

(2) As soon as practicable after forming a reasonable suspicion that a debtor has committed an offence in connection with a proposal to which this section applies, the court referred to in **section 121**, the liquidator referred to in **section 177** or a supervisor of a voluntary arrangement must report the matter to the Prosecutor General.

(3) On receiving the report contemplated in subsection (2), the Prosecutor General may request the person who made the report to provide -

- (a) such information as is specified in the request; and
- (b) access to, and facilities for inspecting and taking copies of, such documents as are so specified.

(4) The person who made the report must comply with such a request to the extent that the information or documents are under the debtor's control and relate to the matter concerned.

(5) If the Prosecutor General takes criminal proceedings following a report made under subsection (2), the person who made the report must provide the Prosecutor General with all assistance in connection with the prosecution that that person is reasonably able to provide.

(6) If the person who made the report fails to comply with subsections (3), (4) or (5) the Prosecutor General may apply to the Court for an order under subsection (7).

(7) On the hearing of an application made under subsection (6), the Court may make an order directing the person who made the report to comply with subsection (3) or (4), as appropriate.

CHAPTER 5

CROSS-BORDER INSOLVENCIES

PART 1
INTERPRETATION AND FUNDAMENTAL PRINCIPLES

Definitions

181. For the purposes of this Chapter -

- (a) “debtor” means-
- (i) a natural person or the estate of such natural person;
 - (ii) a partnership or the estate of a partnership;
 - (iii) a trust;
 - (iv) a company incorporated in terms of the Companies Act, including an external company;
 - (v) a co-operative incorporated in terms of the Co-operatives Act, 1996 (Act No. 23 of 1996) and includes a co-operative agricultural society, co-operative agricultural company, farmers' special co-operative company and co-operative trading society deemed to be registered as a cooperative in terms of section 110 of that Act;
 - (vi) a corporation incorporated in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988);
 - (vii) any other person or entity which is a debtor in the usual sense of the word;

- (b) “curator of an institution” means a curator appointed in terms of section 6 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
- (c) “establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human means and goods or services;
- (d) “foreign court” means a judicial or other authority competent to control or supervise foreign proceedings;
- (e) “foreign main proceedings” means foreign proceedings taking place in the State where the debtor has the centre of its main interests;
- (f) “foreign non-main proceedings” means foreign proceedings, other than foreign main proceedings, taking place in a State where the debtor has an establishment within the meaning of paragraph (c) of this section;
- (g) “foreign proceedings” means collective judicial or administrative proceedings in a foreign State, including interim proceedings, pursuant to a law relating to insolvency in which proceedings the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;
- (h) “foreign representative” means a person or body, including one appointed on an interim basis, authorized in foreign proceedings to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceedings;
- (i) “foreign State” means a State designated under **section 183(2)**;
- (j) “judicial manager” means a judicial manager defined in section 1 of the Companies Act and includes a provisional judicial manager;

- (k) “liquidator”, in relation to a company, means a liquidator defined in section 1 of the Companies Act;
- (l) “trustee” means a trustee as defined in section 1 of the Trust Monies Protection Act, 1934 (Act No. 34 of 1934).

Purpose and aims

182. The purpose of this Chapter is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of -

- (a) co-operation between the courts and other competent authorities of Namibia and those of foreign States involved in cases of cross-border insolvency;
- (b) greater legal certainty for trade and investment;
- (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
- (d) protection and maximization of the value of the debtor's assets; and
- (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

Scope of application

183. (1) This Chapter applies where-

- (a) assistance is sought in Namibia by a foreign court or a foreign representative in connection with a foreign proceeding;

- (b) assistance is sought in a foreign State in connection with a proceeding under the laws of Namibia relating to insolvency;
- (c) a foreign proceeding and a proceeding under the laws of Namibia relating to insolvency in respect of the same debtor are taking place concurrently; or
- (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, a proceeding under the laws of Namibia relating to insolvency.

(2) (a) Subject to paragraph (b), this Chapter applies in respect of any foreign State not designated by the Minister by notice in the *Gazette*.

(b) The Minister may designate a foreign State by notice in the *Gazette* if the Minister is satisfied that the recognition accorded by the law of such a State to proceedings under the laws of Namibia relating to insolvency does not justify the application of this Chapter to foreign proceedings in such State.

