

ACTS SUPPLEMENT

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Act 20

Insolvency (Amendment) Act

2022

THE INSOLVENCY (AMENDMENT) ACT, 2022

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THE INSOLVENCY (AMENDMENT) ACT, 2022

An Act to amend the Insolvency Act, 2011 to provide for a creditor’s right to set-off a debt subject to preferential debts; to repeal section 12 (2) of the Act; to empower administrators and supervisors to avoid transactions under sections 15, 16, 17, 18 and 19 of the Act; to provide for the offence of unlawful dealing with assets; to provide for post arrangement financing; to provide for post administration financing; to provide for court to make administration orders; to provide for the right of a creditor to apply for an interim order or appointment of a provisional administrator; to empower the minister to prescribe additional qualifications for an insolvency practitioner; to repeal sections 212 to 224 relating to reciprocal arrangements; to provide for the issuance of certificates of dissolution; to empower the official receiver to act and exercise the powers of an insolvency practitioner in respect of an asset discovered after the completion of an insolvency process and for related matters.

DATE OF ASSENT: 7th September, 2022

Date of Commencement: 16th September, 2022

BE IT ENACTED by Parliament as follows—

1. Amendment of Insolvency Act, 2011

The Insolvency Act, 2011, in this Act referred to as the “principal Act”, is amended in section 9, by inserting immediately after subsection (2) the following—

“(3) Notwithstanding the provisions of subsection (1) (b), a creditor’s right to set off any debt shall be subject to preferential debts referred to in section 12.”

2. Amendment of section 12 of principal Act

Section 12 of the principal Act is amended—

- (a) in subsection (1) by repealing the words “and subsection (2),”;
- (b) by repealing subsection (2).

3. Amendment of section 15 of principal Act

Section 15 of the principal Act is amended—

- (a) in subsection (1), by inserting immediately after the word “liquidator” the words “member, contributory, administrator, supervisor”;
- (b) in subsection (1) (a) (iii) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”;
- (c) in subsection (1) (b) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”; and
- (d) in subsection (2) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”.

4. Amendment of section 16 of principal Act

Section 16 of the principal Act is amended—

- (a) by inserting immediately after the word “liquidator” the words “administrator, supervisor”; and

- (b) in paragraph (a) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”.

5. Amendment of section 17 of principal Act

Section 17 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after the word “liquidator” the words “administrator, supervisor” and immediately after the word “liquidation” the words “receivership, arrangement, administration”;
- (c) in subsection (1) (b) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”; and
- (b) in subsection (2) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”.

6. Amendment of section 18 of principal Act

Section 18 of the principal Act is amended in subsection (1) by inserting immediately after the word “liquidator” the words “administrator, supervisor”.

7. Amendment of section 19 of principal Act

Section 19 of the principal Act is amended—

- (a) in subsection (1) by inserting immediately after the word “liquidator” the words “administrator, supervisor”;
- (b) in subsection (1) (a) by inserting immediately after the word “liquidator” the words “creditor, administrator, supervisor, receiver, member or contributory”;
- (c) in subsection (1) (b) by inserting immediately after the word “liquidator” the words “creditor, administrator, supervisor, member or contributory”;

- (d) in subsection (5) (a) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”;
- (e) in subsection (5) (b) (i) by inserting immediately after the word “liquidator” the words “administrator, supervisor”;
- (f) in subsection (5) (b) (vi) by inserting immediately after the word “liquidation” the words “receivership, arrangement, administration”; and
- (g) in subsection (7) by inserting immediately after the word “liquidator” the words “creditor, administrator, supervisor, member or contributory”.

8. Insertion of new section 19A in principal Act

The principal Act is amended by inserting immediately after section 19 the following—

“19A. Unlawful dealings with assets

(1) A person who conceals, disposes of or creates a charge on the property or removes any part of it with the intention of depriving or delaying creditor’s claims within two years before the commencement of insolvency proceedings commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or to imprisonment not exceeding five years or both.

(2) A person who executes a transaction specified in sections 15, 16, 17 and 18 of this Act with the intention to deprive or delay creditors’ claims commits an offence and is liable, on conviction, to a fine not exceeding two hundred and fifty currency points or to imprisonment not exceeding five years or both.

9. Amendment of section 45 of principal Act

Section 45 of the principal Act is amended in subsection (3) (b) by substituting for the word “five” the word “two”.

10. Amendment of section 67 of principal Act

Section 67 of the principal Act is amended—

- (a) in subsection (3) (a) by substituting for the word “registrar” the words “official receiver”;
- (b) in subsection (3) (b) by substituting for the word “registrar” the words “official receiver”;
- (c) by repealing subsection (5); and
- (d) by substituting for subsection (7), the following—

“(7) Where the court makes an order under subsection (6), a certified copy shall be delivered to the official receiver for registration within seven days after the making of the order.”

