section (1) of section *one hundred and twenty-four* the insolvent shall set out the particulars of the composition and shall state whether there are or are not creditors whose claims against his estate have not been proved, and if there are such creditors, he shall state their names and addresses and particulars of their claims.

Opposition to or refusal by Court of rehabilitation

127. (1) Upon the day fixed for the hearing of an application for rehabilitation the Master shall report thereon to the Court, and the Master, the trustee or any creditor or other person interested in the estate of the applicant may appear in person or by counsel to oppose the grant of the application.

(2) Whether the application be opposed or not, the Court may ref use an application for rehabilitation or may postpone the hearing of the application or may rehabilitate the insolvent upon such conditions as it may think fit to impose and may order the applicant to pay the costs of any opposition to the application if it is satisfied that the opposition was not vexatious.

(3) Among the conditions referred to in sub-section (2), the Court may require the insolvent to consent to judgment being entered against him for the payment of any unsatisfied balance of any debt which was or could have been proved against his estate, or of such lesser sum as the Court may determine, but in such case execution shall not be issued on the judgment except with leave of the Court and on proof that the insolvent has since the date of sequestration of his estate acquired property or income available for the payment of his debts; or apart from any such judgment the Court may impose any other condition with respect to any property, or income which may accrue to the insolvent in the future.

(4) In granting an application for rehabilitation made under sub-section (1) of section *one hundred and twenty-four* the Court may order that any obligation incurred by the applicant before the sequestration of his estate which, but for that order, would be discharged as a result of the applicant's rehabilitation, shall remain of full force and effect, notwithstanding the rehabilitation.

(5) The registrar of the Court shall forthwith give notice to the Master of every rehabilitation of an insolvent granted by the Court.

Rehabilitation by effluxion of time

127A. Any insolvent not rehabilitated by the court within a period of ten years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period unless a court upon application by an interested person after notice to the insolvent orders otherwise prior to the expiration of the said period of ten years or before the 31st December, 1972, whichever date is the later.

[Section 127A is inserted by Act 6 of 1972.]

Partnership cannot be rehabilitated

128. A partnership whose estate has been sequestrated shall not be rehabilitated.

Effect of rehabilitation

129. (1) Subject to the provisions of sub-section (3) and subject to such conditions as the Court may have imposed in granting a rehabilitation, the rehabilitation of an insolvent shall have the effect -

(a) of putting an end to the sequestration;

(b) of discharging all debts of the insolvent, which were due, or the cause of which had arisen, before the sequestration, and which did not arise out of any fraud on his part;

(c) of relieving the insolvent of every disability resulting from the sequestration.

(2) A rehabilitation granted on an application made in circumstances described in sub-section (3) of section *one hundred and twenty-four* shall have the effect of reinvesting the insolvent with his estate.

(3) A rehabilitation shall not affect -

(a) the rights of the trustee or creditors under a composition;

(b) the powers or duties of the Master or the duties of the trustee in connection with a composition;

(c) the right of the trustee or creditors to any part of the insolvent's estate which is vested in but has not yet been distributed by the trustee, but subject to the provisions of sub-section (2);

(d) the liability of a surety for the insolvent;

(e) the liability of any person to pay any penalty or suffer any punishment under any provision of this Act.

Illegal inducements to vote for composition or not to oppose rehabilitation

130. Any undertaking to grant any benefit to any person in order to induce him or any other person to accept an offer of composition or to agree to, or refrain from opposing the rehabilitation of an insolvent, or as a consideration for the acceptance of an offer of composition or for the agreement to or non-opposition of the rehabilitation of an insolvent (whether by the person for whom the benefit is intended or by any other person), shall be void and any person who has accepted any such benefit or who has stipulated for any such benefit, whether for himself or any other person shall be liable to pay by way of penalty for the benefit of the creditors of the insolvent estate in question -

(a) a sum equal to the amount of the claim (if any) which he originally proved against the estate; and

(b) the amount or value of any benefit given or promised; and

(c) in case of a composition, the amount paid or to be paid to him under the composition.

Recovery of penalty

131. The trustee may enforce and recover any penalty mentioned in section *one hundred and thirty* and if he fails to do so any creditor may do so in the name of the trustee, upon his indemnifying the trustee against all costs in connection with such action.

Concealing or destroying books or assets

132. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if at any time before or after the sequestration of his estate he does any of the following acts, unless it is proved that he had no intention to defraud; that is to say, if he -

(a) conceals, parts with, destroys, mutilates, falsifies or makes any false entry or erasure in any book or document relating to his business, property or affairs or permits any other person to commit any such act in regard to any such book or document; or

(b) conceals or permits the concealment of any assets which ought to be placed at the disposal of the trustee; or

(c) otherwise than in the ordinary course of business makes, or permits the making of a disposition of any property which he has obtained on credit and has not paid for; or

(d) otherwise than in the ordinary course of business destroys, damages, removes or makes a disposition of, or permits the destruction, damage, removal or the making of a disposition of, any assets in his estate if such destruction, damage, removal or disposition has prejudiced or is calculated to prejudice his creditors:

