



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$5.20

WINDHOEK - 9 December 2005

No. 3551

CONTENTS

	<i>Page</i>
GOVERNMENT NOTICE	
No. 177 Promulgation of Insolvency Amendment Act, 2005 (Act No. 12 of 2005), of the Parliament	1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 177 2005

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 12 of 2005: Insolvency Amendment Act, 2005.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

- (c) by the substitution for the definition of “Court” or “the Court” of the following definition:
- “ ‘Court’ or ‘the Court’ means the High Court or any judge of that Court, and in relation to any offence under this Act or in section 8, 26, 29, 30, 31, 32, 72, 73, 75, 76, 78 or 147 the expression ‘court’ or ‘the court’ includes a magistrate’s court which has jurisdiction in regard to the offence or matter in question;”;
- (d) by the deletion of the definition of “Gazette”;
- (e) by the substitution for the definition of “Master” of the following definition:
- “ ‘Master’ [**in relation to any matter,**] means the Master of the [**Supreme Court within whose area of jurisdiction that matter is to be dealt with**] High Court and includes [**an Assistant**] a Deputy Master;”;
- (f) by the insertion after the definition of “messenger” of the following definition:
- “ ‘Minister’ means the Minister responsible for the administration of justice;”;
- (g) by the insertion after the definition of “preference” of the following definition:
- “ ‘prescribed’ means prescribed by regulation;”;
- (h) by the insertion after the definition of “property” of the following definition:
- “ ‘regulation’ means a regulation made under section 158;”;
- (i) by the deletion of the definition of “Republic”;
- (j) by the substitution for the definition of “special mortgage” of the following definition:
- “ ‘special mortgage’ means a mortgage bond hypothecating any immovable property [**or a notarial mortgage bond hypothecating specially described movable property in terms of section one of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932)**], but excludes any [**other**] mortgage bond hypothecating movable property;”;
- (k) by the deletion of the definition of “Supreme Court”, “Division of the Supreme Court” and “Provincial or Local Division of the Supreme Court”; and
- (l) by the deletion of the definition of “the Territory”.

Amendment of section 3 of Act No. 24 of 1936

2. Section 3 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) All the members of a partnership (other than partners *en commandite* [**or special partners as defined in the Special Partnerships Limited Liability Act, 1861 (Act No. 24 of 1861) of the Cape of Good Hope or in Law No. 1 of**”

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

1865 of Natal) who reside in [the Republic] Namibia, or their agent, may petition the court for the acceptance of the surrender of the estate of the partnership and of the estate of each such member.”.

Amendment of section 4 of Act No. 24 of 1936, as amended by section 3 of Act No. 16 of 1943 and section 19 of Act No. 62 of 1955

3. Section 4 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) Before presenting a petition mentioned in section 3 the person who intends to present the petition (in this section referred to as the petitioner) shall cause to be published in the *Gazette* [and in a newspaper circulating in the district in which the debtor resides, or, if the debtor is a trader, in the district in which his principal place of business is situate,] a notice of surrender in [a] the prescribed form [corresponding substantially with Form A in the First Schedule to this Act]. The said notice shall be published not more than thirty days and not less than fourteen days before the date stated in the notice of surrender as the date upon which application will be made to the court for acceptance of the surrender of the estate of the debtor [: Provided that when a petition is presented as aforesaid in the High Court of South-West Africa the periods to be observed as aforesaid shall be thirty-five days and twenty-one days respectively, instead of thirty days and fourteen days: Provided further that if the last seven days of the said period of thirty-five days do not fall wholly within a term for the dispatch of civil work of the High Court of South-West Africa then the said period shall be extended so as to embrace the first seven days of the next succeeding term].”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Within a period of seven days as from the date of publication of the said notice in the *Gazette*, the petitioner shall personally deliver or [post] send by registered post a copy of the said notice to every one of the creditors of the debtor in question whose address he or she knows or can ascertain.”;

(c) by the substitution for subsection (3) of the following subsection:

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

(d) by the substitution for subsection (5) of the following subsection:

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

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

of the district at a place other than the seat of magistracy of that district, at the office of such additional or assistant magistrate.”.

Substitution of section 5 of Act No. 24 of 1936, as amended by section 4 of Act No. 16 of 1943, section 1 of Act No. 99 of 1965 and section 1 of Act No. 14 of 1985

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

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

5. (1) After the publication of a notice of surrender in the *Gazette* in terms of section 4, it shall not be lawful to sell any property of the estate in question, which has been attached under writ of execution or other process, unless the person charged with the execution of the writ or other process could not have known of the publication: Provided that the Master, if in his or her opinion the value of any such property does not exceed **[R5 000]** the prescribed amount, or the Court, if it exceeds that amount, may order the sale of the property attached and direct how the proceeds of the sale shall be applied.

