Zimbabwe

Insolvency Act

Chapter 6:04

Legislation as at 31 December 2016

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Insolvency Act
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Chapter 6:04

Commenced on 1 January 1975

[This is the version of this document at 31 December 2016 and includes any amendments published up to 31 December 2017.]

[Note: This version of the Act was revised and consolidated by the Law Development Commission of Zimbabwe]

[Repealed by Insolvency Act, 2018 (Act 7 of 2018) on 25 June 2018]

AN ACT to make provision for the administration of insolvent and assigned estates; and to provide for matters incidental to the foregoing.

Part I – Preliminary

1. Short title

This Act may be cited as the Insolvency Act *[Chapter 6:04]*.

2. Interpretation

(1) In this Act—

"**account**", in relation to a trustee or assignee, means—

(a) a liquidation account or a plan of distribution or contribution; or

(b) a supplementary liquidation account or plan of distribution or contribution;

as the case may be;

"**assignee**" means a person to whom a debtor has assigned his estate in terms of Part VIII;

"**court**" includes a magistrates court which has jurisdiction in regard to the offence or matter in question;

"**debtor**", in connection with the sequestration or assignment of the estate of a debtor, means a person or partnership or the estate of a person or partnership, including a partnership which has been terminated but has not been wound up, which is a debtor in the usual sense of the word but does not include a body corporate or a company or other association of persons which may be placed in liquidation or which may be wound up in terms of the law relating to companies or any other law;

"**deputy sheriff**" means a deputy sheriff appointed in terms of subsection (3) of section 55 of the High Court Act *[Chapter 7:06]* and includes an assistant deputy sheriff appointed in terms of that subsection;

"**disposition**" means any transfer or abandonment of rights to property, and includes a sale, lease, suretyship, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor but does not include a disposition in compliance with an order of a 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, landlord's legal hypothec, pledge or right of retention;

"**good faith**", in relation to the disposition of property, means the absence of 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 Deeds Registry or other registration office in Zimbabwe wherein title to immovable property or mining title may be registered;

"**insolvent**", when used as a noun, means a debtor whose estate is subject to a sequestration order;

"**insolvent estate**" means an estate which is subject to a sequestration order;

"**magistrate for the district**" means the magistrate whose court is situated within the district concerned or, where there is no magistrates court situated in the district concerned, the magistrate whose court is situated nearest thereto;

"**Master**" means the Master of the High Court appointed in terms of the Administration of Estates Act *[Chapter 6:01]*;

"**messenger**" means a messenger of a magistrates court and includes a deputy messenger;

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

"**notice of assignment**" means a notice of assignment referred to in section one hundred and fifty-two;

"**petition**" means an application to the High Court made in the appropriate form prescribed in rules of court;

"**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;

"**presiding officer**" means the Master, magistrate or other officer, as the case may be, who presides at a meeting of creditors in terms of subsection (2) of section fifty-two;

"**property**" means movable or immovable property wherever situated within Zimbabwe, and includes contingent interests in property other than the contingent interest of a fideicommissary instituted by will or deed *inter vivos*;

"**registrar**" means the Registrar of the High Court;

"**return day**", in relation to a rule *nisi*, means the date of hearing of the matter concerned, fixed in accordance with rules of court;

"**rule nisi**" means a provisional order issued by the High Court in the appropriate form prescribed in rules of court;

"**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 the High Court whereby a debtor's estate is sequestrated and includes a provisional order when it has not been set aside.

"**Sheriff**" has the meaning assigned thereto in section 2 of the High Court Act *[Chapter 7:06]*;

"**special mortgage**" means any hypothecation duly registered against immovable property in accordance with any enactment;

"**spouse of an insolvent**" includes a wife or husband by virtue of a marriage according to any law or custom and 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, but does not include a wife or husband of an insolvent who is living apart from the insolvent under an order of judicial separation;

"**trader**" means any person who carries on the business—

(a) of buying, selling, letting, hiring, exchanging or manufacturing for sale, lease, hire or exchange any property;

(b) of performing building operations;

(c) of providing public entertainment;

(d) of operating an hotel, boarding-house, restaurant, café or tea-room;

(e) as the agent or broker of another, of buying or selling of any property or of letting or hiring any property;

but does not include a farmer in respect of his farming operations;

"**trustee**" means the trustee of an insolvent estate and, except for the purposes of subsection (5) of section twelve and section seventeen, includes a provisional trustee.

(2) Where in terms of any provision of this Act any account, statement of affairs, deed of assignment or other document is required to be filed or lodged with or submitted to the Master or the Master's office, such account, statement of affairs, deed of assignment or other document shall be so filed or lodged with or submitted to the office of the Master in Harare or the office of the Assistant Master in Bulawayo:

Provided that the Master may direct in a particular case that such account, statement of affairs, deed or other document be so filed or lodged with or submitted to one or other of such offices.

Part II – Sequestration and attachment of estate

Voluntary surrender

3. Petition for surrender

(1) A petition for the acceptance of the surrender of the estate of a debtor may be made to the High Court by—

(a) the insolvent debtor or his agent; or

(b) the person in whom is vested the administration of the estate of—

(i) a deceased insolvent debtor;

(ii) an insolvent debtor who is incapable of managing his own affairs.

(2) All the members of a partnership, other than partners *en commandite* or special partners referred to in the Special Partnerships Limited Liability Act *[Chapter 240 of 1963]* who reside in Zimbabwe may petition the High Court for the acceptance of the surrender of the estate of the partnership and of the estate of each such member.

(3) A petition referred to in subsection (1) shall include a statement of the debtor's affairs in the prescribed form.

(4) A copy of a petition referred to in subsection (1) shall be served on the Master prior to the hearing of the petition and shall be accompanied by an additional copy of the statement of the debtor's affairs.

4. Provisional acceptance of surrender and issue of rule *nisi*

(1) Upon the application for the acceptance of the surrender of the estate of the debtor the High Court may, if it is satisfied that, *prima facie*—

(a) there are available assets of the estate sufficient to defray all such costs of sequestration as are payable out of the free residue in terms of this Act; and

(b) the estate of the debtor is insolvent;

provisionally accept the surrender of the estate of the debtor and grant an order of provisional sequestration of that estate and shall at the same time issue a rule *nisi* calling upon interested persons to appear and show cause why the debtor's estate should not be sequestrated finally.

(2) Before issuing a rule *nisi* in terms of subsection (1) the High Court may direct the petitioner or any other person to appear and be examined before the High Court.

5. Publication of rule *nisi*

Upon the issue of the rule *nisi* in terms of subsection (1) of section four the petitioner shall cause a copy thereof to be published in the *Gazette* and in a newspaper circulating—

(a) in the case where the debtor is or, within the period of six months preceding his death, was a trader, in the district where his principal business is or was situated; or

(b) in any other case, in the district where the debtor resides or, immediately prior to his death, resided.

6. Final acceptance of surrender

On the return day of a rule *nisi* issued in terms of subsection (1) of section four, if the High Court is satisfied that—

(a) there are available assets of the estate sufficient to defray all such costs of sequestration as are payable out of the free residue in terms of this Act; and

(b) the estate of the debtor is insolvent; and

(c) the provisions of section five have been complied with;

the High Court may finally accept the surrender of the estate and grant an order placing the estate of the debtor under sequestration:

Provided that, where no appearance is made on the return day of the rule *nisi* either by the petitioner or an interested person the High Court shall either extend the return day of the rule *nisi* to a fixed date or discharge the rule *nisi*.

7. Discharge of rule *nisi*

Subject to section eight, where a rule *nisi* issued in terms of subsection (1) of section four is discharged, the estate of the debtor concerned shall be revested in him and all the rights of or against the estate shall be revived.

8. Costs of attachment and control of property and administration of estate

The assets of a debtor which have been attached by a deputy sheriff or taken under the control of a trustee since the issue of a rule *nisi* in terms of subsection (1) of section four in respect of the estate of the debtor shall not be released from such attachment or control after the rule *nisi* is discharged until such costs and expenses as the Master may approve which have been incurred in connection with those assets and the administration of the debtor's estate have been paid.

9. Sale of assets if costs and expenses not paid

If the costs and expenses referred to in section eight are not paid within two months of the date of discharge of the rule *nisi*, the deputy sheriff or trustee, as the case may be, may, with the authority of the Master, sell sufficient of the assets which are attached by him or under his control, as the case may be, to meet such costs and expenses.

10. Sale of assets not claimed

If any assets of a debtor which have been attached by a deputy sheriff or taken under the control of a trustee since the issue of a rule *nisi* in terms of subsection (1) of section four are not claimed in terms of section seven within two months of the discharge of the rule *nisi*, the deputy sheriff or trustee, as the case may be, may sell the assets by public auction and, after deduction of such costs and expenses as the Master may approve which have been incurred in connection with those assets and the administration of the debtor's estate, shall remit the balance remaining to the Master who shall place it to the credit of the debtor in the Guardian's Fund.

Compulsory sequestration

11. Acts of insolvency

A debtor shall be deemed to have committed an act of insolvency if—

(a) he leaves Zimbabwe or, being out of Zimbabwe, 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; or

(b) 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; or

(c) 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; or

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

(e) except as provided in this Act, he agrees or offers to assign his estate for the benefit of his creditors or any of them or makes or offers to make any arrangement with his creditors for releasing him wholly or partially from his debts; or

(f) he gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts or if he has suspended payment of his debts; or

(g) he makes default in publishing the notice required by section one hundred and fifty-two or if his creditors have, in terms of section one hundred and fifty-six, declined the assignment of his estate; or

(h) being a trader, he gives notice in terms of section forty-seven and is unable to meet the liabilities of his business; or

(i) a notice of assignment having been published in terms of section one hundred and fifty-two, he omits to lodge his statement of affairs as by law required or his statement of affairs does not fully disclose his debts or property and that omission is material.

12. Petition for sequestration of estate

(1) A petition for the sequestration of the estate of a debtor who is insolvent or who has committed an act of insolvency may be made to the High Court by—

(a) a creditor who has a liquidated claim for not less than such amount as may be prescribed; or

(b) two or more creditors who have liquidated claims in the aggregate for not less than such amount as may be prescribed; or

(c) the agent of any creditor or creditors referred to in paragraph (a) or (b).

[subsection amended by Act 22 of 1998]

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition shall be deemed to be a liquidated claim for the purposes of subsection (1).

(3) The petition shall specify—

(a) the amount, cause and nature of the claim in question; and

(b) whether or not the petitioner holds any security for his claim and, if so, the nature and value of the security; and

(c) the alleged act of insolvency committed by the debtor or the allegation that the debtor is insolvent.

(4) The facts stated in the petition shall be confirmed by affidavit.

(5) The petition shall be accompanied by a certificate of the Master or a magistrate, given not more than ten days before the date of hearing of the petition, that sufficient security has been given in favour of the Master 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 costs of sequestration and administration and of all charges necessary for the discharge of the estate from sequestration:

Provided that, where a magistrate issues a certificate referred to in this subsection, he shall forthwith, at the expense of the petitioner, advise the Master by telegram that he has issued such certificate.

(6) A copy of the petition and verifying affidavit shall be lodged with the Master before the hearing of the petition.

(7) Where the petitioner relies solely on the allegation that the debtor is insolvent, a copy of the petition and notice of the date of hearing of the petition shall be served on the debtor:

Provided that the High Court may for good cause shown dispense with the provisions of this subsection.

(8) The Master may report to the High Court any facts ascertained by him which would appear to him to justify the court in postponing the hearing of or in dismissing the petition and shall transmit a copy of that report to the petitioner.

(9) The petitioner may submit an answering affidavit in reply to any report made in terms of subsection (8).

(10) At the hearing of the petition the High Court, on consideration of the petition, any report thereon made in terms of subsection (8) and any affidavit in reply thereto in terms of sub-section (9), may—

(a) subject to section thirteen, grant an order placing the estate of the debtor under provisional sequestration; or

(b) dismiss the petition; or

(c) postpone the hearing; or

(d) make such other order in the matter as in the circumstances appears to it to be just.

13. Order of provisional sequestration

The High Court shall not grant an order of provisional sequestration unless it is of the opinion that, *prima facie*—

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

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

(c) the petitioner has a claim against the debtor to the extent referred to in subsection (1) of section twelve.

14. Service of rule *nisi*

(1) Where the High Court grants an order of provisional sequestration of the estate of a debtor, it shall at the same time issue a rule *nisi* calling upon the debtor to appear and to show cause on why his estate should not be sequestrated finally.

(2) Upon the issue of the rule *nisi* the petitioner shall cause a copy thereof to be published in the *Gazette* and in a newspaper circulating—

(a) in the case where the debtor is or, within the period of six months preceding his death, was a trader, in the district where his principal place of business is or was situated; or

(b) in any other case, in the district where the debtor resides or. immediately prior to his death, resided.

(3) 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 Zimbabwe, the High Court may direct that it shall be sufficient service of the rule *nisi* if a copy thereof be affixed to the outer door of the buildings where the High Court sits or may direct some other mode of service.

(4) Upon the application of the debtor, the High Court may anticipate the return day of the rule *nisi* for the purpose of discharging the order of provisional sequestration if twenty-four hours' notice of such application has been given to the petitioner.

15. Final order of sequestration or discharge of provisional order

(1) On the return day of a rule *nisi* issued in terms of subsection (1) of section fourteen, if the High Court is satisfied that—

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

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

(c) the petitioner has a claim against the debtor to the extent referred to in subsection (1) of section twelve; and

(d) subsection (2) of section fourteen has been complied with;

the High Court may grant an order placing the estate of the debtor under sequestration.

(2) If the High Court is not satisfied as specified in subsection (1), it shall—

(a) dismiss the petition and set aside the order of provisional sequestration; or

(b) postpone the hearing for any reasonable time but not *sine die* and—

(i) require further proof of any of the matters set out in the petition;

(ii) where subsection (2) of section fourteen has not been complied with, require compliance therewith.

Miscellaneous

16. Sequestration of partnership estate

(1) Where the High Court sequestrates the estate of a partnership, it shall at the same time sequestrate the estate of every member of the partnership, other than an anonymous partner, a partner *en commandite* or special partner referred to in the Special Partnerships Limited Liability Act *[Chapter 240 of 1963]* 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 High 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.

(2) The aggregate of the costs of sequestration of the estate of the partnership and of the estates of the partners shall be payable as follows—

(a) one-half, by the estate of the partnership; and

(b) one-half, in equal shares by the estates of the partners.

(3) Where the estate of a partner is unable fully to meet the costs of sequestration, the balance shall be paid out of the estate of the partnership:

Provided that the estate of the partnership shall not be liable for such costs if to pay them would involve a contribution by creditors of the estate of the partnership and there are one or more creditors of the estate of the partner who have proved claims in the estate of that partner or who are liable for the costs of sequestration of the estate of that partner.

(4) The surrender of the estate of a partnership shall not be accepted unless and until the High Court is satisfied that petitions have been presented for the acceptance of the surrender of the separate estates of all the partners who reside in Zimbabwe and of all other partners who have joined in the application for the surrender of the estate of the partnership:

Provided that the petitions for the surrender of the separate estates of the partners may be incorporated in the petition for the surrender of the estate of the partnership.

(5) Where a partner who does not reside in Zimbabwe has not joined in an application which is made for the surrender of the estate of the partnership, the High Court shall upon the grant of the application order the provisional sequestration of the estate of that partner and shall issue a rule *nisi* calling upon that partner to appear and to show cause why his estate should not be sequestrated finally.

(6) On the return day of the rule *nisi* issued in terms of subsection (5), the High Court may, if no cause to the contrary is shown, grant an order placing the estate of the partner concerned under sequestration.

(7) Where any member of a partnership, which is or is being sequestrated, is a corporate body this section shall be construed, *mutatis mutandis*, as referring to the liquidation or winding up of that corporate body in terms of the law relating thereto.

(8) Where a partnership estate is sequestrated paragraph (b) of subsection (2) of section nineteen and the liability for any contravention thereof shall extend to—

(a) every partner; and

(b) every director and officer of any corporate body which is a partner:

Provided that it shall be deemed to be sufficient compliance by all such persons with that paragraph if any one of those persons complies therewith.

17. Petitioning creditor to prosecute sequestration until trustee appointed and liable for contribution

(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 trustee has been appointed.

(2) The trustee shall pay to the creditor referred to in subsection (1) his taxed costs out of the first funds of the estate available for that purpose in terms of section one hundred.

(3) In the event of a contribution by creditors in terms of section one hundred and seventeen, the creditor referred to in subsection (1), whether or not he has proved a claim against the estate in terms of section fifty-seven, shall be liable to contribute not less than he would have had to contribute if he had proved the claim stated in his petition.

18. Malicious or vexatious petitions

Whenever the High Court is satisfied that a petition for the sequestration of the estate of a debtor 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 think fit.

19. Insolvent and spouse to deliver records and lodge statements

(1) The registrar of the High Court which has granted a final order of sequestration, including an order on acceptance of surrender, shall—

(a) cause a copy of such order to be served as soon as possible by a deputy sheriff on—

(i) the insolvent; and

(ii) any spouse of the insolvent whose estate has not been sequestrated;

and

(b) file a copy of the deputy sheriff's return of service with the Master.

(2) An insolvent upon whom a copy of an order referred to in subsection (1) has been served shall—

(a) forthwith deliver to the deputy sheriff all records and books relating to his affairs which have not yet been taken into custody in terms of subsection (2) of section twenty-one and obtain from the deputy sheriff a detailed receipt therefor; and

(b) except in the case of an order on acceptance of surrender, within seven days of service of the order referred to in subsection (1), lodge with the Master in the prescribed form the original and one copy of the statement of his affairs:

Provided that the Master may, on application being made to him and for good cause shown, extend the period within which the statement and the copy thereof must be lodged.

(3) The spouse of an insolvent who has been served with a copy of an order in terms of subparagraph (ii) of paragraph (a) of subsection (1) shall, within seven days of such service, lodge with the Master in the prescribed form the original and one copy of the statement of his or her affairs:

Provided that the Master may, on application being made to him and for good cause shown, extend the period within which the statement and the copy thereof must be lodged.

(4) If the Master is satisfied that an insolvent or the spouse of an insolvent was unable to prepare without assistance the statement referred to in subsection (2) or (3), as the case may be, the person who assisted the insolvent or that spouse with the preparation of that 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.

Attachment and custody of estate

20. Notice of sequestration

(1) The registrar of the High Court which has granted a sequestration order or an order relating to an insolvent estate or to a trustee or to an insolvent shall without delay transmit a duplicate original of such order to the Master.

(2) The registrar of the High Court which has granted a sequestration order or an order amending or setting aside the same shall without delay transmit a duplicate original of such order to—

(a) the trustee, if one is appointed; and

(b) the Sheriff and the deputy sheriff of every district in which it appears the insolvent resides or owns property; and

(c) every officer charged with the registration of title to immovable property; and

(d) every messenger by whom it appears that the property of the insolvent is under attachment:

Provided that when the value of an estate is under four hundred dollars and the High Court so orders, the movable assets may remain in the custody of the insolvent or any other person on such terms and security as the Court may direct, and in that case it shall not be necessary to transmit the order of sequestration to the Sheriff or any deputy sheriff.

(3) Every officer who has received an order transmitted to him in terms of subsection (2) shall register it and note thereon the date and hour when it was received in his office.

(4) Upon the receipt by an officer referred to in paragraph (c) of subsection (2) of an order transmitted to him in terms of that subsection, he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of all bonds registered at the registry of which he is in charge in the name of the insolvent or his or her spouse.

(5) When the Master has received a sequestration order or an order amending or setting aside the same transmitted to him in terms of subsection (1), he shall give notice in the *Gazette* of such order.

21. Attachment of property by deputy sheriff

(1) Upon receipt of an order transmitted to him in terms of subsection (2) of section twenty, a deputy sheriff shall, in the manner specified in subsection (2), attach and make an inventory of all the movable property of the insolvent which is—

(a) situated in the district of the deputy sheriff; and

(b) capable of manual delivery; and

(c) not in the possession of a person who claims to possess it under a right of pledge or right of retention; and

(d) not under attachment by a messenger.