Provided that -

(i) whenever in any proceedings for a contravention of paragraph (a) any act described in that paragraph is proved to have been committed in regard to any book or other document relating to the business, property or affairs of the insolvent, he shall be deemed to have committed or permitted such act unless it is proved that he neither committed it nor could have prevented the commission;

(ii) in any proceedings for a contravention of paragraph (c) or paragraph (d) any disposition, destruction, damage or removal of assets proved to have been committed shall, unless the contrary is proved, be deemed to have been otherwise than in the ordinary course of business;

(iii) if it appears from any book or document relating to the business, property or affairs of the insolvent or if it is proved in any other manner whatsoever that there ought to be available to the trustee at least ten per cent. more assets of the estate than the assets actually available to him, such insolvent shall be deemed to have removed or made a disposition of assets of a value equal to the difference between the value of the assets which ought to be available, and the value of the assets actually so available, in contravention of paragraph (d), unless he fully and accurately accounts for or explains the deficiency and proves that the deficiency was not caused by his action and that he could not have prevented it.

Concealment of liabilities or pretext to existence of assets

133. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if, within two years immediately preceding the sequestration of his estate,

when making any statement either verbally or in writing in regard to his business, property or affairs to any person who was then his creditor or to any person who became his creditor on the faith of such a statement, he concealed any liability, present or future, certain or contingent, which he may then have contracted, or failed to disclose the full extent of his liability or mentioned, as if it were an asset, any right or property which at the time was not an asset, or represented that he had more assets than he in fact had or made any false statement in regard to the amount, quality or value of his assets, or in any way concealed or disguised or attempted to conceal or disguise any loss which he had sustained, or gave any incorrect amount thereof, unless it is proved that he had good reason to believe that the said statement was correct in every respect and that he was not concealing or failing to disclose or disguising any relevant fact.

Failure to keep proper records

134. (1) An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding one year if his occupation or transactions prior to the sequestration of his estate were such that he might reasonably be expected to keep a record of his transactions, and he failed to keep a proper record of his transactions in the English or the Dutch language 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 and to preserve that record during a period of not less than three years.

[Subsection (1) is amended by Act 16 of 1943.]

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

[The introductory phrase of subsection (2) is substituted by Act 6 of 1972.]

(a) detailed stock sheets (which shall disclose the cost price of every article on hand at the date of stocktaking which has been purchased by the trader for the purpose of his business) and balance sheets completed for each of his three financial or business years immediately preceding the sequestration of his estate, or if he commenced business less than three years before the sequestration, completed at the commencement of his business and thereafter for each financial or business year preceding the sequestration;

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

[The introductory phrase of paragraph (b) is substituted by Act 6 of 1972.]

(i) all property purchased in the course of the business, duly supported by the original invoices;

(ii) all cash receipts and disbursements and the dates thereof;

(iii) a daily record of all property sold on credit, and such a continuous record of all transactions as a trader may be expected to keep in the ordinary course of his business;

(iv) the name of every person indebted to the trader and of every person to whom the trader is indebted and the address of every such person at the time when the indebtedness arose or at any time thereafter;

(c) a record of all payment instruments used during the period mentioned in paragraph (b) and the records of payment of such payment instruments, if available, showing clearly, in the case of each payment instrument and on each record of payment, the name of the payee, the amount of the payment instrument, and the date of the payment instrument.

[Paragraph (c) is substituted with amendment markings by Act 16 of 2022. Not all of the changes are indicated by the amendment markings. The paragraph should end with a colon instead of a full stop since it is followed by a proviso.]

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

[The proviso to subsection (2) is substituted by Act 14 of 1985.]

Undue preferences, contracting debts without expectation of ability to pay, etc.

135. (1) An insolvent shall be guilty of an offence and liable to imprisonment not exceeding one year, if, prior to the sequestration of his estate, he made a disposition of any part of his property with the intention of preferring one or more of his creditors above the others or any other if at the time when he made that disposition his liabilities exceeded the value of his assets: Provided that any such disposition which had the effect of preferring, or was calculated to prefer, one or more creditors above the others or any other shall, unless the contrary is proved, be deemed to have been made with the intention of preferring such creditor or creditors above the others or any other. Provided, further, that if the insolvent's estate was sequestrated within a period of six months as from the date of making such a disposition, his liabilities shall be deemed to have exceeded the value of his assets at that date, unless the contrary is proved.

(2) In sub-section (1) the expression "creditor" includes a surety for the insolvent as well as a person who in law is in a position analagous to that of a surety.

[The word "analogous" is misspelt in the *Government Gazette*, as reproduced above.]

(3) An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding two years if, prior to the sequestration of his estate -

(a) he contracted any debt of fifteen pounds or more or debts to the aggregate of fifty pounds or more, without any reasonable expectation of being able to discharge such debt or debts; or

[An amount of fifteen pounds is equivalent to an amount of N$30, and an amount of fifty pounds is equivalent to an amount of N$100.]

