

BILL

To consolidate the laws relating to insolvent persons and to their estates; to repeal the Insolvency Act, 1936; and to provide for ancillary matters.

BE IT ENACTED as passed by the Parliament and assented to by the President of the Republic of Namibia, as follows:

ARRANGEMENT OF SECTIONS

CHAPTER 1

INTRODUCTORY PROVISIONS

1. Definitions
2. Application of Act
3. Objectives of Act

CHAPTER 2

GOVERNANCE OF THE INSOLVENCY REGIME

Part 1

The Insolvency Commissioner

4. Appointment of Insolvency Commissioner
5. Appointment of staff members to assist Commissioner
6. Functions and powers of Commissioner
7. Specialist committees

Part 2

Insolvency practitioners

8. Acting as insolvency practitioner
9. Insolvency practitioners not registered
10. Qualifications to act as insolvency practitioner
11. Recognised professional bodies

12. Application to act as insolvency practitioner
13. Grant or refusal of application to act as insolvency practitioner
14. Revocation of registration certificate
15. Appeal against decision of Commissioner

CHAPTER 3

LIQUIDATION PROCEEDINGS

Part 1

Commencement Standards

16. Acts of insolvency

Part 2

Applications For Liquidation And Liquidation Orders

17. Application by debtor for liquidation of estate
18. Application by creditor for liquidation of debtor's estate
19. Liquidation of partnership estate or trust
20. Application for stay of proceedings from the time an application for commencement of liquidation is made
21. Abuse of Court's procedures or malicious or vexatious application for liquidation
22. Provisional liquidation order
23. Final liquidation order
24. Public register of rehabilitated and unrehabilitated insolvents
25. Obligations of creditor upon whose application a liquidation order is made
26. Notice of liquidation

Part 3

Effect Of Liquidation

27. Effect of commencement of liquidation on insolvent and his or her property
28. The effect of liquidation on civil proceedings by or against the insolvent

29. Rights and obligations of debtor during insolvency

Part 4

Impeachable Dispositions

30. General
31. Alienation by insolvent of property to third party who is in good faith
32. Presumptions relating to property in possession of insolvent
33. Disposition without value
34. Antenuptial contracts
35. Voidable preferences
36. Collusive dealings for prejudicial disposition of property
37. Certain contributions to funds may be recovered for benefit of insolvent estate
38. Attachment of property in possession of associate
39. Certain rights not affected by improper disposition
40. Set-off
41. Payment of debt to insolvent after liquidation
42. Institution of proceedings on behalf of insolvent estate

Part 5

Effect Of Liquidation Upon Certain Contracts

43. Uncompleted acquisition of immovable property by debtor
44. Transactions on an exchange
45. Agreements providing for termination and netting
46. Effect of liquidation of estate of seller under reservation of ownership contract
47. Goods purchased not on credit but not paid for
48. Effect of liquidation upon lease
49. Effect of liquidation on contract of service

Part 6

Provisional Appointment, Election, Appointment And Disqualification Of Liquidators

50. Provisional appointment of liquidator
51. Election of liquidator
52. Commissioner may refuse to appoint elected liquidator
53. Appointment of liquidator and security
54. Joint liquidators to act jointly
55. Vacation of office of liquidator
56. Removal of liquidator from office by the Commissioner
57. Court may declare liquidator disqualified or remove liquidator
58. Election of new liquidator

Part 7

Powers And Duties Of Liquidators

59. Service of provisional liquidation order on debtor and attachment of property belonging to insolvent estate
60. Debtor to hand over books to liquidator and submit statement of affairs to Commissioner and liquidator
61. Liquidator may obtain search warrant
62. Registration of name and address with liquidator
63. Liquidator's report
64. Recovery of debts due to estate
65. Remuneration of liquidator
66. General duties and powers of liquidator

Part 8

Rights and Duties of Creditors

67. Realization of security
68. Attachment of property upon failure to deliver to liquidator
69. Application of proceeds of security
70. Security in respect of reserved ownership or financial lease
71. Security in respect of landlord's hypothec
72. Special notarial bond over movable property
73. Certain mortgages afford no security or preference

Part 9

Costs Of Liquidation And Application Of Free Residue

- 74. Costs of liquidation
- 75. Application of the free residue
- 76. Costs incurred in respect of legal services

Part 10

Special Provisions Relating To The Sale Of Property Belonging To The Insolvent Estate

- 77. Non-compliance with provisions of Act in sale of property of insolvent estate
- 78. Bona fide sale of property in possession of debtor
- 79. Persons incompetent to acquire property from insolvent estate

Part 11

Meetings And Questioning Of Insolvent And Other Persons

- 80. First meeting of creditors
- 81. Special meeting of creditors
- 82. Notice to creditors who have not proved claims
- 83. General provisions relating to meetings of creditors
- 84. Voting at meeting of creditors
- 85. Insolvent to attend meetings of creditors
- 86. Summons to attend meeting of creditors and notice to furnish information
- 87. Questioning of insolvent and other persons
- 88. Questioning by estate representative
- 89. Liquidator may put written questions or call for accounts, books, documents, records or information
- 90. Questioning by or on behalf of the Commissioner
- 91. Enforcing summonses and giving of evidence
- 92. Suspected commission of offence to be reported to Commercial Branch
- 93. Proof of record of proceedings of meetings of creditors

Part 12

Claims

94. Claim by partnership creditor against estate of insolvent partner
95. Claims against partnerships
96. Proof of claims
97. Liquidator to examine claims
98. Late proof of claims
99. Conditional claims
100. Arrear interest and debt due after liquidation
101. Withdrawal of claim
102. Recovery of debt from insolvent estate where creditor recovered from another source

Part 13

Banking Accounts, Investments And Moneys Belonging To The Insolvent Estate

103. Banking accounts and investments
104. Recording of receipts by liquidator
105. Unlawful retention of moneys or use of property by liquidator

Part 14

Estate Accounts, Distribution And Contribution

106. Estate Accounts
107. Copies of liquidator's accounts to be open for inspection
108. Objections to liquidator's account
109. Confirmation of liquidator's accounts
110. Distribution of estate and collection of contributions
111. Liquidator to produce receipts for dividends or pay over unpaid dividends to Commissioner
112. Surplus to be paid into Guardian's Fund
113. Contribution by creditors towards cost of liquidation
114. Enforcing payment of contribution

Part 15
Rehabilitation Of Insolvent

- 115. Rehabilitation
- 116. Opposition to rehabilitation or refusal of rehabilitation by court
- 117. Rehabilitation by effluxion of time
- 118. Effect of rehabilitation
- 119. Penalties for unlawful inducement to accept compromise or in connection with rehabilitation