(2) Where a deputy sheriff acts in terms of subsection (1), he shall—

(a) 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 shall remit all such cash to the Master or to the trustee;

(b) 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) hand to the person appointed in terms of paragraph (b) a copy of the inventory with a notice stating that the property has been attached by virtue of a sequestration order and a statement of the offence constituted by section one hundred and eighty-four and the penalty provided therefor;

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

(e) if the insolvent is present, inquire from him whether or not the list referred to in paragraph (d) is a complete list of the books, documents and records relating to his affairs and, if there are any other such books, documents or records in the possession of any other person, the name and address of such other person, and record his reply thereto.

(3) Any person interested in the insolvent estate or in the property attached may be present when a deputy sheriff is making his attachment or inventory.

(4) A deputy sheriff shall—

(a) immediately after effecting the attachment and making the inventory, report to the Master in writing that the attachment has been effected and the inventory has been made and shall specify in his report any property which to his knowledge is in the lawful possession of a person who claims to possess such property under a right of pledge or a right of retention and shall submit with such report the original and one copy of the inventory made in terms of subsection (1); and

(b) upon the request of the trustee, submit to him a copy of the report and inventory referred to in subsection (1).

22. Messenger to transmit attached property to Master

A messenger who has received an order transmitted to him in terms of subsection (2) of section twenty shall without delay transmit to the Master an inventory of all property attached by him which he knows to belong to the insolvent referred to in that order.

Part III – Effects of sequestration

Effect upon insolvent, spouse of insolvent and their property

23. Immediate effect of sequestration order

(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 the trustee;

(b) to stay, until the appointment of a trustee, any civil proceedings instituted by or against the insolvent except such proceedings as may, in terms of section thirty-five, 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 estate of the insolvent in terms of section fifty-seven or ninety-two, the claimant may also prove against the estate a claim for his taxed costs incurred in connexion with those proceedings before the sequestration of the estate of the insolvent;

(c) as soon as the Sheriff, a deputy sheriff or a messenger whose duty it is to execute any judgment against the insolvent becomes aware of the sequestration, to stay that execution unless the High Court otherwise directs, save in the case where the execution is levied on immovable property and a sale has already taken place and been confirmed by the Sheriff in terms of rules of court, in which event the proviso to paragraph (a) of subsection (2) shall apply;

(d) where the insolvent is imprisoned for debt, to entitle him to his immediate release.

[paragraph substituted by Act 22 of 1998]

(2) For the purposes of subsection (1) and subject to any other law, the estate of an insolvent shall include—

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

Provided that, where the Sheriff has, prior to becoming aware of the sequestration order, confirmed a sale in execution of immovable property in terms of rules of court he shall proceed to do everything necessary to complete the sale, including the transfer of the property to the purchaser, and shall proceed to pay out the proceeds thereof to the creditors whose claims may be secured thereby and, notwithstanding any other writs lodged with him, the balance only, after deduction of the costs of execution, shall vest in terms of paragraph (a) of subsection (1); and

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

24. Effect of sequestration on property of spouse of insolvent

Subject to this Act, upon the sequestration of the estate of an insolvent the property, including such property or the proceeds thereof which the Sheriff, a deputy sheriff or a messenger holds under a writ of attachment, of any spouse of the insolvent whose estate has not been sequestrated shall be vested in the Master until the appointment of a trustee to the estate of the insolvent and, upon such appointment, in that trustee, and this Act shall apply, *mutatis mutandis*, in respect of the property as if it were the property of the insolvent estate:

Provided that, where the Sheriff has, prior to becoming aware of the sequestration order, confirmed a sale in execution of immovable property in terms of rules of court he shall proceed to do everything necessary to complete the sale, including the transfer of the property to the purchaser, and shall proceed to pay out the proceeds thereof to the creditors whose claims may be secured thereby and, notwithstanding any other writs lodged with him, the balance only, after deduction of the costs of execution, shall vest in terms of this section.

25. Application to High Court to stay or exclude vesting of property of spouse temporarily

(1) Either before or after the grant of a sequestration order an application may be made to the High Court by the spouse of the insolvent for an order directing that the property or any part thereof of the spouse shall be temporarily stayed or excluded from vesting, as the case may be, in the Master or the trustee in terms of section twenty-four.

(2) Upon an application being made to it in terms of subsection (1) the High Court may, if satisfied that —

(a) satisfactory arrangements will be made by the spouse of the insolvent to protect the interests, if any, of the estate of the insolvent in the property concerned; and

(b) the spouse of the insolvent—

(i) is carrying on business as a trader apart from the insolvent; or

(ii) is likely to suffer serious prejudice through the immediate vesting of his or her property in the Master or trustee in terms of section twenty-four;

order that the property of the spouse of the insolvent or such part thereof as the High Court may specify shall not vest in the Master or the trustee in terms of section twenty-four for such period as it thinks fit.

(3) During the period for which an order referred to in subsection (1) endures, the spouse of the insolvent may make application to the trustee, if one has been appointed, for the release of his or her property in terms of section twenty-seven.

(4) Upon the expiry of the period for which an order referred to in subsection (1) endures, the property of the spouse of the insolvent which has not been released by the trustee in terms of section twenty-seven shall vest in the Master or the trustee in terms of section twenty-four.

26. Trustee to give notice of intention to realize property of spouse

(1) A trustee in whom the property of the spouse of an insolvent has vested in terms of section twenty-four shall not, without leave of the High Court, realize any such property unless he gives notice of his intention to do so in terms of this section—

(a) to the spouse of the insolvent; and

(b) to the creditors of that spouse.

(2) Notice of intention to realize property referred to in subsection (1)—

(a) in relation to the spouse of an insolvent—

(i) shall be given in writing to that spouse at least six weeks before the intended realization of the property; and

(ii) may be served by registered letter addressed and posted to the spouse of the insolvent at his or her address if known to the trustee or, if unknown to him, at his or her last known address;

(b) in relation to the creditors of the spouse of the insolvent—

(i) shall be published, at least six weeks before the intended realization of the property, in the *Gazette* and in a newspaper circulating in the district where the spouse of the insolvent resides if known to the trustee or, if unknown to him, in the district where the spouse of the insolvent was last known to reside; and

(ii) shall invite all the creditors for value of the spouse of the insolvent to prove their claims to the trustee in terms of section twenty-nine.

27. Trustee to release property

(1) A trustee shall release any property or the proceeds thereof of the spouse of an insolvent which has vested in him in terms of section twenty-four where such property is proved—

(a) to have been the property of that spouse immediately before his or her marriage to the insolvent or immediately before he or she began living with the insolvent as his or her husband or wife, as the case may be; or

(b) to have been acquired by that spouse under a marriage settlement and not to be a disposition without value made by the insolvent which could be set aside in terms of this Act; or

(c) to have been acquired by that spouse during the marriage with the insolvent or during the time he or she was living with the insolvent as his or her husband or wife, as the case may be, by a title valid as against creditors of the insolvent; or

(d) to be safeguarded in favour of that spouse in terms of the Insurance Act *[Chapter 24:07]*; or

(e) to have been acquired with any property referred to in paragraphs (a) to (d) or with the income or proceeds thereof.

(2) Where it is proved that any property—

(a) which is the movable property of the insolvent estate; or

(b) which was acquired by the spouse of the insolvent by a title which is not valid as against the creditors of the insolvent estate;

was acquired in either case by way of contribution made by the spouse of the insolvent, the trustee shall—

(i) permit that spouse to purchase the interest of the insolvent estate in the property after the value thereof has been agreed between them and thereupon release the property to the spouse; or

(ii) failing agreement in terms of subparagraph (i), or, at the request of the spouse, release to the spouse from the proceeds of the realization of the property an amount which bears to the total amount of the proceeds the same proportion as the contribution of the spouse bore to the total consideration given by the insolvent and the spouse in respect of the acquisition of the property.

(3) Where the trustee has released any property or the proceeds thereof in terms of subsection (1) or (2), he shall be entitled subsequently to prove that such property or proceeds belong to the estate of the insolvent and may recover that property or those proceeds.

28. Application to High Court for release of property

(1) The spouse of an insolvent whose property has vested in the trustee in terms of section twenty-four may apply to the High Court for an order—

(a) releasing any such property or the proceeds thereof; or

(b) staying the realization of any such property or the distribution of the proceeds thereof.

(2) Upon an application in terms of subsection (1), the High Court may make such order relating to the property or the proceeds thereof as it thinks just.

29. Creditors of spouse may prove claims

(1) Where the property of the spouse of an insolvent has vested in the trustee in terms of section twenty-four, creditors for value of that spouse who have claims against that spouse which could have been proved against the estate of that spouse if that estate were sequestrated may prove

their claims against the estate of the insolvent and shall be entitled to share in the proceeds of the property of the spouse of the insolvent according to their legal priorities *inter se* and in priority to the creditors of the insolvent estate, but shall not be entitled to share in the separate assets of the insolvent estate.

(2) Every claim intended to be proved in terms of subsection (1) shall specify that the claim is against the solvent spouse.

30. Property of spouse to bear proportionate share of costs of sequestration

Subject to any order made in terms of section twenty-eight, any property of the spouse of an insolvent which has vested in the trustee in terms of section twenty-four and which has been realized by the trustee shall bear a proportionate share of the costs of sequestration of the estate of the insolvent.

31. Excussion of property of spouse

(1) Where any property or the proceeds thereof of the spouse of an insolvent have been released by the trustee in terms of section twenty-seven or by virtue of an order of the High Court made in terms of section twenty-eight, the creditors of that spouse, other than creditors who hold securities for their claims, shall only be entitled to share in terms of section twenty-nine in the proceeds of any other property which has vested in the trustee in terms of section twenty-four after the property or proceeds so released and any property acquired by the spouse of the insolvent since sequestration of the estate of the insolvent have been excussed:

Provided that where a creditor has incurred costs in making such excussion and has been unable to recover those costs, he shall be entitled to add the amount of those costs to the amount of a claim proved by him in terms of section twenty-nine.

(2) When an excussion is required to be made in terms of subsection (1), the trustee may, before awarding a creditor of the spouse of the insolvent a share in terms of section twenty-nine in the proceeds of the property of that spouse, require the creditor to lodge with him, within a period to be determined by the Master, an affidavit, supported by such evidence as is available, setting forth the result of the excussion and the balance of his claim which remains unpaid after the excussion.

(3) Subject to any order made by the High Court, if a creditor who has been required to lodge an affidavit in terms of subsection (2) fails to make the excussion concerned and to lodge the affidavit with the trustee within the period determined by the Master in terms of that subsection, the creditor shall not be entitled to share in terms of section twenty-nine in the proceeds of the property of the spouse of the insolvent.

32. Creditors of spouse not liable for costs of sequestration and may not vote at certain meetings

A creditor of the spouse of an insolvent who has proved a claim in terms of section twenty-nine shall not be liable to make any contribution in terms of section one hundred and seventeen or to vote at any meeting held in terms of section fifty-three, fifty-four or fifty-five, but any direction of the creditors of the insolvent estate which infringes rights of the first-mentioned creditor may be set aside by the High Court on the application of that creditor.

33. Application for sequestration of estate of spouse may be postponed by Court

If an application is made for the sequestration of the estate of the spouse of an insolvent on the ground of an act of insolvency committed after the vesting of the property of that spouse in the Master or the trustee in terms of section twenty-four, the High Court may postpone the hearing of the application or make such interim order as it thinks fit if it appears to the High Court that the act of insolvency alleged in the application was due to the vesting and—

(a) an application is intended to be made to the trustee for the release of the property or the proceeds thereof of the spouse of the insolvent in terms of section twenty-seven; or

(b) any property or the proceeds thereof of the spouse of the insolvent has been released from the vesting and that that spouse is now able to discharge his or her liabilities.

34. Payment of debts after sequestration

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

35. Powers, duties and privileges of insolvent during sequestration

(1) Subject to this section and section thirty-eight, all property acquired by an insolvent shall belong to his insolvent estate.

(2) The fact that a person entering into any contract is insolvent shall not affect the validity of that contract:

Provided that, subject to the provisions of section thirty-eight—

(a) the insolvent does not thereby purport to dispose of any property of his insolvent estate;

(b) the insolvent shall not, without the consent in writing of the trustee, 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.

(3) An insolvent may follow any profession or occupation or enter into any employment:

Provided that an insolvent may not, without the consent in writing of the trustee, 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.

(4) A creditor or an insolvent may appeal to the Master against the decision of the trustee in giving or refusing to give his consent in terms of subsection (3), and the decision of the Master shall be final.

(5) Where a trustee has given consent in terms of subsection (3), he shall, within seven days thereof, forward to the Master a copy of the consent given.

(6) An insolvent shall—

(a) keep a detailed record of all assets and income received by him from whatsoever source and of all disbursements made by him; and

(b) afford the trustee access to the record required to be kept in terms of paragraph (a) for the purpose of inspection at all reasonable times; and

(c) if required by the trustee, transmit to the trustee in the first week of every month a statement of all assets and income received by him and all disbursements made by him during the preceding month; and

(d) if required by the trustee, produce to the trustee reasonable vouchers in support of any item in the record required to be kept in terms of paragraph (a) and of any expenditure made or incurred.

(7) A trustee shall be entitled to any moneys received or to be received by the insolvent in the course of his profession, occupation or 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.

(8) Where the trustee has notified the employer of the insolvent that he is entitled to any part of the remuneration of the insolvent due or which will become due by that employer to the insolvent, the employer shall pay that part of the remuneration to the trustee, in the case of remuneration which

is already due, within thirty days of the receipt of such notification, and in the case of remuneration which will become due, within thirty days of the date when it becomes due.

(9) Notwithstanding any law to the contrary, subsection (8) shall apply where the State is the employer of the insolvent.

(10) An insolvent may sue or be sued in his own name without any reference to the trustee in any matter relating to status or any right in so far as it does not affect his estate or in respect of any 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.

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

(12) An insolvent may recover, for his own benefit, 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 leave of the High Court, institute an action against the trustee on the ground of malicious prosecution or defamation.

(13) Subject to subsections (7) and (8), an 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.

(14) An 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.

(15) Any moneys claimable by the trustee from an 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 moneys stated therein are so claimable.

(16) An insolvent shall at any time before the second meeting of the creditors of his estate held in terms of section fifty-three at the request of the trustee, assist the trustee to the best of his ability in collecting, taking charge of or realizing any property belonging to the estate, and 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 trustee, necessary for the support of the insolvent and those dependent upon him.

(17) An insolvent shall keep the trustee informed at all times of his residential and postal addresses and of the address of his business or his employer.

(18) 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 subsection (17).

36. Examination of insolvent in relation to affairs since sequestration

(1) The Master may, at the request of the trustee or a creditor who has proved a claim against the insolvent estate, require the insolvent to appear before him or a magistrate appointed for the purpose by the Master for examination in regard to his income and expenditure and any of his financial transactions since the sequestration of his estate and may require him to produce at such examination any book, document or other evidence in support of his income and expenditure and any of his financial transactions since the sequestration of his estate.

(2) Upon the appearance of the insolvent before the Master or a magistrate in terms of subsection (1), the Master or the magistrate, as the case may be, the trustee, any creditor who has proved a claim against the estate or the agent of any of them may examine the insolvent upon oath in regard to his income and expenditure and any of his financial transactions since the sequestration of his estate.

(3) The Master or the magistrate before whom an insolvent appears in terms of subsection (1) may adjourn the examination at any time.

(4) Section sixty-nine shall, *mutatis mutandis*, be construed as if any reference therein to a presiding officer included a reference to the Master or a magistrate before whom an insolvent is required to appear or to produce anything in terms of this section and as if any reference therein to a person summoned to appear or to a person who may be interrogated included a reference to an insolvent required to appear or who may be examined in terms of this section.

37. Power of Master to have movable property sold

If it appears to the Master that the value of all the movable property of an estate under sequestration vested in him does not exceed such amount as may be prescribed and that it is in the interests of the creditors that such property or any part thereof be sold forthwith, he may direct a sale thereof to take place on such conditions and in such manner as he may think fit:

Provided that if the Master has notice that any such property or any portion thereof is subject to any right of preference, it shall not be sold without the consent in writing of the person in whose favour such right of preference exists.

[section amended by Act 22 of 1998]

38. Property acquired after sequestration and alienated by insolvent

(1) If an insolvent purports to alienate, for valuable consideration, without the consent of the trustee, any property which he acquired after the sequestration of his estate and which by virtue of such acquisition became part of his insolvent 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, be deemed to belong to the estate of the insolvent unless the contrary is proved, but if a person who became the creditor of the insolvent after sequestration of his estate alleges, whether against the trustee or against the insolvent, that any such property does not belong to the estate of the insolvent and claims any right thereto, the property shall be deemed not to belong to the estate of the insolvent unless the contrary is proved.

39. Estate to remain vested in trustee until composition or rehabilitation

(1) The estate of an insolvent shall remain vested in the Master or the trustee until the insolvent is reinvested therewith pursuant to a composition in terms of section one hundred and thirty-six or until the rehabilitation of the insolvent in terms of section one hundred and forty-four:

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.

(2) When a trustee has vacated his office or has been removed from office or has resigned or died, the estate of the insolvent shall vest in the remaining trustee or, if there is no remaining trustee, in the Master until another trustee has been appointed.

Effect upon antecedent transactions

40. Dispositions without value

(1) Subject to this Act, every disposition of property not made for value may be set aside by a 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 the value of his assets; or

(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 value of 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 has been set aside in terms of subsection (1) or which was uncompleted by the insolvent shall not give rise to any claim in competition with the creditors of the estate of the insolvent.

41. Antenuptial contracts

(1) For the purposes of subsection (1)—

"immediate benefit" means a benefit given by a transfer, delivery, payment, cession, pledge or special mortgage of property completed within the period of three months next following the date of the marriage.

(2) 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.

42. Voidable preferences

(1) In this section—

(a) "creditor" includes a surety for the debtor and a person in a position by law analagous to that of a surety;

(b) every disposition of property made under a power of attorney, whether revocable or irrevocable, shall be deemed to be made at the time at which the transfer or delivery or mortgage of such property takes place.

(2) Subject to this section, every disposition of his property made by a debtor within the period of six months immediately preceding—

(a) the sequestration of his estate; or

(b) if he is dead and his estate is insolvent, his death;

which has the effect of preferring one of his creditors above another may be set aside by a court if, immediately after the making of the disposition, the liabilities of the debtor exceeded the value of his assets.

(3) A disposition shall not be set aside in terms of subsection (2) if 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.

43. Undue preferences

(1) In subsection (2)—

(a) "creditor" includes a surety for the debtor and a person in a position by law analagous to that of a surety;

(b) every disposition of property made under a power of attorney, whether revocable or irrevocable, shall be deemed to be made at the time at which the transfer or delivery or mortgage of such property takes place.

(2) Every disposition of his property made by a debtor at a time when his liabilities exceeded his assets with the intention of preferring one creditor above another may be set aside by a court if the estate of the debtor is thereafter sequestrated.

44. Collusive dealings

(1) Every transaction entered into by a debtor before the sequestration of his estate in collusion with another person for the disposal of any property belonging to the debtor which had the effect of prejudicing his creditors or of preferring one creditor above another may be set aside by a court if the estate of the debtor is thereafter sequestrated.

(2) Any person who was a party to a collusive transaction referred to in subsection (1) shall—

(a) be liable to make good any loss caused thereby 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 fix, not exceeding the amount by which he would have been benefited by such dealing if it had not been set aside; and

(b) if he is a creditor, forfeit his claim against the estate.

(3) The compensation and penalty referred to in subsection (2) may be recovered in any action to set aside the transaction in question.

45. Proceedings to set aside improper disposition

(1) Proceedings to set aside any disposition referred to in section forty, forty-two, forty-three or forty-four or for the recovery of compensation or penalty referred to in section forty-four may be taken by the trustee:

Provided that if the trustee fails to take any such proceedings they may be taken by another creditor in the name of the trustee upon his indemnifying the trustee against all costs thereof.

(2) In any proceedings referred to in subsection (1) 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 to give evidence by the court.

(3) When giving evidence in any proceedings referred to in subsection (1), the insolvent shall not be entitled to 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.

(4) When a court sets aside any disposition of property in terms of section forty, forty-two, forty-three or forty-four, 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.

46. Improper dispositions do not affect certain rights

(1) A person who, in return for any disposition which is liable to be set aside in terms of section forty, forty-two, forty-three or forty-four, 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) Sections forty, forty-two, forty-three and forty-four 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.