(3) The Minister may at any time by subsequent notice in the *Gazette* withdraw any notice in terms of subsection (2)(b), and thereupon any State referred to in such last-mentioned notice is to be a foreign State for the purposes of this Chapter.

(4) Any notice referred to in subsection (2)(b) or (3) must, before publication in the *Gazette*, be approved by Parliament.

(5) Where the Minister issues a notice in terms of subsection (2)(b) or (3), such notice does not affect any pending legal proceedings and such proceedings must continue as if the notice had not been issued.

International obligations of Namibia

184. To the extent that this Chapter conflicts with an obligation of Namibia arising out of any treaty or other form of agreement to which Namibia is a party with one or more other States and which treaty or agreement has been ratified or acceded to in terms of Article 62(2)(c) of the Namibian Constitution or is binding upon Namibia in terms of Article 143 or 144 of that Constitution, the requirements of the treaty or agreement prevail.

Competent court

185. The functions referred to in this Chapter relating to recognition of foreign proceedings and cooperation with foreign courts must be performed by the Court.

Authorization of insolvency practitioner, trustee, liquidator, judicial manager or curator to act in foreign State

186. An insolvency practitioner, trustee, liquidator, judicial manager or curator of an institution is authorized to act in a foreign State in respect of proceedings under the laws of Namibia relating to insolvency, as permitted by the applicable foreign law.

Public policy exception

187. Nothing in this Chapter prevents the Court from refusing to take an action governed by this Chapter if the action would be manifestly contrary to the public policy of Namibia.

Additional assistance under other laws

188. Nothing in this Chapter limits the power of a Court or an insolvency practitioner, a trustee, liquidator, judicial manager or curator of an institution to provide additional assistance to a foreign representative under other laws of Namibia.

Interpretation

189. In the interpretation of this Chapter, regard must be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

PART 2

ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO COURTS IN REPUBLIC

Right of direct access

190. A foreign representative is entitled to apply directly to a Court in Namibia for relief.

Limited jurisdiction

191. The sole fact that an application pursuant to this Chapter is made to a Court in Namibia by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the Courts of Namibia for any purpose other than the application.

Application by foreign representative to commence proceedings under the laws of Namibia relating to insolvency

192. A foreign representative may apply to commence proceedings under the laws of Namibia relating to insolvency if the conditions for commencing such proceedings are otherwise met.

Participation of foreign representative in proceedings under the laws of Namibia relating to insolvency

193. Upon recognition of foreign proceedings, the foreign representative may participate in proceedings regarding the debtor under the laws of Namibia relating to insolvency.

Access of foreign creditors to proceedings under the laws of Namibia relating to insolvency

194. (1) Subject to subsection (2), foreign creditors have the same rights regarding the commencement of, and participation in, proceedings under the laws of Namibia relating to insolvency as creditors in Namibia.

(2) Subsection (1) of this section does not affect the ranking of claims in a proceeding under the laws of Namibia relating to insolvency, except that the claims of foreign creditors may not be ranked lower than non-preferent claims.

(3) Without derogating from the application of the law and practice of Namibia generally, the ranking of claims in respect of assets in Namibia is regulated by the law and practice of Namibia on the ranking of claims.

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

195. (1) (a) Whenever under the laws of Namibia relating to insolvency notification is to be given to creditors in Namibia, such notification must also be given to the known creditors that do not have addresses in Namibia.

(b) The Court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

- (2) (a) Such notification must be made to the foreign creditors individually, unless the Court considers that, under the circumstances, some other form of notification would be more appropriate.
- (b) For purposes of paragraph (a), no letters rogatory or other, similar formality is required.
- (3) When a notification of commencement of proceedings is to be given to foreign creditors, the notification must -
 - (a) indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) indicate whether secured creditors need to file their secured claims; and
 - (c) contain any other information required to be included in such a notification to creditors pursuant to the law of Namibia and the orders of the Court.

PART 3

RECOGNITION OF FOREIGN PROCEEDINGS AND RELIEF

Application for recognition of foreign proceedings

196. (1) A foreign representative may apply to the Court for recognition of the foreign proceeding in which the foreign representative has been appointed.

