

**124. Application for rehabilitation.**—(1) An insolvent who has obtained from the Master the certificate mentioned in subsection (7) of section *one hundred and nineteen* may apply to the court for an order for his rehabilitation: Provided that he has not less than three weeks before making the application, given, by advertisement in the *Gazette* notice of his intention to make the application and delivered or posted in a registered letter to the trustee of his estate a copy of that notice: and provided further that the said certificate shows that payment has been made or the security prescribed by subsection (7) of section *one hundred and nineteen* has been given for the payment of not less than ten shillings for every pound of every claim proved or to be proved against the estate of the insolvent.

[Sub-s. (1) amended by s. 32 (a) of Act No. 16 of 1943 and by s. 41 of Act No. 99 of 1965.]

(2) An insolvent who is not entitled under subsection (1) to apply to the court for his rehabilitation and who has previously given to the Master and to the trustee of his estate in writing and by advertisement in the *Gazette* not less than six weeks' notice of his intention to apply to the court for his rehabilitation may so apply—

- (a) after twelve months have elapsed from the confirmation by the Master, of the first trustee's account in his estate, unless he falls within the provisions of paragraph (b) or (c); or
- (b) after three years have elapsed from such confirmation if his estate has either under this Act or a prior law been sequestrated prior to the sequestration to which he desires to put an end and if he does not fall within the provisions of paragraph (c); or
- (c) after five years have elapsed from the date of his conviction of any fraudulent act in relation to his existing or any previous insolvency or of any offence under section *one hundred and thirty-two*, *one hundred and thirty-three* or *one hundred and thirty-four* of this Act or under any corresponding provision of the Insolvency Act, 1916 ([Act No. 32 of 1916](#)):

[Para. (c) amended by s. 32 (b) of Act No. 16 of 1943 and by s. 1 of Act No. 49 of 1996.]

Provided that no application for rehabilitation under this subsection shall be granted before the expiration of a period of four years from the date of sequestration of the estate of the applicant, except upon the recommendation of the Master.

(3) After the expiration of a period of six months as from the sequestration of an estate, the insolvent concerned may apply to the court for his rehabilitation—

- (a) if he has, not less than six weeks before making the application, given to the Master and to the trustee, if any, of his estate notice in writing, and published in the *Gazette* a notice of his intention to make the application; and
- (b) if, at the time of making the application, no claim has been proved against his estate; and
- (c) if he has not been convicted of an offence mentioned in paragraph (c) of subsection (2); and
- (d) if his estate was not sequestrated under any law prior to the sequestration which he desires to end.

(4) A trustee who has received a notice mentioned in subsection (1), (2), or (3) shall report to the Master any facts which in his opinion would justify the court in refusing, postponing, or qualifying the insolvent's rehabilitation.

(5) At any time after the confirmation by the Master, of a plan of distribution providing for the payment in full of all claims proved against an insolvent estate, with interest thereon from the date of sequestration, calculated in terms of subsection (2) of section *one hundred and three* and of all the costs of sequestration, the insolvent concerned may apply to the court for his rehabilitation: Provided that he has not less than three weeks before making the application given notice in writing to the Master and to the trustee of his estate of his intention to make the application.

**125. Security to be furnished prior to application for rehabilitation.**—Not less than three weeks before applying to the court for his rehabilitation an insolvent shall furnish to the registrar of the court security, to the amount or value of R500, for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the court.

[S. 125 substituted by s. 17 of Act No. 101 of 1983.]

**126. Facts to be averred on application for rehabilitation.**—In support of an application for his rehabilitation, an insolvent shall submit his affidavit that he has made a complete surrender of his estate and has not granted or promised any benefit whatever to any person or entered into any secret agreement with intent to induce his trustee or any creditor not to oppose the rehabilitation. Such affidavit shall include a statement of his assets and liabilities and of his earnings at the date of the application. Information shall also be laid before the court as to what dividend was paid to his creditors, what further assets in his estate are available for realization and the estimated value thereof, the total amount of all claims proved against his estate, and the total amount of his liabilities at the date of the sequestration of his estate. If application for rehabilitation is made pursuant to subsection (1) of section *one hundred and twenty-four* the insolvent shall set out the particulars of the composition and shall state whether there are or are not creditors whose claims against his estate have not been proved, and if there are such creditors, he shall state their names and addresses and particulars of their claims.