47. Sale of business

(1) Every alienation by a trader of any business belonging to him or the goodwill of that business or of any goods or property forming part of that business, otherwise than in the ordinary course of that business, shall, unless the trader has, not more than eight weeks before the alienation, given notice of the intended alienation in three consecutive issues of the *Gazette* and once a week for three consecutive weeks in a newspaper circulating in the district in which the business is carried on—

(a) be void as against his creditors for the period of six months immediately following the alienation; and

(b) be void as against the trustee if his estate is sequestrated within the period of six months immediately following the alienation.

(2) Upon the first publication of a notice referred to in subsection (1), every liquidated claim against the business concerned shall, at the option of the creditor, become payable:

Provided that where the claim was payable at a future date—

(a) without interest, there shall be deducted from the amount due a rebate of at such rate as may be prescribed calculated in respect of the period between that future date and the date the claim is paid;

[paragraph amended by Act 22 of 1998]

(b) with interest, the claim shall be payable in its full amount with such interest calculated to the date the claim is paid.

48. Contracts to buy immovable property

(1) Where a person has, before the sequestration of his estate, entered into a contract for the acquisition of immovable property and such property has not been transferred to him, the trustee may elect to adopt or abandon the contract.

(2) If the trustee does not make an election referred to in subsection (1) within six weeks after being required in writing to do so, the person entitled under the contract may apply to a court for cancellation of the contract and for delivery of possession of the immovable property.

(3) Upon an application referred to in subsection (2) being made to it, the court may make such order as it thinks fit.

(4) Nothing in this section contained shall affect any concurrent claim against the insolvent estate which a person may have for damages for non-fulfilment of a contract abandoned or cancelled in terms of this section.

49. Sales for cash

(1) Where any person has, before the sequestration of the estate of an insolvent, sold and delivered for cash to the insolvent any movable property and has not received full payment for the same, the seller may, after the sequestration, reclaim that property if, within the period of ten days next following the delivery thereof, he gives notice in writing to the insolvent and to the trustee or the Master, as the case may be, in whom the estate is vested, that he reclaims the property:

Provided that, if the trustee disputes the seller's right to reclaim the property, the seller shall take proceedings to enforce that right within fourteen days after the trustee has given notice that he disputes such right.

(2) A trustee to whom a claim for the restoration of any property in terms of subsection (1) has been made shall not be obliged to restore the property unless the seller refunds all moneys received by him on account of the purchase price.

(3) For the purposes of this section, a sale shall be deemed to be for cash unless the seller has expressly or tacitly agreed that any part of the purchase price shall not be claimable at the time of delivery of the property sold.

(4) Except as provided in this section, no seller shall be entitled to redelivery or retransfer of any property sold and delivered or transferred to an insolvent by reason only that the insolvent has failed to make due payment of the purchase price.

50. Property of another in possession of insolvent

Where any movable property belonging to any person other than an insolvent, is in the possession of the insolvent at the time of the sequestration of his estate, the owner of such property shall lose all right to recover that property if it has in good faith been sold as part of the insolvent estate unless, before the sale, he gives notice in writing to the Master or the trustee, if one is appointed, that the property belongs to him:

Provided that nothing in this section shall affect the right of the owner of any such property to recover from the trustee, before the confirmation of any trustee's account in terms of section one hundred and twenty-eight, the net proceeds of the sale of such property where it has been sold in good faith as part of the property of the insolvent estate.

51. Leases

(1) A lease of any property entered into by a person as lessee shall not be determined by reason merely of the sequestration of his estate but the trustee may determine the lease by notice in writing to the lessor.

(2) Where the trustee has determined a lease in terms of subsection (1), the lessor shall have a claim against the insolvent estate for any damages he may have suffered by reason of the non-performance of the terms of the lease.

(3) 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 insolvent estate, he shall be deemed to have determined the lease at the end of such three months.

(4) The rent due under a lease referred to in subsection (1), from the date of sequestration of the estate of the lessee to the determination or cession thereof by the trustee, shall be included in the costs of sequestration.

(5) Where a lease has been determined in terms of this section, the insolvent estate shall not have any right to claim compensation for improvements, other than those made in terms of an agreement with the lessor, made on the leased property during the period of the lease.

(6) A stipulation in a lease that the lease shall terminate or be varied upon the sequestration of the estate of either party shall be 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 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.

Part IV – Meetings of creditors

Meetings: How convened and when

52. Time and place of meetings

(1) Whenever the Master convenes any meeting of creditors in terms of this Part, 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, where the time and place of a meeting is altered, the Master shall give notice thereof in the *Gazette*.

(2) All meetings of creditors held—

(a) in a district where 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;

(b) in a district where there is no Master's office shall be held in accordance with the directions of the Master and presided over by a magistrate within whose province the place of the meeting is situated or by an officer in the Public Service designated, either generally or specially, by the magistrate for that purpose.

(3) The officer presiding at a meeting of creditors 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's office, 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.

(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.

(7) The officer presiding at a meeting of creditors may direct that any person shall be excluded from such meeting or from any part thereof—

(a) where such person so conducts himself as to render the continuance of the proceedings in his presence impracticable; or

(b) where for any other reason, in the opinion of the presiding officer, it is necessary or desirable to exclude such person in the interests of justice:

Provided that any person who has been excluded from a meeting or part thereof in terms of this subsection shall, at his request, be informed by the presiding officer of any decision made in his absence.

53. First and second meetings

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

(2) The Master shall publish the notice referred to in subsection (1) on a date not less than ten days before the date upon which the meeting is to be held and shall in such notice specify the time and place at which the meeting is to be held.

(3) After the first meeting of creditors, the Master shall appoint a second meeting of creditors for the proof of claims against the insolvent 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.

(4) The trustee shall convene the second meeting of creditors by notice in the *Gazette* which shall be published not less than ten days before the date of the meeting and shall specify the time and place thereof.

(5) At least ninety-six hours before the date of the second meeting of creditors the trustee shall lodge the report referred to in subsection (3) at the office of the person who will be the presiding officer at the meeting.

54. General meetings

(1) A trustee 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 insolvent estate, convene a general meeting of creditors for the purpose of giving him directions concerning any matter relating to the administration of the estate and at which meeting claims may, subject to this Act, be proved.

(2) Subsection (4) of section fifty-three shall apply, *mutatis mutandis*, to any meeting referred to in subsection (1) as if any reference therein to a second meeting of creditors were a reference to a meeting referred to in subsection (1):

Provided that the notice convening the meeting shall state the specific purpose for which the meeting is called and that claims may, subject to this Act, be proved.

55. Special meetings

(1) After the second meeting of creditors, the trustee shall convene a special meeting of creditors for the proof of claims against the insolvent estate whenever he is required thereto by any interested person who at the same time tenders to him payment of all expenses and prescribed fees to be incurred in connection with such a meeting.

(2) Subsection (4) of section fifty-three shall apply, *mutatis mutandis*, to a meeting referred to in subsection (1) as if any reference therein to a second meeting of creditors were a reference to a meeting referred to in subsection (1).

56. Creditor may register with trustee

(1) Any person who claims to be a creditor of an insolvent estate may register his name and address in Zimbabwe with the trustee upon payment to the trustee of the prescribed fee.

(2) The trustee shall send to the address of a person registered with him in terms of subsection (1)—

(a) a notice of every meeting of creditors; and

(b) a copy of every account which he is submitting to the Master in connexion with the insolvent estate:

Provided that the Master may authorize the submission in terms of this paragraph of a summary of any account when, in the opinion of the Master, the circumstances so warrant it; and

(c) 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, right of retention, landlord's tacit or legal hypothec.

(3) Notwithstanding subsection (2), the failure of the trustee to comply with that subsection shall not invalidate anything done in terms of this Act.

57. Proof of liquidated claims

(1) Subject to this Act, every person or the representative of such person who has a liquidated claim against an insolvent estate, the cause of which arose before the sequestration of the estate, may at any time prove that claim in terms of this section.

(2) Where a person who appears to the trustee to be a creditor has failed at the first or second meeting of creditors to prove his claim against the insolvent estate, the trustee shall, immediately after the second meeting of creditors, notify him in writing of the sequestration of the estate.

(3) A claim referred to in subsection (1) shall be proved by the claimant or his representative at a meeting of creditors to the satisfaction of the presiding officer 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 nor, subject to section eighty-nine, from establishing his claim by action at law.

(4) Every claim referred to in subsection (1) shall be proved by affidavit in the prescribed form.

(5) An affidavit referred to in subsection (4) shall—

(a) be made by the creditor or by any person cognizant with the claim who shall specify in the affidavit the facts upon which his knowledge of the claim is based; and

(b) specify the nature and particulars of the claim; and

(c) specify whether the claim was acquired by cession after the institution of the proceedings by which the estate was sequestrated; and

(d) if the creditor holds security for the claim, specify the nature and particulars thereof and, in the case of security other than movable property which has been realized in terms of section ninety-seven, the amount at which the creditor values the security.

(6) An affidavit referred to in subsection (4) and any other document submitted in support of the claim shall be lodged at the office of the person who will be the presiding officer at the meeting of creditors at which the claim is intended to be proved not less than forty-eight hours before the advertised time of the meeting at which the claim is intended to be proved and shall be open for inspection there during the normal business hours by the insolvent, the trustee, any creditor or the representative of any of them.

(7) If an affidavit referred to in subsection (4) is not lodged in terms of subsection (6) in respect of a claim intended to be proved at a meeting of creditors, the presiding officer shall not admit the claim to proof at the meeting unless he is satisfied that through no fault of the creditor he has been unable to comply with subsection (6).

(8) A creditor who has proved an incorrect claim in terms of this section 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 one.

(9) 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.

(10) 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 before 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 subsection (9) shall apply.

(11) If any person fails without reasonable excuse to appear in answer to a summons referred to in subsection (10) or having appeared or when present at any meeting of creditors refuses to take the oath or to submit to the interrogation in terms of subsection (9) 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.

58. Trustee to examine claims

(1) After a meeting of creditors of an insolvent estate 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 insolvent estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in the report his reasons for disputing the claim.

(4) Upon receipt of a report in terms of subsection (3), the Master may—

(a) confirm the claim; or

(b) after having allowed the claimant an opportunity to substantiate his claim, reduce or disallow the claim.

(5) Where the Master has reduced or disallowed a claim in terms of subsection (4), he shall notify the claimant in writing of his decision.

(6) The reduction or rejection of a claim by the Master in terms of subsection (4) shall not debar the claimant, subject to the provisions of section eighty-nine, from establishing his claim by action at law.

59. Set-off

(1) Where a person—

(a) has entered into a transaction with a debtor as a result of which a set-off in whole or in part has operated in respect of a debt due by him to the debtor and the estate of the debtor is sequestrated within the period of six months immediately following the taking place of the set-off; or

(b) who had a claim against a debtor has ceded it to a third person against whom the debtor had a claim at the date of the cession as a result of which a set-off in whole or in part has operated in respect of the claims between the debtor and the third person and the estate of the debtor is sequestrated within the period of twelve months immediately following the cession;

the trustee may elect to abide by or, subject to subsection (2), disregard the set-off.

(2) The trustee may only elect to disregard a set-off referred to in subsection (1)—

(a) with the approval of the Master; and

(b) if the set-off was effected otherwise than in the ordinary course of business of the debtor.

(3) Where the trustee has elected to disregard a set-off in terms of this section, he shall call upon the person who, but for the set-off, would be indebted to the insolvent estate to pay the amount of his indebtedness to the estate.

(4) Where the trustee has, in terms of subsection (3), called upon any person to pay a debt referred to in that subsection, that person shall be obliged to pay the debt to the insolvent estate and may prove his claim against the insolvent estate as if no set-off operated.

60. Right of retention and landlord's legal hypothec

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 affairs of the insolvent shall not afford any security or preference in connection with any claim against the estate.

61. Proof of conditional claims

(1) A creditor whose claim against an insolvent estate is dependent upon a condition may, subject to the provisions of this section, prove that claim in accordance with section fifty-seven.

(2) Where a claim referred to in subsection (1) is subject to a condition which is of such a nature that it will be fulfilled, if at all, within a year of the date of the sequestration—

(a) the creditor may prove the claim but may not vote in respect thereof at any meeting of creditors;

(b) if any dividend is awarded on the claim it shall be paid by the trustee to the Master who shall pay it to the creditor if the condition has been fulfilled or otherwise shall return it to the trustee for distribution among the other creditors.

(3) Where a claim referred to in subsection (1) is subject to a condition which will not be fulfilled within a year of the date of sequestration, the creditor may, at a meeting of creditors, request the trustee to place a value on the claim.

(4) Upon a request made to him in terms of subsection (3), the trustee shall place a value on the claim and shall submit it to the officer presiding at the meeting of creditors with the reasons therefor.

(5) The presiding officer to whom a trustee has submitted a claim in terms of subsection (4) may admit the claim at the valuation made by the trustee or at such value as he may determine or reject it.

(6) Notwithstanding this section, where a condition referred to in subsection (3) is fulfilled before the confirmation by the Master in terms of section one hundred and twenty-eight of a trustee's account in the liquidation of the estate, the creditor may prove the claim concerned as if it had been unconditional.

62. Claim against partnerships

(1) Where the estate of a partnership and the estates of the partners in that partnership are under sequestration simultaneously—

(a) 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; and

(b) the trustee of the estate of the partnership shall be entitled to any balance of the estate of a partner that may remain over after satisfying the claims of the creditors of the estate of that partner in so far as that balance is required to pay the debts of the partnership; and

(c) the trustee of the estate of a partner shall be entitled to any balance of the estate of the partnership 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 subsection (1) shall be construed as preventing a claim being proved against the estate of a partnership in respect of any sum referred to in paragraph (c) of subsection (1) of section one hundred and six or any interest due on such sum.

63. Arrear interest

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

(2) Where a debt which was incurred before the date of sequestration of a debtor's estate is payable upon some date after the sequestration, the creditor to whom the debt is owing may claim from the insolvent estate the full amount of the debt and, if it bears interest, the interest thereon accrued up to the date of sequestration as if the debt and the interest, if any, thereon were payable at the date of sequestration.

(3) Where a debt referred to in subsection (2) bears no interest and a distribution account is confirmed by the Master in terms of section one hundred and twenty-eight before the date on which the debt would have become payable, the amount payable on the claim under the distribution account shall be reduced by six *per centum* per annum calculated in respect of the period between the due date and the date of sequestration.

64. Withdrawal of claim

(1) A creditor who has proved a claim against an insolvent estate may, by notice given by registered letter addressed and posted to the Master and the trustee, withdraw his claim.

(2) Upon receipt of a notice referred to in subsection (1), the trustee shall give notice of the withdrawal to all persons who appear to him to be creditors of the estate, whether or not they have proved their claims.

(3) A creditor who has withdrawn his claim in terms of subsection (1) shall remain liable in terms of section one hundred and seventeen 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 letter of withdrawal from the creditor.

(4) A creditor who has withdrawn his claim in terms of subsection (1) may, by notice given by registered letter addressed and posted to the Master and the trustee, cancel the withdrawal.

(5) Where a creditor has cancelled a withdrawal in terms of subsection (4), he shall—

(a) not become liable for any costs in connection with the sequestration for which he was not liable at the time of cancellation; and

(b) not be entitled to any payment out of the insolvent estate in respect of his claim until all the other creditors who have proved their claims have been paid in full.

Voting at meetings

65. Right to vote and reckoning of votes

(1) Subject to this Act, every creditor of an insolvent estate shall be entitled to vote at any meeting of the creditors of that estate after 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 such amount as may be prescribed.

[subsection amended by Act 22 of 1998]

(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 ninety-seven.

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

66. Questions upon which creditors may vote

(1) A creditor of an insolvent estate who is entitled to vote may vote at a meeting of creditors on all matters relating to the administration of the estate:

Provided that a creditor 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 section seventy-three and subsection (7) of section one hundred and thirty-six, every matter upon which a creditor may vote shall be determined by the majority of votes reckoned in accordance with section sixty-five.

(3) Every creditor may vote in terms of this section 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 who is—

(a) the trustee or a person nominated for election as trustee in the estate concerned; or

(b) the employer or employee of such trustee or person; or

(c) the employee of any person or association of persons, whether corporate or unincorporate, by whom or by which the trustee or the person referred to in paragraph (a) is employed; or

(d) the spouse of or a person related to the trustee or 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 the trustee or person referred to in paragraph (a).

(4) 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, subject to subsection (5), be binding upon the trustee in so far as it is a direction to him.

(5) The creditors shall not be entitled to direct the trustee to employ or not to employ a particular legal practitioner, auctioneer or estate agent, in connection with the administration of the insolvent estate but may recommend the employment of a particular legal practitioner, auctioneer or estate agent and, if the trustee does not accept the recommendation, any creditor may submit the matter to the Master whose decision, after hearing the trustee, shall be final.

(6) No direction, other than one referred to in subsection (4) or section ninety-five, shall be binding upon the trustee.

(7) Any direction to the trustee 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.

Examination of insolvent and others

67. Insolvent and others to attend meetings

(1) An insolvent shall, unless excused by his trustee or the officer who is to preside, attend—

(a) the first and second meetings of the creditors of his insolvent estate and every adjournment thereof:

Provided that the presiding officer may, after consultation with the trustee, by notice in writing given to the insolvent excuse him from attendance at either such meeting or adjournment thereof; and

(b) any other meeting of creditors if required to do so by written notice given to him by the trustee.

(2) The officer who is to preside or who presides at any meeting of creditors may—

(a) summon to appear at the meeting or any adjournment thereof—

(i) any person who is known or, upon reasonable ground, 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

(ii) any person, including the spouse of the insolvent, who, in the opinion of that 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 the business affairs or property of the spouse of the insolvent;

and

(b) summon any person who is known or, upon reasonable ground, believed to have in his possession or custody or under his control any book or document containing any information referred to in paragraph (a) to produce that book or document or an extract therefrom at the meeting or any adjournment thereof.

68. Interrogation of insolvent and others

(1) At any meeting of the creditors of an insolvent estate the presiding officer may call and administer the oath to the insolvent or any other person present at the meeting who was or might have been summoned in terms of section sixty-seven.

(2) The presiding officer, the trustee and any creditor who has proved a claim against the insolvent estate or the agent of any of them may interrogate a person sworn in terms of subsection (1) concerning—

(a) all matters relating to the insolvent, his business or affairs, whether before or after the sequestration of his estate, and any property belonging to his estate; and

(b) the business affairs or property of the spouse of the insolvent:

Provided that the presiding officer shall disallow any question which is irrelevant and may disallow any question which would prolong the interrogation unnecessarily.

(3) Subject to this section, the law applicable to the privilege of a witness summoned to give evidence or to produce any book or document in a court of law shall apply to any person interrogated in terms of subsection (2) or summoned to produce any book or document in terms of subsection (2) of section sixty-seven.

(4) No person interrogated in terms of subsection (2) shall be entitled to refuse to answer any question upon the ground that the answer may or would tend to incriminate him.

(5) A banker at whose bank an insolvent or his or her spouse keeps or kept an account shall be obliged —

(a) if summoned to do so in terms of subsection (2) of section sixty-seven, to produce—

(i) any cheque in his possession which was drawn by the insolvent or his or her spouse within the period of twelve months immediately preceding the date of sequestration of the estate of the insolvent; or

(ii) if any cheque referred to in subparagraph (i) is not available, any record of the payment, date of payment and amount of that cheque which may be available to the banker or a copy of such record;

and

(b) if called upon to do so, to give any other information not specified in paragraph (a) in connection with a cheque referred to in that paragraph or the account of the insolvent or his or her spouse.

(6) 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 criminal case before a magistrates court the statement of any person giving evidence in terms of this section:

Provided that, if a person who may be required to give evidence in terms of 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 be read by or read over to that person when he is called as a witness in terms of this section and if then adhered to by him shall be deemed to be evidence given in terms of this section.

(7) An insolvent who gives evidence in terms of this section shall be required to make a declaration that he has made a full and true disclosure of all his affairs.

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

(9) Any person called upon to give evidence in terms of this section may be assisted at his interrogation by his legal representative, who may examine or adduce evidence through his client.

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

Provided that the Master may for good cause authorize an increase in such fees in any particular case.

(11) 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.

69. Enforcing summonses and giving of evidence

(1) If any person who has been summoned in terms of section sixty-seven fails to appear in answer to the summons or if an insolvent fails, in terms of section sixty-seven, to attend any meeting of creditors or if that person or the insolvent fails to remain in attendance at the appropriate meeting, the presiding officer at the meeting may issue a warrant authorizing any member of the police to apprehend that person or the insolvent and to bring him before the officer.

