

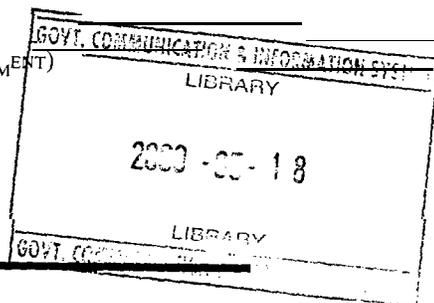
REPUBLIC OF SOUTH AFRICA

ADMINISTRATION OF ESTATES AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 12081 of 10 April 2000) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 24—2000]



REPUBLIEK VAN SUID-AFRIKA

BOEDELWYSIGINGS- WETSONTWERP

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 12081 van 10 April 2000 gepubliseer) (Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[w 24—2000]

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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 5 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 10 [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.

(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 15 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 20 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. 25

(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] High Court concerned.

(4) The Minister may delegate any power conferred on him or her by this 30 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 15 of 1969

3. The following section is hereby substituted for section 3 of the principal Act: 35

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

3. (1) Each Master shall have his or her 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 40 shall have his or her office at any place specified by the Minister, there to perform, in respect of the area so specified, such functions as he or she may lawfully perform under this Act or any other law.”.

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 45

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

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

“(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 50 [provincial division of the Supreme Court] High Court, with the Master appointed in respect of that area; and”; and

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

“(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”.

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: 10

“(5) The reference in section **[47(1) 118(I) 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 15

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

“(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), (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.”. 20

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: 25

‘. 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—”.

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: 30

‘. 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: 35

“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 (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.”. 40 45

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—

(u) by the substitution for subsection (1) of the following subsection: 50

“(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] R1000**, 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;

(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:

(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.”;

(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 20 account.”;

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

“(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

(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.”.

Amendment of section 34 of Act 66 of 1965, as substituted by section 10 of Act 86 35 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:

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

Amendment of section 39 of Act 66 of 1965, as amended by section 4 of Act 54 of 1970, section 7 of Act 139 of 1992 and section 1 of Act 49 of 1996

11. section 39 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the executor is a practicing conveyancer and has performed any work in terms of this section in connection with the registration of, or the endorsement against the title deeds of, immovable property referred to in subsection (1), he or she shall be entitled to remuneration for such work **[in accordance with the fees and charges prescribed by regulation under section 10(1)(C) of the Deeds Registries Act, 1937 (Act No. 47 of 1937)]**.”.

Substitution of section 48 of Act 66 of 1965

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

“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

13. 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”,

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

14. 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

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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

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

“Publication of list of unclaimed moneys

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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

16. Section 93 of the principal Act is hereby amended by the substitution for subsection (I) 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] R1 00** 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 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

17. 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,** 5
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**”. 10

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

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

(a) by the substitution in subsection (1) for paragraph (e) of the following paragraph: 15

“(e) when being interrogated under oath under section **[thirty-tie] 32,**
makes, relative to the subject in connection with which he or she is
interrogated, any statement whatever which he or she hews to be
false or which he or she does not know or believe to be true; or”;
and 20

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

- “(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];** 25
- (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];** 30
- (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 35
- (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].”.** 40

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

19. Section 103 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively: 45

“(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. 50

(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).”.

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

20. 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)] **5**
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

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

Amendment or repeal of laws, and savings

22. (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, **15**

(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; **20**
- (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, **25**
 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 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; and **30** **35**
- (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; **40**
- (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; **45**
- (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 **50**
- (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

such office until the appointment to that office is withdrawn or cancelled by the Minister for Justice and Constitutional Development, 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. 5

Interpretation of certain references in existing laws and in other documents

23. 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. 10

Short title and commencement

24. This Act is called the Administration of Estates Amendment Act, 2000, and commences on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

(Section 22)

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: “(3) The vote of a creditor shall in <i>no case</i> 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: “(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: “(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. Pro-vided that if the debt exceeds [R1000] 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 (Vends)	Administration of Estates Act, 1965	The whole
Act No. 66 of 1965 (Ciskei)	Administration of Estates Act, 1965	The whole

No. and year of Act	Short title	Extent of amendment or repeal
Act No. 57 of 1972	Age of Majority Act, 1972	<p>Amendment of section 3 by the substitution for paragraph (f) of the following paragraph:</p> <p>“(f) full particulars of any movable or immovable property of which he or she 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).”.</p>

MEMORANDUM ON THE OBJECTS OF THE ADMINISTRATION OF ESTATES AMENDMENT BILL, 2000

1. BACKGROUND

1.1 Item 2(1) of Schedule 6 to the Constitution provides that all laws that were in force when the Constitution took effect, continue in force, subject to any amendment or repeal and consistency with the Constitution. section 229 of the Interim Constitution contained a similar provision which provided that all laws which immediately before the commencement of that Constitution were in force in any area which formed part of the national territory, were to continue to be in force in such area, subject to repeal or amendment by a competent authority.

1.2 Most of the legislation of the Republic of South Africa was “inherited” by the former Republics of Transkei, Bophuthatswana, Vends and Ciskei (the former TBVC States). There was, however, no law that compelled the former TBVC States to retain the legislation without amending it. As a result, most of the legislation, including the Administration of Estates Act, 1965 (Act No. 66 of 1965) (the principal Act), were amended and this resulted in fragmented and uncoordinated legislation.

2. OBJECTS OF BILL

2.1 The main object of the Bill is to make the principal Act applicable throughout South Africa, by extending the operation of that Act to the areas of the former TBVC states, and by repealing the corresponding laws which are currently applicable in those areas.

2.2 The Bill further seeks to effect certain technical and other amendments to the principal Act. For example, all references in the principal Act to “Supreme Court” are to be changed to “High Court”.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following parties were, among others, consulted:

- * The Chief Justice
- * The Judges President of the High Courts
- * The Legal Profession
- * Masters of the High Courts
- * Regional Heads of the Department of Justice

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.