(2) After the publication of a notice of surrender as aforesaid in the *Gazette* the Master may appoint a *curator bonis* to the debtor’s estate, who shall forthwith take the estate into his or her custody and take over the control of any business, including any business the debtor is licensed to carry on in terms of the Liquor Act, 1998 (Act No. 6 of 1998), or undertaking of the debtor, as if he or she were the debtor, as the Master may direct, but subject in every case, *mutatis mutandis*, to the provisions of section 70.”.

Amendment of section 7 of Act No. 24 of 1936

5. Section 7 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 9 of Act No. 24 of 1936, as amended by section 6 of Act No. 16 of 1943 and section 2 of Act No. 99 of 1965

6. Section 9 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) A creditor (or his or her agent) who has a liquidated claim for not less than **[fifty pounds] N\$5 000**, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than **[one hundred pounds] N\$10 000** against a debtor who has committed an act of insolvency, or is insolvent, may petition the court for the sequestration of the estate of the debtor.”.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 13 of Act No. 24 of 1936, as amended by section 7 of Act No. 16 of 1943 and section 3 of Act No. 99 of 1965**

7. Section 13 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

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

Amendment of section 16 of Act No. 24 of 1936, as substituted by section 4 of Act No. 99 of 1965

8. Section 16 of the principal Act is amended -

(a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) within seven days of such service lodge, in duplicate, with the Master a statement of his or her affairs as at the date of the sequestration order, framed in [a] the prescribed form [**corresponding substantially with Form B of the First Schedule to this Act**], containing the particulars for which provision is made in the said [Form] prescribed form and verified by an affidavit [(which shall be free from stamp duty)] in the form set forth therein.”; and

(b) by the substitution for subsection (3) of the following subsection:

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

Amendment of section 19 of Act No. 24 of 1936, as amended by section 11 of Act No. 50 of 1956 and section 5 of Act No. 99 of 1965

9. Section 19 of the principal Act is amended -

(a) by the substitution for subsection (5) of the following subsection:

“(5) The deputy sheriff shall be entitled to fees taxed by the Master according to [tariff A in the **Second Schedule to this Act**] the prescribed tariff and [the] rules for the construction of that tariff.”; and

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

- (b) by the deletion of subsection (6).

Amendment of section 21 of Act No. 24 of 1936, as amended by section 12 of Act No. 16 of 1943

10. Section 21 of the principal Act is amended -

- (a) by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) to be **[safeguarded]** afforded protection in favour of that spouse by [section *twenty-eight* of this Act or by the Insurance Act, 1923 (Act No. 37 of 1923) or by the Insurance Ordinance, 1927 (Ordinance No. 12 of 1927 of the Territory)] section 45, 46 or 47 of the Long-term Insurance Act, 1998 (Act No. 5 of 1998); or”; and

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

“(3) If the solvent spouse is in **[the Republic]** Namibia and the trustee is able to ascertain his or her address, the trustee shall not, except with the leave of the court, realize property which ostensibly belonged to the solvent spouse, until the expiry of six weeks’ written notice of his or her intention to do so, given to that spouse. Such notice shall also be published in the Gazette and in [a] an English newspaper circulating [in the district in which the solvent spouse resides or carries on business] throughout Namibia, and shall invite all separate creditors for value of that spouse to prove their claims as provided in subsection (5).”.

Amendment of section 23 of Act No. 24 of 1936, as amended by section 13 of Act No. 16 of 1943

11. Section 23 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

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

Amendment of section 27 of Act No. 24 of 1936

12. Section 27 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) No immediate benefit under a duly registered antenuptial contract given in good faith by **[a man]** one spouse to [his wife] the other spouse or any child to be born of the marriage shall be set aside as a disposition without value, unless **[that man’s]** the estate of the spouse giving such benefit was sequestrated within two years of the registration of that antenuptial contract.”.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 29 of Act No. 24 of 1936, as amended by section 17 of Act No. 16 of 1960, section 9 of Act No. 64 of 1960 and section 6 of Act No. 99 of 1965**

13. Section 29 of the principal Act is amended by the deletion of subsection (4).

Amendment of section 34 of Act No. 24 of 1936, as amended by section 12 of Act No. 32 of 1952 and section 2 of Act No. 14 of 1985

14. Section 34 of the principal Act is amended -

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

“(1) If a trader alienates any business belonging to him or her, or the goodwill of such business or any goods or property forming part thereof (except in the ordinary course of that business) and such trader does not publish a notice of such intended alienation in the *Gazette*, and **[in two issues of an Afrikaans and two issues of an English newspaper circulating in the district in which that business is carried on]** send or cause to be sent by registered post a copy of that notice to each of his or her creditors who has a claim against him or her in connection with his or her business, within a period not less than thirty days and not more than sixty days before the date of such alienation, the said alienation shall be void as against his or her creditors for a period of six months after such alienation, and shall be void against the trustee of his or her estate, if his or her estate is sequestrated at any time within the said period.”; and

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

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

- (a) in the High Court or in the magistrate’s court of the district in which the said business is carried on; or
- (b) in any other magistrate’s court, and the person to whom the said business was alienated knew at the time of the alienation that those proceedings had been instituted,