CHAPTER 4
REORGANIZATION PROCEEDINGS

Part 1
Definitions

- 120. Definitions

Part 2
Pre-Liquidation Composition

- 121. Pre-liquidation composition with creditors: magistrate's court

Part 3
Voluntary Arrangements: Ordinary Proceedings In High Court

- 122. Voluntary arrangement not fully implemented
- 123. Application for interim order
- 124. Effect of application for interim order
- 125. Power of Court to make interim order
- 126. Provisional supervisor's report on debtor's proposal
- 127. Creditor's meeting to consider debtor's proposal
- 128. Consideration of debtor's proposal at creditors' meeting
- 129. Approval of debtor's proposal

- 130. Effect of approval of debtor's proposal
- 131. Additional effect of approved debtor's proposal on unrehabilitated insolvent
- 132. Right to challenge decision taken at creditors' meeting
- 133. Implementation and supervision of debtor's proposal

Part 4

Voluntary Arrangements: Expedited Procedure

- 134. Expedited voluntary arrangement
- 135. Duty of Commissioner to report to Court
- 136. Approval of expedited voluntary arrangement
- 137. Commissioner may apply to Court if debtor is unrehabilitated insolvent
- 138. Revocation of expedited procedure

Part 5

Summary Instalment Orders

- 139. Purpose of summary instalment order
- 140. Application for summary instalment order
- 141. Requirements for summary instalment order
- 142. Summary instalment order
- 143. Commissioner may make additional orders
- 144. Appointment of supervisor
- 145. Role of supervisor
- 146. Commissioner may require supervisor or past supervisor to provide documents
- 147. Termination of supervisor's appointment
- 148. Period of payment of instalments
- 149. Variation or discharge of summary instalment orders
- 150. Effect of summary instalment orders
- 151. Restrictions on bringing proceedings against a debtor while summary instalment order is in force
- 152. Supervisor to give notice of summary instalment order
- 153. Public register of debtors subject to summary instalment orders
- 154. When summary instalment order not current

- 155. Claims of creditors when summary instalment order has effect
- 156. Payment of debtor's earnings to supervisor
- 157. Default by debtor to pay instalments
- 158. Offence for debtor to obtain credit when summary instalment order in in force

Part 6

No-Asset Procedure

- 159. Debtor with no realizable assets
- 160. Eligibility for admission to no-asset procedure
- 161. Criteria for admission to no-asset procedure
- 162. Debtor disqualified in certain cases
- 163. Notification to creditors
- 164. Restrictions on debtor obtaining credit
- 165. Debtor admitted to no-asset procedure
- 166. Public register of persons admitted to no-asset procedure
- 167. Creditors may not enforce debts of debtor admitted to no-asset procedure
- 168. Debtor's duties after admission to no-entry procedure
- 169. Offence to obtain credit while under no-asset procedure
- 170. Termination of debtor's admission to no-asset procedure
- 171. Commissioner may cause termination of no-asset procedure
- 172. Commissioner may apply for preservation order
- 173. Effect of termination of debtor's participation in no-access procedure
- 174. Creditor may apply to Commissioner for termination of debtor's participation in no-asset procedure
- 175. Automatic discharge of debtor from no-asset procedure
- 176. Discharge of debtor's participation in no-asset procedure
- 177. Discharge does not release debtor's business partners and others

Part 7

Post-Liquidation Composition

- 178. Post-liquidation composition

Part 8

Criminal Conduct Under This Chapter

- 179. False declaration to obtain creditors' approval
- 180. Prosecution of delinquent debtors

CHAPTER 5

CROSS-BORDER INSOLVENCIES

Part 1

Interpretation And Fundamental Principles

- 181. Definitions
- 182. Purpose and aims
- 183. Scope of application
- 184. International obligations of Namibia
- 185. Competent court
- 186. Authorization of insolvency practitioner, trustee, liquidator, judicial manager or curator to act in foreign State
- 187. Public policy exception
- 188. Additional assistance under other laws
- 189. Interpretation

Part 2

Access Of Foreign Representatives And Creditors To Courts In Namibia

- 190. Right of direct access
- 191. Limited jurisdiction
- 192. Application by foreign representative to commence proceedings under the laws of Namibia relating to insolvency
- 193. Participation of foreign representative in proceedings under the laws of Namibia relating to insolvency
- 194. Access of foreign creditors to proceedings under the laws of Namibia relating to insolvency

195. Notification to foreign creditors of proceedings under the laws of Namibia relating to insolvency

Part 3

Recognition Of Foreign Proceedings And Relief

196. Application for recognition of foreign proceedings
197. Presumptions concerning recognition
198. Decision to recognize foreign proceedings
199. Subsequent information
200. Relief that may be granted upon application for recognition of foreign proceedings
201. Effect of recognition of foreign main proceedings
202. Relief that may be granted upon recognition of foreign proceedings
203. Protection of creditors and other interested persons
204. Actions to avoid acts detrimental to creditors
205. Intervention by foreign representative in proceedings in Namibia

Part 4

Cooperation With Foreign Courts And Foreign Representatives

206. Cooperation and direct communication between court of Namibia and foreign courts or foreign representatives
207. Cooperation and direct communication between insolvency practitioner, trustee, liquidator, judicial manager or curator of an institution and foreign courts or foreign representatives
208. Forms of cooperation

Part 5

Concurrent Proceedings

209. Commencement of proceedings under the laws of Namibia relating to insolvency after recognition of foreign main proceedings
210. Coordination of proceedings under the laws of Namibia relating to insolvency and foreign proceedings

- 211. Coordination of foreign proceedings
- 212. Presumption of insolvency based on recognition of foreign main proceedings
- 213. Rule of payment in concurrent proceedings

CHAPTER 6 OFFENCES

- 214. Offences

CHAPTER 7 PUBLIC REGISTERS

- 215. Public registers relating to insolvents and others
- 216. Access to public registers
- 217. Purposes of public registers
- 218. General information to be included in public registers
- 219. Information kept indefinitely in public registers
- 220. Restricted information
- 221. Commissioner may omit, remove, restrict access to or amend information in public registers
- 222. Information in public registers may be used for statistical or research purposes
- 223. Government and Commissioner not liable for certain acts or omissions