(2) An application for recognition in terms of subsection (1) must be accompanied by -

- (a) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

- (b) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
- (c) in the absence of evidence referred to in paragraphs (a) and (b), any other evidence acceptable to the Court of the existence of the foreign proceeding and of the appointment of the foreign representative.

(3) An application for recognition must also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.

(4) The Court may require a translation of documents supplied in support of the application for recognition into the official language of Namibia.

Presumptions concerning recognition

197. (1) If the decision or certificate referred to in **section 196(2)** indicates that the foreign proceedings are proceedings within the meaning of **section 181(g)** and that the foreign representative is a person or body within the meaning of **section 181(h)**, the Court may so presume.

(2) The Court may presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalized.

(3) In the absence of proof to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the centre of the debtor's main interests.

Decision to recognize foreign proceedings

198. (1) Subject to **section 187**, foreign proceedings must be recognized if -

- (a) the foreign proceedings are proceedings within the meaning of **section 181(g)**;
 - (b) the foreign representative applying for recognition is a person or body within the meaning of **section 181(h)**;
 - (c) the application meets the requirements of **section 196(2)**; and
 - (d) the application has been submitted to a Court.
- (2) The foreign proceedings must be recognized -
- (a) as foreign main proceedings if they are taking place in the State where the debtor has the centre of his or her or its main interests; or
 - (b) as foreign non-main proceedings if the debtor has an establishment within the meaning of **section 181(c)** in the foreign State.
- (3) An application for recognition of foreign proceedings must be decided upon at the earliest possible time.
- (4) The provisions of **sections 196, 197**, this section **and section 199** do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

Subsequent information

199. From the time of filing the application for recognition of the foreign proceeding, the foreign representative must inform the Court promptly of -

- (a) any change in the status of the recognized foreign proceedings or the status of the foreign representative's appointment; and

- (b) any other foreign proceedings regarding the same debtor that become known to the foreign representative.

Relief that may be granted upon application for recognition of foreign proceedings

200. (1) From the time of filing an application for recognition until the application is decided upon, the Court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including -

- (a) staying execution against the debtor's assets;
- (b) entrusting the administration or realization of all or part of the debtor's assets located in Namibia to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- (c) any relief mentioned in **section 202(1)(c), (d) and (g)**.

(2) An order issued in terms of subsection (1) must be dealt with as contemplated in **section 26** of this Act.

(3) Unless extended under **section 202(1)(f)**, the relief granted under this section terminates when the application for recognition is decided upon.

(4) The Court may refuse to grant relief under this section if such relief would interfere with the administration of foreign main proceedings.

Effect of recognition of foreign main proceedings

201. (1) Upon recognition of foreign proceedings that are foreign main proceedings -

- (a) commencement or continuation of individual legal actions or individual legal proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;
- (b) execution against the debtor's assets is stayed; and
- (c) the right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

(2) The scope, and the modification or termination, of the stay and suspension referred to in subsection (1) of this section are subject to the provisions of **sections 20 and 28** of this Act, and the Court may, at the request of the foreign representative or a person affected by subsection (1), modify or terminate the scope of the stay and suspension.

(3) Subsection (1)(a) does not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.

(4) Subsection (1) does not affect the right to request the commencement of proceedings under the laws of Namibia relating to insolvency or the right to file claims in such proceedings.

Relief that may be granted upon recognition of foreign proceedings

202. (1) Upon recognition of foreign proceedings, whether foreign main or non-main proceedings, where necessary to protect the assets of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including -

- (a) staying the commencement or continuation of individual legal actions or individual legal proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under **section 201(1)(a)**;

- (b) staying execution against the debtor's assets to the extent it has not been stayed under **section 201(1)(b)**;
- (c) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under **section 201(1)(c)**;
- (d) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
- (e) entrusting the administration or realization of all or part of the debtor's assets located in Namibia to the foreign representative or another person designated by the Court;
- (f) extending relief granted under **section 200(1)**;
- (g) granting any additional relief that may be available to an insolvency practitioner, a trustee, liquidator, judicial manager or curator of an institution under the laws of Namibia.