(2) Upon the apprehension and production before him in terms of subsection (1) of any person, the presiding officer may, unless satisfied that that person had a reasonable excuse for failing to appear at or to attend such meeting or for absenting himself from the meeting, commit him to prison to be detained there until such time as the officer may appoint.

(3) The officer in charge of a prison to which a person has been committed in terms of subsection (2) shall detain him and produce him at the time and place appointed in terms of subsection (2).

(4) If a person summoned in terms of section sixty-seven 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 section sixty-eight refuses—

(a) to be sworn by the presiding officer at that meeting; or

(b) to answer fully and satisfactorily any question lawfully put to him;

the presiding officer may issue a warrant committing that person to prison until he has undertaken to do what is required of him.

(5) If a person who has been released from prison after having undertaken in terms of subsection (4) to do what is required of him fails to fulfill his undertaking, the presiding officer may recommit him to prison as often as may be necessary to compel him to do what is required of him.

(6) A person committed to prison in terms of this section may apply to the High Court for his discharge from custody and the Court may order his discharge if it is of the opinion that he was wrongfully committed to prison or is being wrongfully detained.

(7) In connection with the apprehension of a person or with the committal of a person to prison in terms of 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.

70. Steps to be taken on suspicion of offence

(1) If it appears from any statement made at an interrogation in terms of section sixty-eight that there are reasonable grounds for suspecting that any person has committed any offence, the Master shall transmit the said statement or certified copy thereof and all necessary documents to

the Prosecutor-General to enable him to determine whether any criminal proceedings should be instituted in the matter.

(2) When any statement referred to in subsection (1) has been made at a meeting at which an officer, other than the Master, presided, the presiding officer shall, when transmitting the record of the proceedings to the Master in terms of subsection (3) of section fifty-two, 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-seven and sixty-eight, 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.

71. Presumption as to record of proceedings and validity of acts at meeting of creditors

(1) Any record purporting to be a record of any proceedings at a meeting of the creditors of an insolvent estate held in terms of this Act and purporting to be 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) It shall be presumed, until the contrary is proved, that any meeting of the proceedings at which there was kept and signed a record referred to in subsection (1) was duly convened and held and that all acts performed at such meeting were validly performed.

Part V – Appointment and removal of trustees

72. Appointment of provisional trustee

(1) The Court or the Master may appoint to an estate in respect of which a sequestration order has been granted a provisional trustee—

(a) before a trustee has been appointed; or

(b) where the trustee ceases to be a trustee or to function as such.

(2) A provisional trustee shall find security to the satisfaction of the Master for the proper performance of his duties and shall hold office until the appointment of a trustee.

(3) At any time before the first meeting of the creditors of an insolvent estate in terms of section fifty-three the Master may, subject to subsection (5), give such directions to the provisional trustee as could be given to a trustee by the creditors at a meeting of creditors.

(4) Subject to the provisions of this section, a provisional trustee shall have the powers and duties of a trustee.

(5) A provisional trustee shall not—

(a) except with the authority of the High Court or for the purpose of obtaining such authority, bring or defend any legal proceedings relating to the insolvent estate;

(b) except on such terms and conditions as may be specified by the High Court or by the Master, sell any property of the insolvent estate.

73. Election of trustee

(1) In this section—

"majority of votes in number" means a greater number of votes, apart from the value of the claims which they represent, than has been obtained by any competitor;

"majority of votes in value" means votes representing claims of a greater aggregate value than the votes obtained by any competitor.

(2) 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.

(3) 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.

(4) If no person has obtained the majority referred to in subsection (3), 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.

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

(6) If at any meeting of creditors convened for the purpose of electing a trustee, no trustee is elected and the Master does not appoint a trustee, the Master or the insolvent, with the consent of the Master, may apply at the cost of the estate to the High Court by petition to set aside the sequestration.

(7) The Court to which an application referred to in subsection (6) has been made may make such order thereon as it thinks fit.

74. Qualifications and disqualifications for appointment or election as trustee

(1) No person shall be elected or appointed a trustee in terms of this Act unless he is registered in terms of the Estate Administrators Act *[Chapter 27:20]*:

Provided that an unregistered person may be appointed a provisional trustee in terms of section seventy-two.

(2) The following persons shall be disqualified from being elected or appointed a trustee in terms of this Act—

(a) a person related to the insolvent by consanguinity or affinity within the third degree;

(b) a person who does not reside in Zimbabwe;

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

(d) a former trustee disqualified in terms of section eighty-six;

(e) a person declared in terms of section seventy-eight to be incapacitated for election as trustee, while any such incapacity lasts, or any person removed by the High Court, on account of misconduct, from an office of trust;

(f) a person who at any time during the twelve months immediately preceding the date of sequestration acted as the bookkeeper, accountant or auditor of the insolvent;

(g) an agent authorized specially or under a general power of attorney to vote for or on behalf of a creditor at a meeting or creditors of the insolvent estate and acting or purporting to act under such special authority or general power of attorney.

[section as substituted by section 69 of Act 16 of 1998]

75. Appointment of trustee by Master

(1) When the person who has been elected as trustee at a meeting of creditors provides such security as the Master considers sufficient for the proper performance of his duties as trustee, the Master shall, subject to this Act, appoint him as trustee.

(2) Where at a meeting of creditors held for the election of a trustee no trustee is elected and—

(a) the insolvent estate is at the time of the meeting vested in a provisional trustee, the Master shall, subject to this Act and upon the provisional trustee providing such additional security as the Master may require, appoint the provisional trustee as trustee; or

(b) the insolvent estate is not at the time of the meeting vested in a provisional trustee, the Master may, subject to this Act and upon the person he proposes to appoint as trustee providing such security as the Master considers sufficient for the proper performance of his duties as trustee, appoint any other person as trustee.

(3) Upon the appointment of a person as trustee the Master shall deliver to him a certificate of appointment which shall be valid throughout Zimbabwe.

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

(5) When two trustees have been appointed both of them shall act jointly in performing their functions as trustee and each of them shall be jointly and severally liable for every act performed by them jointly.

(6) Whenever the trustees of an 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.

(7) Subject to section one hundred and thirteen, the cost of giving the security referred to in subsection (1) or (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.

(8) 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 referred to in subsection (1) or (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.

76. Where Master declines to appoint trustee

(1) If a person who has been elected as trustee—

(a) was not properly elected; or

(b) is disqualified in terms of section seventy-four from being a trustee; or

(c) fails to give security in terms of section seventy-five within seven days of his election as trustee or within such further period as the Master may allow; or

(d) should not, in the opinion of the Master, be appointed as trustee;

the Master shall give notice in writing to that person that he declines to appoint him as trustee and shall in the notice state the ground upon which he declines.

(2) Where the Master has declined to appoint a person as trustee in terms of subsection (1), the Master shall convene a meeting of creditors for the purpose of electing another person as trustee.

(3) Subsections (1), (2) and (3) of section fifty-three shall apply to a meeting referred to in subsection (2) and such meeting shall be deemed to be a continuation of the first meeting of creditors.

(4) In the notice convening the meeting referred to in subsection (2) the Master shall state that he declined to appoint the person so elected as trustee.

(5) The Master shall post a copy of the notice referred to in subsection (4) to every creditor whose claim against the insolvent estate was previously proved and admitted.

(6) Subsection (1) shall apply, *mutatis mutandis*, in relation to any person elected as trustee at a meeting referred to in subsection (2).

(7) Where the Master has declined to appoint a person elected as trustee at a meeting referred to in subsection (2) and that person was elected as sole trustee or if two persons were elected as trustees and the Master has declined to appoint both or one of them the Master may, subject to this Act and upon the person he proposes to appoint as trustee providing such security as the Master considers sufficient for the proper performance of his duties as trustee, appoint any other person as trustee.

77. Vacation of office of trustee

A trustee shall vacate his office and his office shall become vacant —

(a) if his estate is sequestrated in terms of this Act; or

(b) if an order is issued in terms of 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, whether in Zimbabwe or elsewhere, of any offence and sentenced to serve any term of imprisonment without the option of a fine or if he is convicted, whether in Zimbabwe or elsewhere, of theft, fraud, forgery or uttering a forged document or perjury; or

[section as amended by section 69 of Act 16 of 1998]

(d) if his registration under the Estate Administrators Act *[Chapter 27:20]* is cancelled or suspended in terms of that Act.

[section as inserted by section 69 of Act 16 of 1998]

78. High Court may disqualify person from being trustee or remove trustee

(1) Upon the application of any interested person, the High Court may by order—

(a) declare any person proposed to be appointed as trustee disqualified from being appointed; or

(b) remove any person appointed as trustee from office as trustee.

(2) Where the High Court makes an order in terms of subsection (1), it may declare that the person who is the subject of the order shall be incapable of being elected or appointed as trustee in terms of this Act during the period of his lifetime or such other period as it may specify if—

(a) he has been 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; or

(b) he has been disqualified or removed on the grounds of absence from Zimbabwe, ill-health or any other factor tending to interfere with the performance of his duties as trustee; or

(c) 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 whatsoever in connection with any matter relating to that estate; or

(d) in order to obtain or in return for the vote of any creditor or contributory 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 allowed the omission or inclusion of the name of any person from or in any record or account; or

(ii) procured or allowed the wrongful or inaccurate statement of the claim of any creditor or contributory; or

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

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

(v) been guilty of or allowed the splitting of claims for the purpose of increasing the number or value of votes;

or

(e) he has been guilty of misconduct, including any failure to satisfy a lawful demand of the Master; or

(f) he has failed to perform any of the duties imposed upon him by this Act.

79. Master may remove trustee

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 have 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.

80. Leave of absence or resignation of trustee

At the request of a trustee, the Master may permit him to absent himself from Zimbabwe 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 absent himself from Zimbabwe or to resign as the Master may direct.

81. Election of new trustee

(1) When the High 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.

(2) When a sole trustee has vacated his office or has been removed from office or 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.

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

82. Remuneration of trustee

(1) Every trustee shall be entitled to a reasonable remuneration for his services, to be taxed by the Master in accordance with such tariff as may be prescribed:

Provided that the Master may—

(a) for good cause, reduce or increase his remuneration; or

(b) disallow his remuneration, 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.

(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 insolvent estate for services rendered to the estate, except remuneration to which in terms of this Act he is entitled as trustee.

Part VI – Liquidation and distribution of estate

Duties and powers of trustee in liquidation of estate

83. Trustee to take charge of property of estate

(1) A trustee shall, as soon as possible after his appointment but not before the deputy sheriff has made the inventory referred to in subsection (1) of section twenty-one, take into his possession or under his control all the movable property, books and documents belonging to the insolvent estate.

(2) If a trustee has reason to believe that any movable property, book or document belonging to the insolvent estate is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate of the province in which the property, book or document is believed to be for a search warrant.

(3) A magistrate to whom application in terms of subsection (2) has been made may, if it appears to him that any movable property, book or document belongs to the insolvent estate and that it is being concealed or otherwise being unlawfully withheld from the trustee, issue a warrant to search for and take possession of the property, book or document concerned.

(4) A warrant issued in terms of subsection (3) shall be executed in the same manner as a search warrant issued in terms of the Criminal Procedure and Evidence Act *[Chapter 9:07]* is executed:

Provided that anything seized in terms of the warrant shall be delivered to the trustee.

84. Opening of bank account

(1) A trustee shall open an account in the name of the insolvent estate with a bank in Zimbabwe and shall deposit therein to the credit of the insolvent estate from time to time all sums received by him on behalf of the estate.

(2) All cheques or orders drawn upon the account referred to in subsection (1) shall—

(a) contain the name of the payee; and

(b) be drawn to order; and

(c) be signed by every trustee of the insolvent estate or his agent.

(3) Within fourteen days after his appointment, the trustee shall give to the Master notice in writing of the bank and branch thereof with which the account referred to in subsection (1) has been or will be opened and he shall not, without the written permission of the Master, transfer that account from that branch.

(4) 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 the account referred to in subsection (1) as the trustee himself possesses and may examine all vouchers in relation thereto, whether in the hands of the bank or of the trustee.

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

(6) A trustee may, from sums deposited to the credit of an insolvent estate in terms of subsection (1), invest sums not immediately required for the administration of the estate—

(a) in the Post Office Savings Bank established by the Post Office Savings Bank Act *[Chapter 24:10]*; or

(b) in a building society registered in terms of the Building Societies Act *[Chapter 24:02]*; or

(c) with any person registered in a class of banking business in terms of the Banking Act *[Chapter 24:01]*;

and may withdraw sums so invested.

(7) A trustee shall within fourteen days of the opening of an investment account in terms of subsection (6) give notice thereof to the Master and subsections (4) and (5) shall thereupon apply, *mutatis mutandis*, as if any reference therein to an account included a reference to such investment account and as if any reference therein to the manager of a bank or branch of the bank included a reference to the manager or director of the bank or branch thereof or building society where the investment account has been opened.

85. Record of all receipts

(1) Immediately after his appointment, a trustee of an insolvent estate shall open books or other suitable records 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 insolvent estate.

(2) The Master may at any time direct a trustee in writing to produce the books or records required to be kept in terms of subsection (1) for inspection and every creditor who has proved his claim against the insolvent estate and, if the Master so orders, every person claiming to be a creditor or a surety for the trustee may inspect those books or records at all reasonable times.

86. Unlawful retention of moneys or use of property by trustee

(1) A trustee who—

(a) without lawful cause retains or permits his co-trustee to retain any money exceeding forty dollars which belongs to the insolvent estate longer than the earliest date after its receipt on which it was possible to pay that money into a bank; or

(b) uses or permits his co-trustee to use any property belonging to the insolvent 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 insolvent estate an amount equal to double the amount so retained or double the value of the property so used, as the case may be.

(2) The amount which a trustee may be liable to pay in terms of subsection (1) may—

(a) be deducted from any claim which that trustee may have against the insolvent estate; or

(b) be recovered from the trustee at the instance of his co-trustee, the Master or any creditor of the insolvent estate who has proved his claim.

(3) A person whose estate is sequestrated while he is, in terms of subsection (1), indebted to an insolvent estate shall forever be disqualified from holding the office of trustee, provisional trustee, liquidator, curator dative, tutor dative, *curator bonis* or executor dative.

87. Trustee may obtain legal and other advice

(1) A trustee may—

(a) obtain legal advice on any question of law affecting the administration or distribution of the insolvent estate;

(b) on the directions of the creditors or, failing such directions, with the approval of the Master employ a legal practitioner for the institution or defence of legal proceedings on behalf of or against the insolvent estate;

(c) with the approval of the Master, but subject to any directions given by the creditors of the insolvent estate, obtain expert advice not referred to in paragraph (a) on any matter affecting the insolvent estate.

(2) All costs incurred by a trustee in terms of subsection (1), including costs awarded against the insolvent estate in any legal proceedings referred to in that subsection, shall be included in the costs of the sequestration of the estate.

(3) All costs referred to in subsection (2) which are—

(a) subject to taxation by a taxing officer of a court, shall be so taxed; or

(b) not subject to the taxation referred to in paragraph (a), shall be approved by the Master:

Provided that, where he thinks it fit to do so, the Master may waive the requirements of paragraph (a) in relation to any costs and may approve the inclusion of such costs, without such taxation, in the costs of sequestration of the insolvent estate.

(4) The Master may disallow any costs referred to in subsection (2), including those taxed by the taxing officer of a court, if, in his opinion, the trustee acted *mala fide*, negligently or unreasonably in incurring those costs.

88. Improper advising or conduct of legal proceedings

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

89. Legal proceedings against estate

(1) Any civil legal proceedings instituted against a debtor before the sequestration of his estate shall lapse upon the expiration of a period of eight weeks as from the date of the first meeting of the

creditors of that estate, unless the person who instituted those proceedings gives 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:

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 terms of section one hundred and twenty-eight, 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 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.

90. Continuance of pending legal proceedings by surviving or new trustee

(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 proceedings referred to in subsection (1) 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.

91. Recovery of debts due to estate

A trustee shall—

(a) in the notification of his appointment published in the *Gazette* in terms of subsection (4) of section seventy-five, call upon all persons indebted to the insolvent estate to pay their debts within a period and at a place specified in that notice;

(b) if any person fails to pay his debt as may be required in terms of the notice referred to in paragraph (a), forthwith recover payment from him, if necessary by legal proceedings.

92. Extension of time for payment or compounding of debts and arbitration

(1) A trustee may accept from a debtor of an 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 a debtor of the insolvent estate an extension of time for the payment of his debt.

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

(3) A trustee may, unless otherwise directed by the creditors, on receipt of a sworn affidavit deposing to the facts, compromise or settle any claim against an insolvent estate, whether liquidated or unliquidated.

(4) A claim which has been compromised or settled in terms of subsection (3) shall be regarded as being liquidated for the purposes of section fifty-seven and the creditor concerned shall, unless he wishes to abandon the claim, prove it in accordance with that section.

(5) Where a claim which has been disputed by the trustee or rejected at a meeting by the presiding officer has been settled by a subsequent judgment of a court it shall be deemed to have been proved and admitted against the insolvent estate concerned in terms of section fifty-seven, unless the

creditor informs the trustee in writing within seven days of the judgment that he abandons his claim.

(6) Nothing in subsection (5) contained shall be deemed to debar a trustee from appealing against a judgment referred to in that subsection.

93. Subsistence allowance for insolvent and family

At any time before the second meeting of creditors the trustee may 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.

94. Continuation of insolvent's business

(1) A trustee may carry on the insolvent's business or any part thereof if authorized thereto—

(a) by the creditors; or

(b) in the absence of any instructions given by the creditors, by the Master.

(2) The authority of the Master referred to in paragraph (b) of subsection (1) may be given at any time, whether before or after the second meeting of creditors.

(3) Where a trustee is authorized in terms of subsection (1) to carry on any business or part thereof he shall, unless otherwise directed by the creditors, purchase for cash only and only out of the takings of that business any goods which he may require for that business.

95. Trustee's report to creditors

(1) A trustee shall investigate the affairs and transactions of the insolvent and shall report thereon to the creditors.

(2) A report referred to in subsection (1) shall relate to—

(a) all matters relevant to the sequestration; and

(b) the assets and liabilities of the insolvent estate; and

(c) the cause of the debtor's insolvency; and

(d) 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; and

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

(f) any allowance made to the insolvent in terms of section ninety-three and the reasons therefor; and

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

(h) 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; and

(i) any matter referred to in section forty-eight or fifty-one; and

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

(3) A report referred to in subsection (1) shall be made—

(a) at the second meeting of creditors; or

(b) with the approval of the Master obtained before the second meeting, at an adjourned second meeting of creditors; or

(c) if an offer of composition has been accepted in terms of section one hundred and thirty-six, within one month of such acceptance:

Provided that a trustee may, with the approval of the Master, call a second meeting of creditors for the purpose of presenting an interim report dealing with matters of urgency.

(4) A trustee shall, not later than fourteen days before the date specified in the *Gazette* in terms of subsection (4) of section fifty-three for the holding of the second meeting of creditors, send by post to each creditor whose name and address is known to him—

(a) a copy of the report referred to in subsection (1) or, with the approval of the Master, a summary thereof; and

(b) any recommendation in respect of any resolution or direction which, in his opinion, ought to be passed or given at the second meeting.

(5) A trustee shall, not later than forty-eight hours before the date specified in the *Gazette* in terms of subsection (4) of section fifty-three for the holding of the second meeting of creditors, submit to the officer who is to preside at that meeting—

(a) the original and one copy of the report referred to in subsection (1); and

(b) full particulars of each resolution and direction recommended by him to such creditors in terms of paragraph (b) of subsection (4).

(6) The creditors may, at the second meeting of creditors, direct what action shall be taken by the trustee in respect of any matter reported to them under paragraphs (f), (g), (h), (i) and (j) of subsection (2).

(7) If no resolution or direction has been passed or given by the creditors at the second meeting, the Master may give such directions as he thinks fit relating to any matter reported to the creditors at the meeting or relating to the administration or realization of the estate.

(8) A direction given in terms of subsection (7) shall be binding upon the trustee.

