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GOVERNMENT GAZETTE

STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1289.

20 July 1993

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

No. 122 of 1993: Insolvency Amendment Act, 1993.

No. 1289.

20 Julie 1993

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

No. 122 van 1993: Insolvensiewysigingswet, 1993.

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

Words underlined with a solid line indicate insertions in existing enactments.

To amend the Insolvency Act, 1936, so as to further regulate the particulars to be furnished in an application for sequestration; to provide for further notices to officers charged with the registration of title to immovable property and for the registration of such notices; to regulate the expiration of certain caveats; to place obligations on a trustee with regard to the transmission of particulars in respect of the insolvent and his spouse to certain officers; to authorize a trustee, with the consent of the Master of the Supreme Court, to cause a caveat to be registered; to further regulate the registration of transactions in respect of immovable property after the expiry of caveats; to provide for the recovery of the value of immovable property disposed of unlawfully; and to amplify the particulars to be furnished in a statement of affairs; to amend the Deeds Registries Act, 1937, so as to authorize the Registrar of Deeds to destroy records relating to a caveat which has expired; to amend the Matrimonial Property Act, 1984, so as to further regulate an application for the sequestration of a joint estate; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 9 July 1993.)

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

Amendment of section 9 of Act 24 of 1936, as amended by section 6 of Act 16 of 1943 and section 2 of Act 99 of 1965

1. Section 9 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Such a petition shall **[set forth]**, subject to the provisions of paragraph (c), contain the following information, namely—

- (i) the full names and date of birth of the debtor and, if an identity number has been assigned to him, his identity number;
- (ii) the marital status of the debtor and, if he is married, the full names and date of birth of his spouse and, if an identity number has been assigned to his spouse, the identity number of such spouse;
- (iii) the amount, cause and nature of the claim in question **[shall state]**;
- (iv) whether the claim is or is not secured and, if it is, the nature and value of the security; and **[shall set forth]**
- (v) the debtor's act of insolvency upon which the petition is based or otherwise allege that the debtor is in fact insolvent.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrap-
pings uit bestaande verordeninge aan.

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

WET

Tot wysiging van die Insolvensiewet, 1936, ten einde die besonderhede wat in 'n aansoek om sekwestrasie aangegee moet word, verder te reël; voorsiening te maak vir verdere kennisgewings aan amptenare belas met die registrasie van titels van onroerende goed en vir die aantekene van sodanige kennisgewings; die verstryking van sekere caveatte te reël; verpligtinge op 'n kurator te plaas met betrekking tot die versending van besonderhede ten opsigte van die insolvent en sy gade aan sekere amptenare; aan 'n kurator die bevoegdheid te verleen om met die toestemming van die Meester van die Hooggeregshof 'n caveat te laat aantekene; registrasie van handelings ten opsigte van onroerende goed na die verval van caveatte verder te reël; voorsiening te maak vir die verhaal van die waarde van onroerende goed wat onregmatig vervreem is; en die besonderhede wat in 'n vermoëstaat aangegee moet word, aan te vul; tot wysiging van die Registrasie van Aktes Wet, 1937, om die Registrateur van Aktes te magtig om stukke wat betrekking het op 'n caveat wat verval het, te vernietig; tot wysiging van die Wet op Huweliksgoedere, 1984, ten einde 'n aansoek om die sekwestrasie van 'n gesamentlike boedel verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 9 Julie 1993.)

