

INSOLVENCY

Insolvency Act 24 of 1936, as amended in South Africa to November 1979.

Summary: This Act governs insolvent persons and their estates. It details the sequestration procedure, and the rights of various creditors.

Applicability to SWA: Section 1 defines “Republic” to include “the mandated territory of South West Africa,” and “Gazette” and “Supreme Court” are defined accordingly. Section 158*ter* states “This Act and any amendment thereof shall apply also in the Territory, including that portion of the Territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951).”

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(a) of the transfer proclamation excluded the references to the “Republic” in the Act from the operation of section 3(1) of the General Proclamation, except where it occurs for the second and third times in section 148 of the Act. This means that the designated references to “Republic” in section 148 were to be construed as references to the Territory only, while elsewhere “Republic” retained the meaning given to it in the definition section of the Act (South Africa and SWA).

None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Section 50 of the Sales Tax Proclamation (AG 40/1978) amends section 99 of this Act regarding the payment of sales tax from a sequestrated estate.

Act 18/1980 makes the *Insolvency Amendment Act 78 of 1980* applicable to South West Africa.

Act 14/1985 amends the Act substantially.

AG 17/1986 amends Tariff A in the Second Schedule to the Act. Proc. 12/1999 (GG 2051) substitutes Tariff A and Tariff B in the Second Schedule and the tariff of fees in the Third Schedule.

Act 12/2005 (GG 3551), which will come into force on a date set by the Minister of Justice, amends the Act substantially.

Regulations: The regulations promulgated in RSA GN R.1379 of 24 August 1962 are amended by GN 32/1999 (GG 2051).

A tariff of fees is contained in GN 37/1999 (GG 2051), which withdraws RSA General Notice 681 of 1 November 1974.

Cases:

Bekker NO v Kotzé & Another 1994 NR 345 (HC) (section 18(3)). See also the related case of *Bekker NO v Kotzé & Another* 1994 NR 373 (HC).

Barotti Furniture (Pty) Ltd v Moodley 1996 NR 295 (HC)
Commercial Bank of Namibia v Myburgh & Another 1996 NR 330 (HC)
JCL Civils Namibia (Pty) Ltd v Steenkamp 2007 (1) NR 1 (HC) (secured
creditor).