(b) at a time when his liabilities exceeded his assets or during the period of six months immediately preceding the sequestration of his estate, he diminished his assets by gambling, betting, hazardous speculations or expenditure, not reasonably necessary in connection with his business or vocation or for the maintenance of himself and his dependents or being a trader, alienated any business belonging to him, or the

goodwill of such business or any goods or property forming part thereof not in the ordinary course of that business, without publishing a notification of his intention so to alienate in the *Gazette*, and in a newspaper, in terms of the provisions of subsection (1) of section *thirty-four*:

Provided that in any proceedings for a contravention of paragraph (a) the insolvent shall, unless the contrary is proved, be deemed to have contracted the debt or debts without having had a reasonable expectation of discharging it or them, if the debt was or the debts were contracted -

(i) at a time when his liabilities exceeded his assets; or

(ii) within the period of six months immediately preceding the sequestration of his estate.

[Subsection (3) is amended by Act 32 of 1952.]

Failure to give information or to deliver assets, books, etc.

136. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years -

(a) if at any time during the sequestration of his estate he, knowing or suspecting that any person has proved or intends to prove a false claim against his estate, fails to inform the Master and the trustee of his estate in writing of that knowledge or suspicion, within seven days as from the date upon which he acquired that knowledge or upon which his suspicion was aroused;

(b) if he fails within fourteen days as from the appointment of the trustee of his estate -

(i) to deliver to the trustee or as the trustee may in writing direct, any property of whatever nature belonging to the estate which may be in his possession or custody or under his control; or

(ii) to inform the trustee of the existence and whereabouts of any property belonging to the estate (other than property mentioned in sub-paragraph (i)), which is not fully disclosed in the statement of his affairs mentioned in section *four* or *sixteen* or which is not already in the possession of the trustee; or

(iii) to deliver to the trustee or deputy sheriff, or as either of them may direct all books and documents in his possession or custody or under his control, relating to his affairs; or

(iv) to inform the trustee of the existence or whereabouts of any such book or document not in his possession or custody or under his control, if it is not already in the possession of the trustee;

unless, in any such case, he proves that he had a reasonable excuse for such failure;

(c) if, at any time after the sequestration of his estate, he fails to furnish at the request of the trustee complete and truthful information regarding any property which was at any time in his possession or custody or under his control, or regarding the time when or the manner or circumstances in which he disposed of such property or ceased to be in possession, custody or control thereof, unless he proves that he had a reasonable excuse for such failure.

Obtaining credit during insolvency, offering inducements, etc.

137. Any person shall be guilty of an offence and liable to imprisonment for a period not exceeding one year -

(a) if, during the sequestration of his estate, he obtains credit to an amount exceeding ten pounds without previously informing the person from whom he obtains credit that he is an insolvent, unless he proves that such person had knowledge of that fact; or

[An amount of ten pounds is equivalent to an amount of N$20.]

(b) if he grants, promises, or offers any consideration whatever in order to procure the acceptance by any creditor of an offer of composition or to prevent opposition to a rehabilitation or, during the sequestration of any estate, to induce any person to refrain from investigating any matter relating to that estate or from disclosing any information in regard thereto; or

(c) if he contravenes or fails to comply with the provisions of section *sixteen,* or of sub-section (3), (4) or (12) of section *twenty-three* unless he proves that he had a reasonable excuse for such contravention or failure; or

(d) if he makes any false statement in the statement of his affairs mentioned in section *four* or *sixteen,* or in the statement mentioned in sub-section (4) of section *twenty-three.*

Failure to attend meetings of creditors or give certain information

138. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding six months -

(a)

[Paragraph (a) is deleted by Act 99 of 1965.]

(b) if he fails, when thereto required in writing by the trustee of his estate, to give a true, clear and detailed explanation of his insolvency or fails to account correctly and in detail for the excess of his liabilities over his assets; or

(c) if, at a meeting of the creditors of his estate, when thereto required by the trustee or the officer presiding or any creditor or by the agent of any of them, he fails to account for or to disclose what has become of any property which was in his possession so recently that in the ordinary course he ought to be able to account therefor; or

(d) if he fails to comply with the requirements of sub-section (13) of section *twenty-three.*

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.

[Section 138*bis* is inserted by Act 99 of 1965.]

Failure to appear or to give evidence or giving false evidence

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

[Subsection (1) is substituted by Act 14 of 1985.]

(2) Any person shall be guilty of an offence and liable to the punishment provided by law for the crime of perjury, if, when being interrogated on oath under this Act, he wilfully makes, relative to the subject in connection wherewith he is interrogated, any statement whatever which he knows to be false or which he does not know or believe to be true.

Failure of insolvent or spouse to appear to give evidence

140. An insolvent or the spouse of an insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding six months if, when summoned to give evidence in any proceedings instituted by or against the trustee of the insolvent's estate he or she conceals himself or herself or quits the Republic or without reasonable excuse fails to attend those proceedings or refuses to answer any question which may be lawfully put to him or her in the course of those proceedings.

Acceptance of consideration for certain illegal acts or omissions

141. Any person shall be guilty of an offence and liable to a fine not exceeding R500 or to imprisonment without the option of a fine for a period not exceeding six months if he accepts any benefit or the promise or offer of any benefit as a consideration for having refrained from or discontinued, or for his undertaking to refrain from or to discontinue any proceedings for the sequestration of an estate or for having agreed to or not opposed, or for his undertaking to agree to or not to oppose a composition in an insolvent estate or the rehabilitation of an insolvent, or for having refrained or undertaken to refrain form investigating any matter relating to an insolvent or an insolvent estate or from disclosing any information in regard to an insolvent or an insolvent estate.

