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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1202.

14 June 1989

No. 1202.

14 Junie 1989

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

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

No. 89 of 1989: Insolvency Amendment Act, 1989.

No. 89 van 1989: Insolvensiewysigingswet, 1989.

Act No. 89, 1989

INSOLVENCY AMENDMENT ACT, 1989

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 further regulate the appointment of trustees; and to further regulate the interrogation of an insolvent or any other person at a meeting of creditors; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 1 June 1989.)*

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

Amendment of section 56 of Act 24 of 1936, as amended by section 16 of Act 99 of 1965

1. Section 56 of the Insolvency Act, 1936 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (4) of the following subsection: 5

“(4) When two trustees have been appointed or when the Master has appointed **[a co-trustee]** one or more co-trustees in terms of section 57 (5) **[both or all three]** all the trustees shall act jointly in performing their functions as trustees and each of them shall be jointly and severally liable for every act 10 performed by them jointly.”.

Amendment of section 57 of Act 24 of 1936, as amended by section 17 of Act 99 of 1965

2. Section 57 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Whenever the Master considers it desirable, he may appoint **[a person]** 15 one or more persons not disqualified from holding the office of trustee who has given the security mentioned in section 56 (2) as a co-trustee or co-trustees, as the case may be, with the trustee or trustees of an insolvent estate.”.

Amendment of section 65 of Act 24 of 1936, as amended by section 20 of Act 99 of 1965

3. Section 65 of the principal Act is hereby amended— 20

(a) by the substitution for the last 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 25

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Insolvensiewet, 1936, ten einde die aanstelling van kurators verder te reël; en die ondervraging van 'n insolvent of enige ander persoon op 'n byeenkoms van skuldeisers verder te reël; en om voorsiening te maak vir bykomstige aangeleenthede.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 1 Junie 1989.)

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

Wysiging van artikel 56 van Wet 24 van 1936, soos gewysig deur artikel 16 van Wet 99 van 1965

- 5 1. Artikel 56 van die Insolvensiewet, 1936 (hieronder die Hoofwet genoem), word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) Wanneer twee kurators aangestel is of as die Meester kragtens artikel 57 (5) **[’n mede-kurator]** een of meer mede-kurators aangestel het, moet **[albei of aldie]** al die kurators gesamentlik handel by die verrigting van hulle werksaam-
- 10 hede as kurators, en elkeen van hulle is solidair aanspreeklik vir elke handeling verrig deur hulle gesamentlik.”.

Wysiging van artikel 57 van Wet 24 van 1936, soos gewysig deur artikel 17 van Wet 99 van 1965

- 15 2. Artikel 57 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:
- “(5) Wanneer die Meester dit wenslik ag, kan hy **[iemand]** een of meer persone wat nie onbevoeg is om die betrekking van kurator te beklee nie en wat die sekuriteit bedoel in artikel 56 (2), gestel het, aanstel as mede-kurator of
- 20 mede-kurators, na gelang van die geval, van die kurator of kurators van ’n insolvente boedel.”.

Wysiging van artikel 65 van Wet 24 van 1936, soos gewysig deur artikel 20 van Wet 99 van 1965

- 25 3. Artikel 65 van die Hoofwet word hierby gewysig—
- (a) deur die laaste voorbehoudsbepaling by subartikel (2) deur die volgende voorbehoudsbepaling te vervang:
- “en met dien verstande voorts dat ’n kragtens subartikel (1) ondervraagde persoon nie geregtig is om by die ondervraging te weier om ’n vraag te beantwoord nie omrede dat die antwoord hom sou kan

- him or upon the ground that he is to be tried on a criminal charge and may be prejudiced at such a trial by his answer.”; and
- (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, where he is to be tried on a criminal charge, may prejudice him at such trial, the presiding officer shall, notwithstanding the provisions of section 39 (6), 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. 5
- (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 section 139 (1) relating to a failure to answer lawful questions fully and satisfactorily. 10
- (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).”; and 15
- (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.”. 20 25

Amendment of section 152 of Act 24 of 1936, as amended by section 46 of Act 99 of 1965

4. Section 152 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection: 30
- “(5) The provisions of subsection (2) of section 65 shall, subject to subsection (2A) of that section, mutatis mutandis apply in connection with the production of any book or document or with the interrogation of any person under the preceding provisions of this section.”. 35

Application of Act

5. The provisions of sections 1, 2, 3 and 4 shall also be applicable in respect of an estate which was sequestrated either provisionally or finally before the commencement of this Act.