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

Wysiging van artikel 9 van Wet 24 van 1936, soos gewysig deur artikel 6 van Wet 16 van 1943 en artikel 2 van Wet 99 van 1965

- 5 1. Artikel 9 van die Insolvensiewet, 1936 (hieronder die Hoofwet genoem),
word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:
- “(3)(a) So ’n versoekskrif moet, behoudens die bepalinge van paragraaf
(c), die volgende inligting bevat, naamlik—
- 10 (i) die volle naam en geboortedatum van die skuldenaar en, indien ’n
identiteitsnommer aan hom toegewys is, sy identiteitsnommer;
- (ii) die huwelikstaat van die skuldenaar en, indien hy getroud is, die volle
naam en geboortedatum van sy gade en, indien ’n identiteitsnommer
aan sy gade toegewys is, die identiteitsnommer van sodanige gade;
- 15 (iii) die bedrag, regsgrond en aard van die betrokke vordering **[vermeld en
ook]**;
- (iv) of sekuriteit vir die vordering gegee is of nie en, indien wel, die aard en
waarde van die sekuriteit; en **[moet]**
- (v) die skuldenaar se daad van insolvensie waarop die versoek steun,
[aangee] of andersins beweer dat die skuldenaar wel insolvent is.

(b) The facts stated in the petition shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master given not more than ten days before the date of such petition that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed, of all fees and charges necessary for the discharge of the estate from sequestration. 5

(c) The particulars contemplated in paragraph (a)(i) and (ii) shall also be set out in the heading to the petition, and if the creditor is unable to set out all such particulars he shall state the reason why he is unable to do so. 10

(d) In issuing a sequestration order the registrar shall reflect any of the said particulars that appear in the heading to the petition on such order.”

Amendment of section 17 of Act 24 of 1936, as amended by section 10 of Act 16 of 1943 and section 1 of Act 57 of 1951

2. Section 17 of the principal Act is hereby amended— 15

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

“(2) Every officer who has received an order transmitted to him in terms of subsection (1), or a certificate and a copy of an order transmitted to him in terms of section 18A, shall register **[it]** each such order, certificate or copy and note thereon the day and hour when it was received in his office.”; and 20

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

“(3) (a) Upon the receipt by any officer referred to in subparagraph (ii) of paragraph (b) of subsection (1) of a sequestration order, or of a certificate and a copy of an order referred to in section 18A, he shall, if he has not yet entered such a caveat, enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent **[or to his or her spouse],** and if the sequestration order or the certificate referred to in section 18A contains the name of the spouse of the insolvent, he shall in like manner enter a caveat in respect of such spouse. 25 30

(b) A caveat contemplated in this subsection, whether it was entered before or after the commencement of the Insolvency Amendment Act, 1993, shall expire ten years after the date of the sequestration order in question, or six months after the commencement of the said Act, whichever date is the later.”. 35

Insertion of sections 18A and 18B in Act 24 of 1936

3. The following sections are hereby inserted in the principal Act after section 18: 40

“Trustee to furnish particulars of insolvent

18A. Any person appointed as provisional trustee after the commencement of the Insolvency Amendment Act, 1993, or if no provisional trustee has been appointed, or if the provisional trustee has failed to perform the duties mentioned below, a trustee appointed after the said commencement shall as soon as possible after his appointment determine whether the particulars referred to in section 9(3)(a)(i) and (ii) are correctly reflected in the sequestration order, and if any of such particulars are not so reflected or are incorrectly reflected he shall forthwith take all reasonable steps to obtain the correct particulars and shall transmit a certificate containing such particulars, a copy of the sequestration order and of his appointment to every officer charged with the registration of title to any immovable property in the Republic and to the Master. 45 50

- (b) Die bewerings in die versoekskrif moet deur 'n beëdigde verklaring bevestig word en die versoekskrif moet vergesel gaan van 'n sertifikaat van die Meester wat nie meer as tien dae voor die datum van die versoekskrif uitgereik is nie, dat voldoende sekuriteit gestel is vir die betaling van alle gelde en koste wat nodig is om alle sekwestrasie verrigtings te volvoer en van alle koste van bereddering van die boedel totdat 'n kurator aangestel is, of as geen kurator aangestel word nie, van alle gelde en koste wat nodig is om die boedel van sekwestrasie te onthef.
- (c) Die besonderhede in paragraaf (a)(i) en (ii) beoog, moet ook in die opskrif by die versoekskrif vermeld word, en indien die skuldeiser nie al sodanige gegewens kan vermeld nie, moet hy die rede aandui waarom hy dit nie kan vermeld nie.
- (d) By die uitreiking van 'n sekwestrasie-order moet die griffier bedoelde gegewens wat in die opskrif by die versoekskrif voorkom, op sodanige order aanbring."