CHAPTER 8 GENERAL PROVISIONS

- 224. Court may stay or set aside liquidation
- 225. Meetings to ascertain wishes of creditors and others
- 226. Dispositions after liquidation void
- 227. General provisions relating to Part 4, Chapter 3 proceedings
- 228. Giving of evidence after conviction for failure to testify
- 229. Criminal liability of partners, administrators, servants or agents
- 230. Jurisdiction of Court
- 231. Appeals

- 232. Review
- 233. Commissioner's fees
- 234. Custody and destruction of documents
- 235. Insurer's liability in respect of indemnification of debtor
- 236. Non-compliance with directives
- 237. Regulations, policy and other powers of Minister
- 238. Amendment and repeal
- 239. Short title and commencement

SCHEDULE 1

- FORM A1: STATEMENT OF DEBTOR'S AFFAIRS
- FORM A2: NOMINATION FOR LIQUIDATOR BY CREDITOR
- FORM A3: NOMINATION FOR LIQUIDATOR BY REGISTERED TRADE UNION
- FORM B: AFFIDAVIT FOR PROOF OF ANY CLAIM OTHER THAN A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE
- FORM C: AFFIDAVIT FOR THE PROOF OF A CLAIM BASED ON A PROMISSORY NOTE OR OTHER BILL OF EXCHANGE
- FORM D : FORM AND CONTENTS OF ACCOUNTS
- FORM E1: NOTICE IN TERMS OF SECTION 29(6)(a) OF THE INSOLVENCY ACT ___ OF ___ (THE "ACT") TO ATTEND A HEARING IN TERMS OF SECTION 28 (7)(a) OF THE ACT
- FORM E2: SUMMONS IN TERMS OF SECTION 96(13) OF THE INSOLVENCY ACT ___ OF 2___ (THE "ACT") TO ATTEND A MEETING OF CREDITORS FOR QUESTIONING IN TERMS OF SECTION 96(13) OF THE ACT
- FORM E3: SUMMONS IN TERMS OF SECTION 86(1) OF THE INSOLVENCY ACT ___ OF 2___ (THE "ACT") TO ATTEND A MEETING OF CREDITORS FOR QUESTIONING IN TERMS OF SECTION 87 OF THE ACT
- FORM E4: SUMMONS IN TERMS OF SECTION 88(3)(b) OR 88(6) OF THE INSOLVENCY ACT ___ OF 2___ (THE "ACT") TO ATTEND A QUESTIONING IN TERMS OF SECTION 88 OF THE ACT

FORM E5: SUMMONS IN TERMS OF SECTION 90(1) OF THE
INSOLVENCY ACT ____ OF 2 ____ (THE “ACT”) TO ATTEND A
QUESTIONING IN TERMS OF SECTION 90 OF THE ACT

FORM F: STATUTORY DEMAND IN TERMS OF SECTION 16(2)(a) OF
THE INSOLVENCY ACT __ OF 2 __ (“THE ACT”)

SCHEDULE 2

TARIFF A: SHERIFF'S FEES

TARIFF B: REMUNERATION OF LIQUIDATOR

TARIFF C: COMMISSIONER'S FEES OF OFFICE

SCHEDULE 3: PROVISIONS OF LAWS AMENDED OR REPEALED

SCHEDULE 4: STATEMENT IN RESPECT OF PROPOSED PRE-
LIQUIDATION COMPOSITION: MAGISTRATE’S COURT

CHAPTER 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates-

“account”, in relation to a liquidator, means a liquidation account and distribution account or contribution account, or any supplementary liquidation account and distribution account or contribution account;

“Administration of Estates Act” means the Administration of Estates Act 1965 (Act No. 66 of 1965);

“associate” -

(a) in relation to a natural person means-

- (i) the spouse of such person;
- (ii) any person who is by consanguinity related to such first-mentioned person or to his or her spouse, in the first, second or third degree of relationship as determined in accordance with the provisions of the Intestate Succession Ordinance, 1946 (Ordinance No. 12 of 1946);
- (iii) the partner of such person or the spouse of such partner or any person who is related to such partner or spouse as is contemplated in subparagraph (ii);
- (iv) the beneficiaries of a trust, or a trust of which such person or associate of such person is a trustee or beneficiary; or

- (v) a company of which such person is a director or a close corporation of which such person is a member or any juristic person of whom such person is a manager or of which he or she has control;
- (b) in relation to a juristic person means -
 - (i) any natural person who is a director of that juristic person or a member of a close corporation or who has control of that juristic person or close corporation, either alone or together with his or her associate as contemplated in sub paragraph (a); or
 - (ii) any other juristic person which is controlled by the same person who controls the first-mentioned juristic person;
- (c) of another person means a person who has control of an undertaking of the other person, and that person also has control of an undertaking if the person who manages the undertaking is or the persons who manage it are accustomed to act in accordance with that person's directions or instructions, unless that person gives advice in a professional capacity only;
- (d) means a natural person or juristic person who was an associate of another natural person or juristic person at the time of any disposition or at the date of the liquidation of an insolvent estate or liquidation of one of the parties; or
- (e) means that two entities are associates of each other if the one is an associate of the other;

“bank” means a banking institution registered in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“book” or “books” in relation to bookkeeping or the recording or storage of information, includes any electronic or mechanical device by means of which the information concerned is recorded or stored, and in relation to the production, the handing over or the attachment of any book or books, means the production, the

handing over or the attachment of a print-out or other written version of the said information produced by means of such device;

“centre of main interests” means the place where the debtor conducts the administration of the debtor’s interests on a regular basis, ascertainable by third parties or the place where the debtor’s registered office is, or where that the debtor’s habitual residence is;

“concurrent creditor” means a creditor who in whole or in part has a claim other than as a secured creditor or a preferent creditor;

“commencement of liquidation” means the date of a provisional liquidation order;

“Commissioner” means the Insolvency Commissioner appointed under **section 4**;

“Commissioner of Inland Revenue” means Commissioner of Inland Revenue defined in section 1 of the Income Tax Act;

“Companies Act” means the Companies Act, 2004 (Act No. 28 of 2004);

“composition” means a composition contemplated in Chapter 4;

“Court” or “the Court” means the High Court or a judge of the High Court, defined in section 1 of the High Court Act and in **section 16(1)(b); 28(1); 33, 35, 36, 213 and 227** includes a magistrate's court, which has jurisdiction in respect of the matter or offence concerned;

“debtor” means a person, trust or entity that is able to incur debt and whose estate has been liquidated, and includes-

- (a) the estate of any such person or entity;
- (b) unless inconsistent with the context or clearly inappropriate any such debtor or debtor’s estate before liquidation,

but excludes a debtor which can be wound up under the Companies Act, or any other Act;

“Deeds Registries Act” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“direct notice” means notice by facsimile, e-mail, or personal delivery;

“disposition” means any transfer or abandonment of rights to property and includes a sale, mortgage, pledge, delivery, payment, release, compromise, donation, suretyship or any contract therefor;

“e-mail” means a message distributed by electronic means to an e-mail address indicated for use by the intended recipient and no report is received that the message could not be delivered to that recipient;

“employee” means an employee as defined by section 1 of the Labour Act;

“establishment” for purposes of determining whether this Act applies to a debtor, means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;

“estate” in its functional sense refers to assets of the debtor that are controlled by an insolvency practitioner and are subject to insolvency proceedings.

