

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING****No. 77****7 February 2014****DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****POLICY ON THE APPOINTMENT OF INSOLVENCY PRACTITIONERS**

The Minister of Justice and Constitutional Development has under section 158(2) of the Insolvency Act, 1936 (Act No. 24 of 1936), section 10(1A)(a) of the Close Corporations Act, 1984 (Act No. 69 of 1984), and section 158(2) of the said Insolvency Act read with section 339 of the Companies Act, 1973 (Act No. 61 of 1973), determined the Policy in the Schedule.

SCHEDULE**1. Definitions**

Unless the context indicates otherwise—

"Chief Master" means the person appointed as the Chief Master of the High Courts in terms of section 2(1) of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

"Close Corporations Act" means the Close Corporations Act, 1984 (Act No. 69 of 1984);

"Companies Act" means the Companies Act, 1973 (Act No. 61 of 1973);

"Insolvency Act" means the Insolvency Act, 1936 (Act No. 24 of 1936);

"insolvency industry" means the industry which involves the administration of insolvent estates and the winding up of companies or close corporations;

"insolvency practitioner" means a natural person who is appointed by a Master

of a High Court as a *curator bonis*, provisional trustee, trustee, co-trustee, provisional liquidator, liquidator or co-liquidator in the circumstances set out in paragraph 3.2 of this Policy;

"insolvent estate" includes the assets of a company or close corporation under winding up;

"Master" means a Master, Deputy Master or Assistant Master of a High Court as referred to in the definition of "Master" in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

"Master's List" means any Master's List of Insolvency Practitioners referred to in paragraph 6 of this Policy.

2. Objective

The objective of the Policy is to promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination.

3. Scope and application of Policy

3.1 This Policy—

- (a) replaces all previous policies and guidelines related to the appointment of insolvency practitioners used in the Masters' offices; and
- (b) is intended to form the basis of the transformation of the insolvency industry.

3.2 This Policy applies only in respect of appointments under the following provisions of the Insolvency Act, the Companies Act and the Close Corporations Act:

3.2.1 Insolvency Act:

- (a) Section 5(2) – the appointment of a *curator bonis* after a notice of voluntary surrender.
- (b) Section 18(1) – the appointment of a provisional trustee by the Master.
- (c) Section 54(5) – the appointment of a trustee where none is elected by the creditors and no provisional trustee is in office.
- (d) Section 57(4) – the Master declines to appoint an elected trustee.

- (e) Section 57(5) – the Master considers it desirable to appoint a co-trustee.
- (f) Section 62(2) – the appointment of a provisional trustee pending the election of a trustee to fill a vacancy.
- (g) Section 95(4) – the appointment of a trustee where there is no trustee to distribute proceeds due to a secured creditor who did not prove a claim previously.

3.2.2 Companies Act 61 of 1973:

- (a) Section 368 – the appointment of provisional liquidator by the Master.
- (b) Section 370(3)(b) – the Master again declines to appoint a person nominated at a further meeting.
- (c) Section 374 – the Master considers it desirable to appoint co-liquidator.
- (d) Section 377(3) – the appointment of provisional liquidator or liquidator for a vacancy or where a vacancy is not filled.

3.2.3 Close Corporations Act:

- (a) Section 74(1) – the appointment of a liquidator (similar to a provisional liquidator for a company).
- (b) Section 66(1) read with section 374 of the Companies Act – the appointment of a co-liquidator.
- (c) Section 76(3)(b) – the appointment of a liquidator where the Master declines to appoint an elected liquidator.

3.3 This Policy does not apply to the appointment of an insolvency practitioner for a solvent company wound up voluntarily in terms of section 80 of the Companies Act, 2008 (Act No. 71 of 2008).

4. Policy statements

The Minister of Justice and Constitutional Development is committed to—

- (a) addressing the imbalances of the past and transforming the insolvency industry;
- (b) establishing uniform procedures for the appointment of insolvency practitioners;
- (c) making the insolvency industry accessible to individuals from previously

disadvantaged communities;

- (d) promoting the objectives of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), by empowering insolvency practitioners who are previously disadvantaged individuals;
- (e) preventing corruption and fronting; and
- (f) promoting transparency and accountability.

5. Directives

The Chief Master must issue directives to be used by all Masters in order to implement and monitor the application of this Policy.

6. Different categories of insolvency practitioners

6.1 Insolvency practitioners on every Master's List must be divided into the following categories, where an African, Coloured, Indian or Chinese person is limited to a person who became a South African citizen before 27 April 1994 or a descendant of such a citizen:

Category A: African, Coloured, Indian and Chinese females;

Category B: African, Coloured, Indian and Chinese males;

Category C: White females;

Category D: White males,

and within each category be arranged in alphabetical order according to their surnames and, in the event of similar surnames, their first names. Insolvency practitioners added to the list after the compilation thereof must be added at the end of the relevant category.

6.2 A Master's List must distinguish between "senior practitioners", being insolvency practitioners who have been appointed at least once every year within the last five years and "junior practitioners", being insolvency practitioners who have not been appointed at least once every year within the last five years but who satisfy the Master that they have sufficient infrastructure and experience to be appointed alone.

The senior and junior practitioners must be arranged where they fit alphabetically in Category A to Category D on the same Master's List.

7. Appointment of insolvency practitioners by Masters of High Courts

7.1 Insolvency practitioners must be appointed consecutively in the ratio A4: B3: C2: D1, where—

“A” represents African, Coloured, Indian and Chinese females;

“B” represents African, Coloured, Indian and Chinese males;

“C” represents White females;

“D” represents White males,

and the numbers 4: 3: 2: 1 represent the number of insolvency practitioners that must be appointed in that sequence in respect of each such category.

7.2 Within the different categories on a Master's List, insolvency practitioners must, subject to paragraph 7.3, be appointed in alphabetical order.

7.3 The Master may, having regard to the complexity of the matter and the suitability of the next-in-line insolvency practitioner but subject to any applicable law, appoint a senior practitioner jointly with the junior or senior practitioner appointed in alphabetical order. If the Master makes such a joint appointment, the Master must record the reason therefor and, on request, provide the other insolvency practitioner therewith.

7.4 If an insolvency practitioner due for appointment in accordance with the alphabetical list of names in a specific category on the Master's List—

- (a) fails to lodge a bond of security in time, the next insolvency practitioner on the Master's List must be appointed, and the person determined previously is moved to the back of that list; or
- (b) satisfies the Master that he or she has a conflict of interest or a conflict of interest arises after the appointment, the next-in-line insolvency practitioner must be

appointed, and the person determined previously is considered for appointment when the next appointment in that category is made.

8. Commencement

This Policy commences on 31 March 2014.