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VAN
SUID-AFRIKA

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No. 20875

We all have the power to prevent AIDS

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affects
us all



A
new
struggle

Prevention is the cure

**AIDS
HELPUNE**

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DEPARTMENT OF HEALTH

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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 397 OF 2000

DEPARTMENT OF JUSTICE

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
INSOLVENCY ACT, 1936 (ACT NO. 24 OF 1936)**

INVITATION TO LODGE REPRESENTATIONS ON PROPOSED NOTICE IN
TERMS OF SECTION 98A OF THE INSOLVENCY ACT, 1936 (ACT NO. 24 OF
1936)

In terms of section 98A(2)(d)(i), read with section 98A(2)(a), of the Insolvency Act, 1936 (Act No. 24 of 1936) as inserted by section 2 of the Judicial Matters Second Amendment Act, 1998 (Act No. 122 of 1998), interested parties are hereby invited to lodge with the Director-General: Justice in writing within a period of 60 days from the date of publication hereof, representations in connection with the proposed draft notice set out in the Annexure hereto. Representations shall be marked for the attention of S J Robbertse and -

- (a) if forwarded by post, be addressed to -

The Director-General: Justice

Private Bag X81

PRETORIA

0001

- (b) if delivered by hand, be delivered at -

Presidia Building

c/o Paul Kruger Street and Pretorius Street

PRETORIA

Background information

The following background information is hereby furnished in order to assist interested parties to make representations on the draft notice:

Section 2 of the Judicial Matters Second Amendment Act, which has not yet come into operation, inserts section 98A in the Insolvency Act, 1936. Section 98A was inserted in order to bring the provisions of the Insolvency Act, 1936 in line with the provisions of the International Labour Organisation's Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (Convention No. 173 of 1992). The Convention provides that specified claims of workers should have a rank higher than most other preferent claims (and in particular those of the State and the social security system) and that workers' claims may be limited to a prescribed amount, provided that the said amount is not set below a socially acceptable level and is adjusted regularly in order to maintain value.

The new section 98A(1) provides that the balance of the free residue of an employer's insolvent estate shall be applied in paying -

- (a) to any employee who was employed by the insolvent -
 - (i) any salary or wages, for a period not exceeding three months, due to an employee;
 - (ii) any payment in respect of any period of leave or holiday due to the employee which has accrued as a result of the employer's employment by the insolvent in the year of insolvency or the previous year, whether or not payment thereof is due at the date of sequestration;
 - (iii) any payment due in respect of any other form of paid absence for a period not exceeding three months prior to the date of sequestration of the estate; and
 - (iv) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract or wage-regulating measure; and
- (b) any contributions which were payable by the insolvent, including contributions which were payable in respect of any of his or her employees, and which were, immediately prior to the sequestration of the estate, owing by the insolvent, in his

or her capacity as employer, to any pension, provident, medical aid, sick pay, holiday, unemployment or training scheme or fund, or to any similar scheme or fund.

Section 98A(2)(a) provides that the Minister of Justice may by notice in the *Gazette* determine maximum amounts which shall be paid out in terms of subsection (1) in respect of -

- (i) paragraph (a) of section 98A(1), any or all the subparagraphs thereof or any single employee; and
 - (ii) paragraph (b) of section 98A(1) or any single scheme or fund,
- and different maximum amounts may be so determined in respect of different schemes or funds.

Section 98A(6) also provides that the Minister of Justice may, after consultation with the National Economic, Development and Labour Council, by notice in the *Gazette* exclude from the operation of the provisions of this section a category of employees, schemes or funds specified in the notice -

- (a) in the case of employees, by reason of the particular nature of the employment relationship between the employer and employees;
- (b) in the case of employees, schemes or funds, by reason of the fact that there exists any other type of guarantee which affords the employees, schemes or funds protection which is equivalent to the protection as provided in this section; or
- (c) in the case of schemes or funds, by reason of the fact that the sequestration of the employer's estate will make it impossible to achieve the objects of the schemes or funds.