[Section 141 is substituted by Act 14 of 1985. The word "form" should be "from" in the phrase "to refrain form investigating".]

Removing or concealing property to defeat an attachment or failure to disclose property

142. (1) Any person shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if, either before or after the sequestration of an estate, he removes, conceals, disposes of, deals with or receives any asset belonging to that estate with intent to defeat an attachment by virtue of a sequestration order, or with intent to prejudice the creditors in that estate: Provided that in any proceedings for an offence under this sub-section, any such removal, concealment, disposal of, dealing with or receipt of assets which had the effect of defeating or was calculated to defeat such attachment or which prejudiced or was calculated to prejudice the creditors of that estate, shall, unless the contrary is proved, be deemed to have been committed with intent to defeat the attachment or (as the case may be) to prejudice those creditors.

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

[Subsection (2) is substituted by Act 14 of 1985.]

(3) The provisions of sub-sections (1) and (2) shall not apply to an insolvent in respect of any property belonging to his own insolvent estate.

(4) A secured creditor of an insolvent estate who has realized his security in terms of section *eighty-three* and who has failed after written demand to pay over the proceeds of the realization in accordance with the provisions of sub-section (10) of that section, shall, apart from any other offence which he may have committed in connection with those proceeds, be guilty of an offence and liable to the penalties mentioned in subsection (2).

Criminal liability of partners, administrators, servants or agents

143. (1) A person who -

(a) is or was a member of a partnership and who does or omits to do in relation to any property or to the affairs of that partnership or of the insolvent estate of that partnership; or

(b) is or was charged with the administration of an estate and who does or omits to do in relation to any property or to the affairs of that estate; or

(c) as a servant or agent has or had the sole or practical control of any property or of the affairs of his employer or principal and who does or omits to do in relation to that property or to the affairs of his employer or principal or of the insolvent estate of his former employer or principal,

any act which, if done or omitted by him in the like circumstances in relation to his own property or affairs or to any property belonging to, or the affairs of his insolvent estate, would have constituted an offence under this Act, shall be deemed to have committed that offence.

(2) The liability under sub-section (1) of a partner, servant or agent shall not affect the liability under that sub-section or under any other provision of this Act, of another partner or of a servant or agent of the same partnership, or of the employer or principal of the employee or agent who is so liable.

Criminal liability of trustee for neglect of certain duties

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

[Section 144 is substituted by Act 14 of 1985.]

Obstructing trustee

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

[Section 145 is substituted by Act 14 of 1985.]

Evidence of liability incurred by insolvent

146. Whenever in any criminal proceedings under this Act any liability incurred by an insolvent or the date or time when the liability was incurred, is in issue or relevant to the issue, proof that a claim in respect of that liability has been admitted against the estate of the insolvent in accordance with any provision of this Act shall be sufficient evidence of the existence of the liability and any such liability shall be deemed to have been incurred upon the date or at the time alleged in any document submitted in accordance with any provision of this Act in support of that claim: Provided that the accused or the prosecutor in those proceedings may prove that no such liability or that a lesser or a greater liability was incurred or that it was incurred on a date or at a time other than the date or time so alleged.

Offences committed by insolvent in different provinces may be tried at his place of business or residence

147. (1) Any court of law which has jurisdiction to try an insolvent in respect of an offence under this Act committed at the place where the insolvent mainly carried on business or resided at the time of the commission of the offence, shall have jurisdiction to try the insolvent in respect of such an offence committed anywhere in the Republic.

(2) In sub-section (1) "insolvent" includes a person who is liable under sub-section (1) of section *one hundred and forty-three.*

Deportation of certain persons for certain offences

148. If a person born elsewhere than in a part of South Africa which has been included in the Republic, has been convicted of an offence under this Act or under the Insolvency Act, 1916 or under the Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928 of the Territory), and in view of the circumstances of the offence the Minister of Justice deems him to be an undesirable inhabitant of the Republic, the said Minister may, by warrant under his hand cause him to be removed from the Republic and pending his removal, to be arrested and detained in custody.

[Section 148 is amended by Act 16 of 1943.]

Jurisdiction of the Court

149. (1) The Court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who -

(a) on the date on which a petition for the acceptance of the surrender or for the sequestration of his estate is lodged with the registrar of the Court, is domiciled or owns or is entitled to property situate within the jurisdiction of the Court; or

(b) at any time within twelve months immediately preceding the lodging of the petition ordinarily resided or carried on business within the jurisdiction of the Court:

Provided that when it appears to the Court equitable or convenient that the estate of a person not domiciled in the Republic be sequestrated elsewhere, or that the estate of a person over whom it has jurisdiction be sequestrated by another Court within the Republic, the Court may refuse or postpone the acceptance of the surrender or the sequestration.

(2) The Court may rescind or vary any order made by it under the provisions of this Act.