(2) Upon recognition of foreign proceedings, whether foreign main or non-main proceedings, the Court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Namibia to the foreign representative or another person designated by the Court, provided that the Court is satisfied that the interests of creditors in Namibia are adequately protected.

(3) In granting relief under this section to a representative of foreign non-main proceedings, the Court must be satisfied that the relief relates to assets that, under the law of Namibia, should be administered in the foreign non-main proceeding or concerns information required in those proceedings.

(4) Without derogating from the application of laws of Namibia generally, in granting relief under this section the Court must indicate the laws of Namibia relating to the administration, realization or distribution of a debtor's estate in Namibia that will apply.

Protection of creditors and other interested persons

203. (1) In granting or denying relief under **section 200 or 202**, or in modifying or terminating relief under subsection (3), the Court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.

(2) The Court may subject relief granted under **sections 200 or 202** to conditions it considers appropriate.

(3) The Court may, at the request of the foreign representative or a person affected by relief granted under **sections 200 or 202**, or of its own motion, modify or terminate such relief.

Actions to avoid acts detrimental to creditors

204. (1) Upon recognition of foreign proceedings, the foreign representative has standing to initiate any legal action to set aside a disposition that is available to a trustee or liquidator under the laws of Namibia relating to insolvency.

(2) When the foreign proceedings are foreign non-main proceedings, the Court must be satisfied that the legal action relates to assets that, under the law of Namibia, should be administered in the foreign non-main proceeding.

Intervention by foreign representative in proceedings in Namibia

205. Upon recognition of foreign proceedings, the foreign representative may, provided the requirements of the law of Namibia are met, intervene in any proceedings in which the debtor is a party.

PART 4
COOPERATION WITH FOREIGN COURTS AND FOREIGN
REPRESENTATIVES

Cooperation and direct communication between court of Namibia and foreign courts or foreign representatives

206. (1) In matters referred to in **section 183(1)**, the Court must cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through an insolvency practitioner, a trustee, liquidator, judicial manager or curator of an institution.

(2) The Court may communicate directly with, or request information or assistance directly from, foreign courts or foreign representatives.

Cooperation and direct communication between insolvency practitioner, trustee, liquidator, judicial manager or curator of an institution and foreign courts or foreign representatives

207. (1) In matters referred to in **section 183(1)**, an insolvency practitioner, a trustee, liquidator, judicial manager or curator of an institution must, in the performance of his or her or its functions and subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

(2) The insolvency practitioner, trustee, liquidator, judicial manager or curator of an institution may, in the exercise of his or her or its functions and subject to the supervision of the Court, communicate directly with foreign courts or foreign representatives.

Forms of cooperation

208. Cooperation referred to in **sections 206 and 207** may be implemented by any appropriate means, including -

- (a) appointment of a person or body to act at the direction of the Court;
- (b) communication of information by any means considered appropriate by the Court;
- (c) coordination of the administration and supervision of the debtor's assets and affairs;
- (d) approval or implementation by courts of agreements concerning the coordination of proceedings;
- (e) coordination of concurrent proceedings regarding the same debtor.

PART 5

CONCURRENT PROCEEDINGS

Commencement of proceedings under the laws of Namibia relating to insolvency after recognition of foreign main proceedings

209. (1) After recognition of foreign main proceedings, proceedings under the laws of Namibia relating to insolvency may be commenced only if the debtor has assets in Namibia.

(2) The effects of such proceedings are restricted to the assets of the debtor that are located in Namibia and, to the extent necessary to implement cooperation and coordination under **sections 206, 207 and 208**, to other assets of the debtor that, under the law of Namibia, should be administered in those proceedings.

Coordination of proceedings under the laws of Namibia relating to insolvency and foreign proceedings

210. Where foreign proceedings and proceedings under the laws of Namibia relating to insolvency are taking place concurrently regarding the same debtor, the Court must seek cooperation and coordination under **sections 206, 207 and 208**, and-

