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**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 3038**

**DATE OF QUESTION: 09 SEPTEMBER 2022**

**DATE OF SUBMISSION: 23 SEPTEMBER 2022**

**Mrs Y N Yako (EFF) to ask the Minister of Justice and Correctional Services:**

Whether, in respect of the Insolvency Act, Act 24 of 1936, which refers to a threshold of £50 to sequestrate any debtor, his department has any plans to introduce amending legislation to the specified Act to (a) raise the specified threshold and (b) provide for debts such as student loans, home loans and food to be excluded from the harsh reality of the consequences of sequestration?

**NW3677E**

**REPLY:**

The Insolvency Act, 1936 (Act No. 24 of 1936) (“the Act”) is part of apartheid era legislation which the Department is currently reviewing with the aim of aligning the legislation with the Constitution of the Republic of South Africa, 1996 , and modernising the legislation.

One of the objectives of the draft Bill is to create a legislative framework that is based on the balancing of the conflicting interests of the stakeholders in insolvency proceedings, as opposed to the current legal framework that places emphasis on the best interest of the creditors.

The Department is currently processing a draft Insolvency Bill (the draft Bill”). The issue raised is provided for in section 9(1) of the Act. According to this section a creditor who has a liquidated claim for not less than fifty pounds against a debtor who has committed an act of insolvency, or who is insolvent, may petition the court for the sequestration of the estate of that debtor. Clause 2 of the draft Bill deals with this aspect of the question.

With the assistance of the Reserve Bank, the value of the 50 pounds was calculated at around R22 500 (and 100 pounds is estimated at R45 000) during the last quarter of 2019 (when the clause was crafted).

With regard to the second part of the question, clause 116 of the draft Bill intends to introduce pre-liquidation composition, which allows a debtor with debts not exceeding R300 000, irrespective of their source, to offer a composition to creditors, before the commencement of liquidation proceedings.

Rule 46A of the Uniform Rules of Court requires that judicial discretion be exercised before the primary residence of a judgement debtor is attached with a view to selling it in execution. Rule 46A is not applicable to a debtor whose estate is in sequestration. The Department will, as the Bill is processed further, review the current status, that is, the absence of judicial oversight with regards to the execution of the residential property of a debtor who is in sequestration the light of the provisions of section 26 of the Constitution, which provides for the right to access adequate housing.

Whilst the draft Bill is being processed there are measures in legislation available to persons who are over indebted. Section 74 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) provides for an administration order procedure, which has been described as a modified form of insolvency proceedings. The National Credit Act, 2005 (Act No. 34 of 2005) has introduced debt review as an alternative to sequestration. The Act makes provision for post liquidation composition, and if the offer of composition has been accepted by creditors the insolvent may apply for rehabilitation, which has the effect of putting an end to sequestration proceedings.

**END**