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Recognition of External Trustees and Liquidators Act, 1932

Act 51 of 1932

Legislation as at 1 December 1998

FRBR URI: /akn/sz/act/1932/51/eng@1998-12-01

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PDF created on 21 February 2024 at 17:29.

Collection last checked for updates: 1 December 1998.

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Recognition of External Trustees and Liquidators Act, 1932

Act 51 of 1932

Commenced on 18 November 1932

[This is the version of this document at 1 December 1998.]

An Act to provide for the recognition of trustees and liquidators appointed in certain other countries.

1. Short title

This Act may be cited as the Recognition of External Trustees and Liquidators Act, 1932.

2. Interpretation

In this Act unless inconsistent with the context—

“**country**” means—

- (a) any country in the Commonwealth;
- (b) the Republic of Ireland;
- (c) the Republic of South Africa; or
- (d) South West Africa;

“**external trustee**” means a person duly appointed in a country other than Swaziland, for the purpose of administering, liquidating and distributing any bankrupt or insolvent estate;

“**external liquidator**” means a person duly appointed in a country other than Swaziland, for the purpose of liquidating any company;

“**immovable property**” means land or any interest in land registered in the office of the Registrar of Deeds or Registrar of Mining Rights or other registration officer;

“**letter of appointment**” means and includes every document issued and delivered (or a copy of such document duly certified by a competent judicial authority) under which any person is appointed to perform duties in relation to any bankrupt or insolvent estate or to any company in liquidation similar to those performed in Swaziland by trustees of insolvent estates or by liquidators respectively;

“**local creditor**” means a creditor—

- (a) resident or carrying on business in Swaziland;
- (b) who is such by virtue of any right or claim against the estate first accruing to a creditor resident or carrying on business in Swaziland;
- (c) who is such by virtue of any debt or obligation registered in the office of the Registrar of Deeds or Registrar of Mining Rights or other registration office;

“**Master**” means the Master or Assistant Master of the High Court or any person lawfully acting in such capacity;

“**Minister**” means the Prime Minister;

“**movable property**” means every kind of property and every right, interest or asset which is not immovable property.

3. Coming into force

This Act shall apply to external trustees or external liquidators with effect from the date of publication by the Minister in the *Gazette* of a notice declaring that there is in force in the country in question due provision for the recognition of letters of appointment of trustees in insolvency and liquidators granted by competent authority in Swaziland and shall continue to apply until the publication in like manner of a notice declaring that such provision is no longer in force in the country in question and thereby withdrawing in respect of it the operation of this Act.

4. Order of recognition

- (1) The High Court may order the recognition within Swaziland of any external trustee or external liquidator who has specified in writing a place in Swaziland as *domicilium citandi* on production to it of the letter of appointment of such external trustee or external liquidator and thereupon the property in Swaziland of the bankrupt, insolvent or company in liquidation, in respect of which the letter of appointment was made shall vest in such external trustee or external liquidator for the purpose of the bankruptcy, insolvency or liquidation as though such property were the property of an insolvent estate sequestrated, or company placed in liquidation, by order of a competent court of Swaziland but subject to the provisions of this Act.
- (2) The Registrar of the High Court shall forthwith transmit a duplicate of such order to the Master, the Registrar of Deeds and to the Registrar of Mining Rights, and the Master shall upon request by such external trustee or external liquidator instruct the Sheriff to enter and lay an attachment upon the movable property of the bankrupt, insolvent or company in liquidation (as the case may be) and the Sheriff shall attach such property in the same manner as he would attach property of an insolvent estate sequestrated in Swaziland.

5. Inventory and security

- (1) The external trustee or external liquidator shall forthwith lodge with the Master as inventory verified by affidavit showing the assets of such estate or company in Swaziland and the value thereof and shall give security to the satisfaction of the Master for—
 - (a) the due administration of such assets in Swaziland;
 - (b) due compliance with this Act;
 - (c) the payment of all fees and charges due under the laws of Swaziland; and
 - (d) the payment of any penalty or costs which he may be adjudged liable to pay under this Act.
- (2) The Master may at any time demand such further security as he may deem necessary and if such further security is not furnished within a reasonable time he may apply to the High Court by way of motion for an order upon the external trustee or external liquidator to furnish such further security as the court may direct.

6. Claims

The proof and admission or rejection of claims against such estate or company and its liability for them to the extent of its property, the application of such property, as well as all questions of mortgage or preference in respect thereof, shall be regulated as if the estate were sequestrated or the company placed in liquidation by order of a competent court in Swaziland:

Provided that the Master shall appoint not less than two public meetings of creditors (to be held at such times and places as he shall deem most convenient for all concerned) for receiving proofs of debt against the estate, and the second of such meetings shall be held not less than fourteen days after the first, and none but local creditors shall be entitled to prove their claims thereat:

Provided further that the external liquidator shall advertise such meetings in the *Gazette* and in such newspaper circulating in Swaziland as the Master may direct.