“fax” means a facsimile transmission which according to a transmission report has been transmitted successfully;

“financial lease” means a contract whereby a lessor leases specified movable property to a lessee at a specified rent over a specified period subject to a term of the contract that-

- (a) at the expiry of the contract the lessee may acquire ownership of the leased property by paying an agreed or determinable sum of money to the lessor; or

- (b) the rent paid in terms of the contract must at the expiry of the contract be applied in reduction of an agreed or determinable price at which the lessee may purchase the leased property from the lessor; or
- (c) the proceeds of the realization of the leased property at the expiry of the lease must accrue wholly or partly to the lessee;

“free residue” in relation to an insolvent estate, means that portion of the estate which is not subject to any claim by a secured creditor;

“good faith” in relation to the disposition of property, means the absence of any intention to prejudice creditors in obtaining payment of their claims or to prefer one creditor above any other;

“High Court Act” means the High Court Act, 1990 (Act No. 16 of 1990);

“immovable property” means land and every right, title and interest in and to land or minerals which is registrable in any office in Namibia intended for the registration of title to land or the right to mine;

“Income Tax Act” means the Income Tax Act, 1981 (Act No. 24 of 1981);

“insolvency practitioner” means a person who holds a registration certificate granted in terms of **section 13**;

“insolvency proceedings” means-

- (a) liquidation proceedings in terms of Chapter 3; or
- (b) reorganization proceedings in terms of Chapter 4;

“insolvent” means a debtor whose estate is under liquidation, and in relation to a debtor who at the date of the liquidation of his or her estate is married in community of property, includes the spouse of such debtor;

“insolvent estate” means an estate which is under liquidation and where the joint estate of spouses married in community of property is under liquidation, it includes the separate property of the spouses;

“Labour Act” means the Labour Act, 2007 (Act No. 11 of 2007);

“liquidation order” means an order of a Court whereby the estate of a debtor is placed under liquidation and includes a provisional liquidation order when it has not been set aside;

“liquidator” means an insolvency practitioner who acts as the liquidator of an insolvent estate appointed in accordance with **Part 6 of Chapter 3** as a provisional or final liquidator of an insolvent estate;

“liquidator's notice” means-

- (a) notice or delivery by the liquidator by registered mail, fax, e-mail, or personal delivery supported by an affidavit by the liquidator with a list of the persons given notice or delivered to and the method used by the liquidator to send or deliver the notice; or
- (b) any other form of notice approved by the Commissioner where the Commissioner is satisfied that there are exceptional circumstances justifying another form of notice;

“magistrate” means a magistrate as defined in section 1 of the Magistrates Act, 2003 (Act No. 3 of 2003) and includes an additional magistrate defined in that section;

“Magistrates’ Court Act” means the Magistrates’ Court Act, 1944 (Act No. 32 of 1944);

“magistrate's court” means a magistrate’s court established in terms of the Magistrates’ Court Act;

“Master” means the Master of the High Court and includes a Deputy Master appointed in terms of section 2 of the Administration of Estates Act;

“Minister” means the Minister responsible for the administration of justice;

“movable property” means every kind of property and every right or interest which is not immovable property;

“prescribed” means prescribed by regulation;

“Prescribed Rate of Interest Act” means the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975);

“preferent creditor” means a creditor whose claim enjoys preference in terms of any provision of this Act or a or a similar preference in terms of any other Act;

“property” means-

- (a) all movable or immovable property including rights and interests in assets, wherever located, whether in Namibia or a foreign State;
- (b) all tangible and intangible assets; and
- (c) a person’s rights and interests in encumbered assets and in third-party-owned assets,

but excludes assets owned by a third party that are in the possession of the debtor at the commencement of liquidation, including, but not limited-

- (i) to trust assets; or
- (ii) to assets subject to an arrangement (whether contractual or otherwise) that does not involve a transfer of title, but rather the use of the assets and return thereof

to the owner once the purpose for which they were in the possession of the person has been fulfilled;

“Public Service Act” means the Public Service Act, 1995 (Act No. 13 of 1995);

“provisional liquidation order” means-

- (a) a provisional order for the liquidation of the estate of a debtor; or
- (b) an order for the final liquidation of the estate of the debtor if a provisional liquidation order has not been granted;

“registration certificate” means a registration certificate issued to person in terms of **section 13** authorizing such person to practice as an insolvency practitioner;

“Rules of the Court” means the Rules of the High Court of Namibia made in terms of section 39 of the High Court Act;

“Registrar of the Court” means the registrar of court appointed in terms of section 30 of the High Court Act and includes a deputy registrar and assistant registrar appointed in terms of that section;

“Registrar of Deeds” means the Registrar of Deeds defined in section 1 of the Deeds Registries Act;

“reservation of ownership contract” means-

- (a) a contract in terms of which corporeal or incorporeal movable property is sold to a purchaser;
- (b) the purchase price is payable wholly or partly in the future;
- (c) the property is delivered to or placed at the disposal of the purchaser; and

- (d) the ownership in the property does not pass to the purchaser upon delivery of the property, but remains vested in the seller until the purchase price is fully paid or until the occurrence of some other specified event;

“secured creditor” means a creditor of an insolvent estate who holds security for his or her claim, or a portion of a claim, against that estate;

“security” in relation to the claim of a creditor of an insolvent estate means property of the insolvent estate over which the creditor has a preferent right by virtue of-

- (a) any special bond;
- (b) a landlord's legal hypothec;
- (c) a pledge;
- (d) a cession of rights to secure a debt;
- (e) a right of retention;
- (f) a reservation of ownership contract;
- (g) a financial lease;
- (h) any preferent right over property in terms of any other Act; or
- (i) any prescribed security;

“sheriff” means the sheriff appointed in terms of section 30 of the High Court Act and includes an additional sheriff, a deputy-sheriff or an assistant to a sheriff appointed in terms of that section;

“social benefit” means a pension, allowance or benefits payable to a person in terms of the Employee’s Compensation Act, 1941 (Act No. 30 of 1941) or the Social Security Act, 1994 (Act No 34 of 1994);

“special bond” means-

- (a) a mortgage bond hypothecating any immovable property; or
- (b) a notarial bond hypothecating specially described movable property in terms of **section 72**;

“spouse” means a person’s-

- (a) partner in a marriage;
- (b) partner in a customary union or customary marriage according to customary law; or
- (c) partner in a relationship in which the parties live together in a manner resembling a partnership contemplated in paragraphs (a) or (b);

“standard notice” means notice by registered mail, fax, e-mail or personal delivery;

“Stock Exchanges Control Act” means the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

“this Act” includes the regulations;

“trade union” means a trade union registered in terms of the Labour Act.