Wysiging van artikel 17 van Wet 24 van 1936, soos gewysig deur artikel 10 van Wet 16 van 1943 en artikel 1 van Wet 57 van 1951

2. Artikel 17 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- "(2) Elke amptenaar wat 'n order **[ontvang het]** wat aan hom ingevolge subartikel (1) gestuur is, of 'n sertifikaat en 'n afskrif van 'n order wat aan hom ingevolge artikel 18A gestuur is, ontvang het, moet **[dit]** elke sodanige order, sertifikaat of afskrif registreer en daarop aanteken die dag en uur wanneer dit in sy kantoor ontvang is."; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- "(3)(a) Wanneer 'n amptenaar bedoel in subparagraaf (ii) van paragraaf (b) van subartikel (1) 'n sekwestrasie-order of 'n sertifikaat en 'n afskrif van 'n order bedoel in artikel 18A ontvang het, moet hy, indien hy nog nie so 'n caveat aangeteken het nie, 'n caveat aanteken teen die transport van alle onroerende goed of teen die rojering of cessie van elke verband wat op naam van die insolvent **[of sy vrou of haar man]** geregistreer is of aan hom **[of haar]** behoort, en indien die sekwestrasie-order of die sertifikaat in artikel 18A bedoel die insolvent se gade se naam bevat, moet hy aldus 'n caveat ten opsigte van sodanige gade aanteken.
- (b) 'n Caveat in hierdie subartikel beoog, hetsy dit voor of na die inwerkingtreding van die Insolvensiewysigingswet, 1993, aange-teken is, verval tien jaar na die datum van die betrokke sekwestrasie-order, of ses maande na die inwerkingtreding van genoemde Wet, watter datum ook al die laatste is."

Invoeging van artikels 18A en 18B in Wet 24 van 1936

3. Die volgende artikels word hierby in die Hoofwet na artikel 18 ingevoeg:

"Kurator moet besonderhede van insolvent verskaf

- 18A.** Iemand wat na die inwerkingtreding van die Insolvensiewysigingswet, 1993, as voorlopige kurator aangestel word, of indien geen voorlopige kurator aangestel is nie, of indien die voorlopige kurator nie onderstaande pligte nagekom het nie, 'n kurator wat na bedoelde inwerkingtreding aangestel word, moet so gou moontlik na sy aanstelling vasstel of die besonderhede bedoel in artikel 9(3)(a)(i) en (ii) korrek op die sekwestrasie-order aangeteken is, en indien enige van sodanige besonderhede nie aldus aangeteken is nie of foutief aangeteken is, moet hy onverwyld alle redelike stappe doen om die korrekte besonderhede te bekom en moet hy 'n sertifikaat wat sodanige besonderhede bevat en 'n afskrif van die sekwestrasie-order en van sy aanstelling aan elke amptenaar belas met die registrasie van titels van onroerende goed in die Republiek en aan die Meester stuur.

Trustee may cause caveat to be entered

18B. (1) A trustee may, before or after the rehabilitation of an insolvent, with the written consent of the Master, by notice to the officer charged with the registration of title to immovable property in the Republic, in respect of immovable property or a bond registered in the name of the insolvent or of his spouse contemplated in section 21(13), cause a caveat to be entered against the transfer of the immovable property or the cancellation or cession of the bond referred to in the notice. 5

(2) The notice referred to in subsection (1) shall be accompanied by the written consent of the Master contemplated in that subsection and shall identify sufficiently the person in respect of whom and the property or bond in respect of which the caveat is to be entered so as to enable the officer charged with the registration to enter the caveat as contemplated in the said subsection. 10 15

(3) The caveat shall remain in force until the date indicated by the Master in his consent.”