(9) A report referred to in subsection (1) shall contain full particulars of all the facts relating to the alleged contravention of this Act or the commission of any other offence by the insolvent reported in terms of paragraph (e) of subsection (2) and the trustee who made such report shall furnish such further information in regard thereto as the Master may require.

96. Sale of property

(1) Subject to subsection (2), the trustee shall, after the second meeting of creditors, proceed to sell all the property of the insolvent estate in such manner and on such conditions as the creditors may direct or, where no such directions have been given, in such manner and on such conditions as the Master may direct.

(2) If at any time before the second meeting of creditors the trustee considers it expedient that any property of the insolvent estate should be sold forthwith he may, with the authority of the Master and in such manner and upon such conditions as the Master may direct, sell such property:

Provided that where the Master has notice that any property of an insolvent estate or any portion thereof is subject to a right of preference he shall not authorize the sale of such property or such portion thereof in terms of this subsection unless the person entitled to such right of preference

has given his consent to the sale in writing or the trustee has guaranteed that person against loss by such sale.

(3) From the sale of the property of the insolvent estate there shall be excepted—

(a) the wearing apparel and bedding of the insolvent;

(b) the whole or such part of his household furniture, 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.

(4) An insolvent shall, subject to any conditions imposed by the creditors or the Master, be entitled to any property excepted from the sale in terms of subsection (3).

(5) A trustee, an auctioneer or an estate agent employed to sell property of an insolvent estate or the spouse, partner, employer, employee or agent of that trustee, auctioneer or estate agent shall not acquire any property of the insolvent estate unless the acquisition is confirmed by an order of the High Court.

(6) Notwithstanding this section, where a person, other than a person referred to in subsection (5), has in good faith and for value acquired property of an insolvent estate—

(a) which was disposed of to him in contravention of this section; or

(b) which was disposed of to him by a person referred to in subsection (5) who acquired it in contravention of this section;

the acquisition by such first-mentioned person shall be valid and the person who unlawfully disposed of it shall be liable to pay to the insolvent estate twice the amount of any loss which the estate may have sustained as a result of the dealing with the property in contravention of this section.

97. Realization of securities

(1) Where a creditor of an insolvent estate has any movable property in his possession as security for his claim, he shall, before the second meeting of creditors, give notice of that fact to the trustee or, if no trustee has been appointed, to the Master.

(2) A notice referred to in subsection (1) shall state—

(a) the value placed on the security by the creditor; and

(b) whether the creditor wishes to surrender the property to the trustee for realization by the trustee or to be authorized to realize the property himself.

(3) Where a creditor who has given a notice referred to in subsection (1) wishes to realize the property concerned himself, the trustee or, if no trustee is appointed before the second meeting, the Master, shall authorize the creditor to realize the property before the second meeting in such manner and subject to such conditions as the trustee or the Master, as the case may be, may specify.

(4) Where a creditor who has given a notice referred to in subsection (1) wishes to surrender the property concerned, the trustee, if one is appointed, shall, as soon as possible, arrange to take delivery of the property and shall, except where the property is taken over by the creditor in terms of subsection (9), realize the property and distribute the proceeds thereof in terms of this Act to the creditors secured thereby according to their legal order of preference.

(5) Where a creditor who has been authorized to realize any property in terms of subsection (3) has realized that property, he shall, as soon as possible thereafter—

(a) pay the proceeds thereof to the trustee or, if no trustee has been appointed, to the Master; and

(b) prove his claim in terms of section fifty-seven, attaching to the affidavit submitted in support thereof a statement of the proceeds of the realization and of the facts on which he relies for his preference.

(6) Where a creditor who has been authorized to realize any property in terms of subsection (3) has not realized it before the second meeting of creditors of the insolvent estate, he shall, unless otherwise authorized by the trustee in writing, deliver the property to the trustee as soon as possible after the second meeting.

(7) Where a creditor of an insolvent estate holds as security for his claim a hypothec over any immovable property or over any movable property which is not in his possession, such property shall, unless taken over by the creditor in terms of subsection (9), be realized by the trustee in terms of this Act and the proceeds thereof shall be distributed to the creditors secured thereby according to their legal order of preference.

(8) Where the amount of the claim of a creditor whose claim is secured by any property, whether movable or immovable, with interest thereon payable in terms of this Act, exceeds the sum payable to him in respect of that security, he shall be entitled to rank as a concurrent creditor for the balance of his claim and interest unless he has stated in his affidavit submitted in support of proof of his claim that he relies for the satisfaction of his claim and interest solely on the proceeds of the property which constitutes his security.

(9) Subject to any directions which may be given to him by the creditors or the Master, a trustee may consent to a creditor who has proved his claim in terms of section fifty-seven taking over any property which constitutes his security, whether movable or immovable, at a value agreed between the trustee and the creditor.

(10) If the agreed value of any security taken over in terms of subsection (9) by a creditor exceeds the amount of his claim together with interest thereon from the date of sequestration to the date the security is taken over calculated in the manner provided in subsection (2) of section one hundred and nine, the creditor shall pay the excess to the trustee.

(11) If the agreed value of any property taken over in terms of subsection (9) by a creditor is less than the amount of his claim with interest thereon from the date of sequestration to the date the security is taken over calculated in the manner provided in subsection (2) of section one hundred and nine, the creditor shall be entitled to rank as a concurrent creditor for the balance of his claim and interest unless he has stated in his affidavit submitted in support of proof of his claim that he relies solely for his claim on the proceeds of the security.

(12) This section shall apply, *mutatis mutandis*, in relation to any creditor for value of the spouse of an insolvent who holds any security for his claim against that spouse.

98. Cession of book debts

(1) No cession made by a debtor on or after the 1st January, 1975, of a book debt or any part thereof which is not in existence at the time of the cession shall, to the extent to which the debt or part thereof which has been ceded remains unpaid at the date of sequestration of the estate of the debtor, be valid against the trustee of his insolvent estate unless the cession is effected by a notarial bond or notarial deed which—

(a) is tendered for registration and registered in the Deeds Registry in the time and manner prescribed therefor by law in respect of notarial bonds; and

(b) specifies the names of the cedent and cessionary, the consideration for the cession and, where the cession is in *securitatem debiti*, the amount secured thereby.

(2) No cession made by a debtor before the 1st January, 1975, of a book debt or any part thereof which was not in existence at the time of the cession shall, to the extent to which the debt or part thereof which has been ceded remains unpaid at the date of sequestration of the estate of the debtor, be

valid against the trustee of his insolvent estate if that date is more than three months after the 1st January, 1975, unless—

(a) a document relating to that cession has been lodged and registered in terms of subsection (3) within the said period of three months; or

(b) the cession is effected by a notarial bond or notarial deed which—

(i) has been tendered for registration and registered in the Deeds Registry in the time and manner prescribed therefor by law in respect of notarial bonds; and

(ii) specifies the names of the cedent and cessionary, the consideration for the cession and, where the cession is in *securitatem debiti*, the amount secured thereby.

(3) A document referred to in paragraph (a) of subsection (2) shall—

(a) specify—

(i) the date of the cession; and

(ii) the names of the cedent and cessionary; and

(iii) the consideration for the cession and, where the cession is in *securitatem debiti*, the amount secured thereby; and

(b) be signed by the cessionary and attested before a notary public; and

(c) be lodged, in triplicate, in the Deeds Registry;

and the Registrar of Deeds in whose registry the document is lodged shall register it in the manner prescribed by law for the registration of notarial bonds and shall transmit to the registrar of the other Deeds Registry one copy of the document for registration by him.

(4) No cession made by a debtor on or after the 1st January, 1975, of an existing book debt or part thereof shall, to the extent that the debt or part thereof which has been ceded remains unpaid at the date of sequestration of the estate of the debtor, be valid against the trustee unless the cession is effected—

(a) by a notarial bond or notarial deed which—

(i) is tendered for registration and is registered in the Deeds Registry in the time and manner prescribed therefor by law in respect of notarial bonds; and

(ii) specifies the names of the cedent and cessionary, the consideration for the cession and, where the cession is in *securitatem debiti*, the amount secured thereby;

or

(b) by a written instrument which—

(i) is signed in the presence of a commissioner of oaths who certifies the date of execution thereon; and

(ii) specifies the names of the cedent and the cessionary, the consideration for the cession, and, where the cession is in *securitatem debiti*, the amount secured thereby.

(5) Subsections (1), (2) and (4) shall not apply to—

(a) a cession of book debts included in the *bona fide* transfer of a business; or

(b) a cession of book debts included in an assignment of an estate for the benefit of creditors generally; or

(c) a cession of a negotiable instrument or a cession of a book debt which book debt is recorded in a separate document and signed by the person by whom the debt is owing and dated.

Costs and preferent claims

99. Funeral and death-bed expenses

(1) In this section—

"death-bed expenses" includes expenses incurred for medical attendance, nursing, medicines and medical necessaries.

(2) Subject to subsection (3), any free residue of an insolvent estate shall first be applied to the payment of the funeral expenses of—

(a) the insolvent, if they were incurred before the trustee's first plan of distribution is submitted to the Master in terms of section one hundred and eighteen; and

(b) the wife or minor child of the insolvent, if they were incurred within the period of three months immediately preceding the sequestration of the estate of the insolvent.

(3) No amount in excess of such amount as may be prescribed shall be payable in terms of subsection (2).

[subsection amended by Act 22 of 1998]

(4) After the payment of the expenses referred to in subsection (2), any balance of the free residue shall then be applied to the death-bed expenses of—

(a) the insolvent, if they were incurred before the trustee's first plan of distribution is submitted to the Master in terms of section one hundred and eighteen; and

(b) the wife or minor child of the insolvent, if they were incurred within the period of three months immediately preceding the sequestration of the estate of the insolvent:

Provided that no amount payable in terms of this subsection shall exceed such amount as may be prescribed.

[subsection amended by Act 22 of 1998]

(5) If the free residue of an insolvent estate is insufficient to defray the expenses referred to in subsections (2), (3) and (4), the deficiency shall be defrayed from the proceeds of the other assets of the estate in proportion to their value.

(6) Death-bed expenses shall rank *pari passu* and shall where necessary abate proportionately.

100. Costs of sequestration

(1) In this section—

"taxed costs of sequestration" means the necessary costs, as taxed on a legal practitioner and client basis by the registrar, 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 estate of the debtor, but does not include the costs of opposition to such a petition unless the High Court directs that they shall be included.

(2) After payment in terms of section ninety-nine has been made, there shall next be paid from the free residue of an insolvent estate the costs of sequestration of the estate, with the exception of the costs specified in section one hundred and thirteen.

(3) The costs of sequestration shall be paid in the following order—

(a) the charges of the Sheriff, a deputy sheriff and a messenger incurred since the sequestration;

(b) the fees payable to the Master in respect of the sequestration;

(c) the following costs which shall rank *pari passu* and abate proportionately if necessary—

(i) the taxed costs of sequestration;

(ii) the remuneration of the trustee;

(iii) all other costs of administration and liquidation, including such costs incurred by the trustee in giving security for his proper administration as the Master considers reasonable and in so far as they are not payable by a creditor in terms of section one hundred and thirteen and such costs which, in terms of this Act, are deemed to be part of the costs of sequestration;

(iv) the salary or wages of any person engaged by the trustee in connection with the administration of the estate and of any employee of the insolvent who is required to continue in the service of the estate in terms of subsection (4) of section one hundred and three;

(v) any rent referred to in subsection (4) of section fifty-one.

101. Costs of execution

(1) After payment in terms of section one hundred, there shall be paid next from the free residue of an insolvent estate—

(a) the taxed costs of the Sheriff, deputy sheriff or messenger in respect of any execution of the property of the insolvent which was under attachment or the proceeds of which were in the hands of the Sheriff, deputy sheriff or messenger at the date of the sequestration;

(b) the taxed costs of the Sheriff, deputy sheriff or messenger in respect of any proceedings which resulted in the execution referred to in paragraph (a);

(c) any other taxed costs in respect of the proceedings referred to in paragraph (b) not exceeding such amount as may be prescribed:

[paragraph amended by Act 22 of 1998]

Provided that no amount payable in terms of this subsection shall exceed the amount of the proceeds of the property concerned.

(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 that provided for in subsection (1).

102. Contributions to certain funds

(1) In this section—

"contributions" means contributions payable by an employer in respect of his employees and includes any contributions which have been or should have been deducted by the employer from the salary or wages of his employees.

(2) After payment in terms of section one hundred and one, there shall next be paid from the free residue of an insolvent estate of a person who was an employer any contributions payable by such employer, in respect of any period prior to the date of sequestration or in the month in which the date of sequestration falls, to any pension, provident, sick, medical aid, unemployment, holiday, insurance or workmen's compensation fund.

(3) The trustee shall be entitled to make payments in terms of subsection (2) without any claim having been made by such fund but may in his discretion require from any fund an affidavit in support of its claim.

(4) Contributions payable in terms of subsection (2) shall rank *pari passu* and shall abate proportionately if necessary.

103. Salary or wages

(1) In this section—

(a) "employee" means any person engaged by the insolvent to perform work under an agreement of service or of apprenticeship or otherwise, whether such agreement is express or implied, is oral or in writing, and whether payment is calculated by time or by work done;

(b) "salary or wages" shall include commission but not bonus unless such bonus is payable either monthly or weekly and the amount, or method of calculation of the amount thereof, was fixed at least six months prior to the date of sequestration;

(b1) terminal benefit" means any amount payable to an employee, in terms of his contract of service or any law, upon the insolvency or liquidation of his employer;

[paragraph inserted by Act 22 of 1998]

(c) a commercial traveller engaged on a commission basis shall be deemed to be an employee engaged by the month and his commission earned during any month shall be included in his salary or wages;

(d) leave shall be deemed to accrue from month to month upon the basis of one-twelfth of the annual rate of accrual.

(2) After payment in terms of section one hundred and two the following amounts shall next be paid from the free residue of an insolvent estate—

(a) the salary or wages due to any employee of the insolvent for a period—

(i) not exceeding the month in which the date of sequestration falls and the two months immediately prior thereto, where the employee was engaged by the month; or

(ii) not exceeding the week in which the date of sequestration falls and the three weeks immediately prior thereto, where the employee was engaged by the week;

and

(b) any terminal benefit due to the employee:

Provided that—

(i) no amount shall be paid to any one employee in terms of paragraph (a) or (b) in excess of such amount as may be prescribed;

(ii) no employee shall lose the benefit of the preference conferred by this subsection on the ground that his engagement terminated before the date of sequestration.

[section substituted by Act 22 of 1998]

(3) If on the date of sequestration any leave is due to an employee there shall be included in his salary or wages a sum in respect of any period not exceeding twenty-one days of leave due to him.

(4) An employee claiming a preference for his salary or wages for the month or week in which the sequestration falls shall be obliged to continue in the service of the estate during the remainder of that month or week, and at the end thereof his contract shall be determined unless he is required by the legal representative of the estate to remain longer in the service of the estate.

(5) Nothing in this section shall be construed as—

(a) depriving an employee of any right he may have to damages arising out of the termination of his contract of service; or

(b) preventing an employee from claiming from the insolvent estate any amounts which are owing to him in respect of his employment and which are not accorded a preference in terms of this section.

[section substituted by Act 22 of 1998]

(6) An employee shall be entitled to salary, wages or terminal benefits in terms of subsection (2) or (3) even though he has not proved his claim therefor in terms of section fifty-seven but the trustee may require such employee to submit an affidavit in support of his claim for such salary, wages or terminal benefits.

[subsection amended by Act 22 of 1998]

(7) Claims for salary, wages and terminal benefits in terms of this section shall rank *pari passu* and shall abate proportionately if necessary.

[subsection amended by Act 22 of 1998]

104. Income tax

(1) In subsection (2)—

"tax" means any tax payable under the Income Tax Act *[Chapter 23:06]*, other than any additional amounts of tax payable under section 46 of that Act.

(2) After payment in terms of section one hundred and three, there shall next be paid from the free residue of an insolvent estate—

(a) any tax due from the insolvent in respect of any period prior to the date of sequestration of his estate, whether or not that tax has become due and payable after that date; and

(b) in the case of an insolvent partnership, so much of any tax referred to in paragraph (a) 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 the aforesaid tax the same ratio as his taxable income derived from the partnership bears to his total taxable income from all sources.

105. Capital gains tax

(1) In subsection (2), "capital gain" has the meaning assigned to the term in section 8 of the Capital Gains Tax Act *[Chapter 23:01]*.

(2) After payment in terms of section one hundred and four, there shall next be paid from the free residue of an insolvent estate any amount due from the insolvent in terms of the Capital Gains Tax Act *[Chapter 23:01]*, in respect of any capital gain received by or accrued to or in favour of the insolvent prior to the date of sequestration of his estate, whether or not that amount has become due and payable after that date.

106. Value added tax

After payment in terms of section one hundred and five, there shall next be paid from the free residue of an insolvent estate any amount due from the insolvent in terms of the Value Added Tax Act *[Chapter 23:12]* in respect of any transaction made within the period of eighteen months immediately preceding the date of the sequestration of his estate, whether or not that amount has become due and payable after that date.

[section as amended by section 85 of Act 12 of 2002]

107. Farmers' stop-orders

(1) In this section—

"statutory charges" means prescribed costs, addressee's fees, registered stop-orders and special stop-orders as defined in the Farmers' Stop-order Act *[Chapter 18:11]* ranking in order of preference between themselves as provided in that Act, and the terms "crop" and "proceeds" have the meanings respectively given to them by that Act.

(2) After payment in terms of section one hundred and six, there shall next be paid from the free residue of an insolvent estate which constitutes the proceeds of any crop any statutory charges, with interest thereon calculated in the manner provided in subsection (2) of section one hundred and nine, relating to such crop or its proceeds:

Provided that—

(i) a notarial bond over movable property registered prior to the date of the application of the Farmers' Stop-order Act *[Chapter 18:11]* to the class of crop concerned, shall rank prior to such statutory charges, unless the holder of such bond has registered with the Registrar of Farmers' Stop-orders and the Registrar of Deeds a waiver of such priority. Upon registration any such waiver shall be irrevocable and shall apply in respect of all statutory charges relating to all crops of the insolvent;

(ii) if the trustee sells any land with standing crops thereon forming part of the estate of the insolvent in respect of which there are claims under statutory charges the trustee and the purchaser shall agree upon a figure to represent the value of such crops.

(3) No payments made out of the free residue in terms of sections ninety-nine to one hundred and six shall be made out of that portion of the free residue which constitutes the proceeds of any crop unless the remainder of the free residue is insufficient.

(4) Any claims under statutory charges relating to a crop shall for the purposes of section one hundred and thirteen be deemed to be secured claims, and that section shall apply, *mutatis mutandis*, accordingly.

108. Notarial bonds

After payment in terms of section one hundred and seven, there shall next be paid, in their order of preference, from that part of the free residue of an insolvent estate which constitutes the proceeds of the sale or disposal of the property secured by the bonds concerned—

(a) any claims proved against the estate which were secured by a general notarial bond; and

(b) any claims proved against the estate which were secured by a special notarial bond over movables;

with interest thereon from the date of sequestration to the date of payment calculated in the manner provided in subsection (2) of section one hundred and nine.

109. Non-preferent claims

(1) After payment in terms of section one hundred and eight, any balance of the free residue of an insolvent estate shall be applied—

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

(b) if the unsecured or otherwise non-preferent claims 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 such rate as may be prescribed, unless the amount of any claim bears a higher rate of interest by virtue of a lawful stipulation in

writing, in which case the interest on that amount shall be calculated at the stipulated rate of interest.

[subsection amended by Act 22 of 1998]

Secured claims

110. Exclusion or limitation of preference under legal hypothec

(1) A tacit or legal hypothec, other than a landlord's legal hypothec, 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; or

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

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

(d) fifteen months in any other case.

111. Mortgage bonds

(1) No general mortgage bond shall confer any preference in respect of immovable property and no general clause in a mortgage bond hypothecating immovable property shall confer any preference in respect of any property.

(2) 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.

(3) A special or general mortgage bond, other than a kusting-brief, 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 for registration or passed for the purpose of securing the payment of a debt incurred innovation 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 bond shall be deemed not to have been lodged for the purposes of this section if it was withdrawn from registration.

112. Pledge or cession of movable property

A pledge or cession of any movable property made for the purpose of securing the payment of a debt not previously secured, the cause of which arose more than two months prior to the making of such pledge or cession, or made as security for the payment of a debt incurred innovation or substitution for the first-mentioned debt shall not confer any preference if the estate of the pledgor or cedent is sequestrated within the period of six months immediately following the making of the pledge or cession.

