PRESIDENT'S OFFICE

No. 1062.
21 July 1995

NO. 32 OF 1995: INSOLVENCY AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

<< >> Words between two pointed brackets indicate insertions in existing enactments.

ACT

To amend the Insolvency Act, 1936, so as to provide for the protection of participants in the South African financial markets in the event of insolvency; andto provide for matters connected therewith.

(English text signed by the President.)
(Assented to 10 July 1995.)

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

Insertion of sections 35A and 35B in Act 24 of 1936

1. The following sections are hereby inserted in the Insolvency Act, 1936 (hereinafter referred to as the principal Act), after section 35:

"Transactions on an exchange

<<35A. (1) In this section-

'exchange' means a licensed stock exchange as defined in section I of the Stock Exchanges Control Act, 1985 (Act No. I of 1985), or a financial exchange or clearing house as defined in section I of the Financial Markets Control Act, 1989 (Act No. 55 of 1989); 'market participant'means a stockbroker as defined in section I of the Stock Exchanges Control Act, 1985, or a financial instrument principal or a financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989, or

a client of such a stockbroker or financial instrument trader or any other party to a transaction; 'rules of an exchange' means rules made pursuant to either section 12 of the Stock Exchanges Control Act, 1985, or section 17 of the Financial Markets Control Act, 1989;

'transaction' means any transaction to which the rules of an exchange apply.

(2) If upon the sequestration of the estate of a market participant the obligations of such market participant in respect of any transaction entered into prior to sequestration have not been fulfilled, the exchange in question in respect of any obligation owed to it, or any other market participant in respect of obligations owed to such market participant, shall in accordance with the rules of that exchange applicable to any such transaction be entitled to terminate all such transactions and the trustee of the insolvent estate of the market participant shall be bound by

such termination.

(3) No claim as a result of the termination of any transaction as contemplated in subsection (2) shall exceed the amount due upon termination in terms of the rules of the exchange in question.

(4) Any rules of an exchange and the practices thereunder which provide for the netting of a market participant's position or for set-off in respect of transactions concluded by the market participant or for the opening or closing of a market participant's position shall upon sequestration of the estate of the market participant be binding on the trustee in respect of any transaction or contract concluded by the market participant prior to such sequestration, but which is, in terms of such rules and practices, to be settled on a date occurring after the sequestration, or settlement of which was overdue on the date of sequestration,

(5) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in accordance with the rules of an exchange.>>

Agreements on informal markets

<<35B. (1) In this section 'agreement' means any agreement, other than a transaction as defined in section 35A, providing primarily for delivery, exchange, settlement or payment, as the case may be, on a future date, of, or in connection with, or based on, or based on the price of, currency of a country other than the Republic, interest rates, exchange rates, indices, gold, precious or base metals, financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), whether or not it is a standardised contract as defined therein, securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or such other commodity or corporeal or incorporeal thing or agreement as may be specified by the Minister, after consultation with the Minister of Finance, by notice in the Gazette, or any combination of, or option on, any of the aforegoing agreements.

(2) If upon sequestration of the estate of a party to an agreement, any obligation, whether then immediately claimable or not, arising out of such agreement has not been fulfilled, the right of a party to claim specific performance in terms of such agreement shall be replaced by a claim for payment of damages as at the date of sequestration, which damages shall be deemed to constitute a liquidated claim for purposes of netting or set-off.

(3) Any provision in an agreement for the netting or set-off of the parties' claims under one or more agreements shall, upon sequestration of the estate of any party, be binding on the trustee in respect of any agreement concluded prior to such sequestration but which is, in terms of such agreement, to be settled on a date occurring after the sequestration, or settlement of which was overdue on the date of sequestration.

(4) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to property disposed of in terms of an agreement.>>".

Amendment of section 46 of Act 24 of 1936

2. Section 46 of the principal Act is hereby amended by the addition of the following proviso:

<<"Provided that any set-off shall be effective and binding on the trustee of the insolvent estate if it takes place between an exchange or a market participant as defined in section 35A and any other party in accordance with the rules of such an exchange, or if it takes place under an agreement defined in section 35B.>>".

Amendment of laws of former TBVC states

3. The amendments of the principal Act contained in sections 1 and 2 of this Act shall be deemed also to have been effected to the Insolvency Act, 1936 (Act No. 24 of 1936), as it is in force in the areas of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei.

Short title

4. This Act shall be called the Insolvency Amendment Act, 1995.