

Effects of rehabilitation

Written by Rohan Lamprecht

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The effect of rehabilitation in relation to the person of the insolvent is to eliminate his status as an insolvent, irrespective whether the aforementioned rehabilitation is granted by a High Court, or whether it is automatic due to an efflux of 10 years since the date of sequestration. In the words of the statute: rehabilitation has the effect “of putting an end to the sequestration” and “of relieving the insolvent of every disability resulting from the sequestration”. It also has the effect of discharging any and all of the debts as existing at the date of sequestration, including debts owed to foreign creditors (except for any such which arose out of fraud).

Independently of a composition providing otherwise, rehabilitation does not operate to reinvest the insolvent with his/her estate, save for one exception. The effect of the relevant provisions in this regard is that a composition providing otherwise, and the said exceptional case, apart, property vesting in the trustee as at the date of sequestration and property vesting in him during the sequestration, and unrealized as at the date of rehabilitation, remains vested in him notwithstanding rehabilitation for the purposes of realization and distribution; if, however, the circumstances warrant such, the Court may make an order for the reinvestment of any such property in the insolvent, i.e., in the exercise of its discretion under section 127(2) of the Insolvency Act.

Rehabilitation has no effect on property acquired by the insolvent during sequestration and which has not vested in his trustee. The estate constituted by such property represents a new estate acquired by the insolvent subsequently to the sequestration and his creditors as at the date of such sequestration have no claims whatsoever thereto.

Where at the date of rehabilitation there are such, moneys in the Guardians' Fund deposited thereto in terms of section 116(1) of the Insolvency Act must be paid by the Master to the insolvent after the latter's rehabilitation and upon his request. Rehabilitation has no effect on the rights of the trustee or creditors under a composition or on the powers or duties of the Master or the duties of the trustee in connection therewith. Where in terms of a composition such has occurred, the reinvestment in the insolvent of property of the estate is not affected in any way by the rehabilitation.

Rehabilitation has no effect on the liability of a surety for the insolvent in respect of the latter's debt as at the date of sequestration. Thus, the surety remains liable notwithstanding the automatic discharge (in the absence of an order of Court to the contrary, in the case of an application for rehabilitation pursuant to a composition of at least 50c in the R1,00) of such debt.

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Where he pays the debt after rehabilitation, the surety would have a right of recourse against the former insolvent for the amount paid.

The Court has no power to deprive the surety of such right of recourse, whether in granting the rehabilitation or otherwise. Rehabilitation does not affect the liability of any person to pay a penalty or suffer a punishment under any provision of the Insolvency Act. It is also not competent to rehabilitate a trust, since as in the case of a partnership, once the trust is divested of its property by sequestration; there is nothing left in relation to which the trust may continue to operate. The provisions of the Insolvency Act relating to rehabilitation are designed to accommodate a natural person who, after sequestration, continues in existence and is able to accumulate a new estate.

The appropriate application in relation to a trust is one for the setting aside of the sequestration order where the continuation of the sequestration process is either unnecessary or undesirable.