Application of Act

2. (1) This Act applies to any debtor -

- (a) whose centre of main interests is; or
- (b) who has an establishment,

in Namibia.

(2) In the absence of proof to the contrary it is presumed that a natural person's centre of main interests is in Namibia if that person has his or her habitual residence in Namibia.

Objectives of Act

3. (1) The objectives of this Act are-
- (a) to enhance certainty in financial markets and the economy in general in order to promote economic stability and growth;
 - (b) to achieve a balance of the risks allocated between debtors, creditors and other stakeholders involved in insolvency proceedings;
 - (c) to promote incentives to achieve maximum value for assets of debtors, so as to facilitate higher distributions to creditors as a whole and reduce the burden of insolvency;
 - (d) to seek to achieve a balance between the liquidation of a debtor and the reorganization of such debtor's affairs;
 - (e) to ensure that creditors with similar legal rights should be treated equitably, receiving a distribution on their claim in accordance with their relative ranking and interests;
 - (f) to ensure that the insolvency of a debtor is addressed and resolved in an orderly, quick and efficient manner, in order to avoid undue disruption

to the business activities of the debtor and to minimize the costs of insolvency proceedings;

- (g) to promote the goal of liquidating non-viable and inefficient debtor businesses and the survival of efficient, potentially viable businesses;
- (h) to provide easy access to insolvency proceedings by means of clear and objective criteria which includes-
 - (i) an appropriate structure for supervision and administration of insolvency proceedings;
 - (ii) convenient means of identifying, collecting, preserving and recovering assets and rights that should be applied towards payment of the debts and liabilities of the debtor;
 - (iii) effective participation of a debtor and his or her creditors in insolvency proceedings with the least possible delay and expense;
 - (iv) effective resolution of the debtor's financial obligations and liabilities;
- (i) to preserve the debtor's estate and prevent premature dismemberment of the debtor's assets by individual creditor actions to collect individual debts so as to effect equitable distribution of assets to creditors;
- (j) to ensure a transparent and predictable insolvency legal framework that contains incentives for gathering and dispensing information in order to promote stability in commercial relations and foster lending and investment at lower risk premiums;

- (k) to facilitate clear recognition of existing creditor rights and establishment of clear rules for ranking of priority claims so as to create certainty in financial markets and facilitate the provision of credit; and
- (l) to establish a framework for cross-border insolvency.

CHAPTER 2

GOVERNANCE OF THE INSOLVENCY REGIME

Part 1

The Insolvency Commissioner

Appointment of Insolvency Commissioner

4. (1) Notwithstanding the provisions of section 2 of the Administration of Estates Act, the Minister must appoint on a full-time basis a person with the prescribed qualifications and experience as a Deputy Master in the office of the Master with the designation of Insolvency Commissioner.

- (2) The Commissioner -
 - (a) is responsible to implement the provisions of this Act subject to the general control and supervision of the Master;
 - (b) must perform the functions that are conferred on the Commissioner by or in terms of this Act.

(3) The Commissioner may, on three months' written notice addressed to the Master, resign as Commissioner.

- (4) The Master may remove the Commissioner from office on account of-
 - (a) serious misconduct;

- (b) permanent incapacity;
 - (c) engaging in any activity that may undermine the integrity or standing of the public service; or
 - (d) any other legitimate ground that justifies the removal of the Commissioner.
- (5) A person does not qualify for appointment as Commissioner if such person-
- (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence;
 - (b) does not reside in Namibia;
 - (c) is an unrehabilitated insolvent or is subject to any proceeding in terms of this Act;
 - (d) has been convicted of an offence involving dishonesty and sentenced to imprisonment without the option of a fine; or
 - (e) is a member of a local authority council, regional council or Parliament.
- (6) If the Commissioner is for any reason unable to perform the functions assigned to them in terms of this Act, the Master may, on such conditions as the Master may determine, appoint a suitable person as Acting Commissioner to perform the functions of the Commissioner.

Appointment of staff members to assist Commissioner

5. (1) Subject to the Public Service Act, staff members with suitable qualifications and experience must be appointed to assist the Commissioner in carrying out his or her functions under this Act.

(2) The Master may contract with any service provider to assist the Commissioner in carrying out his or her functions.

Functions and powers of Commissioner

6. (1) The functions of the Commissioner are to-
- (a) oversee and promote adherence with this Act in the interest of the public;
 - (b) supervise the administration of all estates and matters to which this Act applies;
 - (c) receive applications for registration as insolvency practitioners under this Act and issue certificates to persons whose applications have been approved;
 - (d) monitor whether an insolvency practitioner continues to meet the qualifications and requirements determined under **section 10** and take the appropriate action referred to in this Act if the Commissioner determines that the conditions no longer exist;
 - (e) where not otherwise provided for, require the deposit of one or more continuing guaranty bonds or continuing suretyships as security-
 - (i) for the due accounting of all property received by insolvency practitioners and for the due and faithful performance by them of their duties in the administration of estates to which they are appointed;
 - (ii) in any amount that the Commissioner may determine, which amount may be increased or decreased as the Commissioner may deem expedient; and

(iii) in a form satisfactory to the Commissioner,

which the Commissioner may enforce for the benefit of the creditors;

- (f) from time to time, make or cause to be made any inquiry or investigation of estates or other matters to which this Act applies, including the conduct of an insolvency practitioner, that the Commissioner considers appropriate, and for the purpose of the inquiry or investigation the Commissioner or any person appointed by the Commissioner for the purpose must have access to and the right to examine and make copies of all books, records, data, including data in electronic form, documents and papers, that are relevant to such inquiry, investigation or other matters;
- (g) receive and keep a record of all complaints from any creditor or other person interested in any estate and make such specific investigations with regard to such complaints as the Commissioner may determine;
- (h) examine insolvency practitioners' accounts of receipts and disbursements and final statements;
- (i) investigate, either of its own initiative or in response to complaints received, any matter concerning an insolvent estate or an insolvency practitioner;
- (j) promote advocacy and educational programs concerning insolvency;
- (k) maintain public registers and other records contemplated in this Act and particularly in **Chapter 7**;
- (l) to exercise such other powers which are not in conflict with this Act as may be conferred on the Commissioner in writing by the Master or the Minister; and

- (m) inquire into and advise the Minister on-
 - (i) matters relating to insolvency and debt relief, whether of its own accord or at the request of the Minister;
 - (ii) the application of this Act, amendments thereto and the making of regulations; or
 - (iii) any power, duty or function which may or is required to be exercised or performed in terms of this Act.

