



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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DEPARTEMENT VAN DIE EERSTE MINISTER.

DEPARTMENT OF THE PRIME MINISTER.

No. 356. 8 Maart 1972.

No. 356. 8th March, 1972.

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

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

No. 6 van 1972: Insolvensiewysigingswet, 1972.

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

WET

Tot wysiging van die bepalings van die Insolvensiewet, 1936, ten einde die wyse waarop spesiale byeenkomste van skuldeisers belê moet word, nader te bepaal; ten einde die soorte instellings waar gelde van insolvente boedels deur kurators gestort of belê kan word, uit te brei; ten einde sekere wetsbepalings met betrekking tot preferente vorderings teen insolvente boedels saam te vat; om voorsiening te maak vir die rehabilitasie van 'n insolvent deur tydsverloop; en ten einde die wyse waarop aantekeninge van regshandelings gehou moet word, nader te bepaal; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 2 Maart 1972.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 2 van Wet 24 van 1936, soos gewysig deur artikel 2 van Wet 16 van 1943, en artikel 48 van Wet 99 van 1965.

1. Artikel 2 van die Insolvensiewet, 1936 (hieronder die Hoofwet genoem), word hierby gewysig deur na die omskrywing van „rekening” die volgende omskrywings in te voeg:

„bankinstelling’ beteken ’n bankinstelling soos omskryf in artikel 1 van die Bankwet, 1965 (Wet No. 23 van 1965), en geregistreer of voorlopig geregistreer of geag geregistreer te wees as ’n bankinstelling ingevolge artikel 4 van daardie Wet, maar nie ook ’n voorlopig geregistreerde bankinstelling wat na die inwerking-treding van die Insolvensiewysigingswet, 1972, aldus voorlopig geregistreer is nie;

„bouvereniging’ beteken ’n bouvereniging soos omskryf in artikel 1 van die Bouverenigingswet, 1965 (Wet No. 24 van 1965), en finaal geregistreer of geag finaal geregistreer te wees as ’n bouvereniging ingevolge artikel 5 van daardie Wet;”.

Wysiging van artikel 25 van Wet 24 van 1936.

2. Artikel 25 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Die boedel van ’n insolvent bly onder die beheer van die kurator totdat dit weer op die insolvent oorgaan ingevolge ’n akkoord volgens die bepalings van artikel 119, of totdat die insolvent gerehabiliteer word volgens artikel 127 of 127A: Met dien verstande dat alle goedere wat onmiddellik voor die rehabilitasie onder beheer van die kurator val, na die rehabilitasie onder sy beheer bly om te gelde gemaak en verdeel te word.”.

Vervanging van artikel 42 van Wet 24 van 1936.

3. Artikel 42 van die Hoofwet word hierby deur die volgende artikel vervang:

„Spesiale byeenkomste van skuldeisers. 42. Na die tweede byeenkoms van skuldeisers moet die kurator by kennisgewing in die *Staatskoerant* ’n spesiale byeenkoms van skuldeisers belê om vorderings teen die betrokke boedel te bewys, wanneer ’n belanghebbende dit vereis en gelyktydig

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 1972

ACT

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

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

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

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

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

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

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

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

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

Amendment of section 25 of Act 24 of 1936.

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

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

Substitution of section 42 of Act 24 of 1936.

"Special meetings of creditors."

Wet No. 6, 1972

INSOLVENSIEWYSIGINGSWET, 1972.

aan die kurator betaling aanbied van alle koste wat in verband met die byeenkoms gemaak sal moet word.”.

Vervanging van artikel 70 van Wet 24 van 1936, soos gewysig deur artikel 48 van Wet 99 van 1965.

4. Artikel 70 van die Hoofwet word hierby deur die volgende artikel vervang:

„Bankrekenings en beleggings.