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

Substitution of section 38 of Act No. 24 of 1936

15. The following section is substituted for section 38 of the principal Act:

“Contract of service terminated by insolvency of employer

38. (1) The sequestration of the estate of an employer shall terminate the contract of service between **[him]** the employer and his or her employees in accordance with section 31 of the Labour Act, 2004 (Act No. 15 of 2004), but any employee whose contract of service has been so terminated shall be entitled to claim compensation from the insolvent estate of his or her former employer for any loss which he or she may have suffered by reason of the termination of his or her contract of service prior to its expiration.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

(2) In the application of subsection (1), to the extent that it relates to a claim for compensation, regard shall be had to section 100 and to section 31(3) of the Labour Act, 2004 (Act No. 15 of 2004).”.

Amendment of section 40 of Act No. 24 of 1936, as amended by section 8 of Act No. 99 of 1965

16. Section 40 of the principal Act is amended -

(a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) The trustee shall, not less than 14 days before the date on which the second meeting of creditors is to be held, convene that meeting by notice in the *Gazette* and by sending or causing to be sent a copy of such notice by registered post to each creditor of the estate whose name and address is known to the trustee.”; and

(b) by the deletion of paragraph (c) of subsection (3).

Amendment of section 42 of Act No. 24 of 1936, as substituted by section 3 of Act No. 6 of 1972

17. Section 42 of the principal Act is amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The trustee may at any time, and shall whenever he or she is thereto required by a creditor who has proved his or her claim against the estate, provided the Master consents thereto, convene by notice in the *Gazette* a special meeting of creditors for the purpose of interrogating an insolvent, and at such interrogation the provisions of section 65 shall *mutatis mutandis* apply.”.

Substitution of section 43 of Act No. 24 of 1936, as substituted by section 10 of Act No. 99 of 1965 and amended by section 3 of Act No. 14 of 1985

18. The following section is substituted for section 43 of the principal Act:

“A creditor may register his or her name and address with trustee

43. Any person who claims to be a creditor of an insolvent estate may register his or her name and address in [**the Republic**] Namibia, with the trustee of that estate upon payment to the trustee of [**a fee of R25**] the prescribed fee. Thereupon the trustee shall send to that address a notice of every meeting of creditors of that estate, a copy of every account which he or she is submitting to the Master and a notice of the date, time and place of the sale of any property over which the creditor has a preferent right by virtue of a special mortgage, pledge or right of retention or a landlord’s tacit or legal hypothec. Failure on the part of the trustee to comply with a provision of this section shall constitute a failure to perform his or her duties but shall not invalidate anything done under this Act.”.

Amendment of section 44 of Act No. 24 of 1936, as amended by section 15 of Act No. 16 of 1943, section 11 of Act No. 99 of 1965 and section 4 of Act No. 14 of 1985

19. Section 44 of the principal Act is amended by the substitution for subsection (4) of the following subsection:

“(4) Every such claim shall be proved by affidavit in [**a**] the prescribed form [**corresponding substantially with Form C or D in the First Schedule to**

Act No. 12, 2005

INSOLVENCY AMENDMENT ACT, 2005

this Act]. That affidavit may be made by the creditor or by any person fully cognizant of the claim, who shall set forth in the affidavit the facts upon which his or her knowledge of the claim is based and the nature and particulars of the claim, whether it was acquired by cession after the institution of the proceedings by which the estate was sequestrated, and if the creditor holds security therefor, the nature and particulars of that security and in the case of security other than movable property which he or she has realized in terms of section 83, the amount at which he or she values the security. The said affidavit or a copy thereof and any documents submitted in support of the claim shall be delivered at the office of the officer who is to preside at the meeting of creditors not later than twenty-four hours before the advertised time of the meeting at which the creditor concerned intends to prove the claim, failing which the claim shall not be admitted to proof at that meeting, unless the presiding officer is of the opinion that through no fault of the creditor he or she has been unable to deliver such evidences of his or her claim within the prescribed period: Provided that if a creditor has proved an incorrect claim, he or she 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 or her claim or submit a fresh correct claim.”.

Amendment of section 45 of Act No. 24 of 1936

20. Section 45 of the principal Act is amended -

(a) by the substitution for subsection (3) of the following subsection:

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

(b) by the addition of the following subsections:

“(4) The trustee shall at the same time furnish a copy of the report containing his or her reasons for disputing the claim to the claimant and notify him or her that within 14 days of receiving such report, or within such longer period as may be specified by the Master, the claimant may, in writing, give reasons to the Master as to why his or her claim should not be reduced or disallowed, and the trustee shall thereupon confirm in writing to the Master that he or she has complied with the provisions of this subsection.

(5) When a claimant gives reasons to the Master under subsection (4) as to why his or her claim should not be reduced or disallowed, he or she shall at the same time report the fact in writing to the trustee and shall attach to that report a copy of every document submitted by him or her to the Master, and the trustee may, within seven days of receiving the report, give his or her written comments thereon to the Master.

