PUBLISH YOUR INTENDED SALE OF BUSINESS OR CREDITORS WILL COME KNOCKING AT YOUR DOOR

Category: Administrative and Procurement Law,Commercial Law
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Section 34 of the Insolvency Act, 24 of 1936 provides for a trader[1] to publish a notice of intended disposition[2] ("**notice**") of a business before the intended sale.

Purpose of section 34 of the Insolvency Act

The purpose of this provision is to prevent sellers from disposing of businesses when they are in financial difficulties and spending the proceeds from that sale as they please to the detriment of creditors.

How and when must publication take place

A notice of the trader's business must be published in the *Gazette*, and in two local issues of an Afrikaans and English newspaper circulating in the district in which that business is carried on, within a period not less than 30 days and not more than 60 days before such transfer takes place.

Ramifications of non-publication of the intended sale of business

If the trader[3] has not published a notice as stated above, the said transfer shall be void. The trader's creditors have six months from the date of the transfer within which to put in their claims.

Creditors must lodge their claims

As soon as a notice is published, every liquidated liability of the said trader becomes due on demand by the concerned creditor. If the capital amount bears no interest, the debt is reduced at the rate of eight per cent per annum over the period between the date when payment is made and the future date the debt would ordinarily have been due.

When is the purchaser “short-changed”?

If the notice is not published, the purchaser may not become the owner of the business.

Purchaser’s indemnification

The purchaser may demand that the trader indemnifies him/her against any and all claims or loss which the purchaser may suffer as a result of the parties not complying with the provisions of section 34 of the Insolvency Act. The purchaser shall seek the indemnification before the transfer of the business. An indemnification provided by the seller will have no value where the seller is in liquidation.

If you intend selling or buying a business, section 34 compliance is of paramount. Such compliance serves to protect both parties to the sale.

[1] “**trader**” means any person who carries on any trade, business, industry or undertaking in which property is sold, or is bought, exchanged or manufactured for purpose of sale or exchange, or in which building operations of whatever nature are performed, or an object whereof is public entertainment, or who carries on the business of an hotel keeper or boarding-house keeper, or who acts as a broker or agent of any person in the sale or purchase of any property or in the letting or hiring of immovable property; and any person shall be deemed to be a trader for the purpose of this Act (except for the purposes of subsection (10) of section 21) unless it is proved that he is not a trader as hereinbefore defined: Provided that if any person carries on the trade, business, industry or undertaking of selling property which he produced (either personally or through any servant) by means of farming operations, the provisions of this Act relating to traders only shall not apply to him in connection with his said trade, business, industry or undertaking.

[2] **“disposition”** means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the Court; and **“dispose”** has a corresponding meaning.

[3] “**trader**” – interchangeably the seller.