- (2) A complaint contemplated in subsection (1)(i) must be -
 - (a) in the prescribed form; and
 - (b) substantiated by evidence justifying an investigation by the Commissioner.

- (3) The Commissioner must increase knowledge of the nature and dynamics and promote public awareness of matters relating to insolvency by -
 - (a) implementing education and information measures to develop public awareness of the provisions of this Act, and in particular to advance the purposes of this Act;
 - (b) providing guidance to the public by -
 - (i) issuing explanatory notices outlining procedures and guidelines pertaining to the Commissioner's functions under this Act;
 - (ii) issuing non-binding opinions on the interpretation of any provision of this Act; or

- (iii) applying to a Court for a declaratory order on the interpretation or application of the provisions of this Act; and
- (c) conducting research relating to the Commissioner's mandate and activities and, from time to time, publishing the results of that research.
- (4) The Commissioner may liaise with any regulatory authority on matters of common interest and, without limiting the generality of the foregoing, may -
 - (a) exchange information with and receive information from any such regulatory authority pertaining either to matters of common interest or to a specific complaint or investigation;
 - (b) participate in the proceedings of any regulatory authority; and
 - (c) advise, or receive advice from, any regulatory authority.
- (5) The Commissioner may, with the approval of the Minister, on a temporary basis or for a particular matter which is being examined by it, employ any person with special knowledge of any matter relating to the work of the Commissioner, or obtain the cooperation of any body, to advise or assist the Commissioner in the exercise of its powers and the performance of its duties and functions under this Act, and fix the remuneration (including reimbursement for travelling, subsistence and other expenses) or other benefits, if any, of such person or body.
- (6) The Commissioner may-
 - (a) intervene in any matter or proceeding in Court, where the Commissioner considers it expedient to do so, as if the Commissioner was a party thereto;
 - (b) issue to insolvency practitioners or persons who provide counselling pursuant to this Act, directives with respect to the administration of this Act and, without restricting the generality of the foregoing, directives requiring them-

- (i) to keep such records as the Commissioner may require; and
 - (ii) to provide the Commissioner with such information as he or she may require;
- (c) issue such directives as may be necessary to give effect to any decision made by the Commissioner pursuant to this Act or to facilitate the carrying out of the purposes and provisions of this Act, including, without limiting the generality of the foregoing, directives relating to the powers, duties and functions of insolvency practitioners;
- (d) issue directives governing the criteria to be applied by the Commissioner in determining whether a certificate may be issued to a person and governing the qualifications and activities of insolvency practitioners; and
- (e) issue directives determining the form of any document that is by this Act to be prescribed and the information to be given therein;

(7) Every person to whom a directive is issued by the Commissioner under subsection (6) must comply with the directive in the manner and within the time specified therein.

(8) The Commissioner may engage any person that the Commissioner considers advisable to conduct any inquiry or investigation or to take any other necessary action, and the cost and expenses of those persons must, when certified by the Commissioner, be payable out of the appropriation for the office of the Master.

(9) The Commissioner or any person duly authorized by the Commissioner in writing, is entitled to have access to and to examine and make copies of the banking accounts of an insolvency practitioner in which estate funds may have been deposited, and, when required, all deposit slips, cancelled cheques or other documents relating thereto in the custody of a bank or the insolvency practitioner must be produced for examination.

(10) The Commissioner, or any person duly authorized by the Commissioner in writing, may with the leave of the Court granted on an *ex parte* application examine the books, records, documents and deposit accounts of an insolvency practitioner or any other person designated in the order granting that leave for the purpose of tracing or discovering the property or funds of an estate when there are reasonable grounds to believe or suspect that the property or funds of an estate have not been properly disclosed or dealt with and for that purpose may under a warrant from the Court enter on and search any premises.

(11) Where the Commissioner, on *ex parte* application, satisfies the Court that it is necessary and in the public interest to do so, the Court may issue an order directing any deposit-taking institution that holds a deposit account of an insolvency practitioner or such other person as is designated in the order not to make payments out of the account until such time as the Court otherwise directs.

(12) If, on information supplied by any person, the Commissioner suspects, on reasonable grounds, that a person has, in connection with any estate or matter to which this Act applies, committed an offence under this or any other Act, the Commissioner may, if it appears to the Commissioner that the alleged offence might not otherwise be investigated, make or cause to be made any inquiries or investigations that the Commissioner considers appropriate.

(13) (a) If, on the application of the Commissioner or the Commissioner's authorized representative, a subpoena has been issued by the Court, the Commissioner may, for the purpose of an inquiry or investigation under subsection (12) examine or cause to be examined under oath before the Registrar of the Court or other authorized person-

(i) an insolvency practitioner;

(ii) the debtor;

- (iii) any person who the Commissioner suspects, on reasonable grounds, has knowledge of the affairs of the debtor; or
- (iv) any person who is or has been an agent or a mandatary, or a clerk, a servant, an officer, a director or an employee of the debtor or the insolvency practitioner,

with respect to the conduct, dealings and transactions of the debtor or insolvency practitioner, as the case may be, the causes of the insolvency of the debtor, the disposition of the debtor's property or the administration of the estate.

- (b) The Commissioner may order any person liable to be so examined to produce any books, records, data, including data in electronic form, documents or papers in the person's possession or under the person's control.

(14) A person being examined pursuant to this section is bound to answer all questions relating to the conduct, dealings and transactions of the debtor or the insolvency practitioner, as the case may be, the causes of the debtor's insolvency and the disposition of the debtor's property.

(15) Where a person being examined pursuant to this section objects to answering any question on the ground that his or her answer may tend to criminate him or her or may tend to establish his or her liability to a civil proceeding at the instance of the State or of any person and if, but for this section or Article 12(1)(f) of the Namibian Constitution, he or she would have been excused from answering that question, the answer so given may not be used or admitted in evidence against him or her in any proceeding, civil or criminal, thereafter taking place other than a prosecution for perjury in the giving of that evidence.

