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REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2025-180850

(1) REPORTABLE: YES

(2) OF INTEREST TO THE JUDGES: NO

(3) REVISED:NO

DATE: 2 March 2026

SIGNATURE

In the matter between:

S B PRIVATE CAPITAL EN COMMANDITE PARTNERSHIP

Applicant

and

INTERBOND LIMITED

First Respondent

THE COMPANIES AND INTELLECTUAL

PROPERTY COMMISSION

Second Respondent

JUDGMENT

1. The applicant, S B Private Capital En Commandite Partnership, seeks an order placing the first respondent, Interbond Ltd, in provisional liquidation. No relief is sought against the second respondent, the Companies and Intellectual Property Commission (“the Commission” or “CIPC”). The application is unopposed and came before me in the Dedicated Insolvency Court.
2. I raised a query as to the citation of the first respondent with the applicant’s counsel, and that led to the filing of a further affidavit on behalf of the applicant and the reserving of this judgment. To put the issue raised in context, I begin with the case made for the provisional order.
3. The applicant alleges that as a creditor of the first respondent it is entitled to the provisional order because the first respondent is commercially insolvent and unable to pay its debts as contemplated by section 344(f), read with section 345(1)(a) and (c) of the Companies Act 61 of 1973 (“the old Companies Act”). By virtue of item 9 of Schedule 5 of the Companies Act 71 of 2008 (“the new Companies Act”) Chapter 14 of the old Companies Act is still applicable to the winding up of insolvent companies.
4. The debt alleged to be due to the applicant by the first respondent is based on a written loan agreement concluded on 14 October 2022. In its terms the applicant made a loan facility of R15 million available to the first respondent. The loan agreement was amended twice by addenda, and the facility was ultimately increased to R20m million.
5. The first respondent was required to repay the applicant the outstanding amount (as defined in the loan agreement) on the maturity date, being 24 months after the

advance. Interest on the loan would accrue and be paid quarterly on the first day of January, April, July and October of each year. The interest rate was fixed at 16% per annum, calculated daily and compounded in arrears on the first day of every calendar month.

6. An event of default would occur in terms of the loan agreement should the first respondent fail to pay any amount due, and in the event of default, the applicant would be entitled *inter alia* to claim immediate payment of the outstanding balance, and charge interest at a default rate.
7. The applicant alleges that it advanced the total sum of R20 million to the first respondent during the period 14 October 2022 to 1 June 2023. An event of default then occurred in that the first respondent failed to make punctual payment of the interest on the outstanding amount on the interest payment dates. It also failed to repay the outstanding amount in full on the maturity date.
8. On 28 February 2025 and pursuant to the events of default, the applicant exercised its right to claim immediate payment of the outstanding amount by way of a written notice, and despite demand, the first respondent has failed to remedy its breach and remains in default.
9. The applicant alleges that as at 14 October 2024 first respondent was indebted to it in the amount of R21,282,659.16 together with interest thereon at the rate of 18.5% per annum, calculated daily and compounded in arrears on the first business day of every calendar month from 14 October 2024 to date of payment, both dates

inclusive. A certificate of balance issued in terms of the loan agreement confirms the first respondent's indebtedness to the applicant.

10. *Prima facie*, and subject to the query I raised, the applicant has established both its *locus standi* to seek the provisional liquidation of the first respondent and the existence of the debt.
11. As to the inability of the first respondent to pay its debts, the applicant alleges that the first respondent has failed to pay the amount due to it despite two demands for payment, made on 28 February 2025 and 22 May 2025 respectively.
12. On 26 June 2025 the applicant's attorneys caused a notice in terms of Section 345(1)(a) of the old Companies Act dated 24 June 2025 to be served by the Deputy Sherrif at the registered address of the first respondent ("the first section 345 notice"). The notice demanded payment of the outstanding amount and warning the first respondent of the consequences of non-payment. The letters of demand dated 28 February 2025 and 22 May 2025 were attached to the first section 345 notice.
13. On 27 June 2025 the first respondent's attorneys, Schultz Wiskin Inc, addressed a letter to the applicant's attorneys in response to the first section 345 notice requesting a copy of the loan agreement, proof of payment of the monies advanced, and a detailed statement of account. The letter stated that upon receipt of the requested documentation the first respondent would formally respond to the section 345 notice. On 1 July 2025 the applicant's attorneys replied by email attaching the requested documentation.