- (a) when the proceedings in Namibia are taking place at the time that the application for recognition of the foreign proceeding is filed,
 - (i) any relief granted under **sections 200 or 202** must be consistent with the proceedings in Namibia; and
 - (ii) if the foreign proceedings are recognized in Namibia as foreign main proceedings, **section 201** does not apply;
- (b) when the proceedings in Namibia commence after recognition, or after the filing of the application for recognition, of the foreign proceedings:
 - (i) any relief in effect under **sections 200 or 202** must be reviewed by the Court and must be modified or terminated if inconsistent with the proceedings in Namibia; and
 - (ii) if the foreign proceedings are foreign main proceedings, the stay and suspension referred to in **section 201(1)** must be modified or terminated pursuant to **section 201(2)** if inconsistent with the proceedings in Namibia;
- (c) in granting relief or in extending or modifying relief granted to a representative of foreign non-main proceedings, the Court must be satisfied that the relief relates to assets that, under the law of Namibia, should be administered in the foreign non-main proceedings or concerns information required in those proceedings.

Coordination of foreign proceedings

211. In matters referred to in **section 183(1)**, in respect of more than one set of foreign proceedings regarding the same debtor, the court must seek cooperation and coordination under **sections 206, 207 and 208**, and -

- (a) any relief granted under **sections 200 or 202** to a representative of foreign non-main proceedings after recognition of foreign main proceedings must be consistent with the foreign main proceedings;
- (b) if foreign main proceedings are recognized after recognition, or after the filing of an application for recognition, of foreign non-main proceedings, any relief in effect under **sections 200 or 202** must be reviewed by the Court and must be modified or terminated if inconsistent with the foreign main proceedings;
- (c) if, after recognition of foreign non-main proceedings, other foreign non-main proceedings are recognized, the Court must grant, modify or terminate relief for the purpose of facilitating coordination of the proceedings.

Presumption of insolvency based on recognition of foreign main proceedings

212. In the absence of proof to the contrary, recognition of foreign main proceedings is, for the purpose of commencing proceedings under the laws of Namibia relating to insolvency, proof that the debtor is insolvent.

Rule of payment in concurrent proceedings

213. Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in proceedings pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in proceedings under the laws of Namibia relating to insolvency regarding the same

debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

CHAPTER 6

OFFENCES

Offences

- 214.** (1) A debtor is guilty of an offence if he or she-
- (a) before or after the liquidation of his or her estate conceals or parts with or intentionally destroys any book or accounting record relating to his or her affairs or if he or she intentionally erases the information contained therein or makes it illegible or permits any other person to perform any such act in regard to any such book or accounting record;
 - (c) before or after the liquidation of his or her estate, alienates property, obtained by him or her on credit and not paid for, otherwise than in the ordinary course of business;
 - (c) despite having been expressly asked about his or her financial standing and credit worthiness, falsely conceals his or her insolvent status and as a result thereof obtains credit for more than the prescribed amount;
 - (d) offers or promises to any person any reward in order to procure the acceptance by a creditor of his or her estate of an offer of compromise or to induce a creditor not to oppose an application for rehabilitation or to give up any investigation in regard to the estate or to conceal any information in connection therewith;
 - (e) any time within two years before the commencement of liquidation of his or her estate with intent to obtain credit or the extension of credit, intentionally gave false information or concealed any material fact in

connection with his or her assets and liabilities to a creditor or to anyone who became his or her creditor;

- (f) at any time before the date of liquidation of his or her estate deducted an amount from salary paid to an employee for payment to someone other than the debtor and failed to pay the amount to the person entitled thereto when required or, if payment is not required within a specified period, within 14 days after payment of the salary;
- (g) before the liquidation of his or her estate carried on any business or for his or her own account practised any profession or occupation and failed to keep proper accounting records of all business transactions, income, expenditure, assets and liabilities and to retain the accounting records for a period of at least three years;
- (g) at any time when his or her liabilities exceeded his or her assets or at any time within six months immediately prior to the commencement of liquidation of his or her estate, reduced his or her assets through gambling, betting or risky speculation or contracted debts which were not reasonably necessary in connection with business or occupation or for his or her own maintenance or that of his or her dependants;
- (h) contracted any debt of N\$500 or more or debts to the aggregate of N\$1000 or more, without any reasonable expectation of being able to discharge such debt or debts;
- (i) without good cause fails to submit a statement of his or her affairs as required by **section 60(1)(b)**;
- (j) without lawful cause fails to attend any meeting or continuation of a meeting of creditors of his or her estate of which he or she has been notified in writing or the continuation of such meeting which he or she has been directed by the presiding officer of the meeting to attend at the date, time and place determined by the presiding officer; or