Appeal

150. (1) Any person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration may appeal against such order.

(2) Such appeal shall be noted and prosecuted as if it were an appeal from a judgment or order in a civil suit given by the Court which made such final order or set aside such provisional order, and all rules applicable to such lastmentioned appeal shall *mutatis mutandis,* but subject to the provisions of subsection (3), apply to an appeal under this section.

(3) When an appeal has been noted (whether under this section or under any other law), against a final order of sequestration, the provisions of this Act shall nevertheless apply as if no appeal had been noted: Provided that no property belonging to the sequestrated estate shall be realized without the written consent of the insolvent concerned.

(4) If an appeal against a final order of sequestration is allowed, the Court allowing such appeal may order the respondent to pay the costs of sequestrating and administering the estate.

(5) There shall be no appeal against any Order made by the Court in terms of this Act, except as provided in this section

**[Subsection (5) is inserted by Act 16 of 1943.
There should be a full stop at the end.]**

Review

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: Provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section *one hundred and twelve.*

[Section 151 is amended by Act 99 of 1965.]

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.

[Section 151*bis* is inserted by Act 99 of 1965.]

Master may direct trustee to deliver documents or property or call upon any person to furnish certain information

152. (1) The Master may at any time direct a trustee to deliver to him any book or document relating or any property belonging to the insolvent estate of which he is trustee.

(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.

[Subsection (2) is substituted by Act 99 of 1965.]

(3) After having interrogated the person summoned as aforesaid the Master or other officer concerned may deliver to him a written notice to appear again before the Master or other officer at a place and upon a date and hour stated in such notice and to submit to the Master or such other officer any further information or any book or document specified in such notice.

(4) When any person summoned as aforesaid appears before the Master or other officer in question in compliance with a notice issued under sub-section (2) or (3) the Master or such other officer may administer the oath to him and the Master or such other officer and if a person other than the trustee was summoned, also the trustee (or his agent) may interrogate the person summoned in regard to any matter relating to the insolvent or his estate or the administration of the estate.

(5) The provisions of sub-section (2) of section *sixty-five* shall *mutatis mutandis* apply in connection with the production of any book or document or with the interrogation of any person under the preceding provisions of this section.

(6) The provisions of section *sixty-six* shall *mutatis mutandis* apply in connection with a person summoned, and with his interrogation, under this section and the Master or other officer concerned shall, with reference to a person so summoned or with reference to such interrogation, have the powers and immunity conferred upon an officer mentioned in section *sixty-six.*

(7) The provisions of sub-section (7) of section *sixty-five* shall *mutatis mutandis* apply in connection with any person (other than a trustee) who has been summoned under this section for the purpose of furnishing any information: Provided that if there are no assets in the estate in question sufficient to pay the witness fees in question, those fees shall be paid by the State.

Fees of office and certain costs

153. (1) The Master shall recover in respect of the several matters and in the manner mentioned in the Third Schedule to this Act the fees therein specified.

[Subsection (1) is amended by Act 62 of 1955.]

(1)*bis* The State President may from time to time by proclamation in the *Gazette* amend the said Third Schedule.

[Subsection (1)*bis* is inserted by Act 62 of 1955.]

(2) Any expenses incurred by the Master or by an officer who is to preside or presides or has presided at a meeting of the creditors of an insolvent estate in the protection of the assets of an insolvent estate or in carrying out any provision of this Act shall, unless the Court otherwise orders, be regarded as part of the costs of the sequestration of that estate.

Custody of documents. Admissibility of copies or certificates.

[The punctuation of the heading is reproduced as it appears in the *Government Gazette*.]

154. (1) The Master shall have the custody of all documents relating to insolvent estates.

(2) If there is endorsed upon or attached to any document or record a certificate purporting to have been signed by a person describing himself as Master, wherein he describes the nature of the document or record and states that it relates to a specified insolvent or insolvent estate, that document or record shall on its mere production by any person *prima facie* be deemed to be what the certificate describes it to be.

(3) Any document or record upon which there is endorsed or to which there is attached a statement purporting to have been signed by a person describing himself as Master, wherein he certifies that the document or record is a true copy of or extract from a document or record relating to a specified insolvent or insolvent estate, and wherein he describes the nature of the original document or record, shall on its mere production by any person be as admissible in evidence in any court of law and be of the same force and effect as the original document or record would be if it bore or had attached to it the certificate mentioned in sub-section (2).

(4) A certificate, purporting to have been signed by a person describing himself as Master, stating that the estate of a person or partnership mentioned therein was sequestrated on a date therein specified, or that an insolvent named therein has or has not been rehabilitated, or that any person named therein has or has not complied with any particular requirement of this Act, shall upon its mere production by any person be received as *prima facie* evidence of the facts therein stated.

Destruction of Documents

[The word "Documents" is capitalised in the *Government Gazette,* as reproduced above.]

155. (1) After six months have elapsed as from the confirmation by the Master of the final trustees' account in any insolvent estate, the trustee may, with the consent in writing of the Master, destroy all books and documents in his possession relating to the estate.

(2) After five years have elapsed as from the rehabilitation of an insolvent the Master may destroy all records in his office relating to the estate of that insolvent.

