



Government Gazette

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THE PRESIDENCY

No. 666 20 July 2001

It is hereby notified that the Acting President has assented to the following Act, which is hereby published for general information:—

No. 20 of 2001: Administration of Estates Law Interim Rationalisation Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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ADMINISTRATION OF ESTATES LAWS
INTERIM RATIONALISATION ACT, 2001

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the Acting President.)
(Assented to 13 July 2001.)

ACT

To amend the Administration of Estates Act, 1965, so as to delete certain definitions, substitute other definitions and insert new definitions; and to substitute obsolete references; to make the Administration of Estates Act, 1965, applicable throughout the Republic; to repeal corresponding laws in force in the areas of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; to amend the Insolvency Act, 1936, so as to alter certain amounts; to amend the Age of Majority Act, 1972, so as to delete an obsolete reference; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 66 of 1965, as amended by section 1 of Act 54 of 1970, section 1 of Act 79 of 1971, section 26 of Act 57 of 1988 and section 1 of Act 49 of 1996

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1. Section 1 of the Administration of Estates Act, 1965 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definitions of “banking institution” and “building society”;
- (b) by the insertion after the definition of “appraiser” of the following definition: 10
 “ ‘bank’ means a public company registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990);”;
- (c) by the substitution for the definition of “Court” of the following definition: 15
 “ ‘Court’ means the [provincial division of the Supreme Court] High Court having jurisdiction, or any judge thereof [, and includes, whenever a matter in relation to which this expression is used is within the jurisdiction of a local division of the Supreme Court, that local division or any judge thereof];”;
- (d) by the substitution for the definition of “Master” of the following definition: 20
 “ ‘Master’, in relation to any matter, property or estate, means the Master, Deputy Master or Assistant Master of [the Supreme Court] a High Court appointed under section [two] 2, who has jurisdiction in respect of that matter, property or estate;” and
- (e) by the insertion after the definition of “Minister” of the following definition: 25
 “ ‘office’ includes a sub-office referred to in section 3(2)(b);”.

Substitution of section 2 of Act 66 of 1965, as amended by section 2 of Act 79 of 1971 and section 35 of Act 47 of 1997

2. The following section is hereby substituted for section 2 of the principal Act:

“Appointment of Masters, Deputy Masters and Assistant Masters

2. (1) Subject to [the provisions of] subsection (2) and the laws governing the public service, the Minister shall, in respect of the area of jurisdiction of each [provincial division of the Supreme Court] High Court, appoint a Master of the [Supreme Court] High Court, and may, in respect of each such area, appoint one or more Deputy Masters of the [Supreme Court] High Court and one or more Assistant Masters of the [Supreme Court] High Court, who may, subject to the control, direction and supervision of the Master, do anything which may lawfully be done by the Master.

(1A) The Minister may appoint a person as Master, Deputy Master or Assistant Master in respect of the area of jurisdiction of more than one High Court.

(2) No person shall be appointed as Master, Deputy Master or Assistant Master of [the Supreme Court] a High Court unless he or she has passed the diploma *iuris* examination or an examination deemed by the Minister for the Public Service and Administration to be equivalent thereto, or has before the commencement of this Act held a substantive appointment as a Master or Assistant Master of the Supreme Court: Provided that whenever a Master, Deputy Master or Assistant Master of [the Supreme Court] a High Court is because of absence or for any other reason unable to carry out the functions of his or her office or whenever such office becomes vacant, the Minister may authorize any officer in the public service to act in his or her place during his or her absence or incapacity or to act in the vacant office until the vacancy is filled, as the case may be.

[(3) Any person who at the commencement of this Act holds office as Master or Assistant Master of the Supreme Court shall be deemed to have been appointed under this section in respect of the area of jurisdiction of the provincial division of the Supreme Court concerned.]

(4) The Minister may delegate any power conferred on him or her by this section, to the [Secretary for Justice] Director-General: Justice or a [deputy secretary] deputy director-general in the Department of Justice.”.

Substitution of section 3 of Act 66 of 1965, as amended by section 20 of Act 45 of 1969

3. The following section is hereby substituted for section 3 of the principal Act:

“Master’s office to be at seat of High Court

3. (1) Each Master shall, subject to subsection (2), have [his] an office at the seat of the [provincial division of the Supreme Court] High Court in respect of whose area of jurisdiction he or she has been appointed.