- (k) at any time during the liquidation of his or her estate, knows or suspects that any person has lodged or intends to lodge a nomination contemplated in **section 50** which is false or has proved or intends to prove a false claim against his or her estate and fails to inform the Commissioner in the case of a nomination and the Commissioner and the liquidator of his estate in the case of a claim in writing of that knowledge or suspicion within 14 days as from the date upon which he or she acquired that knowledge or upon which his or her suspicion was aroused.
- (2) A person commits an offence if that person -
- (a) evades the service of a summons or a notice to him or her as contemplated in **sections 29(6)(a), 86, 87, 88, or 90** or who without lawful cause fails to attend at the date, time and place determined in the summons or notice or having appeared, without lawful cause fails to remain in attendance until he or she is excused from further attendance by the presiding officer of the meeting concerned;
- (b) has been called up for questioning in terms of **sections 29(6)(a), 86, 87, 88 or 90** and who refuses to be sworn as a witness or to take an affirmation or who without lawful cause refuses or fails to answer any question lawfully put to him or her or who without lawful cause refuses or fails to produce any book, document, or record which is in his or her possession or custody and which he or she is in terms of the summons or a direction of the presiding officer of the meeting obliged to produce;
- (c) without lawful cause fails to comply with a written order of a liquidator contemplated in **section 89(7) or (8)**;
- (d) without lawful cause fails to answer fully and correctly any written questions put to him or her by the liquidator of an insolvent estate in

terms of **section 89** or to send the said answers within the time and in the manner contemplated in **section 89(3)**;

- (e) receives any benefit or accepts any promise of a benefit as a reward for having kept in abeyance or stopped any action for the liquidation of the estate of a debtor or for having undertaken to keep such action in abeyance or to stop it or for having agreed to a composition or rehabilitation or for not opposing it or for having undertaken to agree to such composition or rehabilitation or not to oppose it or for having kept any inquiry in connection with any matter relating to the insolvent estate in abeyance or for having undertaken to hold it in abeyance or for having concealed particulars of a debtor or an insolvent estate or for having undertaken to conceal such information;
- (f) before or after the liquidation of the estate of an insolvent, conceals, parts with, damages, destroys, alienates or otherwise disposes of property attached in terms of **section 38** or property belonging to the insolvent or his or her estate with intent to frustrate the attachment of such property by virtue of a liquidation order, in terms of **that section**, or with intent to prejudice creditors of the insolvent estate;
- (g) has in his or her possession or custody or under his or her control property belonging to an insolvent estate and who intentionally fails to notify the liquidator of the insolvent estate as soon as possible of the existence and whereabouts of such property and to make it available to the liquidator;
- (h) intentionally impedes or hinders a liquidator appointed in terms of **section 51** or a liquidator appointed in terms of this Act or any person acting under his or her command, in the execution of his or her duties;
or
- (i) makes or causes to be made or allows to be made a false nomination in terms of **section 50** or who signs such a nomination without reasonable

grounds for believing it to be correct, or who knowingly submits a false nomination to the Commissioner.

(3) A liquidator of an insolvent estate who intentionally or negligently fails to lodge with the Commissioner an account or to pay over a sum of money within 30 days from the date on which he or she became obliged to submit such account or pay over such sum of money, or fails to comply with the duties in **section 59** within 30 days from the commencement of liquidation is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(4) (a) Any person who is convicted of an offence contemplated in subsection (1)(a) or (b) or subsection (2)(f), (g) or (h) is liable to a fine or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(b) Any person who is convicted of an offence contemplated in subsection (1)(c), (d), (e), (f), (g), (h), (i), (j) or (k) or subsection (2)(e) is liable to a fine or imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(c) Any person who is convicted of an offence contemplated in subsection (1)(h) or subsection (2)(a), (b), (c), (d) or (h) is liable to a fine or to imprisonment not exceeding six months or to both such fine and such imprisonment.

CHAPTER 7

PUBLIC REGISTERS

Public registers relating to insolvents and others

215. This Chapter applies to a public register established under **sections 24, 153 and 165.**