

CHAPTER 5:01

ANTENUPTIAL CONTRACTS ACT

Acts 21/1875, 10/1959 (ss. 80 and 81).

AN ACT to amend the law relating to antenuptial contracts.

[Date of commencement: 10th June, 1891.]

1 Short title

This Act may be cited as the Antenuptial Contracts Act [*Chapter 5:01*].

2 Interpretation

In this Act—

“creditors” includes persons to whom any insolvent spouse, together with any co-partner or other person, is jointly indebted as well as persons to whom such spouse is singly and alone indebted: Provided that—

- (i) nothing in this Act contained shall alter or affect the ranking as between themselves of the creditors upon joint estates and separate estates as provided for in section 62 of the Insolvency Act [*Chapter 6:04*];
- (ii) as often as the separate estate of any such spouse as aforesaid, and the estate of any company or co-partnership of which such spouse is a partner, are concurrently under administration as insolvent, and the trustee of the separate estate and the trustee of the joint estate do not agree between themselves as to which of them will institute such legal proceedings as may have become necessary in reference to any such antenuptial contract as aforesaid, it shall be lawful for the High Court to decide upon application which of the two trustees shall institute such proceedings.

3 No antenuptial contract valid unless registered and copies filed in Deeds Registry

(1) No antenuptial contract executed after the 10th June, 1891, shall be valid as against any creditor of either of the spouses unless the same is registered in the Deeds Registry in conformity with established law and custom and unless a signed original of the contract for filing in the Deeds Registry as the registry duplicate together with two further originals or grosses or copies thereof certified by a notary public are lodged with the Registrar of Deeds.

(2) No antenuptial contract referred to in subsection (1) shall be registered until the signed original and two further originals or grosses or copies thereof certified as required by subsection (1) have been so lodged.

(3) The Registrar of Deeds who registers a contract referred to in subsection (1) shall transmit to the registrar in charge of the other Deeds Registry one original, grosse or copy for registration by him.

(4) The original, grosse or copy which is filed in a Deeds Registry may be inspected by any person who shall, on payment of the fee for the time being payable for a search in the debt registry, be entitled to inspect the register of antenuptial contracts and no separate or further fee shall be demanded.

4 Premiums on life policy of insolvent settled under antenuptial contract on spouse not to fall under Chapter 6:04

When by any antenuptial contract which, if executed after the 10th June, 1891, has been registered and has had a duplicate or notarial copy thereof deposited in terms of this Act, one of the intended spouses has covenanted and agreed for the benefit of the other spouse, or the children of their marriage, or of the descendants of any such children, or upon or for the benefit of such other spouse and of such children and descendants, to effect a policy of assurance upon the life of either of the intended spouses or to cede and assign over some such policy effected before then, and in either case to pay the annual premiums to become due upon such policy, then if the estate of the spouse who so covenanted and agreed becomes sequestrated as insolvent, no payment of such premiums made by such spouse shall be deemed or taken to fall under or come within section 40 or 43 of the Insolvency Act [*Chapter 6:04*].

5 Registration

Every antenuptial contract executed in Zimbabwe shall be tendered for registration within the space of twenty-eight days next after the day of the execution thereof—

- (a) at the Deeds Registry office in Harare if it was executed within the area served by that registry; and
- (b) at the Deeds Registry office in Harare or in Bulawayo if it was executed within the area served by the latter registry.

6 No contract except notarial contracts to be registered unless executed beyond Zimbabwe

(1) No antenuptial contract executed in Zimbabwe shall be capable of being registered in Zimbabwe unless it had been executed before a notary public.

(2) An antenuptial contract, whether notarial or not, executed elsewhere than in Zimbabwe, shall be capable of being registered in the Deeds Registry and, if it is registered and two duplicate originals or two copies thereof attested by a—

- (a) a notary public entitled to practise as such in Zimbabwe; or
- (b) notary public entitled to practise as a notary public in the country in which the antenuptial contract was executed; or
- (c) registrar of deeds or other person charged by law with the duty of registering antenuptial contracts in the country in which the antenuptial contract was executed and in whose registry such contract was registered; are lodged as aforesaid, it shall have in Zimbabwe the same effect in regard to creditors in insolvency as if it had been executed before a notary public in Zimbabwe and had been duly registered.

(3) If no original is available, an antenuptial contract may be registered if there is lodged as aforesaid three copies of the contract attested as provided in paragraph (b) or (c) of subsection (2), and thereupon it shall have the same effect in regard to creditors in insolvency as if it had been executed before a notary public in Zimbabwe and had been duly registered.

7 Act not to affect position of woman married in partial community

(1) Nothing in this Act shall be construed so as to relieve any woman married under an antenuptial contract, not wholly excluding community of property and community of profit and loss, from liability to any creditor to whom she and her property, and the provision made for her benefit by such contract, would have been liable, by reason of the partial community subsisting between her and her husband if this Act had not been passed.

(2) Nothing in this Act shall be construed so as to deprive any woman of any right of tacit hypothec or other privilege which she would otherwise by law possess upon her husband's estate in security for her property, owned by her before and at the time of her marriage, and kept by her out of community, which right shall be judged of as if this Act had not been passed.

8 Act not to affect contracts fraudulently made

Nothing in this Act shall protect or make effectual any antenuptial contract or any provision in any antenuptial contract which would, by reason of some fraud thereby perpetrated or attempted, have been void or voidable by law if this Act had not been passed.