(2) [The Minister may direct that a Deputy Master or an Assistant Master shall have his office at any place specified by the Minister, there to perform, in respect of the area so specified, such functions as he may lawfully perform under this Act or any other law.] If a person has been appointed as Master in respect of the area of jurisdiction of more than one High Court, the Minister—

(a) shall specify the seat of the High Court at which the Master concerned shall have an office; and

(b) may designate one or more places, within the area of jurisdiction in respect of which that Master has been appointed, where sub-offices of that Master may be established.

(3) The Minister may direct that a person who has been appointed as

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Deputy Master or Assistant Master shall be the head of a sub-office referred to in subsection (2) and he or she shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon him or her by or under this Act or any other law, subject to the control, direction and supervision of the Master of the High Court concerned.”.

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Amendment of section 4 of Act 66 of 1965, as amended by section 1 of Act 86 of 1983 and section 26 of Act 57 of 1988

4. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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“(a) in the case of a deceased person who was, at the date of his or her death, ordinarily resident within the area of jurisdiction of a [provincial division of the Supreme Court] High Court, with the Master appointed in respect of that area; and”;

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

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“(a) in the case of any such person who is ordinarily resident within the area of jurisdiction of a [provincial division of the Supreme Court] High Court, with the Master appointed in respect of that area; and”.

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Amendment of section 12 of Act 66 of 1965, as amended by section 3 of Act 54 of 1970, section 1 of Act 63 of 1990 and section 1 of Act 49 of 1996

5. Section 12 of the principal Act is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection:

“(5) The reference in section [47(1)] 118(1) of the Liquor Act, [1928 (Act No. 30 of 1928)] 1989 (Act No. 27 of 1989), to a curator, shall include a reference to an interim curator appointed under subsection (1), who has under subsection (3) been authorized to carry on the business of the licensee or person referred to in the said sections.”; and

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- (b) by the substitution for subsection (7) of the following subsection:

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“(7) [The provisions of sub-sections (3), (4) and (5) of section twenty-three, sections twenty-six, twenty-eight, thirty-six, forty-six,] Sections 23(3), (4) and (5), 26, 28, 36, 46 and [sub-paragraph (ii) of paragraph (b) of sub-section (1) of section fifty-four] 54(1)(b)(ii) shall [mutatis mutandis] with the necessary changes apply with reference to interim curators.”.

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Amendment of section 14 of Act 66 of 1965

6. Section 14 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Master shall, subject to [the provisions of sub-section] subsection (2) and sections [sixteen, seventeen and twenty-two] 16 and 22, on the written application of any person who—”.

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Amendment of section 15 of Act 66 of 1965

7. Section 15 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“The Master shall, subject to [the provisions of sub-section] subsection (2) and sections [sixteen, seventeen and twenty-two] 16 and 22—”.

Amendment of section 21 of Act 66 of 1965

8. Section 21 of the principal Act is hereby amended by the substitution for the words preceding the proviso of the following words:

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“Whenever letters of executorship granted in any State and authenticated as provided in the rules made under section [forty-three of the Supreme Court Act, 1959 (Act No. 59 of 1959)] 6(1)(i) of the Rules Board for Courts of Law Act, 1985

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(Act No. 107 of 1985), are produced to or lodged with the Master by the person in whose favour those letters have been granted or his or her duly authorized agent, those letters may, subject to **[the provisions of]** sections **[twenty-two and twenty-three]** 22 and 23, be signed by the Master and sealed with his or her seal of office, and such person shall thereupon with respect to the whole estate of the deceased situate in the Republic, for the purposes of this Act be deemed to be an executor to whom letters of executorship have been granted by the Master.” 5

Amendment of section 28 of Act 66 of 1965, as substituted by section 3 of Act 79 of 1971 and amended by section 7 of Act 86 of 1983

9. Section 28 of the principal Act is hereby amended— 10

(a) by the substitution for subsection (1) of the following subsection:

“(1) An executor—

(a) shall, unless the Master otherwise directs, as soon as he or she has in hand moneys in the estate in excess of **[R100] R1 000**, open a cheque account in the name of the estate with a **[banking institution] bank** in the Republic and shall deposit therein the moneys which he or she has in hand and such other moneys as he or she may from time to time receive for the estate; 15

(b) may open a savings account in the name of the estate with a **[banking institution or a building society] bank** and may transfer thereto so much of the moneys deposited in the account referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate; 20

(c) may place so much of the moneys deposited in the account referred to in paragraph (a) as is not immediately required for the payment of any claim against the estate on interest-bearing deposit with a **[banking institution or a building society] bank**.”; 25

(b) by the substitution for subsection (2) of the following subsection:

“(2) Every executor shall whenever required by the Master to do so, notify the Master in writing of the **[banking institution or building society] bank** and the office or branch thereof with which he or she has opened an account referred to in subsection (1), and furnish the Master with a bank statement or other sufficient evidence of the position of the account.”; 30

(c) by the substitution for subsection (3) of the following subsection: 35

“(3) No executor who in compliance with a request of the Master under subsection (2), has notified the Master of the office or branch of the **[banking institution or building society] bank** with which he or she has opened an account referred to in subsection (1) shall transfer any such account from any such office or branch to any other such office or branch, except after written notice to the Master.”; and 40

(d) by the substitution for subsection (5) of the following subsection:

“(5) The Master and any surety of the executor shall have the same right to information in regard to any such account as the executor himself or herself possesses, and may examine all vouchers in relation thereto, whether in the hands of the **[banking institution or building society] bank** or of the executor.”. 45

Amendment of section 34 of Act 66 of 1965, as substituted by section 10 of Act 86 of 1983 and amended by section 3 of Act 12 of 1984

10. Section 34 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 50

“(a) no creditor whose claim amounts to less than **[R100] R1 000** shall be reckoned in number;”.

Substitution of section 48 of Act 66 of 1965

11. The following section is hereby substituted for section 48 of the principal Act: 55

“Extension of time and compounding of debts

48. An executor may accept from a debtor of the deceased estate who is unable to pay his or her debt in full, any reasonable part of the debt in discharge of the whole debt or grant any debtor of the deceased estate an extension of time for the payment of his or her debt in so far as this is compatible with **[the provisions of]** section **[thirty-five]** 35: Provided that if the debt exceeds **[two hundred rand]** R2 000, an executor shall, subject to the terms of the will (if any) of the deceased, not accept a part of the debt in discharge of the whole debt, unless he or she has been authorized to do so by the Master.”.

Amendment of section 54 of Act 66 of 1965, as amended by section 16 of Act 86 of 1983 and section 13 of Act 43 of 1992

12. Section 54 of the principal Act is hereby amended by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) if he or she is convicted, in the Republic or elsewhere, of theft, fraud, forgery, uttering a forged instrument or perjury, and is sentenced **[therefor]** to **[serve a term of]** imprisonment without the option of a fine, or to a fine exceeding **[twenty rand]** R2 000; or”.

Substitution of section 87 of Act 66 of 1965, as substituted by section 19 of Act 86 of 1983

13. The following section is hereby substituted for section 87 of the principal Act:

“Moneys in guardian’s fund to be deposits for purposes of Act 45 of 1984

87. The moneys in the guardian’s fund shall be deemed to be deposits for the purposes of the **[Public Debt Commissioners Act, 1969 (Act No. 2 of 1969)]** Public Investment Commissioners Act, 1984 (Act No. 45 of 1984), and the Master may from time to time pay out of any working balance retained at his or her disposal under the said Act, any amounts due and payable out of the said fund.”.

Substitution of section 91 of Act 66 of 1965, as substituted by section 21 of Act 86 of 1983 and amended by section 25 of Act 108 of 1991

14. The following section is hereby substituted for section 91 of the principal Act:

“Publication of list of unclaimed moneys

91. The Master shall in the month of September of each year cause to be published in the *Gazette* a list of all amounts of **[R100]** R1 000 or more in the guardian’s fund, other than the amounts deposited therein in terms of section 93(3), which have been claimable and have remained unclaimed by the persons entitled thereto for a period exceeding one year but not exceeding three years.”.

Amendment of section 93 of Act 66 of 1965, as amended by section 4 of Act 79 of 1971, section 22 of Act 86 of 1983, section 5 of Act 63 of 1990 and section 26 of Act 108 of 1991

15. Section 93 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every person carrying on business in the Republic shall in the month of January in each year prepare in the prescribed form and publish in the *Gazette* a detailed statement in respect of all amounts of **[R10]** R100 or more which were held by him or her or by any agent on his or her behalf in the Republic on the thirty-first day of December of the immediately preceding year and which were not

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his or her property or subject to any valid lien, but at the time of the preparation of the said statement have remained unclaimed for a period of five years or more by the rightful owners.”.

Amendment of section 96 of Act 66 of 1965, as amended by section 26 of Act 57 of 1988

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16. Section 96 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) institute any civil proceedings in pursuance of **[the provisions of]** this Act, against any executor, tutor, curator or interim curator, in the **[division of the Supreme Court] High Court** within whose area of jurisdiction the appointment of such executor, tutor, curator or interim curator was made, whether or not such executor, tutor, curator or interim curator is resident within that area or otherwise subject to the jurisdiction of that **[division] High Court**; and”.