113. Costs to which securities are subject

(1) The costs of maintaining, conserving and realizing any property belonging to an insolvent estate shall be paid out of the proceeds of that property.

(2) Where the proceeds of any property referred to in subsection (1), which is subject to a special mortgage, landlord's legal hypothec, pledge or right of retention, are insufficient to meet the costs referred to in subsection (1), the deficiency shall be paid by those creditors, *pro rata*, who have proved their claims against the insolvent estate and who would have been entitled in priority to other persons to payment of their claims out of those proceeds had they been sufficient to meet those costs and claims.

(3) The costs of realizing any property referred to in subsection (1) shall be deemed to include—

(a) the trustee's remuneration; and

(b) a proportionate share of the costs incurred by the trustee in giving security for his proper administration of the estate calculated on the value disclosed in the statement of affairs of the debtor or, if the Master accepted any different value for the purposes of assessing the security to be provided, on the value accepted by the Master; and

(c) a proportionate share of the Master's fee; and

(d) where the property is immovable, all payments which, but for subsection (6), would in terms of any enactment be required to be paid before transfer of the property could be effected and which are or will become due in respect of the period not exceeding two years immediately preceding the date of sequestration and in respect of the period from that date to the date of realization of the property, with interest thereon calculated in the manner provided in subsection (2) of section one hundred and nine up to the date of realization.

(4) If a secured 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 referred to in subsection (1) and other than the costs for which he may be liable in terms of the proviso to section one hundred and seventeen.

(5) 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.

(6) Notwithstanding any enactment to the contrary, a trustee shall not be prevented from transferring any property of an insolvent estate by reason of there being any payments which are due and unpaid and which are required in terms of any enactment to be paid before transfer of the property may be effected.

Distributions

114. Application of proceeds of securities

(1) The proceeds of any property of an insolvent estate which was subject to a special mortgage, landlord's legal hypothec, pledge or right of retention shall, after deduction therefrom of the costs referred to in section one hundred and thirteen and subject to subsection (5) of section ninety-nine, be applied in satisfying the claims secured by the property in their order of preference with interest thereon from the date of sequestration to the date of payment calculated in the manner provided in subsection (2) of section one hundred and nine.

(2) Where a creditor of an insolvent estate whose claim is secured by a mortgage bond over immovable property belonging to that estate has not proved his claim and the trustee is not satisfied that the debt concerned has been discharged or abandoned, the trustee shall deposit with the Master for the benefit of that creditor from the proceeds of the sale of the property a sum not exceeding the amount to which that creditor would have been entitled in terms of this Act if he had, when proving his claim, stated that he relied solely for satisfaction of his claim on the proceeds of the sale of the property.

(3) A sum deposited in terms of subsection (2) shall be paid by the Master to the creditor for whose benefit it was deposited if that creditor—

(a) applies therefor to the Master within one year of the confirmation in terms of section one hundred and twenty-eight of the distribution account under which the money is distributed; or

(b) proves his claim; or

(c) proves to the satisfaction of the Master that he is entitled to the sum deposited.

(4) When a sum deposited in terms of subsection (2) is not paid out in terms of subsection (3), that sum shall be distributed among the creditors who have proved claims against the insolvent estate prior to the confirmation of the distribution account referred to in subsection (3) as if that sum had, at the time of the confirmation of that account, been available for distribution among them.

(5) A creditor who claims to be entitled to share in a distribution in terms of subsection (4) shall make written application to the Master for payment of his share.

(6) Upon an application in terms of subsection (5), the Master may—

(a) pay out the applicant; or

(b) where there is more than one creditor entitled to the money in respect of which the application has been made, hand the money to the trustee for distribution among the creditors or, if there is no trustee, appoint a trustee on such conditions as he thinks fit for the purpose of making such distribution.

(7) The trustee charged with the duty of making a distribution in terms of subsection (6) 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, *mutatis mutandis*, in respect of such supplementary plan.

115. Late proof of claims

(1) Subject to subsection (2) of section one hundred and fourteen and subsection (6) of section one hundred and three, a creditor of an insolvent estate who has not proved a claim against that estate before the date upon which the trustee submits 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 plan of distribution, permit the creditor who has proved his claim after the date referred to in this subsection to share in the distribution of those 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—

(a) who proves a claim against the estate after the date on which the trustee submitted a plan of distribution to the Master; and

(b) who has not been permitted in terms of subsection (1) to share in the distribution of assets under the plan of distribution referred to in paragraph (a); and

(c) who satisfies the Master that he had a reasonable excuse for the delay in proving his claim;

shall, subject to this Act, be entitled to be awarded under any further plan of distribution submitted to the Master 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 previous plan to the Master.

(3) Wherever, owing to a late proof of a claim, a trustee is obliged to reframe his account, the creditor who proved that claim shall be liable to pay to the trustee such fee, not exceeding such amount as may be prescribed, as the Master may determine.

[subsection amended by Act 22 of 1998]

(4) Wherever a special meeting of creditors is called for the late proof of a claim by a creditor and other creditors who have not previously proved their claims prove them at the special meeting, the costs of calling the special meeting shall be apportioned between all the creditors who prove their claims at the special meeting, and the creditor at whose instance the special meeting was called shall have a right of contribution against those other creditors in proportion to the claims proved by them.

116. Creditor debarred from participating in certain proceeds

(1) A creditor of an insolvent estate who is aware that proceedings have been instituted in terms of section forty, forty-two, forty-three or forty-four to set aside any disposition or dealing with property of the estate and who delays proving his claim until the court has 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 those proceedings.

(2) Where a creditor of an insolvent estate has, in terms of subsection (1) of section forty-five, taken proceedings to set aside any disposition or dealing with property of the estate or for the recovery of compensation or penalty referred to in section forty-four, no other creditor who is 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 those proceedings before the claim and costs of every creditor who was a party to the proceedings have been paid in full.

Contributions

117. Contributions by creditors towards costs of sequestration when free residue insufficient

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 one hundred, all creditors who have proved claims against the estate shall be liable to make good any deficiency, the creditors having no security for their claims 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—

(i) 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;

(ii) 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 sixty-four, 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;

(iii) 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 subparagraph (ii) 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.

Trustee's accounts

118. Liquidation account and plan of distribution or contribution

Subject to sections one hundred and nineteen and one hundred and twenty, a trustee shall—

(a) within the period of six months immediately following the date of his appointment, lodge with the Master—

(i) a liquidation account and plan of distribution or, if all realizable property in the insolvent estate has been realized and brought to account and the proceeds are insufficient to meet the expenses, costs and charges specified in section one hundred, a plan of contribution apportioning the liability for the deficiency among the creditors who are liable to contribute; and

(ii) where the trustee has carried on any business on behalf of the insolvent estate, a trading account;

and

(b) where the last liquidation account which has been submitted is not a final liquidation account, lodge with the Master a further liquidation account within the period of six months next following the submission of the last account.

119. Extension of time for lodging trustee's account

(1) Where a trustee is unable to lodge an account with the Master within the period specified in section one hundred and eighteen, he may apply to the Master for an extension of that period setting out the grounds of his application.

(2) Upon an application in terms of subsection (1), the Master may—

(a) if he is satisfied that sufficient cause exists to justify an extension, grant such extension as he thinks fit; or

(b) if he is not satisfied in terms of paragraph (a), refuse the application.

(3) Where the Master refuses an application referred to in subsection (1), the trustee may, upon notice to the Master, make application to the High Court for an order extending the period within which to lodge the account, and the High Court may, upon such application, make such order as it thinks fit.

120. Master may direct trustee to lodge plan

If a trustee has funds in hand which, in the opinion of the Master, ought to be distributed among the creditors of the insolvent estate and the trustee has not lodged with the Master a plan for the distribution of those funds, the Master may direct him in writing to lodge a plan for the distribution of those funds although the period specified in terms of section one hundred and eighteen for the lodging of a plan of distribution has not elapsed.

121. Form of liquidation account

(1) A liquidation account shall—

(a) contain an accurate record of all moneys received and disbursed by the trustee otherwise than in the course of a business which the trustee carried on on behalf of the insolvent estate; and

(b) be accompanied by the trustee's bank statement and by vouchers in support of all receipts and disbursements referred to in paragraph (a); and

(c) if it is not the final liquidation account, set forth—

(i) all property still unrealized; and

(ii) all outstanding debts due to the insolvent estate; and

(iii) the reason why property referred to in subparagraph (i) has not been realized or debts referred to in subparagraph (ii) have not been collected.

(2) The record of receipts and disbursements referred to in subsection (1) shall set forth the amount and date thereof with sufficient particulars to explain their nature.

(3) Where the estate of a partnership is under sequestration, separate liquidation accounts in terms of this Act shall be framed in the estate of the partnership and in the estate of each member of that partnership whose estate is under sequestration.

122. Form of trading account

(1) A trading account which relates to a business carried on on behalf of an insolvent estate shall contain the following and no other information—

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

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

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

(d) the result of the conduct of the business by the trustee:

Provided that, where the trustee keeps a full set of books relating to the business, the trading account may take the form of a full trading and profit and loss account extracted from such books.

(2) A trading account shall contain the trustee's comments on the advantages or disadvantages of continuing the business concerned.

123. Form of plan of distribution

A plan of distribution shall show in parallel columns under separate headings—

(a) every claim or the part of every claim against the estate which is secured; and

(b) every claim or the part of every claim which is entitled to enjoy a preference in the free residue of the estate in terms of this Act; and

(c) every claim or the part of every claim against the estate not referred to in paragraph (a) or (b); and

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

(e) the deficiency in respect of each claim against the estate;

and shall make provision for the division of the proceeds of the property of the insolvent estate in the order of preference and in the manner provided for in terms of this Act.

124. Form of plan of contribution

A plan of contribution which relates to an insolvent estate 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 section one hundred and seventeen.

125. Trustee's account to be verified and amplified

(1) A trustee shall sign every account which he lodges with the Master and he shall verify by his affidavit 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.

(2) The Master may require a trustee to supply such further explanation of any amount included in any account submitted to the Master as the Master may consider necessary.

Confirmation of account: Dividends and contributions

126. Inspection of trustee's accounts by creditors

(1) A trustee shall lodge a copy of every original trustee's account—

(a) in the case where the debtor is or, within the period of six months preceding his death, was a trader and his principal place of business is or was situated in a district other than that in which the original trustee's account is lodged, at the Master's office in that district or, if there is no Master's office in that district, at the office of the magistrate for that district; or

(b) where the provisions of subparagraph (a) do not apply and the debtor resides or, immediately prior to his death, resided within any district other than that in which the original trustee's account is lodged, at the Master's office in that district or, if there is no Master's office in that district, at the office of the magistrate for that district.

(2) A copy of an account lodged in terms of subsection (1) shall lie open for inspection at the office where it is lodged for a period of fourteen days following the date of publication of the notice referred to in subsection (3).

(3) Wherever a trustee lodges an account with the Master, he shall publish a notice in the *Gazette* stating—

(a) that an account has been lodged; and

(b) the places where copies thereof have been lodged in terms of this Act; and

(c) the period during which the account will lie open for inspection in terms of this Act.

(4) The officer in charge of the Master's office and a magistrate at whose office a copy of an account has been lodged for inspection in terms of this section shall cause to be fixed in some public place in or about his office a notice stating that the account has been lodged and the period for which it will lie open for inspection.

(5) After a copy of an account has lain open for inspection for the period it is required to so lie open, the officer in charge of the Master's office and the magistrate at whose office it was lodged shall endorse upon the copy of the account that it has so lain open and shall submit it to the Master.

127. Objections and directions to amend trustee's account

(1) An insolvent or any person interested in an insolvent estate may, at any time before the confirmation of a trustee's account in terms of section one hundred and twenty-eight, lay before the Master in writing any objection with the reasons therefor to that account.

(2) Where the Master is of the opinion—

(a) that an objection to an account in terms of subsection (1) is well-founded; or

(b) that a trustee's account is in any respect incorrect or contains any improper charge or that the trustee acted *mala fide* or 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 give such other direction in connection therewith as he may think fit.

(3) Any person who is aggrieved by a direction given by the Master in terms of subsection (2) or by the refusal of the Master to sustain an objection in terms of subsection (1) may, within fourteen days of the direction or refusal and after notice to the trustee, apply to the High Court for an order setting aside the decision of the Master.

(4) Upon an application referred to in subsection (3) being made to it, the High Court may confirm the account to which the objection relates or make such other order as it thinks fit.

(5) Where any direction given by the Master in terms of subsection (2) affects the interests of a person who has not lodged an objection with the Master in terms of subsection (1), section one hundred and twenty-six shall apply, *mutatis mutandis*, to the account amended in terms of the direction unless that person consents in writing to the immediate confirmation of the account.

128. Confirmation of trustee's account

When a trustee's account has been open to inspection by creditors as specified in this Act 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 where necessary in terms of subsection (5) of section one hundred and twenty-seven and no application has been made to the High Court in terms of subsection (3) of that section 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 High Court in terms of subsection (3) of section one hundred and twenty-seven;

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

129. Distribution of estate and collection of contributions from creditors

(1) Immediately after the confirmation of a trustee's account, the trustee shall give notice thereof 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 the notice referred to in subsection (1) 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.

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

(1) A 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 cheque purporting to be drawn payable to a creditor in respect of any dividend due to him and paid by the banker on whom it is drawn may be accepted by the Master in lieu of any such receipt.

(2) If any dividend has, at the expiry of a period of three 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 Guardian's Fund for account of the creditor.

131. Application to High Court for order to pay dividend

If a trustee delays payment of any dividend, any creditor entitled thereto may, after notice to the trustee, apply to the High Court for an order compelling the trustee to pay him that dividend.

132. Surplus to be paid into Guardian's Fund until rehabilitation of insolvent

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 Guardian's Fund and after the rehabilitation of the insolvent shall pay it out to him at his request.

133. Failure by trustee to submit account or to perform duties

(1) If a trustee fails—

(a) to lodge any account or plan with the Master as and when required in terms of this Act or any direction made in terms of this Act; or

(b) to submit any vouchers in support of an account referred to in paragraph (a); or

(c) to perform any other duty imposed upon him in terms of this Act; or

(d) 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 concerned may, after giving the trustee not less than fourteen days' notice, apply to the High Court for an order directing the trustee to submit such account or plan or any vouchers in support thereof, to perform such duty or to comply with such demand.

(2) The costs adjudged to the Master or to a person making application to the High Court in terms of subsection (1) shall, unless otherwise ordered by the High Court, be payable by the trustee *de bonis propriis*.

134. Enforcement of order of High Court

(1) If a trustee has failed to comply with any order of the Court made under section one hundred and thirty-three, the High 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 High Court.

(2) If the High Court has ordered a trustee to pay out of his own means the costs of any proceedings instituted under 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.

135. Enforcing payment of contributions

(1) After the expiry of a period of thirty days as from the delivery or posting in a registered letter to any creditor of the notice mentioned in subsection (2) of section one hundred and twenty-nine, the trustee may take out a writ of execution in a court in which the creditor could be sued for the amount of the contribution in question plus the costs of executing the writ 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 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 specify therefor, frame and lodge with 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 subsection (2) shall apply, *mutatis mutandis*, 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 of the trustee, irrecoverable by the trustee.

(4) A trustee may, in lieu of complying with the requirements of section one hundred and twenty-six 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 subsection (1) shall apply, *mutatis mutandis*.

Part VII – Compositions and rehabilitations

Compositions

136. Offer of composition

(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 which shall specify the nature in full of any security which is to be provided and, if the security is to consist of a surety bond or guarantee, the name of every surety.

(2) Where a trustee to whom an offer of composition has been submitted in terms of subsection (1) is of the opinion—

(a) that there is a reasonable possibility that the creditors will accept the offer of composition, he shall, as soon as possible after receipt of the offer, post or deliver to every creditor who has proved his claim a copy of the offer with his report thereon; or

(b) that there is no reasonable possibility 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.

(3) An insolvent who has been informed in terms of paragraph (b) of subsection (2) that his offer of composition is unacceptable may 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 all known creditors.

(4) Whenever a trustee posts or delivers to the creditors in terms of this section an offer of composition he shall at the same time convene and notify those creditors of a meeting to be held at least fourteen days from the date of posting or delivery of the notice for the purpose of considering that offer of composition.

(5) A trustee who convenes a meeting referred to in subsection (4) shall, in addition to giving the notice referred to in that subsection, publish a notice of that meeting in the *Gazette* at least fourteen days before the date of the meeting.

(6) Where an offer of composition made by an insolvent in terms of subsection (1) has been accepted by creditors whose votes amount to not less than three-quarters in value and three-quarters in number (calculated in accordance with the provisions of section sixty-five) of the votes of all the creditors who prove claims against the estate and payment under the composition has been made or security for the payment has been given as specified in the offer of composition, the insolvent shall be entitled to a certificate under the hand of the Master of the acceptance of the offer.

(7) No offer of composition made in terms of subsection (1) may be accepted if it contains any condition where-by 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.

(8) Any condition which makes an offer of composition in terms of subsection (1) or the fulfilment thereof or any part thereof subject to the rehabilitation or the consent of the creditors to the rehabilitation of the insolvent shall be of no effect.

(9) For the purposes of subsections (7) and (8)—

"creditor" includes a creditor who has not proved a claim against the insolvent estate in question.

137. Effect of composition

(1) An offer of composition which has been accepted in terms of section one hundred and thirty-six shall be binding upon the insolvent and upon all 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 is a condition of the composition that any property in the insolvent estate shall be restored to the insolvent, the acceptance of the composition in terms of section one hundred and thirty-six shall divest the trustee of that property and reinvest the insolvent therewith from the date upon which the property is, in pursuance of the composition, to be restored to the insolvent but subject to any condition provided for in the composition.

(3) The acceptance of an offer of composition in terms of section one hundred and thirty-six shall not affect the liability of a surety for the insolvent.

138. Composition by separate partner

(1) Where 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 in terms of section one hundred and thirty-six by the separate creditors of the partner shall not take effect—

(a) in the case where the trustee of the partnership estate is not the same person as the trustee of the partner's estate—

(i) unless the trustee of the partner has given the trustee of the partnership notice in writing of the acceptance; and

(ii) until six weeks have expired since the date of the giving of the notice referred to in subparagraph (i);

(b) where the trustee of the partnership is also the trustee of the partner's estate, until six weeks have expired since the date of the acceptance of the offer of composition.

(2) Where the estate of a partnership and the estate of a partner in that partnership are simultaneously under sequestration and an offer of composition has been accepted by the separate creditors of the partner, the trustee of the partnership may, at any time during the period of six weeks which is required to expire in terms of subsection (1) before the composition can take effect, take over the assets of the estate of the 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.

139. Effect of composition on spouse of insolvent

An offer of composition by an insolvent which has been accepted in terms of section one hundred and thirty-six shall not be binding on the separate creditors of the spouse of the insolvent 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—

(i) any movable property held as security by any such creditor when the property was vested in the trustee shall be restored to that creditor;

(ii) the proceeds of any security whatsoever which has been realized shall be paid to the person or persons entitled thereto according to their rights.

140. Functions of trustee under composition

Any moneys to be paid and anything to be done for the benefit of creditors in pursuance of an offer of composition which has been accepted in terms of section one hundred and thirty-six shall be paid and shall be done as far as practicable through the trustee, and the provisions of this Act relating to trustees' accounts, the confirmation thereof and the distribution of dividends thereunder shall, as far as they may be applicable, continue to apply after the acceptance of the offer of composition.

Rehabilitations

141. Application for rehabilitation

(1) An insolvent who has obtained from the Master the certificate referred to in subsection (6) of section one hundred and thirty-six may, subject to the provisions of section one hundred and forty-two, apply to the High Court for an order for his rehabilitation:

Provided that no application may be made in terms of this subsection unless the insolvent concerned has given in the *Gazette* and to the trustee at least three weeks' notice of his intention to make the application.