(6) The Master may confirm a claim disputed by the trustee in terms of subsection (3) or may, after having afforded the claimant an opportunity to give reasons as to why his or her claim should not be reduced

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

or disallowed as contemplated in subsections (4) and (5), reduce or disallow the claim, and if the Master has done so, he or she shall forthwith notify the claimant in writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his or her claim by an action at law, but subject to the provisions of section 75.”

Amendment of section 49 of Act No. 24 of 1936, as amended by section 21 of Act No. 6 of 1963 and section 12 of Act No. 99 of 1965

21. Section 49 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Nothing in this section shall be construed as preventing the **[Secretary for Inland Revenue or the Commissioner for Inland Revenue of the Territory from]** proving of a claim, in the manner provided in this Act, **[a claim]** against the estate of a partnership in respect of any sum referred to in paragraph (b) of section 101, or any interest due on such sum.”

Amendment of section 52 of Act No. 24 of 1936, as amended by section 16 of Act No. 16 of 1943 and section 6 of Act No. 14 of 1985

22. Section 52 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) The vote of a creditor shall in no case be reckoned in number, unless his or her claim is of the value of at least **[R100]** the prescribed amount.”

Amendment of section 53 of Act No. 24 of 1936, as amended by section 14 of Act No. 99 of 1965

23. Section 53 of the principal Act is amended by the substitution for subsection (5) of the following subsection:

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

Amendment of section 55 of Act No. 24 of 1936, as amended by section 17 of Act No. 16 of 1943 and section 15 of Act No. 99 of 1965

24. Section 55 of the principal Act is amended by the substitution for paragraph (i) of the following paragraph:

- “(i) any person who has at any time been convicted (whether in Namibia or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced therefor to serve -
- (aa) any term of imprisonment without the option of a fine; or
 - (bb) a term of imprisonment exceeding three months with the option of a fine,

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

unless the Court on application by the person concerned otherwise authorizes.”.

Amendment of section 57 of Act No. 24 of 1936, as amended by section 17 of Act No. 99 of 1965

25. Section 57 of the principal Act is amended -

- (a) by the deletion of the proviso to subsection (1);
- (b) by the substitution for subsection (2) of the following subsection:

“(2) When the Master has declined to confirm the election of a trustee or to appoint a person elected as a trustee, or the Minister has under subsection (9) set aside the appointment of a trustee, the Master shall in accordance with the provisions of subsections (1) and (2) of section 40 convene a meeting of creditors of the estate in question for the purpose of electing another trustee in the place of the person whose election as a trustee the Master declined to confirm or whom the Master declined to appoint or whose appointment as trustee has been so set aside. In the notice convening the meeting the Master shall state that he or she has declined to confirm the election of the person previously elected as trustee, or to appoint the person so elected, and the reasons therefor **[(but subject to the proviso to subsection (1))]**, or that the appointment of the person previously appointed as trustee has been set aside by the Minister, as the case may be, and that the meeting is convened for the purpose of electing another trustee. The Master shall post a copy of the notice to every creditor whose claim against the estate was previously proved and admitted.”;

- (c) by the substitution for subsection (7) of the following subsection:

“(7) Any person aggrieved by the appointment of a trustee or the refusal of the Master to confirm the election of a trustee or to appoint a person elected as a trustee, may within a period of seven days from the date of such appointment or refusal request the Master in writing to submit his or her reasons for such appointment or refusal to the Minister **[of Justice]**.”; and

- (d) by the deletion of subsection (10).

Amendment of section 63 of Act No. 24 of 1936, as amended by section 12 of Act No. 50 of 1956

26. Section 63 of the principal Act is amended -

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

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

- (b) by the deletion of subsection (1)*bis*.

Act No. 12, 2005

INSOLVENCY AMENDMENT ACT, 2005

Amendment of section 65 of Act No. 24 of 1936, as amended by section 20 of Act No. 99 of 1965

27. Section 65 of the principal Act is amended -
- (a) by the substitution for the second proviso to subsection (2) of the following proviso:
- “and provided further that a person interrogated under subsection (1) shall not be entitled at such interrogation to refuse to answer any question upon the ground that the answer would tend to incriminate him or her or upon the ground that he or she is to be tried on a criminal charge and may be prejudiced at such a trial by his or her answer.”;
- (b) by the insertion after subsection (2) of the following subsection:
- “(2A) (a) Where any person gives evidence in terms of the provisions of this section and is obliged to answer questions which may incriminate him or her or, where he or she is to be tried on a criminal charge, may prejudice him or her at such trial, the presiding officer shall, notwithstanding the provisions of subsection (6) of section 39, order that such part of the proceedings be held *in camera* and that no information regarding such questions and answers may be published in any manner whatsoever.
- (b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge relating to the administering or taking of an oath or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with such questions and answers, and in criminal proceedings contemplated in subsection (1) of section 139 relating to a failure to answer lawful questions fully and satisfactorily.
- (c) Any person who contravenes any provision of an order contemplated in paragraph (a), shall be guilty of an offence and liable on conviction to the penalty mentioned in subsection (5) of section 154 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) Any evidence given under this section shall, subject to the provisions of subsection (2A), be admissible in any proceedings instituted against the person who gave that evidence.”; and
- (d) by the substitution for subsection (6) of the following subsection:
- “(6) Any person called upon to give evidence under this section may be assisted at his or her interrogation by **[counsel, an attorney] a legal practitioner** or agent.”.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 67 of Act No. 24 of 1936, as amended by section 19 of Act No. 16 of 1943 and section 22 of Act No. 99 of 1965**