70. (1) Die kurator van 'n insolvente boedel—

(a) moet by 'n bankinstelling in die Republiek 'n rekening op naam van die boedel open en moet daarin op kredit van die boedel van tyd tot tyd alle somme geld stort wat hy ten behoeve van die boedel ontvang;

(b) kan, met die skriftelike verlof van die Meester, by 'n bankinstelling of 'n bouvereniging in die Republiek 'n spaarrekening op naam van die boedel open, en kan geld gestort in die in paragraaf (a) vermelde rekening wat nie onmiddellik vir betaling van 'n vordering teen die boedel nodig is nie, daarin oorbetaal;

(c) kan, met die skriftelike verlof van die Meester, geld gestort in die in paragraaf (a) vermelde rekening wat nie onmiddellik vir betaling van 'n vordering teen die boedel nodig is nie, by 'n bankinstelling of bouvereniging in die Republiek in rentedraende deposito plaas.”.

(2) 'n Kurator moet, wanneer die Meester dit van hom verlang, die Meester skriftelik verwittig van die bankinstelling of bouvereniging en die kantoor, takkantoor of agentskap daarvan waarby hy 'n in subartikel (1) bedoelde rekening geopen het, en aan die Meester 'n bankstaat of ander genoegsame bewys van die stand van die rekening verstrek.

(3) 'n Kurator plaas nie so 'n rekening van enige sodanige kantoor, takkantoor of agentskap na 'n ander sodanige kantoor, takkantoor of agentskap oor nie, behalwe na skriftelike kennisgewing aan die Meester.

(4) Alle tjeks of orders wat op so 'n rekening getrek word, moet die naam van die nemer en die grond van betaling bevat, en moet op order uitgemaak en deur elke kurator of sy behoorlik gemagtigde verteenwoordiger onderteken wees.

(5) Die Meester en 'n borg vir die kurator of so 'n borg se gemagtigde het dieselfde reg op inligting met betrekking tot daardie rekening as die kurator self, en is geregtig op insage van alle daarop betreklike bewysstukke, ongeag of hulle in hande van die bankinstelling of bouvereniging of van die kurator is.

(6) Die Meester kan, na kennisgewing aan die kurator, die bestuurder van 'n kantoor, takkantoor of agentskap waarby 'n in subartikel (1) bedoelde rekening geopen is, skriftelik gelas om alle gelde waarmee daardie rekening gekrediteer staan op die tydstip wanneer bedoelde bestuurder daardie opdrag ontvang en alle gelde wat daarna op daardie rekening inbetaal mag word, in die voogdyfonds te stort en bedoelde bestuurder moet aan daardie opdrag gevolg gee.”.

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 1972

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

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

“Banking
accounts
and
investments.

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

- (a) shall open an account in the name of the estate with a banking institution within the Republic, and shall deposit therein to the credit of the estate from time to time all sums received by him on behalf of the estate;
- (b) may, with the written consent of the Master, open a savings account in the name of the estate with a banking institution or a building society within the Republic, and may transfer thereto moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate;
- (c) may, with the written consent of the Master, place moneys deposited in the account referred to in paragraph (a) and not immediately required for the payment of any claim against the estate, on interest-bearing deposit with a banking institution or building society within the Republic.

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

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

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

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

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

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

Wet No. 6, 1972

INSOLVENSIEWYSIGINGSWET, 1972.

Vervanging van artikel 99 van Wet 24 van 1936, soos vervang deur artikel 30 van Wet 99 van 1965.

5. Artikel 99 van die Hoofwet word hierby deur die volgende artikel vervang:

„Voorrang ten opsigte van sekere statutêre verpligtinge. 99. (1) Daarna word die orige van die vrye oorskot aangewend tot dekking van—