Amendment of section 25 of Act 24 of 1936, as amended by section 2 of Act 6 of 1972**4. Section 25 of the principal Act is hereby amended—**

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) The estate of an insolvent shall remain vested in the trustee until the insolvent is reinvested therewith pursuant to a composition as in section 119 provided, or until the rehabilitation of the insolvent in terms of section 127 or 127A: Provided that, subject to the provisions of subsection (3), 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.”; and 25

(b) by the addition of the following subsections:

“(3) After the expiry of every caveat entered in terms of section 17(3), 18B or 127A in respect of the property of an insolvent any act of registration in respect of such property brought about by him shall be valid in spite of the fact that the property formed part of his insolvent estate. 30

(4) If a person who is or was insolvent unlawfully disposes of immovable property or a right to immovable property which forms part of his insolvent estate, the trustee may, notwithstanding the provisions of subsection (3), recover the value of the property or right so disposed of— 35

(a) from the insolvent or former insolvent; 40

(b) from any person who, knowing such property or right to be part of the insolvent estate, acquired such property or right from the insolvent or former insolvent; or

(c) from any person who acquired such property or right from the insolvent or former insolvent without giving sufficient value in return, in which case the amount so recovered shall be the difference between the value of the property or right and any value given in return.”. 45

Amendment of section 32 of Act 24 of 1936**5. Section 32 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 50**

“(1) (a) Proceedings to recover the value of property or a right in terms of section 25(4), to set aside any disposition of property under section 26, 29, 30 or 31, or for the recovery of compensation or a penalty under section 31, may be taken by the trustee. 55

Kurator kan caveat laat aanteken

18B. (1) 'n Kurator kan, voor of na die rehabilitasie van 'n insolvent, met die skriftelike toestemming van die Meester, by kennisgewing aan die amptenaar belas met die registrasie van titels van onroerende goed in die Republiek, ten opsigte van onroerende goed of 'n verband wat op naam van die insolvent of sy eggenoot bedoel in artikel 21(13), geregistreer is, 'n caveat laat aanteken teen die transport van die onroerende goed of die rojering of cessie van die verband in die kennisgewing vermeld.

(2) Die kennisgewing in subartikel (1) beoog, moet vergesel gaan van die Meester se skriftelike toestemming soos in daardie subartikel beoog en moet die persoon ten opsigte van wie en die eiendom of verband ten opsigte waarvan die caveat aangeteken moet word, voldoende identifiseer ten einde die amptenaar belas met die registrasie in staat te stel om die caveat aan te teken soos in genoemde subartikel beoog.

(3) Die caveat geld tot op die datum wat die Meester in sy toestemming aandui."

Wysiging van artikel 25 van Wet 24 van 1936, soos gewysig deur artikel 2 van Wet 6 van 1972

4. Artikel 25 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die boedel van 'n insolvent bly onder die beheer van die kurator totdat dit weer op die insolvent oorgaan ingevolge 'n akkoord volgens die bepalings van artikel 119, of totdat die insolvent gerehabiliteer word volgens artikel 127 of 127A: Met dien verstande dat behoudens die bepalings van subartikel (3) alle goedere wat onmiddellik voor die rehabilitasie onder beheer van die kurator val, na die rehabilitasie onder sy beheer bly om te gelde gemaak en verdeel te word."; en

(b) deur die volgende subartikels by te voeg:

"(3) Nadat die geldigheidsduur van elke caveat wat ingevolge artikel 17(3), 18B of 127A ten opsigte van 'n insolvent se goed aangeteken is, verval het, is elke registrasiehandeling wat hy met betrekking tot die goed teweegbring, regsgeldig ten spyte van die feit dat die goed deel van sy insolvente boedel uitgemaak het.