28. Section 67 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) If it appears from any statement made at an interrogation under section 65 that there are reasonable grounds for suspecting that any person has committed any offence the Master shall transmit the said statement, or a certified copy thereof, and all necessary documents to the **[Attorney-General] Prosecutor-General [in whose area of jurisdiction the interrogation was held or the offence is suspected to have been committed,]** to enable him or her to determine whether any criminal proceedings shall be instituted in the matter.”.

Amendment of section 72 of Act No. 24 of 1936

29. Section 72 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) A trustee who, without lawful cause, retains any money exceeding **[twenty pounds] the prescribed amount** belonging to the estate of which he or she is trustee, or knowingly permits his or her co-trustee to retain such a sum of money longer than the earliest day after its receipt on which it was possible for **[him] the trustee** or his or her co-trustee to pay that money into a bank, or who uses or knowingly permits his or her co-trustee to use any property of the estate except for the benefit of the estate, shall, in addition to any other penalty to which he or she may be liable, be liable to pay into the estate an amount equal to double the amount so retained or double the value of the property so used.”.

Amendment of section 73 of Act No. 24 of 1936, as amended by section 20 of Act No. 16 of 1943, section 24 of Act No. 99 of 1965 and section 1 of Act No. 78 of 1980

30. Section 73 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) A trustee may obtain legal advice on any question of law affecting the administration or distribution of the estate of which he or she is trustee and may employ **[an attorney or an attorney and counsel] a legal practitioner** for the institution or defence of legal proceedings on behalf of or against the estate, and all costs incurred by the trustee under this section as well as costs awarded against the estate in those legal proceedings, in so far as they result from any action taken by the trustee under this subsection, shall be included in the cost of the sequestration of the estate: Provided that, subject to the provisions of subsection (4) of section 53, the trustee shall not act as aforesaid, unless he or she has been authorized thereto by the creditors or by the Master.”; and

(b) by the substitution for subsection (1A) of the following subsection:

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

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Substitution of section 74 of Act No. 24 of 1936**

31. The following section is substituted for section 74 of the principal Act:

“Improper advising or conduct of legal proceedings

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

Amendment of section 78 of Act No. 24 of 1936, as amended by section 21 of Act No. 16 of 1943 and section 9 of Act No. 14 of 1985

32. Section 78 of the principal Act is amended by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that if the debt exceeds **[R1 000]** the prescribed amount, the trustee shall not accept a part of the debt in discharge of the whole debt, unless he or she has been authorized thereto by the creditors of the estate, or if no creditor has proved a claim against the estate, by the Master.”.

Amendment of section 81 of Act No. 24 of 1936, as amended by section 25 of Act No. 99 of 1965

33. Section 81 of the principal Act is amended -

(a) by the substitution for subsection (2) of the following subsection:

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

(b) by the substitution for subsection (4) of the following subsection:

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

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 89 of Act No. 24 of 1936, as amended by section 27 of Act No. 16 of 1943**

34. Section 89 of the principal Act is amended by the substitution for subsection (5) of the following subsection:

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

Substitution of section 90 of Act No. 24 of 1936, as amended by section 28 of Act No. 16 of 1943

35. The following section is substituted for section 90 of the principal Act:

“Agribank not affected by this Act

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

Amendment of section 96 of Act No. 24 of 1936, as amended by section 29 of Act No. 99 of 1965 and section 12 of Act No. 14 of 1985

36. Section 96 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

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

(b) by the substitution for subsection (2) of the following subsection:

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

Amendment of section 98 of Act No. 24 of 1936, as amended by section 13 of Act No. 14 of 1985

37. Section 98 of the principal Act is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

- “(b) any other taxed costs in those proceedings not exceeding **[a sum of R50]** the prescribed amount.”

