

**CHAPTER 29:02**  
**ANTENUPTIAL CONTRACTS**  
ARRANGEMENT OF SECTIONS

SECTION

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(Act 21, 1875),  
HCP 1891,  
Proc. 2, 1959,  
Cap. 145, 1959,  
L.N. 84, 1966.

**An Act to repeal the sixth section of the Placaat of the Emperor Charles V, of 1540, and to make other provisions relating to antenuptial contracts**

*[Date of Commencement: 10th June, 1891]*

**1. Short title**

This Act may be cited as the Antenuptial Contracts Act.

**2. Interpretation**

(1) In this Act, "**creditors**" include and embrace persons to whom any insolvent spouse is, together with any co-partner or other person, jointly indebted, as well as persons to whom the spouse is singly and alone indebted:

Provided, however, that nothing contained herein shall extend to alter or affect the ranking between themselves of the creditors upon joint estates and separate estates as the same is provided for in the Insolvency Act.

(2) As often as the separate estate of a spouse and the estate of any company or co-partnership of which the spouse is a partner, shall be 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 shall institute legal proceedings as may become necessary in reference to any antenuptial contract referred to in this Act, it shall be lawful for the High Court to decide, upon motion, which of the two trustees shall institute such proceedings.

**3. Repeal of section 6 of the perpetual Edict of 1540**

The sixth section of the Placaat of the Emperor Charles V, bearing date the 4th day of October, 1540, is hereby repealed, as also so much of any other law or usage as is repugnant to or inconsistent with any of the provisions of this Act.

**4. No antenuptial contract valid unless registered and copy filed**

No antenuptial contract executed after the commencement of this Act shall be valid or effectual as against any creditor or creditors of either of the spouses unless it has been registered in the Deeds Registry Office, in conformity with established law and custom, and unless a duplicate original or notarial copy of the contract is, at the time of the registration of the original, deposited in the Deeds Registry, there to remain for general information, and such duplicate or copy may be inspected by any person on payment of the fee for the time being payable for a search in the Deeds Registry, shall be entitled to inspect the register of antenuptial contracts, and no separate or further fee shall be payable, and no such antenuptial contract

shall be registered until the duplicate or notarial copy has been deposited.

**5. Contracts executed before passing of Act**

Every antenuptial contract *bona fide* executed and duly registered before the commencement of this Act, whereby any property, movable or immovable, has been settled upon or for the benefit of the other intended spouse, or the children of their marriage, or of the descendants of any of those children, or upon or for the benefit of the said spouse and of the children and descendants, shall be valid and effectual according to its legal order of ranking against or in competition with all creditors upon the insolvent estate of the spouse who made the settlement, except the creditors whose debts or demands are in existence at the time of the commencement of this Act, all which last mentioned debts and demands must be satisfied in full before any claims upon or by virtue of such contracts shall be capable of being set up.

**6. Only notarial contracts to be registered unless executed beyond Botswana**

No antenuptial contract executed in Botswana shall be capable of being registered in the Deeds Registry unless it has been executed before a notary public, but any such contract, if executed elsewhere than within Botswana may, whether notarial or not, be registered, and shall, if registered, and if a duplicate original, or a copy thereof, attested by a notary public entitled to practise as such, be deposited as aforesaid, have in Botswana the same force and effect in regard to creditors in insolvency as if it had been executed before a notary public in Botswana.

**7. Act not to affect position of women married in partial community**

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 in case this Act had not been passed, nor shall anything in this Act 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. Fraudulent contracts not affected**

Nothing in this Act shall extend to 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 in case this Act had not been passed.