(4) Indien iemand wat insolvent is of was onroerende goed of 'n reg op onroerende goed wat deel van sy insolvente boedel uitmaak, onregmatig vervreem, kan die kurator, ondanks die bepalings van subartikel (3), die waarde van die goed of reg wat aldus vervreem is, verhaal—

(a) van die insolvent of voormalige insolvent;

(b) van 'n persoon wat daardie goed of reg van die insolvent of voormalige insolvent verkry het terwyl hy geweet het dat die goed of reg deel van die insolvente boedel uitmaak; of

(c) van 'n persoon wat daardie goed of reg sonder voldoende teenwaarde van die insolvent of voormalige insolvent verkry het, in welke geval die bedrag wat aldus verhaal word die verskil is tussen die waarde van die goed of reg en enige teenwaarde wat wel verleen is."

Wysiging van artikel 32 van Wet 24 van 1936

5. Artikel 32 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) (a) 'n Geding tot verhaal van die waarde van goed of 'n reg kragtens artikel 25(4), tot vernietiging van 'n vervreemding van goed kragtens artikel 26, 29, 30 of 31, of tot invordering van skadevergoeding of 'n boete kragtens artikel 31, kan deur die kurator ingestel word.

(b) If the trustee fails to take any such proceedings they may be taken by any creditor in the name of the trustee upon his indemnifying the trustee against all costs thereof.”.

Amendment of section 104 of Act 24 of 1936

6. Section 104 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) If any creditor has under subsection (1) of section 32 taken proceedings to recover the value of property or a right under section 25(4), to set aside any disposition of or dealing with property under section 26, 29, 30 or 31 or for the recovery of damages or a penalty under section 31, no creditor who was not a party to the proceedings shall derive any benefit from any moneys or from the proceeds of any property recovered as a result of such proceedings before the claim and costs of every creditor who was a party to such proceedings have been paid in full.”. 10

Substitution of section 127A of Act 24 of 1936, as inserted by section 6 of Act 6 of 1972 15

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

“Rehabilitation by effluxion of time

127A. (1) Any insolvent not rehabilitated by the court within a period of ten years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period unless a court upon application by an interested person after notice to the insolvent orders otherwise prior to the expiration of the said period of ten years [or before the 31st December, 1972, whichever date is the later]. 20 25

(2) If a court issues an order contemplated in subsection (1), the registrar shall transmit a copy of the order to every officer charged with the registration of title to any immovable property in the Republic. 30

(3) Upon receipt of the order by such officer he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent. 35

(4) The caveat shall remain in force until the date upon which the insolvent is rehabilitated.”.

Amendment of First Schedule to Act 24 of 1936

8. The First Schedule to the principal Act is hereby amended by the substitution for Annexure VIII of Form B of the following Annexure:

“ANNEXURE VIII

40

PERSONAL INFORMATION

State whether the debtor is married, widowed or divorced

.....
If the debtor is or was married, state—

(a) name or names of spouse or spouses (a ‘spouse’ means not only a wife or husband in the legal sense, but also a wife or husband by virtue of a marriage according to any law or custom, and also a woman living with a man as his wife or a man living with a woman as her husband, although not married to one another) 45

.....
[and]

50

(b) As die kurator in gebreke bly om so 'n geding in te stel, dan kan 'n skuldeiser dit namens die kurator instel, nadat hy die kurator teen alle koste in die geding gevrywaar het.”.

Wysiging van artikel 104 van Wet 24 van 1936

- 5 6. Artikel 104 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) As 'n skuldeiser kragtens subartikel (1) van artikel 32 'n geding ingestel het om kragtens artikel 25(4) die waarde van goed of 'n reg te verhaal, om kragtens artikel 26, 29, 30 of 31 die vervreemding van goed tot
10 niet te maak of om kragtens artikel 31 skadevergoeding of 'n boete in te vorder, dan kan 'n skuldeiser wat nie aan daardie geding deelgeneem het nie, geen voordeel trek uit geld of die opbrengs van goed wat as gevolg van daardie geding verkry is nie voordat die vordering en koste van elke skuldeiser wat aan bedoelde geding deelgeneem het, ten volle betaal is.”.