Amendment of section 99 of Act No. 24 of 1936, as substituted by section 5 of Act No. 6 of 1972 and amended by section 30 of Act No. 90 of 1972, section 6 of Act No. 62 of 1973, section 9 of Act No. 29 of 1974, section 69 of Act No. 85 of 1974 and section 50 of Proclamation No. AG. 40 of 1978

38. Section 99 of the principal Act is amended -

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

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

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any amount which the insolvent -

- (i) has under the provisions of section 35(2) of the Income Tax Act, **[1962 (Act No. 58 of 1962)]** 1981 (Act No. 24 of 1981), deducted or withheld from any amount referred to in section **[9(1)(b)]** 15(1)(b) of that Act in respect of any other person’s obligation to pay normal tax;

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

- (iii) is under the provisions of section **[99]** 91 of the said Act **[or section 76 of the Income Tax Ordinance, 1974 (Ordinance No. 5 of 1974), of the Territory,]** required to pay in respect of any tax due by any other person and has deducted or withheld from any moneys, including pensions, salary, wages, remuneration and amounts of any other nature, held by him or her for or due by him or her to such person; or

- (iv) has under the provisions of **[the Fourth]** Schedule 2 to the said Act **[or Schedule 3 to the said Ordinance]** deducted or withheld by way of employees’ tax from remuneration or any other amount paid or payable by him or her to any other person, **[or**

Act No. 12, 2005

INSOLVENCY AMENDMENT ACT, 2005

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

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

- (c) by the deletion of paragraph (c) of subsection (1);
- (d) by the substitution for paragraph (cA) of subsection (1) of the following paragraph:
- “(cA) the amount of any customs or excise [**or sales**] duty or any surcharge or levy, or interest, fine or penalty which in terms of the Customs and Excise Act, [1964 (Act No. 91 of 1964)] 1998 (Act No. 20 of 1998), was, immediately prior to the sequestration of the estate, due by the insolvent;”;
- (e) by the substitution for paragraph (cC) of subsection (1) of the following paragraph:
- “(cC) the amount of any [**sales**] value-added tax, interest, fine or penalty which in terms of the [**Sales Tax Act, 1978**] Value-Added Tax Act, 2000 (Act No. 10 of 2000), [**or, in the case of the territory, the Sales Tax Proclamation, 1978, of the Administrator-General,**] was, immediately prior to the sequestration of the estate, due by the insolvent;”;
- (f) by the deletion of paragraph (d) of subsection (1); and
- (g) by the deletion of paragraph (e) of subsection (1).

Amendment of section 100 of Act No. 24 of 1936, as amended by section 13 of Act No. 32 of 1952, section 31 of Act No. 99 of 1965 and section 14 of Act No. 14 of 1985

39. Section 100 of the principal Act is amended -
- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
- “(a) Thereafter any balance of the free residue shall be applied in paying the salary or wages, for a period not exceeding two months prior to the date of sequestration of the estate, due to an employee who was engaged by the insolvent and in paying any fee due to a nurse or an accountant or auditor registered under the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951), who was engaged, whether full-time or part-time, by the insolvent before the said date to nurse [**himself, his wife**] the insolvent, his or her spouse or minor child or to keep or write up or audit the books relating to the insolvent’s affairs, as the case may be: Provided that not more than [R2 000] the prescribed amount shall be paid out under this subsection to any employee, nurse, accountant or auditor.”; and

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005

- (b) by the substitution for the proviso to subsection (2) of the following proviso:

“Provided that not more than [R1 000] the prescribed amount shall be paid out under this subsection to any such employee in respect of such salary or wages and bonus.”.

Amendment of section 101 of Act No. 24 of 1936, as substituted by section 32 of Act No. 80 of 1961 and amended by section 22 of Act No. 6 of 1963

40. Section 101 of the principal Act is amended -

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

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

- (b) by the substitution for paragraph (a)*bis* of the following paragraph:

“(a)*bis* any amount payable by the insolvent under any [Act of Parliament] law by way of interest in respect of any period prior to the date of sequestration of his or her estate in respect of any tax referred to in paragraph (a);”.

Amendment of section 108 of Act No. 24 of 1936, as amended by section 20 of Act No. 62 of 1955 and section 33 of Act No. 99 of 1965

41. Section 108 of the principal Act is amended -

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

“(1) If an insolvent resided or carried on business, before the sequestration of his or her estate, in a district [(other than the district of Wynberg, Simonstown or Bellville in the Province of the Cape of Good Hope)] in which there is no Master’s office, the trustee of that estate shall transmit to the magistrate of that district or, if the insolvent resided or carried on business in a portion of that district in respect of which an additional or assistant magistrate permanently carries out the functions of the magistrate of that district at a place other than the seat of magistracy of that district, to such additional or assistant magistrate, a duplicate of every account which he or she submitted to the Master as hereinbefore provided.”; and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) The trustee shall, as soon as possible after he or she has submitted an account to the Master, give notice in the manner prescribed by [paragraphs] paragraph (b) [and (c)] of subsection (3) of section 40 that he or she has so submitted such account and that the account will lie open for inspection by the creditors of the estate at the place or places and during the period stated in the notice.”.