(3) This section shall apply to all insolvent estates which have been finally liquidated or are in course of liquidation at the commencement of this Act.

Insurer obliged to pay third party's claim against insolvent

156. Whenever any person (hereinafter called the insurer) is obliged to indemnify another person (hereinafter called the insured) in respect of any liability incurred by the insured towards a third party, the latter shall, on the sequestration of the estate of the insured, be entitled to recover from the insurer the amount of the insured's liability towards the third party but not exceeding the maximum amount for which the insurer has bound himself to indemnify the insured.

Formal defects

157. (1) Nothing done under this Act shall be invalid by reason of a formal defect or irregularity, unless a substantial injustice has been thereby done, which in the opinion of the Court cannot be remedied by any order of the Court.

(2) No defect or irregularity in the election or appointment of a trustee shall vitiate anything done by him in good faith.

Regulations

158. The State President may from time to time make regulations not inconsistent with the provisions of this Act, prescribing -

(a) the procedure to be observed in any Master's office in connection with insolvent estates;

(b) the form of, and manner of conducting proceedings under this Act;

(c) the manner in which fees payable under this Act shall be paid and brought to account.

State President may amend First Schedule

158*bis*. The State President may by proclamation in the *Gazette* amend the First Schedule.

[Section 158*bis is* inserted by Act 50 of 1956.]

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).

[Section 158*ter is* inserted by Act 99 of 1965, with this insertion deemed to have come into force on 1 July 1943 (section 47(2) of Act 99 of 1965).]

Short title and date of commencement

159. This Act shall be called the Insolvency Act, 1936, and shall come into operation on the first day of July, 1936.

[Transitional provisions regarding the impact of amendments to the Act on estates sequestrated provisionally or finally before the date of such amendments have not been recorded here.]

First Schedule

FORMS

FORM A

Notice of Surrender of a Debtor's Estate (*Section* 4(1)).

Notice is hereby given that application will be made to the ..... Division of the Supreme Court on ..... the ..... day of ..... 19 at ..... o'clock in the forenoon or as soon thereafter as the matter can be heard, for the acceptance of the surrender of the estate of * .....… of ..... and that a statement of his affairs will lie for inspection at the office of the Master of the Supreme Court at‡ ..... (and at the office of .....) for a period of fourteen days as from the ..... day of ..... 19.....

.....
Attorney for .....
.....
..... 19.....

* Here insert the name in full of the debtor and his occupation and address, and if the debtor is a partnership, its style or firm and the name in full and address of every partner, other than a partner en com-mandite or a special partner as defined in the Cape Act No. 24 of 1861 or the Natal Law No. 1 of 1865.

‡ If the statement of the debtor's affairs is to lie for inspection only in a Master's office, delete the words in brackets.

FORM B

Statement of Debtor's Affairs (*Sections* 4(3) *and* 16))

Balance Sheet of*.....

Liabilities.	£ s. d.	*Assets.*	£ s. d.
Debts due as per Annexure IV.		Immovable property as per Annexure I	
		Movable property, furniture, stock-in-trade etc. as per Annexure II. ..	
		Outstanding claims, etc., as per Annexure III. ..	
		Deficiency.	
Total		Total	

* Here insert the name in full of the debtor.

ANNEXURE I.

Immovable Property.

	Description of property.	Situation and extent.	Mortgages thereon.	Estimated values.
				£ s. d.
Property situate in the Union				
Property situate elsewhere				
			Total	

ANNEXURE II.

Any Movable Property whatsoever which is not included in Annexure III or Annexure V.

	Description of property.	Estimated values.
		£ s. d.
Property situate in the Union ..		
Property situate elsewhere ..		
	Total	

Note.—Any merchandise mentioned in the foregoing statement shall be valued at its cost price or at its market value at the time of the making of the affidavit verifying this statement, whichever is the lower, and the statement shall be supported by detailed stock sheets relating to such merchandise.

[The references to "the Union" in this form should now refer to "the Republic", as a result of the global substitution made by Act 99 of 1963.]

ANNEXURE III.

Outstanding Claims, Bills, Bonds and other Securities.

	Name and residential and postal address of the debtor.	Particulars of claim.	Estimated amount good.	Estimated amount bad or doubtful.
			£ s. d.	£ s. d.
In the Union ..				
Elsewhere.. ..				
		Total ..		

ANNEXURE IV.

List of Creditors.

Name and address of creditor.	Nature and value of security for claim.	Nature of claim.	Amount of Claim.
			£ s. d.
		Total ..	

ANNEXURE V.

Movable Assets Pledged, Hypothecated, Subject to a Right of Retention or under Attachment in Execution of a Judgment.

Description of asset.	Estimated value of asset.	Nature of charge on asset.	Amount of debt to which charge relates.	Name of creditor in whose favour charge is.

ANNEXURE VI.

Enumeration and description of every book in use by the debtor at time of notice of surrender or sequestration, or at the time when he ceased carrying on business.

.....

.....

.....

ANNEXURE VII.

Detailed Statement of Causes of Debtor's Insolvency.

.....

.....

.....

ANNEXURE VIII.

Personal Information.