**127. Opposition to or refusal by court of rehabilitation.**—(1) Upon the day fixed for the hearing of an application for rehabilitation the Master shall report thereon to the court, and the Master, the trustee or any creditor or other person interested in the estate of the applicant may appear in person or by counsel to oppose the grant of the application.

(2) Whether the application be opposed or not, the court may refuse an application for rehabilitation or may postpone the hearing of the application or may rehabilitate the insolvent upon such conditions as it may think fit to impose and may order the applicant to pay the costs of any opposition to the application if it is satisfied that the opposition was not vexatious.

(3) Among the conditions referred to in subsection (2), the court may require the insolvent to consent to judgment being entered against him for the payment of any unsatisfied balance of any debt which was or could have been proved against his estate, or of such lesser sum as the court may determine, but in such case execution shall not be issued on the judgment except with leave of the court and on proof that the insolvent has since the date of sequestration of his estate acquired property or income available for the payment of his debts; or apart from any such judgment the court may impose any other condition with respect to any property, or income which may accrue to the insolvent in the future.

(4) In granting an application for rehabilitation made under subsection (1) of section *one hundred and twenty-four* the court may order that any obligation incurred by the applicant before the sequestration of his estate which, but for that order, would be discharged as a result of the applicant's rehabilitation, shall remain of full force and effect, notwithstanding the rehabilitation.

(5) The registrar of the court shall forthwith give notice to the Master of every rehabilitation of an insolvent granted by the court.

**127A. Rehabilitation by effluxion of time.**—(1) Any insolvent not rehabilitated by the court within a period of ten years from the date of sequestration of his estate, shall be deemed to be rehabilitated after the expiry of that period unless a court upon application by an interested person after notice to the insolvent orders otherwise prior to the expiration of the said period of ten years.

(2) If a court issues an order contemplated in subsection (1), the registrar shall transmit a copy of the order to every officer charged with the registration of title to any immovable property in the Republic.

(3) Upon receipt of the order by such officer he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent.

(4) The caveat shall remain in force until the date upon which the insolvent is rehabilitated.

[S. 127A inserted by s. 6 of Act No. 6 of 1972 and substituted by s. 7 of Act No. 122 of 1993.]

**128. Partnership cannot be rehabilitated.**—A partnership whose estate has been sequestrated shall not be rehabilitated.

**129. Effect of rehabilitation.**—(1) Subject to the provisions of subsection (3) and subject to such conditions as the court may have imposed in granting a rehabilitation, the rehabilitation of an insolvent shall have the effect—

- (a) of putting an end to the sequestration;
- (b) of discharging all debts of the insolvent, which were due, or the cause of which had arisen, before the sequestration, and which did not arise out of any fraud on his part;
- (c) of relieving the insolvent of every disability resulting from the sequestration.

(2) A rehabilitation granted on an application made in circumstances described in subsection (3) of section *one hundred and twenty-four* shall have the effect of re-investing the insolvent with his estate.

(3) A rehabilitation shall not affect—

- (a) the rights of the trustee or creditors under a composition;
- (b) the powers or duties of the Master or the duties of the trustee in connection with a composition;
- (c) the right of the trustee or creditors to any part of the insolvent's estate which is vested in but has not yet been distributed by the trustee, but subject to the provisions of subsection (2);
- (d) the liability of a surety for the insolvent;
- (e) the liability of any person to pay any penalty or suffer any punishment under any provision of this Act.

**130. Illegal inducements to vote for composition or not to oppose rehabilitation.**— Any undertaking to grant any benefit to any person in order to induce him or any other person to accept any offer of composition or to agree to, or refrain from opposing the rehabilitation of an insolvent, or as a consideration for the acceptance of an offer of composition or for the agreement to or non-opposition of the rehabilitation of an insolvent (whether by the person for whom the benefit is intended or by any other person), shall be void and any person who has accepted any such benefit or who has stipulated for any such benefit, whether for himself or any other person shall be liable to pay by way of penalty for the benefit of the creditors of the insolvent estate in question—

- (a)

a sum equal to the amount of the claim (if any) which he originally proved against the estate; and

(b)

the amount or value of any benefit given or promised; and

(c)

in case of a composition, the amount paid or to be paid to him under the composition.