- 15 Vervanging van artikel 127A van Wet 24 van 1936, soos ingevoeg deur artikel 6 van Wet 6 van 1972

7. Artikel 127A van die Hoofwet word hierby deur die volgende artikel vervang:

“Rehabilitasie deur tydsverloop

20 127A. (1) 'n Insolvent wat nie binne 'n tydperk van tien jaar van die datum van sekwestrasie van sy boedel deur die hof gerehabiliteer is nie, word na verstryking van daardie tydperk geag gerehabiliteer te wees tensy die hof op aansoek van 'n belanghebbende persoon, na kennisgewing aan die insolvent, anders gelas binne die voormelde
25 tien jaar **[of voor 31 Desember 1972, watter datum ook al die laaste is]**.

(2) Indien 'n hof 'n bevel beoog in subartikel (1) uitreik, stuur die griffier 'n afskrif van die bevel aan elke amptenaar belas met die registrasie van titels van onroerende goed in die Republiek.

30 (3) Wanneer so 'n amptenaar die bevel ontvang, moet hy 'n caveat aanteken teen die transport van alle onroerende goed of teen die rojering of cessie van elke verband wat op naam van die insolvent geregistreer is of aan hom behoort.

35 (4) Die caveat geld tot op die datum waarop die insolvent gerehabiliteer word.”.

Wysiging van Eerste Bylae by Wet 24 van 1936

8. Die Eerste Bylae by die Hoofwet word hierby gewysig deur Aanhangsel VIII van Formulier B deur die volgende Aanhangsel te vervang:

“AANHANGSEL VIII

40 PERSOONLIKE GEGEWENS

Vermeld of skuldenaar getroud, wewenaar of weduwee of geskei is

As skuldenaar getroud is of was, vermeld—

45 (a) naam of name van eggenoot of eggenote ('eggenoot' beteken nie alleen 'n eggenote of eggenoot in die wettige sin nie maar ook 'n eggenote of eggenoot kragtens 'n huwelik volgens enige regstelsel of gebruik en ook 'n vrou wat met 'n man as sy eggenote leef of 'n man wat met 'n vrou as haar eggenoot leef, hoewel hulle nie met mekaar getroud is nie)

50
.....;

- (b) whether the debtor is or was married in or without community of property and whether the accrual system applies 5
- (c) date of marriage 5
- (d) whether the matrimonial property system has been changed since entering into the marriage and, if so, the nature of the change 10
- (e) full names and date of birth of the spouse and, if an identity number has been assigned, the identity number of the spouse 10
- State the debtor's **[race and]** nationality 15
- State the debtor's place of birth, date of birth and, if an identity number has been assigned, the identity number 15
- Was the debtor's estate or the estate of a partnership in which the debtor is or was a partner previously sequestrated or placed in bankruptcy, whether in the Republic or elsewhere? 20
- If the preceding answer is in the affirmative, state—
- (a) whether the debtor's own estate or his partnership's estate was (i) sequestrated; or (ii) placed in bankruptcy 25
- (b) the place where and the date when that estate was sequestrated or placed in bankruptcy 30
- (c) whether the debtor has been rehabilitated or his estate released; if so, when 35
- The foregoing balance sheet and statements shall be verified by an affidavit in the subjoined form, made by the debtor or by the person who on behalf of the debtor presented the petition tendering the surrender of the debtor's estate, or who is the representative of the debtor or his estate. 40

AFFIDAVIT

I, declare under oath/solemnly and sincerely declare* that to the best of my knowledge and belief the statements contained in the foregoing balance sheet and the Annexures thereto are true and complete, and that every estimated amount therein contained is fairly and correctly estimated. 45

Signature of declarant

Sworn *
Solemnly declared before me on the 50

day of at

.....
Commissioner of Oaths

*Delete inappropriate words.”.