Amendment of section 124 of Act No. 24 of 1936, as amended by section 32 of Act No. 16 of 1943 and section 41 of Act No. 99 of 1965

42. Section 124 of the principal Act is amended -

Act No. 12, 2005**INSOLVENCY AMENDMENT ACT, 2005**

- (a) by the substitution for the second proviso to subsection (1) of the following proviso:

“and provided further that the said certificate shows that payment has been made or the security prescribed by subsection (7) of section 119 has been given for the payment of not less than [**ten shillings for every pound**] 50 per cent of every claim proved or to be proved against the estate of the insolvent.”;

- (b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) after five years have elapsed from the date of his or her conviction of any fraudulent act in relation to his or her existing or any previous insolvency or of any offence under section 132, 133 or 134 of this Act [**or under any corresponding provision of the Insolvency Act, 1916 (Act No. 32 of 1916) or of the Insolvency Ordinance, 1928 (Ordinance No. 7 of 1928), of the Territory**]:”;

- (c) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) if he or she has, not less than six weeks before making the application, given to the Master, [**and**] to the trustee, if any, and to all the known creditors of his or her estate notice in writing, and published in the *Gazette* a notice of his or her intention to make the application and furnished in that notice particulars of the assets, if any, of his or her insolvent estate; and”.

Substitution of section 125 of Act No. 24 of 1936, as substituted by section 17 of Act No. 14 of 1985

43. The following section is substituted for section 125 of the principal Act:

“Security to be furnished prior to application for rehabilitation

125. Not less than three weeks before applying to the court for his or her rehabilitation an insolvent shall furnish to the registrar of the court security, to the amount [**or value**] of [**R500**] N\$2 000, for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the court.”.

Substitution of section 127A of Act No. 24 of 1936, as inserted by section 6 of Act No. 6 of 1972

44. The following section is substituted for section 127A of the principal Act:

“Rehabilitation by effluxion of time

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

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 134 of Act No. 24 of 1936, as amended by section 33 of Act No. 16 of 1943, section 7 of Act No. 6 of 1972 and section 18 of Act No. 14 of 1985**

45. Section 134 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding one year if his or her occupation or transactions prior to the sequestration of his or her estate were such that he or she might reasonably be expected to keep a record of his or her transactions, and he or she failed to keep a proper record of his or her transactions in the **[English or the Dutch language or, in the case of an insolvent whose estate has been sequestrated by an order of the High Court of South-West Africa, the German]** official language, and to preserve that record during a period of not less than three years.”; and

(b) by the substitution for the proviso to subsection (2) of the following proviso:

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

Amendment of section 135 of Act No. 24 of 1936, as amended by section 14 of Act No. 32 of 1952

46. Section 135 of the principal Act is amended -

(a) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) he or she contracted any debt of **[fifteen pounds]** N\$500 or more or debts to the aggregate of **[fifty pounds]** N\$2 000 or more, without any reasonable expectation of being able to discharge such debt or debts; or”; and

(b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) at a time when his or her liabilities exceeded his or her assets or during the period of six months immediately preceding the sequestration of his or her estate, he or she diminished his or her assets by gambling, betting, hazardous speculations or expenditure, not reasonably necessary in connection with his or her business or vocation or for the maintenance of himself or herself and his or her dependants, or being a trader, alienated any business belonging to him or her, or the goodwill of such business or any goods or property forming part thereof not in the ordinary course of that business, without publishing a notification of his or her intention so to alienate in the *Gazette* and **[in a newspaper]** sending by registered post a copy of that notification to each of his or her creditors, in terms of the provisions of subsection (1) of section 34:”.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Amendment of section 137 of Act No. 24 of 1936**

47. Section 137 of the principal Act is amended by the substitution for paragraph (a) of the following paragraph:

“(a) if, during the sequestration of his or her estate, he or she obtains credit to an amount exceeding [**ten pounds**] N\$500 without previously informing the person from whom he or she obtains credit that he or she is an insolvent, unless he or she proves that such person had knowledge of that fact; or”.

Amendment of section 139 of Act No. 24 of 1936, as amended by section 19 of Act No. 14 of 1985

48. Section 139 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Any person shall be guilty of an offence and liable to a fine not exceeding [**R500**] N\$2 000 or to imprisonment without the option of a fine for a period not exceeding six months if he or she is guilty of an act or omission for which he or she has been or might have been lawfully committed to prison in terms of subsection (2) or (3) of section 66.”.

Substitution of section 141 of Act No. 24 of 1936, as substituted by section 20 of Act No. 14 of 1985

49. The following section is substituted for section 141 of the principal Act:

“Acceptance of consideration for certain illegal acts or omissions

141. Any person shall be guilty of an offence and liable to a fine not exceeding [**R500**] N\$2 000 or to imprisonment without the option of a fine for a period not exceeding six months if he or she accepts any benefit or the promise or offer of any benefit as a consideration for having refrained from or discontinued, or for his or her undertaking to refrain from or to discontinue any proceedings for the sequestration of an estate or for having agreed to, or not opposed, or for his or her undertaking to agree to or not to oppose a composition in an insolvent estate or the rehabilitation of an insolvent, or for having refrained or undertaken to refrain [**form**] from investigating any matter relating to an insolvent or an insolvent estate or from disclosing any information in regard to an insolvent or an insolvent estate.”.

