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OF THE REPUBLIC OF SOUTH AFRICA

REPUBLIEK VAN SUID-AFRIKA

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STATE PRESIDENT'S OFFICE

No. 1396.

24 June 1987

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

No. 27 of 1987: Insolvency Amendment Act, 1987.

KANTOOR VAN DIE STAATSPRESIDENT

No. 1396.

24 Junie 1987

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

No. 27 van 1987: Insolvensiewysigingswet, 1987.

Act No. 27, 1987

INSOLVENCY AMENDMENT ACT, 1987

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Insolvency Act, 1936, so as to amend the definition of "disposition"; to amend the English text of section 34; and to provide for the convening of a special meeting of creditors for the purpose of interrogating an insolvent; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 16 June 1987.)

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

Amendment of section 2 of Act 24 of 1936, as amended by section 2 of Act 16 of 1943 and section 1 of Act 6 of 1972.

1. Section 2 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "disposition" of the following definition: 5

"'disposition' means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court; and 'dis- 10 pose' has a corresponding meaning;"

Amendment of section 34 of Act 24 of 1936, as amended by section 12 of Act 32 of 1952 and section 2 of Act 101 of 1983.

2. Section 34 of the principal Act is hereby amended—

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

"(1) If a trader **[alienates]** disposes of any business 15 belonging to him, or the goodwill of such business or any goods or property forming part thereof (except in the ordinary course of that business), and such trader does not publish a notice of such intended **[alienation]** disposition in the *Gazette*, and in two issues of an Afri- 20 kaans and two issues of an English newspaper circulating in the district in which that business is carried on, within a period not less than thirty days and not more than sixty days before the date of such **[alienation]** disposition, the said **[alienation]** disposition shall be void 25 as against his creditors for a period of six months after such **[alienation]** disposition, and shall be void against the trustee of his estate, if his estate is sequestrated at any time within the said period."; and

(b) by the substitution for subsection (3) of the following 30 subsection:

"(3) If any person who has any claim against the said trader in connection with the said business, has before such **[alienation]** disposition, for the purpose of enforce-

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Insolvensiewet, 1936, ten einde in die Engelse teks die woordskrywing van "disposition" te wysig; die Engelse teks van artikel 34 te verbeter; en voorsiening te maak vir die belê van 'n spesiale byeenkoms van skuldeisers vir die doel om 'n insolvent te ondervra; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 16 Junie 1987.)*

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

1. Artikel 2 van die Insolvensiewet, 1936 (hieronder die Hoofwet genoem), word hierby gewysig deur in die Engelse teks die omskrywing van "disposition" deur die volgende omskrywing te vervang:

Wysiging van artikel 2 van Wet 24 van 1936, soos gewysig deur artikel 2 van Wet 16 van 1943 en artikel 1 van Wet 6 van 1972.

10 "‘disposition’ means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court; and ‘dispose’ has a corresponding meaning;”.

2. Artikel 34 van die Hoofwet word hierby gewysig—

15 (a) deur in die Engelse teks subartikel (1) deur die volgende subartikel te vervang:

Wysiging van artikel 34 van Wet 24 van 1936, soos gewysig deur artikel 12 van Wet 32 van 1952 en artikel 2 van Wet 101 van 1983.

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

30 (b) deur in die Engelse teks subartikel (3) deur die volgende subartikel te vervang:

35 “(3) If any person who has any claim against the said trader in connection with the said business, has before such **[alienation]** disposition, for the purpose of enforc-

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ing his claim, instituted proceedings against the said trader—

- (a) in any court of law, and the person to whom the said business was **[alienated]** disposed of knew at the time of the **[alienation]** disposition that those proceedings had been instituted; or
- (b) in a Division of the Supreme Court having jurisdiction in the district in which the said business is carried on or in the magistrate's court of that district, the **[alienation]** disposition shall be void as against him for the purpose of such enforcement.”.

Amendment of section 42 of Act 24 of 1936, as substituted by section 3 of Act 6 of 1972.

3. Section 42 of the principal Act is hereby 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 is thereto required by a creditor who has proved his claim against the estate, provided that 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.”.

Short title.

4. This Act shall be called the Insolvency Amendment Act, 1987.

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ing his claim, instituted proceedings against the said trader—

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

(b) in a Division of the Supreme Court having jurisdiction in the district in which the said business is carried on or in the magistrate's court of that district, the **[alienation]** disposition shall be void as against him for the purpose of such enforcement.”.

3. Artikel 42 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg, terwyl die bestaande artikel subartikel (1) word:

15 “(2) Die kurator kan te eniger tyd, en moet as ’n skuldeiser wat sy vordering teen die boedel bewys het dit vereis, mits die Meester daartoe toestem, by kennisgewing in die *Staatskoerant* ’n spesiale byeenkoms van skuldeisers belê vir die doel om ’n insolvent te ondervra, en by so ’n ondervraging is die bepalinge van artikel 65 *mutatis mutandis* van toepassing.”.

Wysiging van artikel 42 van Wet 24 van 1936, soos vervang deur artikel 3 van Wet 6 van 1972.

4. Hierdie Wet heet die Insolvensiewysigingswet, 1987.

Kort titel.