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Amendment of section 102 of Act 66 of 1965, as amended by section 7 of Act 15 of 1978, section 23 of Act 86 of 1983 and section 26 of Act 57 of 1988

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17. Section 102 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) when being interrogated under oath under section **[thirty-two] 32**, makes, relative to the subject in connection with which he or she is interrogated, any statement whatever which he or she knows to be false or which he or she does not know or believe to be true; or”; and

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(b) by the substitution in subsection (1) for paragraphs (i), (ii), (iii), (iv) and (v) of the following paragraphs, respectively:

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- “(i) in the case of an offence referred to in paragraph (a), to a fine **[not exceeding two thousand rand]** or to imprisonment for a period not exceeding seven years **[or to both such fine and such imprisonment]**;
- (ii) in the case of an offence referred to in paragraph (b), (c), (d) or (e), to a fine **[not exceeding one thousand rand]** or to imprisonment for a period not exceeding five years **[or to both such fine and such imprisonment]**;
- (iii) in the case of an offence referred to in paragraph (f) or (g), to a fine **[not exceeding two hundred rand]** or to imprisonment for a period not exceeding twelve months **[or to both such fine and such imprisonment]**;
- (iv) in the case of an offence referred to in paragraph (h), to a fine **[not exceeding one hundred rand]** or to imprisonment for a period not exceeding six months **[or to both such fine and such imprisonment]**; and
- (v) in the case of an offence referred to in paragraph (i), to a fine **[not exceeding fifty rand]** or to imprisonment for a period not exceeding three months **[or to both such fine and such imprisonment]**.”.

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Amendment of section 103 of Act 66 of 1965, as amended by section 46 of Act 97 of 1986

18. Section 103 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) Any regulations made under subsection (1) may **[prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of fifty rand]** provide that any person who contravenes such regulations or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period **[of] not exceeding three months**.

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(3) Any regulations made under section **[one hundred and eighteen] 118** of the Administration of Estates Act, 1913 (Act No. 24 of 1913), shall be deemed to have been made under subsection (1).”.

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INTERIM RATIONALISATION ACT, 2001**Amendment of section 105 of Act 66 of 1965, as amended by section 9 of Act 54 of 1970 and section 1 of Act 49 of 1996**

19. Section 105 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (c) of the following paragraph:

- “(c) who died or dies after the commencement referred to in paragraph (a) [or (b)]
but before the relevant date referred to in section 44(3) leaving a will in terms
of which any minor child of the deceased and such spouse is or will when born
be entitled to any movable property subject to usufructuary or fiduciary rights
or any other like interest in favour of such spouse.”.

Extension of application of Act 66 of 1965

20. The principal Act shall, from the date of commencement of this Act, apply throughout the Republic.

Amendment or repeal of laws, and savings

21. (1) Subject to subsection (2), the laws mentioned in the second column of the Schedule are hereby amended or repealed to the extent indicated in the third column of that Schedule.

(2) Notwithstanding the repeal of the laws referred to in subsection (1)—

- (a) (i) the liquidation and distribution of the estate of any person who died before the commencement of this Act, or any matter relating to the liquidation and distribution of such an estate;
(ii) the administration of the property of any minor or person under curatorship, or any matter relating to the administration of such property;
(iii) the administration of any derelict estate, or any matter relating to the administration of such derelict estate; or
(iv) any other matter,
regulated by or under any law repealed by subsection (1), which at the date of commencement of this Act has been dealt with by, under or in terms of any such law, but which has not been concluded, shall in all respects be continued and concluded under such law as if this Act had not been passed;
(b) any proclamation, notice, regulation, order, determination, decision, direction or authorisation issued, made, taken, given or granted or any other thing done, under a provision of any law repealed by subsection (1), shall continue to be of force and effect, except in so far as it is inconsistent with the principal Act or any regulation made thereunder, until it is withdrawn, cancelled or repealed by the competent authority, where such withdrawal, cancellation or repeal by any authority was possible before the date of commencement of this Act;
(c) any person who, immediately prior to the commencement of this Act and in terms of any law repealed by subsection (1)—
(i) holds office as Master, Deputy Master or Assistant Master of a High Court, shall be deemed to have been appointed as Master, Deputy Master or Assistant Master in terms of the corresponding provisions of the principal Act at the place where he or she holds such office;
(ii) holds office as appraiser, shall be deemed to hold such office in terms of the corresponding provisions of the principal Act, and it shall not be necessary for him or her, if he or she has already taken an oath, to take any further oath under section 6(2) of the principal Act;
(iii) holds office as executor, tutor, curator or interim curator, shall be deemed to hold such office in terms of the corresponding provisions of the principal Act and shall continue to hold such office until he or she is removed or discharged from that office under such law; or
(iv) holds any other office, shall be deemed to hold such office in terms of the corresponding provisions of the principal Act and shall continue to hold