(2) An insolvent who is not entitled in terms of subsection (1) to apply to the High Court for his rehabilitation and who has 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 may, subject to the provisions of section one hundred and forty-two, apply to the High Court for his rehabilitation—

(a) after twelve months have elapsed from the date of the confirmation by the Master of the trustee's first account in his estate or after a period of two years has elapsed from the date of the final sequestration order, whichever is the earlier, unless he falls within paragraph (b) or (c); or

(b) after three years have elapsed from the date of confirmation of the account referred to in paragraph (a) if his estate has, either in terms of this Act or in terms of the Insolvency Act *[Chapter 53 of 1963]*, been sequestrated prior to the sequestration to which he desires to put an end if he does not fall within 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 in terms of section one hundred and sixty-six, one hundred and sixty-seven or one hundred and sixty-eight.

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

(4) 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 the manner provided in subsection (2) of section one hundred and nine, and of all the costs of sequestration, the insolvent concerned may apply to the High Court for his rehabilitation:

Provided that no application may be made in terms of this subsection unless the insolvent concerned has given in the *Gazette* and to the trustee at least three weeks' notice of his intention to make the application.

142. Security to be furnished prior to application for rehabilitation

Not less than three weeks before applying to the High Court for his rehabilitation an insolvent shall furnish to the registrar security of such amount or value as may be prescribed for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the High Court.

[section amended by Act 22 of 1998]

143. Facts to be averred on application for rehabilitation

An insolvent in support of an application for his rehabilitation shall submit to the High Court—

(a) an affidavit made by himself which shall contain—

(i) an averment that he has made a complete surrender of his estate and has not granted or promised any benefit whatsoever to any person or entered into any secret agreement with intent to induce his trustee or any creditor not to oppose the rehabilitation; and

(ii) a statement of his assets, liabilities and earnings at the date of the application;

and

(b) information relating to—

(i) what dividend was paid to his creditors; and

(ii) what further assets in his estate are available for realization and the estimated value thereof; and

(iii) the total amount of all claims proved against his estate; and

(iv) the total amount of his liabilities at the date of the sequestration of his estate; and

(v) whether his estate has ever been previously sequestrated and, if so, what dividend was received by creditors in respect of that sequestration; and

(vi) whether he was convicted of any offence arising out of any previous insolvency and, if so, particulars of the offence and the sentence imposed therefor; and

(vii) where the application for rehabilitation is made in terms of subsection (1) of section one hundred and forty-one, particulars of the composition, whether there are creditors whose claims against his estate have not been proved and, if so, their names and addresses and particulars of their claims.

144. Opposition to or refusal by High Court of rehabilitation

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

(2) Whether the application be opposed or not, the High Court may—

(a) refuse the application; or

(b) postpone the hearing of the application; or

(c) rehabilitate the insolvent upon such conditions, if any, as it may think fit to impose; or

(d) order the applicant to pay the costs of any opposition to the application if it is satisfied that the opposition was not vexatious.

(3) Without prejudice to the generality of the conditions which may be imposed in terms of paragraph (c) of subsection (2), the High Court may—

(a) 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 High Court may determine;

(b) impose any other conditions with respect to any property or income which may accrue to the insolvent in the future.

(4) Where an insolvent has consented to judgment in terms of paragraph (a) of subsection (3), execution shall not be issued on the judgment except with the leave of the High Court and upon proof that the insolvent has since the date of sequestration of his estate acquired property or income available for the payment of his debts.

(5) In granting an application for rehabilitation made in terms of subsection (1) of section one hundred and forty-one, the High Court may order that any obligation incurred by the applicant before the sequestration of his estate and which, but for that order, would be discharged as a result of the rehabilitation of the applicant, shall remain of full force and effect notwithstanding the rehabilitation.

(6) The registrar shall forthwith give notice to the Master of every rehabilitation of an insolvent granted by the High Court and the Master shall, upon receipt of such notice, give notice thereof to the trustee concerned.

145. Partnership cannot be rehabilitated

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

146. Effect of rehabilitation

(1) Subject to subsection (2) and subject to such conditions as the High 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; and

(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; and

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

(2) A rehabilitation shall not affect—

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

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

(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; or

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

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

147. Illegal inducements to vote for composition or not to oppose rehabilitation

(1) 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.

(2) Any person who has accepted or who has stipulated for any benefit referred to in subsection (1), 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.

148. Recovery of penalty

A trustee may enforce and recover any penalty referred to in section one hundred and forty-seven 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.

Part VIII – Assignment

149. Interpretation and application of this Part

(1) In this Part—

"creditor entitled to sign" means a creditor who may sign a deed of assignment in terms of subsection (1) of section one hundred and fifty-five;

"deed of assignment" means a deed of assignment referred to in section one hundred and fifty;

"spouse of a debtor" includes a wife or husband by virtue of a marriage according to any law or custom and 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, but does not include a wife or husband of a debtor who is living apart from the debtor under an order of judicial separation.

(2) This Part shall not apply to a voluntary assignment entered into by a debtor with the consent of all his creditors.

150. Deed of assignment and statement of affairs

(1) Where it is desired to assign the estate of a debtor who is not an insolvent for the benefit of the creditors of the debtor in terms of this Act, the debtor or any person who may, in terms of section three, present a petition for the acceptance of the surrender of the estate of the debtor shall lodge with the Master—

(a) a duly executed deed of assignment assigning the estate to one or two co-assignees for the benefit of the creditors; and

(b) a statement of the affairs of the debtor in the form prescribed and verified by an affidavit in the form prescribed.

(2) A deed of assignment shall, for the purposes of subsection (1), be deemed to be duly executed if—

(a) it is signed by—

(i) the debtor to whose estate it relates or by any person, who may, in terms of section three, present a petition for the acceptance of the surrender of the estate of the debtor; and

(ii) at least one creditor who has a liquidated claim, not being conditional, for not less than such amount as may be prescribed or by creditors who have such claims in the aggregate for not less than such amount as may be prescribed or by the agent of such creditor or creditors; and

(iii) by the assignee or assignees who is or who are a person or persons who would not be disqualified in terms of this Act for election as trustee or trustees, as the case may be;

[paragraph amended by Act 22 of 1998]

and

(b) the signatures of the assignee and the debtor or person signing on behalf of the debtor are attested by a legal practitioner or justice of the peace; and

(c) the signatures of all other persons are attested by at least one witness; and

(d) in the case where a person signs on behalf of a creditor, the power of attorney or other evidence of authority to sign for that creditor is lodged with the Master.

(3) A condition inserted in a deed of assignment whereby any creditor may obtain, as against a creditor who has not executed the deed, any advantage or benefit to which he would not be entitled if the estate of the debtor were to be placed under sequestration shall be of no force or effect.

(4) A deed of assignment lodged in terms of subsection (1) shall lie open for inspection at the Master's office where it is lodged for a period of fourteen days following the date of publication of the notice of assignment in the *Gazette* in terms of section one hundred and fifty-two.

151. Effect of execution of deed of assignment

(1) Upon the execution of a deed of assignment in terms of subsection (2) of section one hundred and fifty the assignee shall immediately—

(a) take into possession as against the debtor all movable property of which the debtor can give or order possession and shall retain that property as against the debtor until the assignment is set aside or the Master certifies that it has been declined by the creditors; and

(b) transmit a notice in the prescribed form to every officer charged with the registration of title to immovable property stating that the debtor has executed a deed of assignment and that he requires a caveat to be entered in terms of subsection (2).

(2) Upon the receipt by an officer referred to in paragraph (b) of subsection (1) of a notice transmitted to him in terms of that paragraph, he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of all bonds registered at the registry of which he is in charge in the name of the debtor.

152. Notice of assignment

Where a deed of assignment has been lodged with the Master, the debtor or the person who executed the deed on his behalf shall publish a notice in the prescribed form of the assignment of the estate concerned —

(a) in the *Gazette*; and

(b) in a newspaper circulating—

(i) in the case where the debtor is or, within the period of six months preceding his death, was a trader, in the district where his principal place of business is or was situated; or

(ii) in any other case, in the district in which the debtor resides or, immediately prior to his death, resided.

153. Lodging of copies of deed for inspection

(1) A copy of the deed of assignment, the statement of affairs of the debtor and the verifying affidavit referred to in section one hundred and fifty shall be lodged—

(a) in the case where the debtor is or, within the period of six months preceding his death, was a trader and his principal place of business is or was situated in a district other than that in which the original deed of assignment is lodged, at the Master's office in that district or, if there is no Master's office in that district, at the office of the magistrate for that district; or

(b) where paragraph (a) does not apply and the debtor resides or, immediately prior to his death, resided within any district other than that in which the original deed of assignment is lodged, at the Master's office in that district or, if there is no Master's office in that district, at the office of the magistrate for that district.

(2) A document lodged in terms of subsection (1) shall lie open for inspection at the office where it is lodged for a period of fourteen days following the date of publication of the notice of assignment in the *Gazette* in terms of section one hundred and fifty-two.

154. Effect of publication of notice of assignment

(1) Upon the publication in the *Gazette* of a notice of assignment—

(a) it shall not be lawful to sell any property of the estate of the debtor concerned which has been attached under any legal process unless the person charged with the execution of such process could not have known of the publication:

Provided that, if in his opinion the attached property does not exceed in value such amount as may be prescribed, the Master or, if it exceeds that amount, the High Court may authorize the sale of the property and in such event shall direct how the proceeds of the sale shall be applied;

[proviso amended by Act 22 of 1998]

(b) the Sheriff, any deputy sheriff or any messenger who is in possession of the proceeds concerned shall not pay out such proceeds except upon an order of the High Court or unless the debtor and his estate have been released from the effects of the assignment in terms of subsection (3) of section one hundred and fifty-six.

(2) Subject to subsections (3) and (4), the publication of a notice of assignment in the *Gazette* shall have the effect of staying all proceedings for the sequestration of the estate of the debtor concerned, whether on his own petition or the petition of the creditor.

(3) A creditor may, at any time after the publication of a notice of assignment and before the registration of the deed of assignment in terms of section one hundred and fifty-seven, upon notice to the Master, the debtor and the assignee, apply to the High Court for—

(a) an order setting aside the assignment; or

(b) an order of sequestration of the estate of the debtor—

(i) on the ground that the statement of affairs of the debtor referred to in section one hundred and fifty does not fully disclose the debts or the property of the debtor; or

(ii) on such other ground as the High Court may permit.

(4) Upon an application in terms of subsection (3), the High Court may—

(a) supersede the assignment and place the estate of the debtor under sequestration provisionally; or

(b) set aside the assignment altogether; or

(c) make such other order as it may think fit.

155. When deed may be signed

(1) The original or any copy of a deed of assignment lodged in terms of section one hundred and fifty-three may be signed by any creditor of the debtor whose claim, not being conditional, would be provable in terms of this Act at a meeting of creditors if the estate of the debtor was sequestrated, at any time before the expiry of the period for which the original and copies of the deed are required to lie open for inspection in terms of this Act.

(2) A creditor who holds any security for his claim shall at the time of signing a deed of assignment or any copy thereof in terms of subsection (1) state the value he places upon his security, failing which his security shall, for the purposes of paragraph (b) of subsection (2) of section one hundred and fifty-six and paragraph (b) of subsection (5) of section one hundred and fifty-seven, be deemed to be valued at the amount of his claim.

(3) The officer in charge of the Master's office and the magistrate at whose office a copy of a deed of assignment has been lodged shall, upon the expiry of the period for which it was lodged, submit that copy to the Master with a certificate stating the period for which it has lain open for inspection.

156. Deed not signed

(1) If, within the period for which they have lain open for inspection as required in this Act, the original and any one or more copies of the deed of assignment together have not been signed by creditors representing, subject to subsection (2), at least three-quarters in value of the claims and three-quarters in number of the creditors entitled to sign and disclosed in the statement of affairs referred to in section one hundred and fifty, the creditors shall be deemed to have declined the assignment.

(2) For the purposes of subsection (1)—

(a) a creditor shall not be reckoned in number unless his claim amounts to at least such amount as may be prescribed; and

[paragraph amended by Act 22 of 1998]

(b) in computing the value of a claim there shall be reckoned only the amount due after deducting the value of any security, other than a general mortgage bond, held in respect of the claim.

(3) Where the creditors have declined an assignment, the Master shall, upon the expiry of the period of fourteen days next following the expiry of the period referred to in subsection (1), by certificate issued under his hand, give notice thereof to the assignee and to every officer to whom notice was given in terms of paragraph (b) of subsection (1) of section one hundred and fifty-one and the debtor and his estate shall thereupon be released from all the effects of the assignment and the notice of assignment.

157. Registration of deed

(1) Subject to subsection (5) and to any order made by the High Court in terms of subsection (3) of section one hundred and fifty-four, and upon the expiry of the period for which the deed of assignment and the copies thereof are required to lie open for inspection in terms of this Act, the Master, if satisfied as specified in subsection (4), shall—

(a) register the deed of assignment; and

(b) deliver to the assignee, upon his finding security to the satisfaction of the Master for the full value of the estate, a certificate of appointment in the form prescribed; and

(c) transmit a notice to every officer charged with the registration of title to immovable property stating that the debtor has assigned his estate.

(2) Upon the receipt by an officer referred to in paragraph (c) of subsection (1) of a notice transmitted to him in terms of that paragraph, he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of all bonds registered at the registry of which he is in charge in the name of the debtor or his or her spouse.

(3) Every act purporting to have been done by the assignee in terms of the deed of assignment before delivery to him of the certificate referred to in paragraph (b) of subsection (1), except in so far as that act was done in terms of this Act or was necessary for the better preservation of the debtor's property, shall be of no effect and the assignee shall be personally liable for the consequences thereof.

(4) The Master shall not register a deed of assignment in terms of subsection (1) unless he is satisfied that—

(a) the original and copies of the deed of assignment, the statement of affairs and the verifying affidavit referred to in section one hundred and fifty have been open for inspection and have been lodged as required in this Act; and

(b) the original or any one or more copies together of the deed of assignment have been signed by creditors representing, subject to subsection (5), three-quarters in value of the claims and three-quarters in number of the creditors entitled to sign and disclosed in the statement of affairs referred to in section one hundred and fifty.

(5) For the purposes of paragraph (b) of subsection (4)—

(a) a creditor shall not be reckoned in number unless his claim amounts to at least such amount as may be prescribed; and

[paragraph amended by Act 22 of 1998]

(b) in computing the value of a claim there shall be reckoned only the amount due after deducting the value of any security, other than a general mortgage bond, held in respect of the claim.

(6) The Master shall not register a deed in terms of subsection (1) where, before the expiry of the period for which the deed and copies thereof are required to lie open for inspection in terms of this

Act, a creditor gives notice to the Master that he intends to make application to the High Court to set aside the assignment or to place the estate of the debtor under sequestration:

Provided that where a creditor does not, within seven days of such notice, make application to the Court, he shall be deemed not to have given notice in terms of this subsection.

158. Effect of registration of deed

(1) The date of registration of a deed of assignment in terms of section one hundred and fifty-seven shall be deemed to be the date of the assignment.

(2) Upon registration in terms of section one hundred and fifty-seven a deed of assignment shall be binding on all creditors of the debtor, whether they have assented to the deed or not, whose claims were due or the cause of whose claims arose before the date of assignment.

(3) The immediate effect of the registration of the deed of assignment shall be—

(a) to vest in the assignee the estate of the debtor as fully and effectually as if the estate were under sequestration; and

(b) to relieve the debtor from every debt which was due or the cause of which arose before the date of the assignment, but subject always to the deed of assignment; and

(c) to stay all legal proceedings against the debtor for any liquidated claim provable against the estate, where-upon the taxed costs of such proceedings by the plaintiff may be added to his claim provable against the estate; and

(d) to suspend every other action and all proceedings therein by or against the debtor, except such as, if he were insolvent, he would be entitled to commence or continue for his own benefit and every action so suspended may be continued by or against the assignee in the same manner and upon the same terms as to notice as if he were the trustee of an insolvent estate; and

(e) to enable the debtor, if in prison for debt, to apply to the High Court for his release after notice to the creditor at whose suit he is so imprisoned.

(4) For the purposes of this section, the estate shall consist of all property of the debtor at the date of the registration of the assignment, including property or the proceeds thereof which is in the hands of the Sheriff, a deputy sheriff or a messenger under a writ of attachment, except such property as would be reserved to the debtor, if he were insolvent, and such further property as may by the deed be reserved to him.

(5) Nothing in this section shall be construed as affecting—

(a) the capacity of the debtor—

(i) to acquire property or to bind himself by contract after the date of assignment; or

(ii) to sue on any debt the cause of which arose after the date of the assignment;

or

(b) any claim against the debtor which occurred after the date of the assignment.

(6) A debtor who has assigned his estate shall keep the assignee informed at all times of his residential and postal addresses and of the address of his business or his employer.

(7) Any notice or information which is to be conveyed in terms of this Act to a debtor who has assigned his estate may be delivered personally to him or may be delivered at or sent in a registered letter by post to an address given by the debtor to the assignee in terms of subsection (6).

(8) An assignment in terms of this Part shall not affect the liability of a surety for the debtor.

159. Notice of assignment to be given to spouse of debtor

(1) Upon the date of assignment the assignee shall cause notice thereof to be served by a deputy sheriff upon any spouse of the debtor whose estate has not been sequestrated.

(2) The spouse of a debtor who has been given notice in terms of subsection (1) shall, within seven days of receipt of such notice, lodge with the Master in the prescribed form the original and one copy of the statement of his or her affairs:

Provided that the Master may, on application being made to him and for good cause shown, extend the period within which the statement and the copy thereof must be lodged.

(3) If the Master is satisfied that the spouse of a debtor was unable to prepare without assistance the statement referred to in subsection (2) the person who assisted the spouse with the preparation of that 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 assignment.

160. Effect of assignment on property of spouse of debtor

(1) Subject to this Act—

(a) upon the date of assignment the property, including such property which the Sheriff, a deputy sheriff or a messenger holds under a writ of attachment, of any spouse of the debtor whose estate has not been sequestrated shall be vested in the assignee and this Act shall apply, *mutatis mutandis*, in respect thereof as if it were the property of the assigned estate; and

(b) before, on and after the date of assignment the assignee, the spouse of the debtor and third persons shall have, *mutatis mutandis*, the same powers, rights and remedies and be subject to the same duties in regard to the property of the spouse of the debtor referred to in paragraph (a) as a trustee, the spouse of an insolvent and third persons have and are subject to in regard to the property of the spouse of an insolvent.

(2) For the purpose of giving effect to subsection (1) the date of assignment shall be deemed to correspond with the date of sequestration.

161. Supervision of assignment by Master

The estate of a debtor whose estate has been assigned in terms of this Part shall be administered and distributed under the supervision of the Master and all proceedings in relation thereto shall as far as possible be had and taken in the same manner as if the debtor were an insolvent and the date of the assignment were the date of the sequestration.

162. Powers of assignee

Upon and after the date of assignment of an estate in terms of this Part, the assignee shall have—

(a) as against the debtor and third persons the same powers, rights and remedies with regard to the acts of the debtor and to the collection and recovery of the estate of the debtor as may be exercised by the trustee of an insolvent estate with regard to the acts of the insolvent and the collection and recovery of his estate;

(b) as between the creditors and himself, in addition to any powers expressly granted to him under the deed of assignment, the same powers, rights and remedies and shall be subject to the same duties in regard to the administration and distribution of the estate and all proceedings in connection therewith as the trustee of an insolvent estate has and is subject to in regard to the administration and distribution of an insolvent estate.

163. Law of insolvency applicable

Every question of preference or priority and all other questions relating to an assignment in terms of this Part shall be determined according to the law and practice relating to insolvency as far as they may be practicable.

164. Powers of High Court

Except as to property acquired by the debtor after the date of the assignment, the High Court shall have power to make all such orders relating to the assignment as it would have power to make if the debtor were an insolvent and his estate had been under sequestration from the date of assignment.

165. Costs of assignment

(1) The costs of an assignment made in terms of this Part shall be taxed by the registrar.

(2) Upon the registration of a deed of assignment in terms of section one hundred and fifty-seven the taxed costs of assignment and such taxed costs of any application to the High Court as the High Court may direct shall be paid in preference in same manner as if they were taxed costs of sequestration.

Part VIII – Offences and penalties

[Please note: numbering as in the original.]

166. Concealing or destroying books or assets

(1) Any person who, at any time before or after the sequestration or assignment of his estate—

(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 divided among his creditors; 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 and such destruction, damage, removal or disposition has prejudiced or is calculated to prejudice his creditors;

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

[subsection as amended by section 4 of Act 22 of 2001]

(2) It shall be a sufficient defence for a person charged with committing any offence specified in subsection (1) if he proves to the satisfaction of the court that he had no intention to defraud.