14. On 22 August 2025 the applicant's attorneys caused a further notice in terms of Section 345(1)(a) of the old Act to be served at the registered address of the first respondent (“the second section 345 notice”), once again demanding payment of the outstanding amount and warning the respondent of the consequences of non-payment.
15. The applicant alleges that no further response was received from the first respondent and it has made no attempt to pay, secure or compound the outstanding amount. Hence it was submitted that the first respondent is deemed to be unable to pay its debts as contemplated in section 345(1)(a) of the old Act and is liable to be wound up.
16. In addition, it was contended by the applicant that the first respondent's failure to pay the outstanding amount over an extended period establishes that it is commercially insolvent and unable to make payment of its debts as and when they fall due. This logic cannot be faulted, and in my view (and again subject to my query) the applicant has also established the first respondent's inability to pay its debts, at least on a *prima facie* basis.
17. I turn then to the query which I raised with the applicant's counsel at the hearing. In the first section 345 letter, dated 24 June 2025, the first respondent, as the addressee of the notice is described to as “Interbond Limited (incorporated in Seychelles)”. Similarly, the sheriff's return of service in respect of the first section 345 letter records the first respondent to be “Interbond Limited (incorporated in

Seychelles)”. This description of the first respondent was repeated in the second section 345 notice and the Sheriff’s return.

18. The first respondent was however cited in the founding affidavit as “Interbond Limited (Registration Number 2013/197788/10), a company with limited liability duly registered in terms of the company laws of the Republic of South Africa, with registered address at Suite 6[...], I[...] Central, 7[...] M[...] Road, I[...], Sandton, Gauteng. I inquired from counsel whether the description of the first respondent in the section 345 processes as being a company incorporated in Seychelles could be reconciled with its citation in the founding affidavit.
19. Counsel took instructions, and in explanation submitted that there is no contradiction because the first respondent is in fact a company incorporated in Seychelles, but it is registered locally as an external company under the company laws of the Republic of South Africa. In confirmation thereof he handed up an affidavit by Mr Karl Engelhard on behalf of the applicant, who alleges that he is duly authorised to depose thereto on its behalf, and confirming these facts.
20. Mr Engelhard also referred to the description of the first respondent in the loan agreement which records that the first respondent, as one of the contracting parties, is “a company incorporated in Seychelles with registration number 2013/197788/10 incorporated as an external company under the laws of the Republic of South Africa and with registered office at 1[...] A[...] Road, Gauteng, South Africa.”

21. I observe that the reference to the first respondent in the loan agreement as being incorporated in South Africa is seemingly not correct, as external companies are registered in South Africa, not incorporated here.
22. Mr Engelhard also submitted in his affidavit that in the circumstances the citation of the first respondent as it stands is not incorrect as it is indeed duly registered in terms of South African company laws, albeit as an external company. He also referred in his affidavit to the Commission (CIPC) registration documentation filed on CaseLines, recording a change in its registered address to that at which the section 345 processes were served.
23. I note that the Commission records also confirm that whilst Interbond Limited is incorporated in the Seychelles, it is indeed registered here as an external company. I also observe that all the directors of the first respondent per the Commission records have residential addresses in Gauteng.
24. I requested counsel to assist me with authority as to whether the court is empowered to issue a provisional liquidation order in respect of a company incorporated in the Seychelles enjoying an external registration in South Africa. I was helpfully referred by counsel to **Sacktein NO v Proudfoot, SA (Pty) Limited** 2003 (4) SA 348 SCA; **Wiseman v Ace Tables Soccer (Pty) Ltd Limited** 1991 (4) SA 171 and **Ward & Another v Smit & Others: in re Gurr v Zambia Airways Corporation Limited** 1998 (3) SA 175 SCA.
25. These cases are certainly authority for the proposition that a South African High Court can issue a liquidation order in respect of external companies registered in

South Africa, at least under the old Companies Act. They rely primarily on the provisions of section 337 of the old Companies Act to reach this conclusion. Section 337 defines a company (for purposes of Chapter 14 of the old Companies Act dealing with the winding up of companies) to include “a company, external company and any other body corporate.” Clearly, the legislature intended, under the old Companies Act, that the application of Chapter 14 (including the provisions pertaining to liquidation) would extend to external companies (see also section 344(g)).