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such office until the appointment to that office is withdrawn or cancelled by the Minister, the Master having jurisdiction or the person who made such appointment or until the matter in respect of which the appointment was made, has been concluded; and

- (d) any office of a Master which, immediately prior to the commencement of this Act, was established under, and functioning in accordance with, any law repealed by subsection (1), shall be deemed to have been established under the corresponding provisions of the principal Act and shall continue to function in accordance with the principal Act: Provided that the Minister may direct that any such office shall be converted into, and function as, a sub-office of the office of a Master of a High Court designated by the Minister. 5 10

(3) The Minister may direct that any person who, at the commencement of this Act, holds office or is deemed to hold office as Master, Deputy Master or Assistant Master of a High Court in terms of the principal Act shall, for such period as the Minister may determine, exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon him or her by or under the principal Act or any other law, subject to the control, direction and supervision of another Master of a High Court designated by the Minister. 15

(4) Notwithstanding Chapter V of the principal Act, the Minister may direct that a Master of a High Court shall, for such period as the Minister may determine, exercise the powers, perform the functions and carry out the duties in respect of his or her guardian's fund conferred upon, assigned to or imposed upon him or her by or under the principal Act or any other law, subject to the control, direction and supervision of another Master of a High Court designated by the Minister. 20

(5) The Minister must publish, by notice in the *Gazette*, any steps taken by him or her in terms of subsection (2)(d), (3) or (4). 25

(6) In this section a word or expression to which a meaning has been assigned in the principal Act, bears that meaning unless the context otherwise indicates.

Interpretation of certain references in existing laws and in other documents

22. A reference in any law in force immediately prior to the commencement of this Act or in any document to a Master, Deputy Master or Assistant Master of the Supreme Court shall, unless inconsistent with the context or otherwise clearly inappropriate, be construed as a reference to a Master, Deputy Master or Assistant Master of a High Court. 30

Short title and commencement

23. This Act is called the Administration of Estates Laws Interim Rationalisation Act, 2001. 35

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SCHEDULE

(Section 21)

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 24 of 1936	Insolvency Act, 1936	<p>(a) Amendment of section 52 by the substitution for subsection (3) of the following subsection:</p> <p>“(3) The vote of a creditor shall in no case be reckoned in number, unless his or her claim is of the value of at least [R100] R1 000.”.</p> <p>(b) Amendment of section 55 by the substitution for paragraph (i) of the following paragraph:</p> <p>“(i) Any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced [therefor] to [serve a term of] imprisonment without the option of a fine, or to a fine exceeding [ten pounds] R2 000;”.</p> <p>(c) Amendment of section 78 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The trustee may accept from a debtor of the insolvent estate who is unable to pay his or her debt in full, any reasonable part of the debt in discharge of the whole debt or grant any debtor of the estate an extension of time for the payment of his or her debt in so far as this is compatible with [the provisions of] section [ninety-one] 91: Provided that if the debt exceeds [R1 000] R2 000, the trustee shall not accept a part of the debt in discharge of the whole debt, unless he or she has been authorised thereto by the creditors of the estate, or if no creditor has proved a claim against the estate, by the Master.”.</p>
Act No. 66 of 1965 (Transkei)	Administration of Estates Act, 1965	The whole
Act No. 66 of 1965 (Bophuthatswana)	Administration of Estates Act, 1965	The whole
Act No. 66 of 1965 (Venda)	Administration of Estates Act, 1965	The whole
Act No. 66 of 1965 (Ciskei)	Administration of Estates Act, 1965	The whole

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No. and year of Act	Short title	Extent of amendment or repeal
Act No. 57 of 1972	Age of Majority Act, 1972	Amendment of section 3 by the substitution for paragraph (f) of the following paragraph: “(f) full particulars of any movable or immovable property of which he or <u>she</u> is the owner and which in terms of [the provisions of] any will or any other instrument is subject to a fideicommissum, usufruct or similar right, or which at the time of the application is subject to the control of the Master, a tutor or curator [or administrator] as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).”