Short title and commencement 40

6. (1) This Act shall be called the Insolvency Amendment Act, 1989, and shall, subject to subsection (2), come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act. 45
- (3) A reference in this Act to the commencement of this Act shall be construed as a reference to the applicable date so determined.

inkrimineer of omrede dat hy op 'n strafregtelike aanklag sal moet teregstaan en by die verhoor deur sy antwoord benadeel sou kan word."; en

(b) deur na subartikel (2) die volgende subartikel in te voeg:

5 “(2A) (a) Waar iemand ingevolge die bepalings van hierdie artikel getuienis aflê en verplig is om vrae te beantwoord wat hom kan inkrimineer of, waar hy op 'n strafregtelike aanklag moet teregstaan, hom kan benadeel by so 'n verhoor, moet die voorsittende amptenaar, ondanks die bepalings van artikel 39 (6), gelas dat sodanige deel van die verrigtinge agter geslote deure gehou word en dat geen inligting

10 betreffende sodanige vrae en antwoorde op enige wyse hoegenaamd gepubliseer mag word nie.

15 (b) Geen getuienis betreffende enige vrae en antwoorde beoog in paragraaf (a) is toelaatbaar by enige strafregtelike verrigtinge nie, behalwe by strafregtelike verrigtinge waar die betrokke persoon teregstaan op 'n aanklag betreffende die oplê of aflê van 'n eed of die oplê of doen van 'n bevestiging of die aflê van valse getuienis of 'n valse verklaring in verband met sodanige vrae en antwoorde, en by strafregtelike verrigtinge beoog in artikel 139 (1) met betrekking tot 'n versuim om wettige vrae volledig en bevredigend te beantwoord.

20 (c) Iemand wat 'n bepaling van 'n lasgewing beoog in paragraaf (a) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met die straf vermeld in subartikel (5) van artikel 154 van die Strafproseswet, 1977 (Wet No. 51 van 1977).”; en

25 (c) deur subartikel (5) deur die volgende subartikel te vervang:

 “(5) Alle getuienis ingevolge hierdie artikel afgelê kan, behoudens die bepalings van subartikel (2A), in enige geding teen die persoon wat die getuienis afgelê het, aangevoer word.”.

30 **Wysiging van artikel 152 van Wet 24 van 1936, soos gewysig deur artikel 46 van Wet 99 van 1965**

4. Artikel 152 van die Hoofwet word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang:

35 “(5) Die bepalings van subartikel (2) van artikel 65 is, behoudens subartikel (2A) van daardie artikel, *mutatis mutandis* van toepassing in verband met die oorlegging van 'n boek of geskrif of met die ondervraging van iemand kragtens die voorgaande bepalings van hierdie artikel.”.

Toepassing van Wet

5. Die bepalings van artikels 1, 2, 3 en 4 is ook van toepassing op 'n boedel wat voor die inwerkingtreding van hierdie Wet voorlopig of finaal gesekwestreer is.

40 Kort titel en inwerkingtreding

6. (1) Hierdie Wet heet die Insolvensiewysigingswet, 1989, en tree behoudens subartikel (2) in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

45 (2) Verskillende datums kan ingevolge subartikel (1) ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

 (3) 'n Verwysing in hierdie Wet na die inwerkingtreding van hierdie Wet uitgelê as 'n verwysing na die toepaslike datum aldus bepaal.

