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MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION

PROJECT 134: ADMINISTRATION OF ESTATES

(Discussion Paper 110 – Closing date for comment: 18 November 2005)

Although a role for traditional leaders and customary law is not excluded, a unitary system for the administration of all estates must be applied following the decision of the Constitutional Court in the **Bhe** matter. Comment is invited on a proposal that all estates should be administered subject to the supervision of the Master of the High Court. It is proposed that special protective measures should apply in small estates, but that in other estates beneficiaries should protect their own interests and the Master should not be obliged to examine all accounts or call for requirements after a liquidation and distribution account has been advertised for inspection free of objections. Regulations which prohibit classes of persons from being appointed as executor or assisting with the administration of estates should be replaced by a requirement that security must be lodged in all cases where the executor is not a duly qualified person or the executor is not assisted by a duly qualified person. Comment is invited on a long list of practical and technical proposals, for instance, should the Master decide factual questions, should there be an Ombud for the administration of estates and should electronic payments be recognised by legislation.

The main thrust of the review of administration of estates is to consider a unitary system for all South Africans. Measures to improve the administration process and reduce the work of the supervising authority and executors, as far as can be justified, are also considered.

It is proposed that all estates should be administered subject to the supervision of the Master and that beneficiaries should have a choice to report an estate to the Master or a service point with jurisdiction. Estates of all persons who die leaving a will or property must be reported. Comment is invited on the question whether a role should be retained for traditional leaders or authorities and customary law.

Comments are invited on the Master's Policy and Procedural Manual: Administration of Intestate Deceased Estates at Service Points, in particular on designation of service points, the need for centralised records, the reporting of testate estates and the payment of funeral expenses before the appointment of an estate representative.

The Master should not be obliged to examine accounts or tax executor's remuneration if no estate duty is payable, beneficiaries have no objections or complaints, there are no disputes about the administration, and there are no absentee, unborn, or minor beneficiaries, or other beneficiaries with limited capacity.

Different types of appointment, namely appointments for small estates in terms of section 18(3) and for foreign estates in terms of sections 21 and 25 should be done away with. Special rules should be enacted for executors in small estates which dispense with all requirements once an appointment has been made. Before the appointment of the executor in a small estate, the beneficiaries must sign a statement of assets and liabilities, which shows the intended distribution of the balance and the appointment must set out the assets to be dealt with by the executor.

In estates which comply with specified conditions an executor should be exempted from complying with almost all the requirements of the Administration of Estates Act once the executor has advertised for creditors and advertised a final account for inspection free from objections.

Regulation 910 should be repealed. Security should be called for in all estates except if the executor is or will be assisted in the administration of the estate by an attorney, accountant, board of executors or trust company, bank, or any other category of person exempted by the Minister from furnishing security in the light of the capabilities of the category of persons and measures to ensure professional conduct by the category of persons. If an executor or agent fails to comply with requirements the Master may refuse further appointments unless security is lodged.

The allocation of funds to the Master should reflect the reality that the Masters' offices play an important role in the lives of people and that the ability of the Masters' offices to render an efficient and effective service must be enhanced.

Comments are invited on the question whether the Master should decide questions of fact and whether the Master should have wide powers to gather information, and appoint a joint executor? The Chief Master or one of the Chief Master's staff designated by the Chief Master as Ombud should have authority to investigate the actions of a Master or designated official, consider the merits of a matter, take evidence, review a decision of the Master or designated official and give directions which the Ombud deems fit to a Master or designated official.

Newspaper notices in terms of sections 29 and 35 should be done away with. Notice in the Government Gazette should be done away with if a website with public access has been established where notices can be placed.

The forms for death notices and inventories should be reviewed, death certificates should be lodged in all estates and it should be a criminal offence to wilfully furnish false information to the Master.

No changes to the calculation of executors' remuneration are recommended, but a fee charged by an agent should be noted with the executors' remuneration in the account if it differs from the remuneration.

Authority signed by an heir or creditor to effect payment by transfer of funds to a banking account identified in the authority and proof of transfer of funds to that account should be accepted as a receipt in terms of section 35(12) of the Administration of Estates Act. In cases where section 28 will apply the executor should be allowed to open any account with a bank or the Postbank and should not be obliged to open a cheque account.

Copies of the Discussion Paper on Administration of Estates are available free of charge from the office of the Law Reform Commission.

The closing date for comment on this Discussion Paper is 18 November 2005.
Comments and submissions should be addressed to:

The Secretary
SA Law Reform Commission
Private Bag X668
PRETORIA
0001

Telephone: (012)392-9540
Fax: (012)320-0936
E-mail: mcronje@justice.gov.za
Internet: www.doj.za/salrc/index.htm

ISSUED BY THE SECRETARY, S A LAW REFORM COMMISSION, PRETORIA

DATE: 13 OCTOBER 2005

**THE CONTACT PERSON FOR ENQUIRIES IN RESPECT OF MEDIA STATEMENT IS
MR TIENIE CRONJE
TEL (012) 392 9553 (OFFICE)
mcronje@justice.gov.za**

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