(a) 'n bedrag wat ingevolge die Ongevallewet, 1941 (Wet No. 30 van 1941), onmiddellik voor die sekwestrasie van die boedel, ten opsigte van 'n aanslag, pene of ander betaling aan die Ongevallekommissaris verskuldig was deur die insolvent in sy hoedanigheid van 'n werkgewer, of die skadeloosstelling wat op sodanige tydstip ten opsigte van 'n werksman verskuldig was, insluitende die koste van geneeskundige behandeling en 'n bedrag betaal of betaalbaar ingevolge artikel 40 (2), 44, 76 (2) of 86 (2) van daardie Wet, en, in die geval van 'n voortdurende verpligting, ook die gekapitaliseerde waarde, soos deur die Ongevallekommissaris vasgestel, van die pensioen (ongeaag of 'n enkele geldsom in plaas van die pensioen of 'n gedeelte daarvan te eniger tyd kragtens artikel 49 van daardie Wet betaal word), periodieke uitkering of toelae wat, na gelang van die geval, die verpligting uitmaak;

(b) 'n bedrag wat die insolvent ingevolge—

(i) artikel 35 (2) van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), van 'n in artikel 9 (1) (b) van daardie Wet bedoelde bedrag ten opsigte van 'n ander persoon se aanspreeklikheid vir die betaling van normale belasting;

(ii) artikel 64E van 'n in artikel 64A van daardie Wet bedoelde bedrag aan rente, ten opsigte van die rentebelasting op buitelanders wat ten opsigte van daardie bedrag aan rente betaalbaar is;

(iii) artikel 99 van daardie Wet ten opsigte van 'n belasting deur 'n ander persoon verskuldig moet betaal en van gelde, met inbegrip van pensioene, salaris, lone of ander besoldiging, wat deur hom gehou word vir of deur hom verskuldig is aan die ander persoon; of

(iv) paragraaf 2 van die Vierde Bylae by daardie Wet by wyse van werknemersbelasting van besoldiging deur hom aan 'n ander persoon betaal of betaalbaar, afgetrek of teruggehou het, maar nie voor die sekwestrasie van die boedel aan die Sekretaris van Binnelandse Inkomste betaal het nie, en rente op so 'n bedrag ingevolge daardie Wet betaalbaar ten opsigte van 'n tydperk voor die datum van sekwestrasie van die boedel;

(c) 'n bedrag wat ingevolge die Pneumokoniosevergoedingswet, 1962 (Wet No. 64 van 1962), onmiddellik voor die sekwestrasie van die boedel, aan die Algemene Raad vir Pneumokoniosevergoeding verskuldig was deur die insolvent in sy hoedanigheid van eienaar of vorige eienaar van 'n myn, en enige daarop verskuldigde rente ten opsigte van 'n tydperk voor die datum van sekwestrasie van die boedel;

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 1972

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

"Preference in regard to certain statutory obligations.

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

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

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

(b) any amount which the insolvent—

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

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

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

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

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

(c) any amount which in terms of the 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;

Wet No. 6, 1972

INSOLVENSIEWYSIGINGSWET, 1972.

- (d) die bedrag van 'n waardevermeerderingskontribusie wat ingevolge die Wet op Gemeenskapsontwikkeling, 1966 (Wet No. 3 van 1966), onmiddellik voor die sekwestrasie van die boedel, aan die Gemeenskapsontwikkelingsraad verskuldig was deur die insolvent;
- (e) 'n bedrag wat ingevolge die Werkloosheidsversekeringswet, 1966 (Wet No. 30 van 1966), onmiddellik voor die sekwestrasie van die boedel, ten opsigte van 'n bydrae, pene of ander betaling aan die Werkloosheidsversekeringsfonds verskuldig was deur die insolvent in sy hoedanigheid van 'n werkgewer;
- (f) enige ander bydraes betaalbaar deur die insolvent (met inbegrip van enige sodanige bydraes betaalbaar ten opsigte van enige van sy werknemers) ingevolge die bepalinge van 'n wet wat, onmiddellik voor die sekwestrasie van die boedel, deur die insolvent, in sy hoedanigheid van 'n werkgewer, aan 'n pensioen-, siekte-, mediese-, werkloosheids-, vakansie-, voorsienings- of ander versekeringsfonds verskuldig was.