- (b) of die skuldenaar in of buite gemeenskap van goedere getroud is of was en of die aanwasbedeling van toepassing is
- 5 (c) datum van die huwelik
- (d) of die huweliksgoederebedeling sedert die aangaan van die huwelik gewysig is en, indien wel, die aard van die verandering
- 10 (e) volle name en geboortedatum van gade en, indien 'n identiteitsnommer toegewys is, die identiteitsnommer van die gade
- Vermeld skuldenaar se **[ras en]** nasionaliteit
- 15 Vermeld skuldenaar se geboorteplek, geboortedatum en, indien 'n identiteitsnommer toegewys is, die identiteitsnommer
- Was die skuldenaar se boedel of die boedel van 'n vennootskap waarvan die skuldenaar 'n vennoot is of was, voorheen gesekwestreer of bankrot verklaar, hetsy in die Republiek of elders?
- 20 As voorgaande antwoord bevestigend is, vermeld—
- (a) of skuldenaar se eie boedel dan wel die boedel van sy vennootskap (i) gesekwestreer; of (ii) bankrot verklaar is
- 25 (b) waar en wanneer daardie boedel gesekwestreer of bankrot verklaar is
- 30 (c) of die skuldenaar gerehabiliteer of sy boedel vrygegee is, en indien wel, wanneer
- 35 Die voorgaande balansstaat en verklarings moet bevestig word deur 'n beëdigde verklaring in onderstaande vorm, afgelê deur die skuldenaar of deur die persoon wat namens die skuldenaar die versoekskrif ingedien het waarin die oorgawe van die skuldenaar se boedel aangebied word of wat die skuldenaar of sy boedel verteenwoordig.

40 BEËDIGDE VERKLARING

Ek verklaar onder eed/plegtig en na waarheid* dat die bewerings in die voorgaande balansstaat en sy aanhangsels vir sover as wat ek weet en glo waar en volledig is en dat elke daarin voorkomende geskatte bedrag billik en juis geskat is.

Handtekening van verklaarder

Voor my te beëdig *
plegtig verklaar

50 op die dag van

.....
Kommissaris van Ede

* Skrap wat nie van toepassing is nie.”.

Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980, section 3 of Act 27 of 1982 and section 28 of Act 88 of 1984

9. Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5

“(a) take charge of and, except as provided in subsection (2) or (3), preserve or cause to be preserved all records which were prior to the commencement of this Act, or may become after such commencement, records of any deeds registry in respect of which he has been appointed: 10
Provided that the registrar may destroy or otherwise dispose of any record as prescribed which has been cancelled in terms of this subsection or any record in connection with a caveat that has expired in terms of section 17(3), 18B or 127A of the Insolvency Act, 1936 (Act No. 24 of 1936).” 15

Amendment of section 58 of Act 47 of 1937, as substituted by section 17 of Act 27 of 1982

10. Section 58 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 20

“(1) Immovable property which has vested in a trustee in accordance with the law relating to insolvency and which has not in terms of that law been re-vested in the insolvent may, subject to the provisions of section 25(3) of the Insolvency Act, 1936 (Act No. 24 of 1936), whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee: 25
Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.”; and 30

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

“(2) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-vested with the ownership of any property, such property may not, subject to the provisions of section 25(3) of the Insolvency Act, 1936 (Act No. 24 of 1936), be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement that the property has been restored to him, has been made by the registrar on the title deed of the property.”. 35 40

Amendment of section 17 of Act 88 of 1984

11. Section 17 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) An application for the surrender of a joint estate shall be made by both spouses. [and] 45

(b) [an] An application for the sequestration of a joint estate shall be made against both spouses: Provided that no application for the sequestration of the estate of a debtor shall be dismissed on the ground that such debtor's estate is a joint estate if the applicant satisfies the court that despite reasonable steps taken by him he was unable to establish whether the debtor is married in community of property or the name and address of the spouse of the debtor.” 50

Short title and commencement

12. (1) This Act shall be called the Insolvency Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette. 55

(2) Different dates may be so fixed in respect of different provisions of this Act.