State whether the debtor is married, widowed or divorced.....

If the debtor is or was married, state—

(*a*) name or names of spouse or spouses.....

..... ; and

(*b*) whether the debtor is or was married in or without community of property.....

State the debtor's race and nationality.....

State the debtor's place of birth.....

Was the debtor's estate or the estate of a partnership in which the debtor is or was a partner previously sequestrated or placed in bankruptcy, whether in the Union or elsewhere ?

.....

If the preceding answer is in the affirmative, state—

(*a*) whether debtor's own estate or his partnership's estate was (i) sequestrated ; or (ii) placed in bankruptcy.....

.....

(*b*) the place where and the date when that estate was sequestrated or placed in bankruptcy.....

(*c*) whether the debtor has been rehabilitated or his estate released; if so when.....

.....

The foregoing balance sheet and statements shall be verified by an affidavit in the subjoined form, made by the debtor or by the person who on behalf of the debtor presented the petition tendering the surrender of the debtor's estate, or who is the representative of the debtor or his estate.

AFFIDAVIT.

I, ... declare under oath* / solemnly and sincerely declare that to the best of my knowledge and belief the statements contained in the foregoing balance sheet and the Annexures thereto are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

Signature of declarant.....

Sworn / Solemnly declared * before me on the.....

day of..... at .....

.....

Commissioner of Oaths.

* Delete inappropriate words.

FORM C

Affidavit for the Proof of any Claim other than a Claim based on a Promissory Note or other Bill of Exchange (*Section* 44(4))

In the Insolvent Estate of.....

Name in full of creditor.....

Address in full.....

Total amount of claim..... £.....

I ..... declare under oath / solemnly and sincerely declare*

(1) That....., whose estate has been sequestrated, was at the date of sequestration, and still is, indebted to .....in the sum of..... for.....

(2) That the said debt arose in the manner and at the time set forth in the account hereunto annexed.

(3) That no other person besides the said..... is liable (otherwise than as surety) for the said debt on any part thereof.

(4) That I have / the said.....has * not, nor has any other person, to my knowledge on my / his * behalf received any security for the said debt or any part thereof, save and except †.....

.....

Signature of declarant.....

Sworn / Solemnly declared * before me on the.....day of

..... at .....

.....

Commissioner of Oaths.

* Strike out inappropriate words according to the facts of the case.

† Here insert nature, particulars and value of mortgage, pledge or other security.

FORM D

Affidavit for the Proof of a Claim based on a Promissory Note or other Bill of Exchange (*Section* 44(4))

In the Insolvent Estate of.....

Name in full of creditor.....

Address in full.....

Total amount of claim.....

I..... declare under oath / solemnly and sincerely declare*

(1) That....., whose estate has been sequestrated, was on the date of sequestration, and still is, indebted to .....in the sum of....., by virtue of the following promissory note / bill of exchange*

Date of note or bill.	Name of maker or drawer.	Name of acceptor.	Name of person to whom payable.	Date when payable.	Name of endorser.	Amount.

(2) That the said debt arose in the manner and at the time set forth in the account hereunto annexed.

(3) That I have / the said.....has* not, nor has any other person to my knowledge on my / his* behalf received any security for the said debt or any part thereof, save and except†.....

(4) That besides the said.....one..... mentioned above, is liable to me / the said.....* as..... of the said note / bill*, as aforesaid.

(5) That the said note / bill* is in all respects genuine and valid.

Signature of declarant.....

Sworn / Solemnly declared* before me on the.....day of .....at.....

.....

Commissioner of Oaths.

*Strike out inappropriate words, according to the facts of the case.
†Here insert nature, particulars and value of mortgage, pledge or other security.

Second Schedule

TARIFF A

[Tariff A is amended by Act 16 of 1943 and by RSA Proc. R.210 of 1960, substituted by RSA Proc. R.282 of 1972, amended by RSA Proc. R.120 of 1980 and by AG 17 of 1986, and substituted by Proc. 12 of 1999.]

DEPUTY SHERIFF'S FEES
(Section 19(5))

		N$
1.	For registration of any document received for service or execution.	3,25
2.	For each separate attachment of movable property, including search and enquiry, per half hour	50,00
3.	For the attachment of moneys: 3,5 per cent of the amount attached.	
4.	For any abortive attempt at attachment, including search and enquiry, per half hour	30,00
5.	For making an inventory and the list of books and records referred to in section 19(1)(d) of the Act, including all necessary copies and time spent in stocktaking, per half hour or part thereof	40,00
6.	For assistance, where necessary in the opinion of the Master, in taking inventory, a reasonable and inclusive fee not exceeding, per half hour	30,00
7.	For notice of attachment of movable property, if necessary, to a single person	10,00
8.	For identical notices when there is more than one person to be given notice, for each after the first	5,00
9.	For each separate possession (as defined in the rules for the construction of this tariff), a fee which is reasonable in the opinion of the Master, not exceeding N$100,00 per day.	
10.	For an additional officer, where necessary, limited to one, per day or part thereof	60,00
11.	When no officer is left in possession but movable property attached remains under supervision of the deputy sheriff, per day or part thereof	30,00
12.	For removal and storage: the actual costs thereof.	
13.	For insuring movable property attached when it considered necessary by the deputy sheriff, in addition to the amount of the premium paid, an inclusive fee of	30,00
14.	For herding and tending of live-stock: The necessary costs thereof.	
15.	Travelling allowance, per kilometre or fraction thereof	3,00
16.	For each necessary letter, telegram or facsimile	6,00

17. Each necessary attendance by telephone, in addition to prescribed trunk charges 5,00

18. The general sales tax payable on fees allowed.

19. For any work necessarily done by or on behalf of the deputy sheriff in performing the duties under section 19 of the Act, for which no provision is made in this tariff: An amount to be determined by the Master.