7. Accounts

The external trustee or external liquidator shall lodge with the Master (subject to any law in force in Swaziland as to extension of time), an account of his administration of the property in Swaziland, a plan of distribution, and (if any) a plan of contribution.

8. Plan of distribution

The plan of distribution shall show—

- (a) all claims entitled to be preferably ranked against the proceeds of the local assets and the proposed application of such assets in satisfaction thereof;
- (b) the balance remaining in Swaziland for distribution among the general body of creditors; and
- (c) the names of all creditors who have proved their claims in Swaziland to the satisfaction of the Master together with the amounts of such claims.

9. Confirmation of plan

The publication and confirmation of every such account and plan and the payment of dividends and the collection of contributions thereunder shall be governed as far as may be by the law and practice in force for the time being in Swaziland relating to insolvency.

10. Concurrent creditors

Upon such confirmation the external trustee or external liquidator shall pay all costs of administration in Swaziland and the claims of all local preferent creditors, and thereafter the balance remaining shall be available for distribution among the general body of creditors, including the local concurrent creditors:

Provided that such balance shall remain in Swaziland until—

- (a) the external trustee or external liquidator shall have lodged with the Master a duplicate of the final liquidation account of the general estate, and
- (b) the dividend payable to the local concurrent creditors out of such general estate shall have been paid out of the balance retained in Swaziland in so far as it may allow of such payment.

11. Unpaid dividends

- (1) All dividends awarded to local preferent creditors remaining unpaid at the end of six months from the confirmation of the account and plan of distribution mentioned in [section 9](#) and all dividends awarded to local concurrent creditors under the account mentioned in [section 10](#) remaining unpaid at the end of six months after the receipt of such account by the Master shall be paid into the hands of the Master and be deposited by him in the Guardian's Fund for account of the persons entitled thereto.
- (2) If the external trustee or external liquidator fails to render the accounts required under this Act and to produce and lodge with the Master the acquittances of the creditors, or otherwise to deposit the unclaimed dividends as aforesaid, the Master may apply to the High Court for an order upon such trustee or liquidator to show cause why such account should not be rendered or such acquittances lodged and such court may make such order as it thinks fit and order such trustee or liquidator, if he has wrongfully retained any such dividend, to pay to the Government by way of penalty, within such time as to it shall seem fit, any sum not exceeding the amount of the dividend so retained.

12. *Costs de bonis propriis*

The court may order the costs awarded to the Master upon any proceeding taken by him against an external trustee or external liquidator under this Act to be paid by such trustee or liquidator *de bonis propriis* and such external trustee or external liquidator shall in no case be entitled to charge them to the estate administered by him unless authorised so to do by the High Court.

13. Master's expenses and fees

The external trustee or external liquidator shall pay any expenses lawfully incurred by the Master in giving effect to this Act together with such fees as are prescribed by any law for the time being in force relating to insolvency or liquidation of companies.

14. Release of trustee

If no creditor proves a claim before the Master within the appointed time the Master may release the sureties of the external trustee or external liquidator upon payment of the fees and expenses prescribed by law.

15. Stay of proceedings against insolvent

All actions pending against any bankrupt or insolvent whose estate is being administered by an external trustee or against a company the assets of which are being administered by an external liquidator shall upon recognition of such trustee or liquidator be stayed:

Provided that if—

- (a) the action be for any debt or demand the plaintiff may prove his claim together with the taxed costs of the action against the estate of the bankrupt or insolvent or the assets of the company;
- (b) the action be for unliquidated damages the plaintiff may, after reasonable notice to such trustee or liquidator requiring him to take up and defend the action, proceed to obtain the judgment of the Court thereon, and may further, if such judgment be in his favour, prove the same, together with any taxed costs of the action, as a claim against the estate of the bankrupt or insolvent or the assets of the company.
- (c) the bankrupt or insolvent be in prison under any arrest granted as security for such debt or demand he may be discharged from prison by the High Court.

16. Stay of proceedings by insolvent

Every action commenced by the said bankrupt, insolvent or company shall upon the recognition of the external trustee of such bankrupt or insolvent or the external liquidator of such company be stayed until such trustee or liquidator shall make election to prosecute or discontinue the same and he shall be bound to make such election within four weeks after notice to that effect has been served upon him by the defendant and, failing such election, he shall be deemed to have abandoned such action.

17. Application of laws of Swaziland

In all matters not specially provided for in this Act the law for the time being in force in Swaziland relating to insolvent estates or liquidation of companies, as the case may be, shall *mutatis mutandis* apply.

18. Saving of powers of High Court

Nothing in this Act shall be deemed to deprive the High Court of any jurisdiction which it may have before the commencement of this Act to recognise for the purposes of the administration of any assets within Swaziland any person appointed by a competent authority outside Swaziland to be the trustee of a bankrupt or insolvent estate or the liquidator of a company.