Amendment of section 142 of Act No. 24 of 1936, as amended by section 21 of Act No. 14 of 1985

50. Section 142 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Any person who has in his or her possession or custody or under his or her control any property belonging to an insolvent estate and who knows of the sequestration of the estate and that the property belongs to it, shall be guilty of an offence and liable to a fine not exceeding [**R1 000**] N\$4 000 or to imprisonment without the option of a fine for a period not exceeding one year if he or she fails to inform the trustee of the estate as soon as possible of the existence and whereabouts of the property and (subject to the provisions of section 83) to deliver it to, or place it at the disposal of, the trustee.”.

Act No. 12, 2005 INSOLVENCY AMENDMENT ACT, 2005**Substitution of section 144 of Act No. 24 of 1936, as substituted by section 22 of Act No. 14 of 1985**

51. The following section is substituted for section 144 of the principal Act:

“Criminal liability of trustee for neglect of certain duties

144. If it was the duty of a trustee to submit an account to the Master or to pay a sum of money to the Master or to a creditor, and he or she failed to submit that account or to pay that sum of money within a period of two months as from the time when that duty arose, he or she shall (apart from any other offence which he or she may have committed in connection with such sum of money) be guilty of an offence and liable to a fine not exceeding [R500] N\$2 000.”.

Substitution of section 145 of Act No. 24 of 1936, as substituted by section 23 of Act No. 14 of 1985

52. The following section is substituted for section 145 of the principal Act:

“Obstructing trustee

145. Any person who obstructs or hinders a *curator bonis* appointed under this Act or a trustee or a representative of either in the performance of his or her functions as such shall be guilty of an offence and liable to a fine not exceeding [R500] N\$2 000, or to imprisonment without the option of a fine for a period not exceeding six months.”.

Repeal of section 148 of Act No. 24 of 1936, as amended by section 34 of Act No. 16 of 1943

53. Section 148 of the principal Act is repealed.

Amendment of section 153 of Act No. 24 of 1936, as amended by section 21 of Act No. 62 of 1955

54. Section 153 of the principal Act is amended -

(a) by the substitution for subsection (1) of the following subsection:

“(1) The Master shall in respect of -

- | |
|---|
| <ul style="list-style-type: none"> (a) insolvent estates; (b) copies of or extracts from documents made or certified in the Master's office; and (c) any amount paid by a trustee into the Guardian's Fund for account of creditors, |
|---|

recover the prescribed fees of office.”; and

(b) by the deletion of subsection (1)*bis*.

Substitution of section 158 of Act No. 24 of 1936

55. The following section is substituted for section 158 of the principal Act:

Act No. 12, 2005**INSOLVENCY AMENDMENT ACT, 2005****“Regulations**

158. The Minister may make regulations -

- (a) prescribing the procedure to be followed in the Master’s office in connection with insolvent estates;
- (b) prescribing the form of proceedings, and the manner of conducting proceedings, under this Act;
- (c) prescribing the form and contents of any notice, statement, affidavit or other document required under this Act;
- (d) prescribing any amount, fee, tariff of fees or tariff of remuneration required to be prescribed under this Act;
- (e) prescribing rules for the construction of the tariff of fees or remuneration referred to in paragraph (d);
- (f) prescribing the manner in which fees payable under this Act shall be paid and accounted for;
- (g) on any matter which is required or permitted to be prescribed under this Act; and
- (h) on any other matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.”.

Repeal of section 158bis of Act No. 24 of 1936, as inserted by section 13 of Act No. 50 of 1956

56. Section 158bis of the principal Act is repealed.

Repeal of section 158ter of Act No. 24 of 1936, as inserted by section 47 of Act No. 99 of 1965

57. Section 158ter of the principal Act is repealed.

Substitution of certain words in Act No. 24 of 1936

58. The principal Act is amended by the substitution for the words “the Republic”, wherever they occur, of the word “Namibia”.

Repeal of First Schedule to Act No. 24 of 1936

59. The First Schedule to the principal Act is repealed.

Repeal of Second Schedule to Act No. 24 of 1936, as amended by section 36 of Act No. 16 of 1943, Proclamation No. 229 of 1956, Proclamation No. R.210 of 1960, Proclamation No. R.159 of 1961, Proclamation No. R. 282 of 1972 and Proclamation No. R.87 of 1973

60. The Second Schedule to the principal Act is repealed.

Act No. 12, 2005**INSOLVENCY AMENDMENT ACT, 2005****Repeal of Third Schedule to Act No. 24 of 1936, as substituted by Proclamation No. R.155 of 1971**

61. The Third Schedule to the principal Act is repealed.

Short title and commencement

62. (1) This Act is called the Insolvency Amendment Act, 2005, and comes into operation on a date to be determined by the Minister of Justice by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