(16) No person may hinder, molest or interfere with any person doing anything that he or she is authorized by or pursuant to this section to do, or prevent or attempt to prevent any person doing any such thing, and, notwithstanding any other

Act or law, every person must, unless he or she is unable to do so, do everything he or she is required by or pursuant to this section to do.

(17) Where any book, record, paper or other document is examined or produced in accordance with this section, the person by whom it is examined or to whom it is produced or the Commissioner, may make or cause to be made one or more copies thereof, and a document purporting to be certified by the Commissioner or a person thereunto authorized by the Commissioner to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if it were proven in the ordinary way.

(18) If, after an investigation pursuant to this section or otherwise the Commissioner has obtained evidence of an offence having been committed in connection with an estate or matter to which this Act applies, the Commissioner must report the alleged offence to the Prosecutor-General or to such person as is duly designated by the Prosecutor-General for that purpose.

(19) A recovery made as the result of any inquiries or investigation made or caused to be made pursuant to this section must be applied to the reimbursement of any costs and expenses incurred by the Commissioner thereon, not being ordinary costs or expenses of the office of the Commissioner, and the balance thereafter remaining in respect of the recovery must be made available for the benefit of the creditors of the debtor.

(20) The Master must submit to the Minister, not later than 31 March of each year, a report on the activities of the Commissioner during the previous year.

(21) The Minister must submit the report of the Master to the National Assembly within 30 days after receipt thereof or, if the National Assembly is not then in session, within 30 days after commencement of its first ensuing session.

Specialist committees

7. (1) The Commissioner, after consultation with the Master may appoint one or more specialist committees to advise the Commissioner on the management of its resources or the performance of his or her functions.

(2) The Commissioner may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in subsection (1).

(3) A specialist committee may -

(a) be established for an indefinite term or for a period determined by the Commissioner when the committee is established; and

(b) determine its own procedures.

(4) A specialist committee established under this section must -

(a) perform its functions impartially and without fear, favour or prejudice; and

(b) consist of-

(i) not more than five persons who are independent from the Commissioner and are appointed by the Minister for a term of not more than five years; and

(ii) not more than two senior employees of the office of the Master designated by the Master.

(5) A member of a specialist committee must-

(a) be a fit and proper person;

(b) should not have been removed involuntarily from a position of trust;

- (c) have appropriate expertise or experience; and
- (d) have the ability to perform effectively as a member of the committee.
- (6) Members of a specialist committee must not-
 - (a) act in any way that is inconsistent with subsection (4)(a);
 - (b) expose themselves to any situation in which the risk of a conflict may arise between their responsibilities and any personal financial interest; or
 - (c) use their position or any information entrusted to them to enrich themselves or improperly benefit any other person.
- (7) A member of a specialist committee ceases to be a member if-
 - (a) the member resigns from the committee;
 - (b) the Commissioner terminates the person's membership because the member no longer complies with subsection (5) or has contravened subsection (6); or
 - (c) the member's term of office has expired.
- (8) A member of a specialist committee who has any personal or financial interest in any matter on which the committee gives advice, must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed.
- (9) The Master must compensate-

- (a) a member contemplated in subsection (4)(b)(i) for expenses incurred to the extent determined by the Master; and
- (b) a member contemplated in subsection (4)(b)(ii) for expenses incurred only to the extent that the member's remuneration and allowances as an employee of the office of the Master does not extend to that person's services as a member of the specialist committee.

PART 2

INSOLVENCY PRACTITIONERS

Acting as insolvency practitioner

8. (1) A person acts as an insolvency practitioner in terms of this Act if that person acts-

- (a) as the permanent or interim liquidator in the liquidation of an insolvent's estate;
- (b) as supervisor of a voluntary arrangement approved under **Parts 3 and 4 of Chapter 4**.

(2) No person may act as an insolvency practitioner unless that person is issued with a registration certificate in terms of this Part.

Insolvency practitioners not registered

9. A person who does not hold a registration certificate and who purports to act as an insolvency practitioner commits an offence and is on conviction liable to a fine not exceeding N\$100 000-00 or to imprisonment not exceeding 4 years.

Qualifications to act as insolvency practitioner

10. (1) Subject to subsections (2) and (3), a person is qualified to act as an insolvency practitioner only if the person-

- (a) satisfies the prescribed requirements with respect to education, practical training and experience;
- (b) is a member of a professional body recognised under **section 11**; and
- (c) satisfies the requirements, if any, of the rules pertaining to insolvency governing that body.

(2) A person is disqualified from being or acting as an insolvency practitioner if the person -

- (a) is an unrehabilitated insolvent or subject to any proceedings under this Act;
- (b) is subject to a disqualification under the law relating to companies;
- (c) is unable to perform the functions of an insolvency practitioner because of physical or mental infirmity;
- (d) does not reside in Namibia;
- (e) is the spouse of a debtor subject to any proceedings under this Act;
- (f) is by consanguinity related or deemed to be related in the first, second or third degree of relationship, as determined in accordance with the Intestate Succession Ordinance, 1946 (Ordinance No. 12 of 1946), to a debtor referred to in paragraph (e) or to his or her spouse;
- (g) is a minor or any other person under legal disability;
- (h) is declared under **section 57** to be disqualified;

- (i) is removed by the Court from office of trust on account of misconduct;
- (j) has been convicted, in Namibia or elsewhere, of an offence in terms of this Act or an offence of which dishonesty is an element and who was sentenced to imprisonment without the option of a fine or to a fine of more than N\$1000;
- (k) any person who was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he or she undertook that he or she would, when performing the functions of an insolvency practitioner, grant or endeavour to grant to, or obtain or endeavour to obtain for any debtor or creditor any benefit not provided for by law;
- (l) any person who has by means of any misrepresentation or any reward or offer of any reward, whether direct or indirect, induced or attempted to induce any person to nominate him or her as an insolvency practitioner, to vote for him or her as an insolvency practitioner or to effect or assist in effecting his or her election as an insolvency practitioner of any insolvent estate;
- (m) any person who at any time during a period of 12 months immediately preceding the commencement of an insolvency proceeding in terms of this Act acted as the bookkeeper, accountant or auditor of a debtor;
- (n) any person with a proven interest opposed to the general interest of the creditors of an insolvent estate.

(3) A body corporate is not eligible to be an insolvency practitioner, but this subsection does not extend to an employee of a body corporate.