RULES FOR THE CONSTRUCTION OF THE TARIFF AND THE GUIDANCE OF THE DEPUTY-SHERIFF

1. In the tariff "possession" means the continuous and necessary presence on the premises in question for the period in respect of which possession is charged of a person employed and paid by the deputy-sheriff for the sole purpose of retaining possession.

2. When a charge is made for possession of any property, no charge shall be allowed for herding and tending of livestock if the same person could render both services.

3. If there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto.

4. No travelling allowance shall be charged unless it was necessary for the deputy-sheriff to go beyond a distance of one kilometre from his or her office; but when any such allowance is payable, it shall be paid for the actual distance travelled in going from and returning to the office.

5. No charge shall be made for the cost of any transport, railway fare, etc., in addition to a charge for travelling allowance.

6. If more services than one can be performed on the same journey, the distance to the first place of service may be brought into account only once, and shall be apportioned equally to the respective services; and the distance from the first place of service to the next place of service shall similarly be apportioned equally to the remaining services, and so forth.

7. If the execution of a judgment has been stayed by publication of notice of surrender or by sequestration after an inventory has been made, for the purpose of the execution, no charge shall be made for a second inventory of the same goods. The deputy-sheriff's fees for making the inventory shall be charged to the insolvent estate in question, according to the tariff, and not to the execution creditor, unless the estate is unable to pay those fees.

8. The deputy-sheriff may pay rent, if necessary, for premises required for the storage of goods attached at a rate as the Master shall authorize.

9. Every question arising under or relative to the tariff shall be determined by the Master.

TARIFF B

[Tariff B is amended by RSA Proc. 229 of 1956 and by RSA Proc. R.159 of 1961, and substituted by RSA Proc. R.87 of 1973 and by Proc. 12 of 1999.]

REMUNERATION OF TRUSTEE
(Section 63)

1.	On the gross proceeds of movable property (other than shares or similar securities) sold, or on the gross amount collected under promissory notes or book debts, or as rent, interest or other income, (excluding amounts collected as envisaged in item 6)	10 per cent
2.	On the gross proceeds of immovable property, shares or similar securities sold, life insurance policies and mortgage bonds recovered and the balance recovered in respect of immovable property sold prior to sequestration	3 per cent
3.	On money found in the estate	1 per cent
4.	the gross proceeds of payment instruments and postal orders payable to the insolvent, found in the estate	1 per cent

[Item 4 is substituted with amendment markings by Act 16 of 2022. The substitution deletes the word "On" at the beginning of the item, without indicating this change in the amendment markings.]

5.	On the gross proceeds of amounts standing to the credit of the insolvent in current, savings and other accounts and of fixed deposits and other deposits at banking institutions, building societies or other financial institution	1 per cent
6.	On moneys paid into the estate by the trustee in his or her personal capacity as debtor or collected from another estate in which he or she is acting as trustee, liquidator, executor or in any other representative capacity.....	1 per cent
7.	On sales by the trustee in carrying on the business of the insolvent, or any part thereof, in terms of section 80.....	6 per cent
8.	On the amount distributed in terms of a composition, excluding any amount on which remuneration is payable under any other item of this tariff	2 per cent
9.	On the value at which movable property in respect of which a creditor has a preferent right, has been taken over by such creditor	5 per cent

Provided that the total remuneration of a trustee in terms of this tariff shall not be less than N$3 000.

REMUNERATION OF *CURATOR BONIS* AND PROVISIONAL TRUSTEE

A reasonable remuneration to be determined by the Master, not to exceed the rate of remuneration of a trustee under this tariff.

Third Schedule

[The Third Schedule is amended by Act 17 of 1938, substituted by Act 62 of 1955 and by RSA Proc. R.155 of 1971, amended by RSA Proc. R.118 of 1980, and substituted by Proc. 12 of 1999.]

MASTER'S FEES OF OFFICE
(Section 153)

		N$
1.	On all insolvent estates the gross value of which -	
	(a) is less than N$5 000.....	0.00
	(b) is N$5 000 or more, for each complete N$1 000.....	5,00
2.	On any amount paid by the trustee into the Guardian's Fund for account of creditors.....	5 per cent.

Note - (1) The fees referred to in items 1(b) 4 shall be assessed by the Master and shall be payable to the receiver of revenue. Proof of such payment shall be submitted by the trustee to the Master.

(2) The fees referred to item (2) shall be payable in cash and be deducted from the amount paid into the Guardian Fund.