

LEGAL TERMINOLOGY

ADMINISTRATION ORDER - Is where, on the application of a debtor to the Magistrate's Court, the Court examines the applicant's financial position and may then appoint an administrator to whom the application is ordered to make regular payment which are then divided pro rata among the creditors.

COLLATERAL MORTGAGE BOND - A mortgage bond giving additional security for a debt or obligation and may be given by a principal debtor or a surety on his behalf.

CONSENT TO JUDGMENT - A judgment against a defendant granted by a Court with the consent of the defendant.

DEFAULT JUDGMENT - A Judgment where a defendant fails to oppose a claim against him by being in default of the required proceedings, or withdraws or absents himself from the remainder of the proceedings.

GENERAL NOTARIAL BOND - A bond executed by a Notary Public over the movable property generally of a mortgagor, it is only effective on the insolvency of the mortgagor.

ILLIQUID CLAIM - A claim where the amount has not been fixed by agreement, or by an Order of Court or in any other way, e.g. a claim for damages.

JUDICIAL MANAGEMENT - Occurs when the Supreme Court in respect of a company grants a moratorium in respect of the debts of a company in favour of a debtor instead of making the debtor insolvent. The judicial manager then assumes the duties, obligations and rights of the board of directors. Such order should only be granted if there is a reasonable probability that the company would in future be able to meet its obligations.

LIQUID CLAIM - A claim where the amount has been fixed by agreement, by an Order of Court or in some other way.

LIQUID DOCUMENT - Is document in which the acknowledgement of debt and undertaking to pay is clear and certain on the face of the document itself and in respect of which no extrinsic evidence is required to prove the indebtedness.

LIQUIDATION - The process by which the affairs of the debtor are wound up leading to the settlement of financial accounts by converting assets into cash for distribution to creditor. For example, the settlement or the winding up of the affairs of a Company usually on insolvency.

MORTGAGE BOND - A bond over immovable property registered in a Deeds Office, which has the effect of making the mortgagee a secured creditor giving him a preferent claim over the proceeds of the mortgaged property.

MOTION ROLL - A list of matters to be heard by way of Application in the Supreme Court and compiled by the Registrar.

NOTICE OF ABANDONMENT - There are two forms of abandonment -

1. **Magistrate's Court**

1.1 In terms of Section 86 of the Magistrate's Court a Plaintiff may abandon a judgement taken against a particular Defendant, but if it does so the Clerk of the Court is obliged to pass judgment against the Plaintiff.

1.2 The Plaintiff may abandon a judgment outside the ambit of Section 86 in terms of the common law which will not nullify the judgment but will nullify all Plaintiff's rights in terms of such judgment.

2. **Court**

In terms of the **High Court** rules a notice of abandonment can be filed. This will not expunge the judgment for the file. ITC will update its records.

PROVISIONAL JUDICIAL MANAGEMENT - A Provisional Order which supercedes the company being finally placed under judicial management.

PROVISIONAL LIQUIDATION / SEQUESTRATION - Provisional orders prior to final orders being taken. Prior to a final order an offer of compromise may very well be entered into which will lead to the Provisional Order being discharged. While negotiations are under way regarding the possible compromise the rule nisi may be postponed one or more times.

PROVISIONAL SENTENCE - A decree of the Court in favour of a creditor against a debtor based on a liquid document. Provisional sentence is provisional only and does not amount to a final or definitive judgment. Provisional sentence may be opposed but is normally granted on a liquid document in which event the debtor must pay into Court as security the amount of the provisional sentence or judgment pending a final determination of the matter.

REHABILITATION - Normally means to restore a person to a former capacity. For example an order of rehabilitation is one that rehabilitates an insolvent person, that is to say, to restore him to the capacity of a solvent person. It does not rehabilitate his estate.

RESCISSION OF JUDGMENT - In both the Magistrate and Supreme Courts a Judgment may be rescinded after the necessary application has been brought which will cause the Judgment to be expunged from the records and as such will become a nullity.

SALES AND TRANSFERS OF BUSINESSES GAZETTED - In terms of Section 34 of the Insolvency Act and in order to protect the purchaser, it is necessary to publish a notice in the newspaper and Government Gazette signifying the sale of the business. Should the sale not be advertised the sale is voidable insofar as the creditors of the businesses are concerned for a period of six months.

SEQUESTRATION - The taking possession of the estate of an insolvent person.

SPECIAL NOTARIAL BOND - A bond similar to a general notarial bond except that the security provided is only over specific items and not over the general free residue of movables of a mortgagor on insolvency.

SUMMARY JUDGMENT - A judgment given by a Court in special circumstances without the hearing of witnesses where there is no reasonable ground to believe that the defendant has a defence.

SURRENDER - Normally includes the procedure provided for in the Insolvency Act 1936, in terms of which a person or a partnership can apply to Court for the acceptance of the surrender of his estate. Surrender could also mean conceding a claim against a person.