Wysiging van artikel 3 van Wet 47 van 1937, soos vervang deur artikel 2 van Wet 87 van 1965 en gewysig deur artikel 1 van Wet 41 van 1977, artikel 1 van Wet 92 van 1978, artikel 1 van Wet 44 van 1980, artikel 3 van Wet 27 van 1982 en artikel 28 van Wet 88 van 1984

- 5 **9.** Artikel 3 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

10 “(a) alle stukke wat voor die inwerkingtreding van hierdie Wet tot die argief van ’n registrasiekantoor waarvoor hy aangestel is, behoort het of wat na daardie inwerkingtreding daarin opgeneem word, onder sy hoede neem en, behalwe soos in subartikel (2) of (3) bepaal, bewaar of laat bewaar: Met dien verstande dat die registrateur enige stuk soos voorgeskryf wat kragtens hierdie subartikel gerokeer is, of enige stuk
15 wat betrekking het op ’n caveat wat ingevolge artikel 17(3), 18B of 127A van die Insolvensiewet, 1936 (Wet No. 24 van 1936), verval het,
kan vernietig of andersins daarvoor kan beskik.”.

Wysiging van artikel 58 van Wet 47 van 1937, soos vervang deur artikel 17 van Wet 27 van 1982

- 20 **10.** Artikel 58 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

25 “(1) Onroerende goed wat kragtens die insolvensiereg op ’n kurator oorgegaan het en wat nie ooreenkomstig daardie reg aan die insolvente persoon teruggeval het nie, kan, behoudens die bepalings van artikel 25(3) van die Insolvensiewet, 1936 (Wet No. 24 van 1936), hetsy voor of na die rehabilitasie van die insolvent, slegs deur die kurator getranspoteer word, en die insolvent kan na sy rehabilitasie die goed nie transporteer, met verband beswaar of andersins daarvoor beskik nie, totdat die kurator die goed aan hom getranspoteer het: Met dien verstande dat indien die kurator na rehabilitasie ontslaan is of daar geen kurator bestaan nie, die Meester die goed aan die gerehabiliteerde insolvent op die voorgeskrewe wyse moet transporteer indien hy oortuig is dat die insolvent op die goed geregtig is.”; en

35 (b) deur subartikel (2) deur die volgende subartikel te vervang:

40 “(2) Indien die eiendom van goed kragtens die insolvensiereg aan ’n insolvent teruggeval het, kan die insolvent, behoudens die bepalings van artikel 25(3) van die Insolvensiewet, 1936 (Wet No. 24 van 1936), daardie goed nie transporteer, met verband beswaar of andersins daarvoor beskik nie, totdat die registrateur op die titelbewys van die goed aangeteken het dat die goed aan die insolvent teruggegee is.”.

Wysiging van artikel 17 van Wet 88 van 1984

- 45 **11.** Artikel 17 van die Wet op Huweliksgoedere, 1984 (Wet No. 88 van 1984), word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

 “(4) (a) ’n Aansoek om oorgawe van ’n gemeenskaplike boedel moet deur albei gades gedoen word. **[en]**

50 (b) ’n Aansoek om die sekwestrasie van ’n gemeenskaplike boedel moet teen albei gades gedoen word: Met dien verstande dat geen aansoek om die sekwestrasie van ’n skuldenaar se boedel van die hand gewys word op grond daarvan dat sodanige skuldenaar se boedel ’n gemeenskaplike boedel is nie indien die applikant die hof oortuig dat ondanks redelike stappe deur hom gedoen, hy nie kon vasstel nie of die skuldenaar in gemeenskap van goed getroud is of wat die naam en adres van die skuldenaar se gade is.”.

Kort titel en inwerkingtreding

- 55 **12.** (1) Hierdie Wet heet die Insolvensiewysigingswet, 1993, en tree in werking op ’n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.
(2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