26. In the Ward judgment at page 182 the Supreme Court of Appeal held that:

“A competent South African court undoubtedly has jurisdiction to grant a winding up order in respect of an external company. In terms of Section 337 a reference to a company in Chapter XIV dealing with the winding up of companies is to be construed as including a reference to an external company. It follows that the grounds upon which a court may wind up an external company in terms of Section 344 are not limited to the grounds referred to in Section 344(g), which deals expressly with external companies...”

27. Similarly in the Proudfoot case the SCA held at page 337:

“An external company may be wound up by the court like a domestic company, because Section 337 of the Companies Act defines a company as including an external company. From this it follows that an external company registered as such in the Republic of South Africa may be liquidated as if it were an independent entity even if the foreign company which it is ‘related’ is not liquidated or dissolved, and *vice versa*...” [para 13]

28. These cases do however predate the new Companies Act, which although promulgated in 2008 only became effective in 2011. The question then becomes whether external companies remain capable of liquidation in South Africa with the

advent of the new Companies Act. This necessitates an examination of the relevant provisions of the new Companies Act (in the context *inter alia* of its substitution for the old Companies Act, and with due regard to its text and purpose) to ascertain whether the court's ability to liquidate an external company has been retained. I begin with the old Companies Act.

29. An external company was defined by the old Companies Act to mean "a foreign company that is carrying on business, on non-profit activities, as the case may be, within the Republic, subject to section 23(2)". "Foreign company", in turn, was defined to mean an entity incorporated outside the Republic, irrespective of whether it is a profit, or non-profit entity or (b) carrying on business or non-profit activities, as the case may be, within the Republic".
30. Section 23 of the old Companies Act provided for the registration of external companies in South Africa. It makes it mandatory for an external company to register within 20 business days of it beginning to conduct business within the Republic. The Commission is required to assign a unique registration number to each external company that has so registered, and to maintain a register of an external company.
31. As already mentioned, the Ward and Proudfoot judgments recognise that section 337 of the old Act made the provisions of the old Companies Act pertaining to liquidation applicable to external companies, and hence external companies registered as such in South Africa are companies which were amenable to be wound up in South Africa under Chapter 14, albeit incorporated in a foreign country. The

Ward and Proudfoot cases explain the interaction between a local liquidation and a possible liquidation in the foreign country, and accordingly I need not deal therewith for present purposes.

32. I turn then to the new Companies Act. I was only able to find one reported case dealing with whether external companies are amenable to be liquidated under the new Companies Act, and being **AJVH Holdings and Others v Steinhoff International Holdings and Other** 2021 ZAWCHC 17, which decided that the ability of a local court to liquidate an external company remains. I endorse the reasoning for that conclusion in the Steinhoff case in the paragraphs that follow.
33. The definitions of both an external company and a foreign company in the old Companies Act have been retained verbatim in the definition section in new Companies Act. There remains a requirement for a foreign company incorporated in another country to be registered here, if it carries on business within the Republic. Section 23 of the new Companies Act requires such registration effectively on the same basis as was required under the old Companies Act.
34. Schedule 2 to the new Companies Act provides for the continuation of pre-existing companies, despite the repeal (with transitional savings) of the old Companies Act. It provides that every pre-existing company that was incorporated or registered in terms of the old Companies Act as at the general effective date of the new Companies Act would continue to exist as a company, as if it had been incorporated and registered in terms of the new Act. Item 2(6) of Schedule 2 provides that “an external company that, immediately before the effective date, was registered as such

in terms of the previous Act must be regarded as having [been] registered on the effective date as an external company in terms of this Act". That suggests a continuity with regard to external companies.

35. Moreover, Item 9 of Schedule 5 to the new Companies Act provides for the continued application of the old Companies Act to winding up and liquidation. It provides in Item 9(1): "Despite the repeal of the previous Act, until the date determined in terms of subsection (4), chapter 14 of that Act continues to apply with respect to the winding up and liquidation of companies under this Act, as if that Act had not been repealed subject to sub-items (2) and (3)."
36. The operation of Item 9 schedule 5, insofar as concerns insolvent companies, is still extant, and the retention of chapter 14 includes the adoption of section 337 to 426 of the old Companies Act as set out above. That would suggest, with the retention of the definition of foreign and external companies and the adoption of section 23 in the new Companies Act, that this court continues to have the power to liquidate external companies. That is in accordance with the reasoning in the **Steinhoff** case.
37. During the course of preparing this judgment, I did however also have reference to **Cooperativa Muratori & Cementisti & Others v Companies and Intellectual Property Commission & Others** 2021 (3) SA 393 SCA. In the **Cementisti** judgment, the SCA held that a company incorporated in Italy and registered in South Africa as an external company ("CMC") could not be placed in business rescue in South Africa under Chapter 6 of the new Companies Act.

