

INSOLVENCY (AMENDMENT) ACT, 1981

No. 3



of 1981

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of sections 9 and 10 of Cap. 16:01

An Act to amend the Insolvency Act

Date of Assent: 9.4.81.

Date of Commencement: 24.4.81.

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Insolvency (Amendment) Act, 1981. Short title

2. The Insolvency Act is hereby amended by substituting for sections 9 and 10 thereof the following new sections — Amendment of sections 9 and 10 of Cap. 16:01

Petition for sequestration of estate

9. (1) A creditor (or his agent) who has a liquidated claim for not less than P100, or 2 or more creditors (or their agent) who in the aggregate have liquidated claims for not less than P200 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.

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition shall be reckoned as a liquidated claim for the purposes of subsection (1).

(3) Every such petition shall contain the following facts —

- (a) the amount involved;
- (b) the cause and nature of the claim in question;
- (c) a statement as to whether the claim is or is not secured, and, if it is, the nature and value of the security; and
- (d) the debtor's act of insolvency upon which the petition is based or otherwise the allegation that the debtor is in fact insolvent.

(4) The facts stated in the petition in accordance with subsection (3) shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master given not more than 10 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) Before any petition is presented to the court in accordance with the provisions of this section, a copy of the petition and of every affidavit confirming the facts stated in the petition shall be lodged with the Master, or, if there is no Master at the seat of the court, with an officer in the public service designated for that purpose by the Master by notice published in the Gazette (in this section referred to as the "designated officer"), and the Master or such designated officer may report to the court any facts ascertained by him which would appear to him to justify the court in postponing the hearing or in dismissing the petition.

(6) The Master or the designated officer, as the case may be, shall transmit a copy of the report referred to in subsection (5) to the petitioning creditor or his agent.

(7) The court may, on consideration of the petition and the Master's or the designated officer's report thereon and of any further affidavit by the petitioning creditor in answer thereto, deal with the petition in accordance with the provisions of section 10 or dismiss the petition or postpone its hearing or make such other order in the matter as in the circumstances appears to be just.

Provisional
sequestration

10. Where the court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie* —

- (a) the petitioning creditor has established a claim in accordance with the provisions of section 9 (1) against the debtor;
 - (b) the debtor has committed an act of insolvency or is insolvent; and
 - (c) there is reason to believe that it will be to the advantage of creditors of the debtors if his estate is sequestrated,
- it may make a provisional order sequestrating the estate of the debtor.”.

PASSED by the National Assembly this 30th day of March, 1981.

I.P. GONTSE,
Clerk of the National Assembly.