11. Amendment of section 77 of principal Act

Section 77 of the principal Act is amended—

- (a) in subsection (4) (a) by substituting for the word “registrar”, the words “official receiver”;
- (b) in subsection (4) (b) by substituting for the word “registrar”, the words “official receiver”;
- (c) by repealing subsection (6); and
- (d) by substituting for subsection (8), the following—

“(8) Where the court makes an order under subsection (7), a certified copy of the order shall be delivered to the official receiver for registration within seven days after the making of the order.”

12. Amendment of section 114 of principal Act

Section 114 of the principal Act is amended by inserting immediately after subsection (2), the following—

“(3) Where the official receiver receives the final report, the final accounts of liquidation and the statement referred to in subsection (1), the official receiver shall register the documents and serve a copy on the registrar.

(4) The official receiver shall, upon the expiry of the time specified in section 67 (6) and 77 (7) of the Act, issue a certificate of dissolution of the company and serve a copy on the registrar.

(5) The registrar shall, upon receiving the certificate of dissolution referred to in subsection (3), remove the company from the register.

(6) The certificate of dissolution referred to in subsection (4), shall be in a form prescribed by regulations.”

13. Insertion of new section 126A to principal Act

The principal Act is amended by inserting immediately after section 126 the following—

126A. Post arrangement financing

(1) A supervisor may, with the consent of the creditors and with the approval of Court, obtain or borrow finances and grant security over the property of the debtor for the purposes of implementing the arrangement.

(2) The post arrangement financing referred to in subsection (1) shall not exceed the value of the debtor’s unencumbered assets at the time of the arrangement order.

14. Amendment of section 145 of principal Act

Section 145 of the principal Act is amended in subsection (2) by substituting for the word “ten” the word “fifteen”.

15. Insertion of new section 137A in principal Act

The principal Act is amended by inserting immediately after section 137 the following—

“137A. Right of creditor to apply for interim order.

(1) A creditor may apply to court for an interim protective order in accordance with the provisions of this Part.

(2) Sections 119 to 137 of the Act shall apply, with necessary modifications where a creditor applies for an interim protective order.

16. Amendment of section 146 of principal Act

Section 146 of the principal Act is amended in subsection (1) by substituting for the word “five” the word “ten”.

17. Amendment of section 155 of principal Act

Section 155 of the principal Act is amended by substituting subsection (4), the following—

“(4) A director or secretary who fails to comply with the provisions of this section commits an offence and is on conviction liable, to a fine not exceeding twenty-four currency point or imprisonment not exceeding two years or both.”

18. Amendment of section 162 of principal Act

Section 162 of the principal Act is amended by inserting immediately after subsection (2) the following—

“(3) The administrator shall within five working days from the date of execution of the administration deed under subsection (1), file the administration deed in court.

(4) Where the administration deed is filed in court under subsection (3), the court shall issue an administration order.”

19. Amendment of section 163 of principal Act

Section 163 of the principal Act is amended in paragraph (c) by repealing the word “court”.

20. Insertion of new section 164A in principal Act

The principal Act is amended by inserting immediately after section 164 the following—

“164A. Post administration financing

(1) An administrator may, with the consent of the creditors, obtain or borrow finances and grant security over the property of the company for the purposes of implementing the administration deed.

(2) The post administration financing referred to in subsection (1) shall not exceed the value of the company’s unencumbered assets at the time of executing the administration deed.”

21. Insertion of new section 174A in principal Act

The principal Act is amended by inserting immediately after section 174 the following—

“174A. Right of creditor to apply for provisional administrator

(3) A creditor may apply to court for the appointment of a provisional administrator in accordance with the provisions of this Part.

(4) Sections 138 to 174 of this Act shall apply, with necessary modifications where a creditor applies for the appointment of a provisional administrator.”

22. Amendment of section 199 of principal Act

Section 199 of the principal Act is amended by inserting immediately after paragraph (d) the following—

“(da) act and exercise the powers of an insolvency practitioner in respect of an asset discovered after the completion of an insolvency process;

(db) to receive and consider applications from an insolvency practitioner for disposal of assets that require to be disposed of expeditiously for purposes of maximising the value of the estate;”

23. Amendment of section 204 of principal Act

Section 204 of the principal Act is amended by inserting immediately after subsection (1) the following—

“(1a) Subject to subsection (1), the Minister may, by regulations, prescribe additional qualifications for a person to be appointed or to act as an insolvency practitioner.”

24. Repeal of sections 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223 and 224

The principal Act is amended by repealing sections 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223 and 224.

25. Amendment of section 225 of the principal Act

Section 225 of the principal Act is amended by repealing subsections (2), (3) and (4).

26. Amendment of section 256 of principal Act

Section 256 of the principal Act is amended by repealing paragraph (a).

27. Insertion of new section 259A in principal Act

The principal Act is amended by inserting immediately after section 259 the following—

“259A. Access to Information

Subject to the Access to Information Act, 2005 and the Data Protection and Privacy Act, 2019, any person may request and have access to information or data in the possession of a trustee, receiver, liquidator, administrator or supervisor.

Cross references

Access to Information Act, 2005, Act 5 of 2005; and
Data Protection and Privacy Act, 2019, Act 9 of 2019.