

10.11 LIQUIDATION

1. The applicant should seek a final winding-up order in the notice of motion.
2. The Court may nonetheless, in the exercise of its discretion, grant a provisional order and direct that service and publication of the provisional order be affected.
3. A copy of the provisional order referred to in paragraph 2 must be served on –
 - (a) every trade union referred to in subsection (2);
 - (b) the employees of the company by affixing a copy of the application to any notice board to which the employees have access inside the debtor's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application;
 - (c) the South African Revenue Service; and
 - (d) the company, unless the application was made by the company.
4. The provisional order referred to in para 2 may include -
 - 4.1 service of the order on the company or close corporation at its registered office;
 - 4.2 publication of the order in the government gazette;
 - 4.3 publication of the order in a newspaper circulating in the area where the company or close corporation carries on business;
 - 4.4 service on all known creditors. This will only be ordered where the applicant has ready access to the identity and address of the creditors. Depending on the information that the applicant has as to the creditor's address such service can be ordered to be effected by e-mail, facsimile transmission or pre-paid registered post.
5. If a provisional order of liquidation is granted, proof of compliance with the service ordered must be provided on the return date. Such proof is provided by filling an affidavit setting out the

manner in which the ordered service was complied with. The presiding judge will only accept the affidavit of service from the bar in exceptional circumstances made out in an affidavit.

6. If an extension of the return date of a provisional order of liquidation is sought, the party seeking such an extension must deliver an affidavit motivating such an extension. Without limiting the generality of the foregoing, full details are required of the following:
 - 6.1 If the provisional order of liquidation has not been served, the attempts made to effect such service;
 - 6.2 If the provisional order of liquidation relates to the winding up of an insolvent company, whether there has been compliance with the provisions of s 357 of the Companies Act, 61 of 1973.
 - 6.3 Whether a provisional liquidator has been appointed by the Master.
7. Where a company or a close corporation seeks its own winding-up, it is not necessary for the application or for any provisional order that may be granted to be served on the company or close corporation.
8. Where the applicant seeking a winding-up order is a shareholder of a company or member of a close corporation, he shall serve the application on all interested parties, such as a co-shareholder or joint member. Failing such service the applicant should indicate in the founding affidavit why such service is not necessary.

10.16 SEQUESTRATION

1. In an application for sequestration, unless leave to proceed by way of substituted service has been granted, personal service of the application must be effected on the respondent.
2.
 - 2.1 Unless the court directs otherwise in terms of section 11 (2) of Act 24 of 1936 (the Act), the provisional order of sequestration must be served on the respondent personally. In addition, there must be service as required in terms of s 11(2A) of the Act.
 - 2.2 A provisional order of sequestration may not be served at the offices of the Sheriff or Deputy Sheriff.
3. If an extension of a provisional order of sequestration is sought, the party seeking such an extension must deliver an affidavit motivating such an extension. Without limiting the generality of the foregoing, full details are required of the following:
 - 3.1 If the sequestration order has not been served, the attempts made to effect such service;
 - 3.2 Whether and to what extent there has been compliance with the provisions of s 17(1) of the Act.
 - 3.3 Whether a provisional trustee has been appointed by the Master in accordance with s 18 of the Act.
 - 3.4 Whether there has been an attachment of property as required in terms of s 19 of the Act.
4. If the applicant fails to establish that the application is not a so-called “friendly” sequestration the following will apply:
 - 4.1 Sufficient proof of the existence of the debt which gives rise to the application must be provided. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.