(4) A natural person who, during the two years immediately preceding the commencement of this Part, was carrying on any of the activities referred to in **section 8(1)** is, unless disqualified under subsection (2), presumed to be qualified to be and to

act as an insolvency practitioner on and after that commencement, and the Commissioner must issue a registration certificate to that person, but that person ceases to be so qualified unless the person has, within 12 months after that commencement, complied with the requirements of subsection (1).

Recognised professional bodies

11. (1) The Minister may, on the recommendation of the Commissioner by notice in the *Gazette* declare one or more professional bodies to be recognised professional bodies for the purposes of this Act.

(2) The Minister may declare a professional body to be a recognized professional body only if it-

- (a) regulates the practice of a profession; and
- (b) maintains and enforces rules enabling its members to act as insolvency practitioners to ensure that those members-
 - (i) are persons fit and proper to act as insolvency practitioners;
 - (ii) meet acceptable requirements relating to education, practical training and experience.

(3) A reference to the members of a recognised professional body includes a reference to persons who are, whether members of that body or not, governed by its rules in the practice of the relevant profession.

(4) The Minister may revoke a notice made under subsection (1) if it appears to the Minister that the professional body no longer meets the requirements of subsection (2).

(5) A notice made by the Minister under this section takes effect from the date of the notice or such other date as is specified in it.

(6) In this section, “profession” means a profession involving in or carrying on any of the activities referred to in **section 8(1)**.

Application to act as insolvency practitioner

12. (1) A person who wishes to act as an insolvency practitioner must apply to the Commissioner for a registration certificate to act as an insolvency practitioner.

(2) The Commissioner must refuse an application in terms of subsection (1) that-

- (a) does not comply with the prescribed requirements;
 - (b) does not contain or is not accompanied by such information as the Commissioner may reasonably require for purposes of determining the application;
 - (c) does not comply with subsection (3); or
 - (d) is not accompanied by the prescribed fee.
- (3) The applicant must include in, or attach to, the application proof that-
- (a) the applicant is qualified to act as an insolvency practitioner;
 - (b) the applicant-
 - (i) has a professional indemnity insurance policy or has provided security for the proper performance of the functions of an insolvency practitioner; and

- (ii) that policy or security meets the prescribed requirements; and
- (c) the applicant is a person fit and proper to act as an insolvency practitioner.

(4) Information to be provided to the Commissioner under this section must, if the Commissioner so requires, be in such form or verified in such manner as the Commissioner may specify.

(5) An application made under subsection (1) may be withdrawn at any time before it is granted or refused.

Grant or refusal of application to act as insolvency practitioner

13. (1) The Commissioner must as soon as practicable after receiving an application made under **section 12**, grant or refuse the application.

(2) The Commissioner must grant an application made under **section 12**, if satisfied that-

- (a) the application complies with the requirements of that section; and
- (b) the applicant is qualified to act as an insolvency practitioner and is a person fit and proper to act as such,

whereupon the Commissioner must issue a registration certificate in the prescribed form to the applicant.

(3) The Commissioner may not refuse an application for a registration certificate without having given the applicant an opportunity to be heard.

(4) On granting an application under this section, the Commissioner must notify the applicant in writing thereof and specify the date on which the registration certificate is to take effect.

(5) A registration certificate granted under this section continues in force for such period and subject to such reasonable conditions as are specified in that certificate.

Revocation of registration certificate

14. (1) The Commissioner in consultation with the Master may revoke a registration certificate if satisfied that the holder of such certificate—

- (a) is no longer qualified to act as an insolvency practitioner;
- (b) is no longer a person fit and proper to act as an insolvency practitioner;
- (c) has been found guilty of an offence under this Act, or of an offence under any other Act involving fraud, dishonesty or breach of trust;
- (d) has contravened or failed to comply with, or is contravening or failing to comply with, a condition of the registration certificate;
- (e) in making the application for registration certificate, has provided the Commissioner with false or misleading information.

(2) A registration certificate may be revoked by the Commissioner at the request, or with the consent, of the holder thereof.

(3) Except if subsection (2) applies, the Commissioner may not revoke a registration certificate without having given its holder an opportunity to be heard in accordance with prescribed directives respecting the rules governing hearings for the purposes of investigation into the conduct of an insolvency practitioner.

(4) A revocation of registration certificate is stayed until the period determined under **section 15(2)(a)** within which the holder of a registration certificate may appeal against the revocation has expired or, if that holder lodges such appeal

within that period, until the appeal is finally determined or is withdrawn, whichever occurs first.

Appeal against decision of Commissioner

15. (1) A person whose-

- (a) application for a registration certificate is refused; or
- (b) registration certificate is revoked otherwise than at that person's request or with his or her consent,

may appeal to the Minister against the refusal or revocation, as the case may be in accordance with rules prescribed for that purpose.

(2) Upon receipt of an appeal referred to in subsection (1), the Minister must within the prescribed period convene an appeals committee comprising of officials from the Ministry responsible for justice whom the Minister deems appropriately qualified to adjudicate the appeal in accordance with the rules referred to in that subsection.

(3) Appeal or a review proceedings may be instituted in any Court only against the decision of an appeals committee referred to in subsection (2).

(4) An appeal or review referred to in subsection (3) must-

- (a) be lodged with the Court within 90 days after applicant or holder of the registration certificate is notified of the decision of the appeals committee refusing the application or revoking the registration certificate, or within such extended period as the Court may allow; and
- (b) be in the form, and complies with any other requirements as prescribed.

(3) The Commissioner must be served with a copy of an appeal or review in terms of this section.

CHAPTER 3

LIQUIDATION PROCEEDINGS

PART 1

COMMENCEMENT STANDARDS

Acts of insolvency

- 16.** (1) A debtor commits an act of insolvency if-
- (a) that debtor leaves Namibia or, being out of Namibia remains absent therefrom, or absents himself or herself from his or her dwelling, or regular place of business, with intent thereby to evade or delay the payment of his or her debts;
 - (b) that debtor disposes or attempts to dispose of the debtor's property or any part thereof in a manner which appears to the Court to be likely to prejudice creditors or to prefer one or more creditors above another, unless the debtor satisfies the Court that such debtor was able to pay the debtor's debts after the disposition;
 - (c) that debtor removes or attempts to remove any of the debtor's property in a manner which appears to the Court to be likely to prejudice creditors or to prefer one or more creditors above another, unless the debtor satisfies the Court that such debtor was able to pay the debtor's debts after the removal or attempted removal;
 - (d) that debtor makes or offers to make any arrangement with any of the debtor's creditors for releasing the debtor wholly or partially from the debtor's debts;