(2) Die in subartikel (1) bedoelde vorderings staan gelyk in rangorde en word, indien nodig, eweredig verminder."

Invoeging van artikel 127A in Wet 24 van 1936.

6. Die volgende artikel word hierby in die Hoofwet na artikel 127 ingevoeg:

„Rehabilitasie deur tydsverloop.

127A. 'n Insolvent wat nie binne 'n tydperk van tien jaar van die datum van sekwestrasie van sy boedel deur die hof gerehabiliteer is nie, word na verstryking van daardie tydperk geag gerehabiliteer te wees tensy die hof op aansoek van 'n belanghebbende persoon, na kennisgewing aan die insolvent anders gelas binne die voormelde tien jaar of voor 31 Desember 1972, watter datum ook die laatste is."

Wysiging van artikel 134 van Wet 24 van 1936, soos gewysig deur artikel 33 van Wet 16 van 1943.

7. Artikel 134 van die Hoofwet word hierby gewysig deur in subartikel (2)—

- (a) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

„By die toepassing van hierdie artikel omvat 'n behoorlike aantekening van regshandelings alle aantekeninge, waarin duidelik die aard van elke regshandeling van bedoelde persoon vermeld staan, wat hy met die oog op sy beroep, redelikerwys verwag kon word om te hou. Van 'n handelaar word vermoed dat hy nie behoorlik aantekening van sy regshandelings gehou het nie, tensy hy aantekeninge gehou het wat omvat—”;

- (b) die woorde in paragraaf (b) wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

„aantekeninge, waarin onderstaande besonderhede voorkom oor die tydperk sedert die begin van besigheid of sedert die begin van die boek- of besigheidsjaar wat voorafgaan aan die boek- of besigheidsjaar voor die boek- of besigheidsjaar waarin die handelaar se boedel gesekwestreer is (na gelang die een of die ander tydperk korter is), naamlik—”.

Herroeping van wette.

8. Die wette in die Bylae genoem, word hierby herroep vir sover in die derde kolom daarvan uiteengesit.

Kort titel.

9. Hierdie Wet heet die Insolvensiewysigingswet, 1972.

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 1972

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

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

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

Insertion of section 127A in Act 24 of 1936.

“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.”.

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

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

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

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

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

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

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

Repeal of laws.

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

Short title.

Wet No. 6, 1972

INSOLVENSIEWYSIGINGSWET, 1972.

Bylae.**WETTE HERROEP**

No. en jaar van Wet.	Kort titel.	In hoeverre herroep.
Wet 24 van 1922	Wet betreffende Aangelegenheden van Zuidwest-Afrika, 1922	Artikel 5 (2)
Wet 30 van 1941	Ongevallewet, 1941	Artikel 99
Wet 27 van 1945	Ongevalle-wysigingswet, 1945	Artikel 35
Wet 51 van 1956	Ongevalle-wysigingswet, 1956	Artikel 27
Wet 58 van 1962	Inkomstebelastingwet, 1962	Artikel 93 <i>bis</i>
Wet 64 van 1962	Pneumokoniosevergoedingswet, 1962	Artikel 123
Wet 6 van 1963	Wysigingswet op Inkomstebelasting, 1963	Artikel 17
Wet 3 van 1966	Wet op Gemeenskapsontwikkeling, 1966	Artikel 47
Wet 30 van 1966	Werkloosheidversekeringswet, 1966	Artikel 59
Wet 95 van 1967	Inkomstebelastingwet, 1967	Artikel 24

INSOLVENCY AMENDMENT ACT, 1972.

Act No. 6, 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 <i>bis</i>
Act 64 of 1962	Pneumoconiosis Compensation Act, 1962	Section 123
Act 6 of 1963	Income Tax Amendment Act, 1963	Section 17
Act 3 of 1966	Community Development Act, 1966	Section 47
Act 30 of 1966	Unemployment Insurance Act, 1966	Section 59
Act 95 of 1967	Income Tax Act, 1967	Section 24