- 4.2 The respondent's assets must be valued by a sworn appraiser on the basis of what the assets will probably realise on a forced sale. Mere opinions, devoid of reasoning as to what the assets will probably realise, will not be regarded as compliance herewith. The valuation must be made on oath and the appraiser must be qualified as an expert witness in the normal manner.
- .4.3 Where the applicant seeks to establish advantage to creditors by relying on the residue between immovable property valued as aforesaid and the amount outstanding on a mortgage bond registered over the immovable property, proof of the amount outstanding on the mortgage bond at the time of the launching of the application is required. The mere say so of the applicant and the respondent will generally not be regarded as sufficient.
- 4.4 Where the applicant seeks to establish advantage to creditors by relying on a sum of money paid into an attorney's trust account to establish benefit for creditors, an affidavit by the attorney must be attached to the application in which he confirms that the money has been paid into his trust account and will be retained there until the appointment of a trustee.
- 4.5 In establishing advantage to creditors the following sequestration and administration costs will be assumed in an uncomplicated application:
- 4.5.1 Cost of application – R 6000
Cost of application if correspondent utilised – R 8000 (if the applicant's attorney of record has agreed to limit fees proof thereof must be provided).
- 4.5.2 The aforementioned costs are assumed to increase by R 700 for every postponement of if the application or if the provisional order has to be furnished to all known creditors, the aforementioned costs are assumed to increase to R700.
- 4.5.3 The cost of administration, subject to a minimum of R2 500 are –
- 4.5.3.1 1% plus VAT on cash or money in a financial institution
- 4.5.3.2 3% plus VAT on immovable property and shares
- 4.5.3.3 10% plus VAT on movable property including book debt
- 4.5.4 Other administration costs include sheriff fees (Schedule 3 of Act 24 of 1936) and the cost of security.
- 4.5.5 The aforementioned costs do not include the costs of the realisation of the asset. The cost must be established unless evidence to the contrary is placed before the court, it

will be assumed that the cost of the realisation of immovable property is 6% of the selling price plus advertising charges.

4.5.6 Regard being had to the costs set out in para 4.5.5, the applicant must in the application set out a calculation indicating the probable dividend to concurrent creditors.

4.6 Where the application is brought as an urgent application with the purpose of staying a sale in execution, notice of the application must be given to the judgement creditor. In addition the applicant must set out facts to enable the court to determine that the assets which are to be sold at the sale in execution will realise more, if sold privately.

4.7 Notwithstanding para 3 above, a court will be reluctant to grant an extension of a return date in a "friendly" sequestration.

16.17 PROVISIONAL SEQUESTRATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING READ the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT:-

1. The estate of the respondent is placed under provisional sequestration.
2. The respondent and any other party who wishes to avoid such an order being made final, are called upon to advance the reasons, if any, why the court should not grant a final order of sequestration of the said estate on the day of at 09:30 or as soon thereafter as the matter may be heard.
3. A copy of this order is must forthwith be served –
 - 3.1 on the respondent personally, if any;
 - 3.2 on the employees of the respondent, if any;
 - 3.3 on all trade unions of which the employees of the respondent are members, if any;
 - 3.4 on the Master; and
 - 3.5 on the South African Revenue Service.
- 4 The costs of this application are costs in the sequestration of the respondent's estate.

BY THE COURT

REGISTRAR

16.21 PROVISIONAL LIQUIDATION

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG

CASE NO:
PH NO:

BEFORE THE HONOURABLE JUDGE

In the matter between:-

APPLICANT

and

RESPONDENT

HAVING read the documents filed of record, heard counsel and having considered the matter:-

IT IS ORDERED THAT -

1. the above mentioned respondent is hereby placed under provisional winding up;
2. all persons who have a legitimate interest are called upon to put forward their reasons why this court should not order the final winding up of the respondent on at 09:30 am or so soon thereafter as the matter may be heard;
3. a copy of this order be served on the respondent at its registered office, unless he application was made by it;
4. A copy of the order be published forthwith once in the Government Gazette;
5. A copy of this order be forthwith forwarded to each known creditor by prepaid registered post or by electronically receipted telefax transmission;
6. A copy of the provisional winding-up order must be served on –
 - (a) every trade union referred to in subsection (2);
 - (b) the employees of the respondent by affixing a copy of the application to any notice board to which the employees have access inside the respondent's premises, or if there is no access to the premises by the employees, by affixing a copy to the front gate, where applicable, failing which to the front door of the premises from which the debtor conducted any business at the time of the presentation of the application;
 - (c) the South African Revenue Service; and
 - (d) the respondent, unless the application was made by it.

BY THE COURT

REGISTRAR