P. M. MADUNA
Minister for Justice and
Constitutional Development

ANNEXURE**No.****2000****INSOLVENCY ACT, 1936 (ACT NO. 24 OF 1936)****DETERMINATION OF AMOUNTS AND EXCLUSION OF EMPLOYEES
FOR THE PURPOSES OF SECTION 98A OF THE INSOLVENCY ACT, 1936**

I, Penuell Mpapa Maduna, Minister for Justice and Constitutional Development, acting under section 98A(2) and (6) of the Insolvency Act, 1936 (Act No. 24 of 1936) -

- (a) hereby determine, in respect of the sections specified in Column A of the Schedule, the maximum amounts payable as specified opposite thereto in Column B of the said Schedule;
- (b) hereby determine, in respect of schemes or funds contemplated in section 98A(1)(b), that a maximum amount of R12 000 shall be payable in respect of any individual employee; and
- (c) after consultation with the National Economic, Development and Labour Council, hereby exclude from the provisions of section 98A of the said Act and for purposes of subsection (6)(a), a director of the company or a member of the close corporation which is the insolvent contemplated in section 98A.

P. M. MADUNA
Minister for Justice and
Constitutional Development

SCHEDULE

Column A	Column B
Section 98A(1)(a)(i)	R12 000
Section 98A(1)(a)(ii)	R4 000
Section 98A(1)(a)(iii)	R4 000
Section 98A(1)(a)(iv)	R12 000

KENNISGEWING 397 VAN 2000
DEPARTEMENT VAN JUSTISIE
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING
INSOLVENSIEWET, 1936 (WET NO. 24 VAN 1936)

UITNODIGING OM VERTOË IN TE DIEN TEN OPSIGTE VAN VOORGESTELDE
KENNISGEWING KRAGTENS ARTIKEL 98A VAN DIE INSOLVENSIEWET, 1936
(WET NO. 24 VAN 1936)

Kragtens artikel 98A(2)(d)(i), saamgelees met artikel 98A(2)(a), van die Insolvensiewet 1936, (Wet No. 24 van 1936), soos deur artikel 2 van die Tweede Wysigingswet op Geregtelike Aangeleenthede, 1998 (Wet No. 122 van 1998) ingevoeg, word belanghebbendes hierby uitgenooi om binne 'n tydperk van 60 dae vanaf die datum van publikasie hiervan, skriftelike vertoë aan die Direkteur-Generaal: Justisie te rig in verband met die voorgestelde konsep kennisgewing in die Aanhangsel hierby vervat. Vertoë moet gemerk word vir die aandag van S J Robbertse en -

- (a) as dit per pos aangestuur word, geadresseer word aan -

Die Direkteur-Generaal: Justisie

Privaatsak X 81

PRETORIA

0001

- (b) as dit per hand afgelewer word, dit afgelewer word by -

Presidia Gebou

h/v Paul Kruger Straat en Pretorius Straat

PRETORIA

Agtergrondinligting

Die volgende agtergrondinligting word hiermee verskaf om belanghebbendes te help om verhoë op die konsepkennisgewing te rig :

Artikel 2 van die Tweede Wysigingswet op Geregtelike Aangeleenthede, 1998, wat nog nie in werking getree het nie, voeg artikel 98A in die Insolvensiewet, 1936. Artikel 98A is ingevoeg om die bepalings van die Insolvensiewet, 1936 in lyn te bring met die bepalings van die "International Labour Organisation's Protection of Workers' Claims (Employers' Insolvency) Convention, 1992 (Convention No. 173 of 1992)". Dié Konvensie bepaal dat bepaalde eise van werkers hoër in rangorde as die meeste ander voorkeureise (en in besonder dié van die Staat en die bestaansekerheidstelsel) moet wees en dat die werkers se eise tot 'n voorgeskrewe bedrag beperk kan word, mits bedoelde bedrag nie minder as 'n sosiaal aanvaarbare vlak vasgestel word nie en gereeld aangepas word ten einde waarde te behou.