38. This **Cementisti** judgment gave me pause and to question whether liquidation was indeed permissible under the new Companies Act, if business rescue (as an alternative to avoid liquidation) was not.

39. But the reasoning of the SCA in **Cementisti** is specifically based on the interpretation of “company”, and in this instance an external company, for purposes of business rescue, rather than liquidation. The SCA held that business rescue is only available to a “company” as is defined in terms of section (1) of the new Companies Act, and being:

“A juristic person incorporated in terms of this Act, a domestic company, or a juristic person that, immediately before the effective date

(a) was registered in terms of the

(i) Companies Act 1973 ... other than as an external company as defined in that Act; or

(ii) Close Corporations Act 1984 ..., if it has subsequently been converted in terms of Schedule 2;

(b) Was in existence and recognised as an existing company in terms of the Companies Act 1973 ...; or

(c) Was deregistered in terms of the Companies Act 1973 ... and has subsequently been re-registered in terms of this Act”. [paragraph 6}.

40. The SCA decided that whether the business rescue was available to CMC depended on it being a “company” in terms of this definition. Although CMC was registered as an external company in terms of the old Companies Act, subsection (a) expressly excludes an external company registered under the old Act from being a company, and it was never a close corporation. Neither was CMC a company which existed

and recognised under the old Act and it was not deregistered under the old Act. [para 7]. Hence, CMC was not a company by definition for purposes of business rescue, and resort to these proceedings was incompetent.

41. But the statutory framework in regard to the liquidation of external companies is different. Specifically, Schedule 5 to the new Companies Act deliberately retains Chapter 14 of the old Companies Act which includes section 337, and thereby incorporates external companies into the definition of companies for the purposes of liquidation proceedings in respect of insolvent companies.
42. For these reasons, I respectfully do not believe that the **Cementisti** judgment applies to liquidations and I have reached the conclusion (like **Steinhoff**) that that this court can issue a provisional order of liquidation under the new Companies Act. This conclusion is consistent with the text, context and purpose of the relevant provisions of the new Companies Act.
43. I can see no reason for the legislature to have intended to alter the established regime for the liquidation of external companies conducting business and registered as such here, and which is plainly beneficial to local creditors. It establishes a convenient concursus for them in South Africa, while simultaneously safeguarding the interests of a foreign liquidator (if there is another liquidation in the place of incorporation) through the well- established recognition procedures, and as explained in Proudfoot.
44. I am satisfied that there has been compliance with section 346(3) as concerns the lodging of security, and that a copy of the application was lodged with the Master

and furnished to the parties designated in Section 346(4)(A)(a) of the old Companies Act.

45. In the circumstances I make an order in the following terms:

45.1. The first respondent, registered as an external company in South Africa, is in provisional liquidation in the hands of the Master of the High Court.

45.2. That a provisional liquidation order is issued calling upon the first respondent and all interested persons to show cause, if any, at 10 am on 13 April 2026, why an order should not be granted in the following terms:

45.2.1. That the first respondent be placed under final winding up in the hands of the Master; and

45.2.2. The costs of this application be costs in the liquidation.

45.3. The applicant is directed to cause a copy of this order, as required in terms of Section 346A of the Companies Act 61 of 1973, to be served:

45.3.1. On the first respondent at its registered address and place of business;

45.3.2. On the employees of the respondent by affixing a copy of the application in this order to any notice board to which the employees have access inside the respondent's premises, or if there is no access to the premises by the employees by affixing

a copy to the front gate, where applicable, failing which to the front door of the premises from which the respondent conducted any business at the time of presentation of the application;

45.3.3. On any trade union representing such employees, together with a copy of the application;

45.3.4. The South African Revenue Service;

45.3.5. The Master of the High Court.

45.4. The applicant is directed to publish a copy of this order once each in the Government Gazette and the Citizen Newspaper.

45.5. The applicant is directed, by no later than 6 April 2026, to deliver an affidavit setting out details of when and in what manner it has complied with the service and publication of this order.

S SYMON
ACTING JUDGE OF THE HIGH COURT,
JOHANNESBURG, GAUTENG DIVISION

DATE OF HEARING: 5 December 2025

DATE OF ORDER: 2 March 2026

DATE OF REASONS FOR JUDGMENT: 2 March 2026