(3) In any criminal proceedings against any person for an offence specified—

(a) in paragraph (a) of subsection (1), whenever any act described in that paragraph is proved to have been committed in regard to any book or document referred to in that paragraph the person to whose business, property or affairs the book or document relates shall be deemed to have committed or permitted such act, unless it is proved that he did not or could not have prevented the commission of the act;

(b) in paragraph (c) or (d) of subsection (1), 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;

(c) in paragraph (d) of subsection (1), if it appears from any book or document relating to the business, property or affairs of the insolvent or person who assigned his estate or if it is proved in any other manner whatsoever that there ought to be available to the trustee or assignee, as the case may be, at least ten *per centum* more assets of the estate than the assets actually available to him, the insolvent or person who assigned his estate shall be deemed to have removed or to have made a disposition of assets of a value equal to the difference between the value of the assets which ought to have been available and the value of the assets actually so available, unless the deficiency is accurately accounted for or explained and it is proved that the deficiency was not caused by the insolvent or person who assigned his estate and that such person could not have prevented it.

(4) Nothing in this section shall be construed as prohibiting any person whose estate has been sequestrated or the assignment of whose estate has been accepted from dealing with any property with which he would be entitled to deal under any other provision of this Act.

167. Concealment of liabilities

(1) Any person who, within two years immediately preceding the sequestration or assignment of his estate, in making any statement, whether verbally or in writing, in regard to his business, property or affairs to any person who was then his creditor or who became his creditor on the faith of such a statement—

(a) conceals any liability, present or future, certain or contingent, which he may then have contracted; or

(b) fails to disclose the full extent of his liabilities or whether any of his assets are subject to any mortgage, pledge or general bond; or

(c) mentions, as if it were an asset, any right or property which at the time was not an asset; or

(d) represents that he had more assets than he in fact has; or

(e) makes any statement in regard to the amount, quality or value of his assets which he knows to be false or which he does not reasonably believe to be true; or

(f) in any way conceals, disguises or attempts to conceal or disguise any loss which he has sustained or gives any incorrect amount thereof;

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

[subsection as amended by section 4 of Act 22 of 2001]

(2) It shall be a sufficient defence for a person charged with the commission of any offence specified in subsection (1) if he proves that he had good reason to believe that—

(a) the statement which is the subject of the charge was correct in every respect; and

(b) he was not concealing, failing to disclose or disguising any relevant fact.

168. Failure to keep proper records

(1) Any person whose occupation or transactions prior to the sequestration or assignment of his estate were such that he might reasonably be expected to keep a record of his transactions and who fails to keep a proper record thereof in the English language and to preserve that record for a period of not less than three years shall be guilty of an offence and liable to imprisonment for a period not exceeding one year.

[subsection as amended by section 4 of Act 22 of 2001]

(2) For the purposes of subsection (1)—

(a) a proper record of transactions shall include all such books and records wherein are set forth clearly the nature of all his transactions as, regard being had to his occupation, the insolvent or person who has assigned his estate can reasonably be expected to have kept;

(b) a trader shall be deemed not to have kept a proper record of his transactions unless he has kept a record which includes—

(i) detailed stock sheets which shall disclose the cost price of every article on hand at the date of stock-taking which has been purchased by the trader for the purpose of his business and balance sheets together with trading and profit and loss or income and expenditure accounts completed for each of his three financial or business years immediately preceding the sequestration or assignment of his estate or, if he commenced business less than three years before the sequestration or assignment—

(A) a statement of the assets and liabilities of his business at the commencement of trading; and

(B) balance sheets together with trading and profit and loss or income and expenditure accounts completed for every financial or business year preceding the sequestration or assignment of his estate;

and

(ii) books 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 or assigned, whichever period is the less, the following particulars—

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

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

(C) 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; and

(D) 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;

and

(iii) a record of all cheques drawn during the period mentioned in subparagraph (ii) and the counterfoils of such cheques, showing clearly, in the case of each cheque and on each counterfoil, the name of the payee, the amount of the cheque and the date of the cheque:

Provided that a trader who proves that his turnover for the two years immediately preceding the sequestration or assignment of his estate or since the commencement of the business, whichever period is the less, was less than such amount or rate as may be prescribed 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 D of subparagraph (ii).

[subsection amended by Act 22 of 1998]

169. Making undue preferences

(1) In this section—

"creditor" includes a surety for the insolvent or person who assigned his estate as well as a person who in law is in a position analogous to that of a surety.

(2) Any person who, prior to the sequestration or assignment of his estate, makes 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 his assets, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[subsection as amended by section 4 of Act 22 of 2001]

(3) In any criminal proceedings against any person for the offence specified in subsection (2)—

(a) any disposition of property which is proved to have had the effect of preferring or to have been 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 intent specified in that subsection;

(b) where the estate of the insolvent or person who has assigned his estate is sequestrated or assigned, as the case may be, within the period of six months immediately following the date of the making of a disposition referred to in that subsection, the liabilities of that person shall be deemed to have exceeded his assets at that date unless the contrary is proved.

170. Contracting debts without expectation of ability to pay

(1) Any person who, prior to the sequestration or assignment of his estate, contracted one or more debts in excess of such amount as may be prescribed without any reasonable expectation of being able to discharge such debt or debts shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[subsection as amended by Act 22 of 1998 and by section 4 of Act 22 of 2001]

(2) In any criminal proceedings against any person for an offence specified in subsection (1) the insolvent or person who assigned his estate shall, unless the contrary is proved, be deemed to have contracted the debt or debts which form the subject of the charge without having had a reasonable expectation of discharging it or them if the debt was or the debts were contracted—

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

(b) within a period of six months immediately preceding the sequestration or assignment of his estate.

171. Unreasonable diminution of assets

Any person who—

(a) at any time prior to the sequestration or assignment of his estate and at the time when his liabilities exceeded his assets; or

(b) within the period of six months immediately preceding the sequestration or assignment of his estate;

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 dependants, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

172. Alienation of business without notice

Any person, being a trader, who—

(a) at any time prior to the sequestration or assignment of his estate and at the time when his liabilities exceeded his assets; or

(b) within the period of six months immediately preceding the sequestration or assignment of his estate;

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 and without publishing notification of his intention so to alienate in terms of section forty-seven shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

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

(1) Any person who, at any time during the sequestration or after the assignment of his estate, 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 or assignee of his estate in writing of that knowledge or suspicion within the period of seven days immediately following the date on which he acquired that knowledge or upon which his suspicion was aroused, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

(2) Any person who, within the period of fourteen days immediately following the appointment of the trustee or assignee of his estate, fails—

(a) to deliver to the trustee or assignee or as the trustee or assignee 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

(b) to inform the trustee or assignee of the existence and whereabouts of any property belonging to the estate, other than property mentioned in paragraph (a), which is not fully disclosed in the statement of his affairs referred to in section three, nineteen or one hundred and fifty or which is not already in the possession of the trustee or assignee; or

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

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

unless, in any such case, he proves that he had a reasonable excuse for such failure, shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

(3) Any person who, at any time after the sequestration or assignment of his estate, fails to furnish at the request of his trustee or assignee 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 shall, unless he proves that he had reasonable excuse for such failure, be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

174. Obtaining credit during insolvency

Any person who, during the sequestration of his estate, obtains credit to an amount exceeding such amount as may be prescribed without informing the person from whom he obtains credit that he is an insolvent or unless he proves that such person had knowledge of that fact shall be guilty of an offence and liable to imprisonment for a period not exceeding one year.

[section as amended by Act 22 of 1998 and by section 4 of Act 22 of 2001]

175. Offering inducements

Any person who grants, promises or offers any consideration whatsoever in order to procure the consent of any creditor to an assignment or offer of composition or to prevent opposition to a rehabilitation or during the sequestration or after the assignment of his estate to induce any person to refrain from the investigation of his affairs or from the prosecution of a criminal charge of himself or any person with whom he may have had business relations shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

176. Failure to lodge statements

Any person who, without reasonable excuse, the proof whereof lies on him, contravenes paragraph (b) of subsection (2) or subsection (3) of section nineteen or subsection (2) of section one hundred and fifty-nine shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

177. Failure to carry out duties

Any person who, without reasonable excuse, the proof whereof lies on him, contravenes subsection (3), (6), (8) or (16) of section thirty-five shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

178. Making false statement in statement of affairs

Any person who makes any statement in a statement of affairs referred to in section three, nineteen, one hundred and fifty or one hundred and fifty-nine or in a record or statement referred to in subsection (6) of section thirty-five which he knows to be false or which he does not reasonably believe to be true shall be guilty of an offence and liable to imprisonment for a period not exceeding two years.

[section as amended by section 4 of Act 22 of 2001]

179. Failure to attend meetings, etc.

(1) Any person who—

(a) if required in terms of this Act to attend at the first or second meeting of creditors or at an adjournment thereof or, in the case of a further meeting, being duly required in writing by the trustee or assignee to attend, fails to attend or absents himself without the written permission of the presiding officer; or

(b) if required in terms of this Act—

(i) to appear before the Master or a magistrate for examination; or

(ii) to produce any book, document or thing before the Master or a magistrate; fails to appear or to produce such book, document or thing; or

(c) fails when required thereto in writing by the trustee or assignee of his estate to give a true, clear and detailed explanation of his insolvency or the assignment; or

(d) if at a meeting of creditors of his estate when required thereto by the trustee, assignee, presiding officer or any creditor or by the agent of any of them, 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

(e) fails to keep the trustee or assignee of his estate informed of his residential and postal addresses and of the address of his business or his employer;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

(2) In any criminal proceedings against any person for the offence specified in paragraph (e) of subsection (1), where it is proved that—

(a) the insolvent or person who has assigned his estate has changed his residential or postal address; and

(b) the trustee or assignee of his estate has not received notification of the change;

it shall be presumed, unless the contrary is proved, that the insolvent or person who has assigned his estate, as the case may be, failed to notify the trustee or assignee of the change.

[subsection as substituted by Act 22 of 1998]

180. Making false answers on oath while under examination or making false affidavit

Every person who—

(a) being examined upon oath in terms of this Act, makes an answer to any lawful question which he knows to be false or which he does not reasonably believe to be true; or

(b) makes a statement in an affidavit made by him or tendered with his knowledge in support of any claim tendered for proof against an estate which he knows to be false or which he does not reasonably believe to be true;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

181. Failure to appear or give evidence

Any person who—

(a) being summoned to appear in terms of section sixty-seven, without reasonable excuse, the proof whereof lies on him, fails to appear in terms of the summons; or

(b) does or omits to do any act or thing for which he could be committed to prison in terms of subsection (5) of section sixty-nine;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

182. Failure to appear or give evidence against trustee or assignee

(1) In subsection (2)—

"spouse of a debtor" has the meaning assigned thereto in subsection (1) of section one hundred and forty-nine.

(2) Any insolvent or any debtor who has assigned his estate or the spouse of an insolvent or such debtor who, being summoned to give evidence in any proceedings instituted by or against the trustee or assignee of the insolvent or assigned estate, conceals himself or herself or quits Zimbabwe or, without reasonable excuse, the proof whereof lies on him or her, as the case may be, 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 shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

183. Acceptance of inducements

Every person who accepts any benefit or the promise or offer of any benefit as a consideration—

(a) 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

(b) 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

(c) for having refrained or undertaken to refrain from investigating any matter relating to an insolvent, an insolvent estate, a person who has assigned his estate or an assigned estate or from disclosing any information in regard to such insolvent, person or estate;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

184. Removal of property

(1) Any person who, before or after the sequestration or assignment of an estate, 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 creditors in that estate shall be guilty of an offence.

(2) In any criminal proceedings against any person for an offence specified in subsection (1), where it is proved that any removal, concealment, disposal, dealing or receipt of assets had the effect of defeating or was calculated to defeat the attachment referred to in that subsection or that it prejudiced or was calculated to prejudice the creditors, it shall, unless the contrary is proved, be deemed to have been done with the intention to defeat the attachment or to prejudice the creditors.

(3) Any person who has in his possession or custody or under his control any property belonging to an insolvent estate or an estate which has been assigned and who knows of the sequestration or assignment of the estate and that the property belongs to it and who fails to inform the trustee or assignee of the estate as soon as possible of the existence and whereabouts of the property and, subject to section ninety-seven, to deliver it to or place it at the disposal of the trustee or assignee shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

(4) Subsections (1) and (3) shall not apply to an insolvent in respect of any property belonging to his own estate.

(5) A secured creditor of an insolvent or assigned estate who has realized his security in terms of section ninety-seven and who has failed after written demand to pay over the proceeds of the realization in accordance with subsection (5) of that section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

185. Criminal liability of partners, administrators, employees or agents

(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 or assigned 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 an employee 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 or assigned 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 or assigned estate, would have constituted an offence in terms of this Act, shall be deemed to have committed that offence.

(2) The liability in terms of subsection (1) of a partner, employee or agent shall not affect the liability in terms of that subsection or in terms of any other provision of this Act of another partner or of an employee or agent of the same partnership or of the employer or principal of the employee or agent who is so liable.

186. Criminal liability of trustee and assignee

A trustee or assignee who, when required to do so in terms of this Act or in terms of any direction made in terms of this Act, fails within two months to lodge an account or plan with the Master or to pay a sum of money to the Master or a creditor shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

187. Obstructing trustee, curator *bonis* or assignee

Any person who obstructs or hinders a *curator bonis* appointed in terms of this Act or a trustee or assignee or the representative of any of them in the performance of his functions in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[section as amended by section 4 of Act 22 of 2001]

188. Evidence of liabilities incurred by insolvent

Whenever in any criminal proceedings in terms of this Act any liability incurred by an insolvent or a person who has assigned his estate 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 or person who assigned his estate in accordance with any provision of this Act shall be sufficient evidence of the existence of the liability and 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 any party in those proceedings may prove that no such liability or that a lesser or greater liability was incurred or that it was incurred on a date or at a time other than the date or time so alleged.

189. ***

[section repealed by section 4 of Act 22 of 2001]

Part X – Judicial

[Please note: numbering as in original.]

190. Jurisdiction of High Court

(1) The High Court shall have jurisdiction in terms of this Act over every debtor and in regard to the estate of every debtor who—

(a) at the date of the presentation of a petition for the sequestration of his estate, is—

(i) possessed of or entitled to property within Zimbabwe; or

(ii) domiciled or resides or has a dwelling-house or place of business or carries on business within Zimbabwe;

or

(b) at any time within twelve months immediately preceding the presentation of the petition has ordinarily resided or had a dwelling-house or place of business or carried on business within Zimbabwe; or

(c) has assigned that portion of his estate which lies within Zimbabwe:

Provided that when it appears to the High Court equitable or convenient that the estate of a person not domiciled in Zimbabwe should be sequestrated elsewhere, the High Court may refuse or postpone the sequestration.

[subsection amended by Act 22 of 1998]

(2) The High Court may rescind or vary any order made by it in terms of this Act.

191. Appeal

(1) Any person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration may appeal to the Supreme Court 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 High Court which made such final order or set aside such provisional order, and all rules applicable to such last-mentioned appeal shall apply, *mutatis mutandis*, but subject to subsection (3), to an appeal in terms of this section.

(3) When an appeal has been noted, whether in terms of this section or in terms of any other law, against a final order of sequestration, 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 Supreme Court 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 High Court in terms of this Act, except as provided in this section.

192. Review

(1) Subject to this Act, any person aggrieved by any decision, ruling, direction, order or taxation of the Master or by a decision, ruling, direction or order of an officer presiding at a meeting of creditors may bring it under review by the High Court and to that end may make a court application to the High Court, 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—

(i) if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors;

(ii) the High Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section one hundred and twenty-eight.

(2) If the High Court reviewing any matter referred to in subsection (1) confirms any decision, ruling, direction, order or taxation of the Master or officer referred to in that subsection, 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 High Court otherwise directs.

Part XI – Miscellaneous

193. Master may direct trustee and assignee to deliver books, documents or property or call upon any person to furnish certain information

(1) The Master may at any time direct a trustee or assignee to deliver to him any book or document relating to or any property belonging to the insolvent or assigned estate of which he is the trustee or assignee.

(2) If, at any time after the sequestration or assignment of the estate of any person and before his rehabilitation, the Master is of the opinion that the insolvent, the person who assigned his estate, the trustee or the assignee of that estate or any other person is able to give any information which the Master considers desirable to obtain concerning the insolvent, the person who assigned his estate, the insolvent or assigned estate, the administration of the insolvent or assigned estate or any claim or demand made against such estate, he may, by notice in writing, delivered to the insolvent, the person who assigned his estate or the trustee, assignee 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.

(3) The Master or other officer before whom a person has been summoned to appear in terms of subsection (2) may, on the appearance of such person before him, require such person to furnish him with all the information within his knowledge concerning the matter for which he has been summoned to appear.

(4) After having interrogated the person concerned in terms of subsection (2), the Master or other officer concerned may deliver to him written notice to appear again before the Master or other officer at a place and on 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.

(5) When any person summoned in terms of subsection (2) appears before the Master or other officer in compliance with a notice issued in terms of subsection (2) or (4), the Master or that other officer may administer the oath to him and the Master or that other officer and, if a person other than the trustee or assignee were summoned, also the trustee or assignee or the agent of either of them may

interrogate the person summoned in regard to any matter in respect of which he was summoned to appear.

(6) Subsections (3), (4), (5) and (9) of section sixty-eight shall apply, *mutatis mutandis*, to the production of any book or document or the interrogation of any person in terms of subsection (2) or (4).

(7) Section sixty-nine shall apply, *mutatis mutandis*, to a person summoned and to his interrogation in terms of this section and the Master or other officer concerned, with reference to a person so summoned and to such interrogation, shall have the powers and immunity conferred upon an officer mentioned in section sixty-nine.

(8) The provisions of subsection (10) of section sixty-eight shall apply, *mutatis mutandis*, to any person, other than a trustee or assignee, who has been summoned in terms of this section:

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.

194. Master may direct payment of small amounts

(1) Where a trustee's account shows an amount available for distribution which would provide a dividend which is less than the prescribed amount for any proved concurrent creditor, the Master may, notwithstanding anything to the contrary contained in this Act—

(a) direct the trustee to pay the amount available for distribution in such manner as to the Master seems most practicable, convenient and equitable in the circumstances to one or more creditors with the largest claims;

(b) authorize the trustee to dispense with advertising the account and lodging copies thereof as required in this Act.

(2) Where payment of any amount has been made in accordance with a direction of the Master given in terms of subsection (1) and any further amounts subsequently become available for distribution, any amount paid in terms of the direction shall be taken into account in assessing the dividend payable to creditors from such further amounts.

195. Fees of office and expenses

(1) The Master shall charge and recover such fees in respect of things done by him or by any other officer in carrying out the provisions of this Act as may be prescribed.

(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 or assigned estate in the protection of the assets of that estate or in carrying out any provisions of this Act shall, unless the High Court otherwise orders, be deemed to be part of the costs of the sequestration of that estate.

196. Custody of documents and documentary evidence

(1) The Master shall have the custody of all documents relating to insolvent or assigned 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 a person who has assigned his estate or to a specified insolvent or assigned 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 a person who has assigned his estate or to a specified insolvent or assigned 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 subsection (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 or assigned 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.

197. Destruction of documents

(1) After six months have elapsed as from the confirmation by the Master of the final trustee's 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 or death of an insolvent or after thirty years have elapsed from the date of sequestration of the estate of an insolvent, the Master may destroy all records in his office relating to the estate of that insolvent.

198. Insurer obliged to pay third party's claim against insolvent

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 or assignment 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.

199. Formal defects

(1) Nothing done in terms of 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 High Court, cannot be remedied by any order of the High Court.

(2) No defect or irregularity in the election or appointment of a trustee shall vitiate anything done by him in good faith.

200. Regulations

(1) The Minister may make regulations providing for any matter which by this Act is required or permitted to be prescribed or which in his opinion is necessary or convenient to be provided for in order to carry out or give effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the procedure to be observed in any Master's office in connection with insolvent or assigned estates;

(b) the form and manner of conducting proceedings under this Act:

(c) the matters in respect of which fees shall be payable for things done by the Master or any officer in terms of this Act;

(d) the manner in which fees payable in terms of this Act shall be paid and brought to account.