Die nuwe artikel 98A(1) bepaal dat die balans van die vrye oorskot van die werkgewer se insolvente boedel aangewend moet word vir betaling -

- (a) aan enige werknemer wat by die insolvent in diens was van -
 - (i) enige salaris of loon, vir 'n tydperk van hoogstens drie maande, verskuldig aan 'n werknemer;
 - (ii) enige betaling ten opsigte van enige verloftydperk of vakansie wat die werknemer toekom en wat opgeloop het as gevolg van sy of haar diens by die insolvent in die jaar van insolvensie of die vorige jaar, hetsy dit op die datum van sekwestrasie betaalbaar is al dan nie;
 - (iii) enige betaling verskuldig ten opsigte van enige ander vorm van betaalde afwesigheid vir 'n tydperk van hoogstens drie maande voor die datum van die sekwestrasie van die boedel; en
 - (iv) enige uittree- of afdankingsbetaling wat aan die werknemer ingevolge enige wet, ooreenkoms, kontrak of loonreëlmaatstaf verskuldig is; en
- (b) van enige bydraes wat deur die insolvent betaalbaar is met inbegrip van bydraes wat ten opsigte van enige van sy of haar werknemers betaalbaar is, en wat,

onmiddelik voor die sekwestrasie van die boedel, deur die insolvent, in sy of haar hoedanigheid as werkgewer, aan 'n pensioen-, voorsorg-, of opleidingskema of -fonds, of aan 'n soortgelyke skema of fonds, verskuldig is.

Artikel 98A(2)(a) bepaal dat die Minister van Justisie by kennisgewing in die *Staatskoerant* maksimum bedrae kan bepaal wat ingevolge subartikel (1) uitbetaal mag word ten opsigte van -

- (i) paragraaf (a) van artikel 98A(1), enige van of al die subparagraawe daarvan of 'n enkele werknemer; en
- (ii) paragraaf (b) van artikel 98A(1) of 'n enkele skema of fonds,

en verskillende maksimum bedrae kan aldus ten opsigte van verskillende skemas of fondse bepaal word.

Artikel 98A(6) bepaal ook dat die Minister van Justisie, na oorlegpleging met Nasionale Ekonomiese, Ontwikkelings- en Arbeidsraad, by kennisgewing in die *Staatskoerant*, 'n kategorie werknemers, skemas of fondse in die kennisgewing vermeld van die bepalings van hierdie artikel kan uitsluit -

- (a) in die geval van werknemers, op grond van die besondere aard van die diensverhouding tussen die werkgewer en werknemers;
- (b) in die geval van werknemers, skemas of fondse, op grond daarvan dat daar 'n ander tipe waarborg bestaan wat aan die werknemers, skemas of fondse beskerming bied wat gelykwaardig is aan dié soos in hierdie artikel bepaal; of
- (c) in die geval van skemas of fondse, op grond daarvan dat die sekwestrasie van die werkgewer se boedel dit onmoontlik sal maak om die doelstellings van die skemas of fondse te verwesenlik.

P. M MADUNA
Minister vir Justisie en
Staatkundige Ontwikkeling

AANHANGSEL

No.

2000

INSOLVENSIEWET, 1936 (WET NO. 24 VAN 1936)**BEPALING VAN BEDRAE EN UITSLUITING VAN WERKNEMERS VIR
DOELEINDES VAN ARTIKEL 98A VAN DIE INSOLVENSIEWET, 1936**

Ek, Penuell Mpapa Maduna, Minister vir Justisie en Staatkundige Ontwikkeling, handelende kragtens artikel 98A(2) en (6) van die Insolvensiewet, 1936 (Wet No. 24 van 1936) -

- (a) bepaal hierby, ten opsigte van die artikels vermeld in Kolom A van die Bylae, die maksimum bedrae betaalbaar daarteenoor vermeld in Kolom B van die genoemde Bylae;
- (b) bepaal hierby, ten opsigte van die skemas of fondse bedoel in artikel 98A(1)(b) die maksimum bedrag van R12 000 wat betaalbaar is ten opsigte van enige individuele werknemer; en
- (c) na oorlegpleging met die Nasionale Ekonomiese, Ontwikkelings- en Arbeidsraad sluit hierby vir doeleindes van subartikel (6)(a) 'n direkteur van 'n maatskappy en 'n lid van 'n beslote korporasie wat die insolvent is soos beoog in artikel 98A uit van die bepalings van artikel 98A van die gemelde Wet.

P. M. MADUNA
Minister vir Justisie en
Staatkundige Ontwikkeling

BYLAE

Kolom A	Kolom B
Artikel 98A(1)(a)(i)	R12 000
Artikel 98A(1)(a)(ii)	R4 000
Artikel 98A(1)(a)(iii)	R4 000
Artikel 98A(1)(a)(iv)	R12 000



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