

Ref: #759894

6 February 2020

Acting Chief Master

**Office of the Chief Master**

Email: [TBezuidenhout@justice.gov.za](mailto:TBezuidenhout@justice.gov.za)

Dear Ms Bezuidenhout,

**SAICA SUBMISSION ON THE DRAFT PROPOSALS ON THE POLICY TO APPOINT  
INSOLVENCY PRACTITIONERS**

In response to your request for comments on the three draft proposals for the appointment of insolvency practitioners please find comments prepared by The South African Institute of Chartered Accountants (SAICA).

**General discussion**

The Master's office prepared 3 proposals for appointment of insolvency practitioners.

The policy objective states that the objective is to promote consistency, fairness, transparency and achievement of equality for persons previously disadvantaged by unfair discrimination and to create a uniform procedure for all Master's offices for the appointment of an insolvency practitioner.

The Insolvency Act allows for the Minister to prescribe a procedure to be observed in the Master's office in connection with insolvent estates and Section 158 deals with a policy:

*"(2) The Minister may determine a policy for the appointment of a curator bonnis, trustee, provisional trustee, or co-trustee by the Master in order to promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination.*

*(3) Any policy determined in accordance with the provisions of subsection (2) must be tabled in Parliament before publication in the Gazette".*

The three draft policies refer to a provisional appointment procedure but then goes further into qualifications, examinations and a process for mentorship for the insolvency practitioners.

The Insolvency Act allows for a policy for appointment of a *curator bonnis, trustee, provisional trustee, or co-trustee* appointment of the and not the additional requirements as set out in the draft policies. The Minister is only allowed to determine a policy for appointment, not qualification and mentorship requirements and there is no legal basis for such inclusions.

The policy document must also be issued by the Minister and follow the normal public consultation process and cannot just be released by the Master's office for comments. We would urge the Master's office and the Minister to follow the public consultation process to ensure that the policy can be applied.

With regards to the three policies we note the following:

- First proposal – Manual System does not actually include a policy but rather states that the Chief Master must issue guidelines to implement the policy.

The document also states that provisional appointments will be made in alphabetical order, but this does not take specific skills or industry knowledge into account.

- Second proposal - Manual System with Shared Folder does not actually include a policy but rather states that the Chief Master must issue guidelines to implement the policy.

The document also states that provisional appointments will be made on a rotational basis, but this does not take specific skills or industry knowledge into account.

- Third proposal – Computer generated list does not actually include a policy but rather states that the Chief Master must issue guidelines to implement the policy.

The document also states that provisional appointments will be made on from one list nationwide where the computer generates the name, but this does not take specific skills or industry knowledge or location into account. It is also not clear whether the different geographical areas will be taken into account during the appointment.

The three draft proposals also include a Code of Conduct which references to King III, it should be noted that King III has since been replaced by the King IV Report. We question the Master's office authority and human resources to manage and enforce this Code. Professional bodies, such as SAICA has a disciplinary team that investigates and deals with complaints as well as the actual disciplinary hearing.

In addition, we have reservations with regards to the Master's office powers to prescribe a mentorship programme and the proposed examination. Further studies and qualifications, the setting and writing of an exam, is a very specialised area and needs to follow the legislative requirements. The Master's office needs to be aware that qualifications needs to be standardised and set out as required by the relevant legislation and possible registration with SAQA. The policy does not set out who will be the examiner and how the courses will be prepared as well as the proposed costs and venues.

The Master's office also prescribes a mentorship programme, but it does not deal with who will these mentors be, what qualifications must the mentor have, will the mentor be remunerated. The draft policies also require the mentor to prepare a report, which again mentors might want to be remunerated when performing this. It is also unclear on how mentees would be able to find mentors willing to assist them.

## **Conclusion**

The three draft policies are not clear in the appointment of the insolvency practitioners, in Proposal 1 the practitioner is appointed from top in alphabetical order, in Proposal 2 the practitioner is appointed from top but the list is not alphabetical and in Proposal 3 the computer chooses, which is not clear on what basis the computer will be choosing. It would seem as if all three proposals have a list which is chosen from either alphabetical or top to bottom.

The additional requirements set out in the policies does not seem to fall within the mandate of the Chief Master or the Minister of Justice's authority in terms of the Insolvency Act.

We thank you for the opportunity to provide comments on these proposals and we support the department's objectives of fairness, transparency and equality and therefore believe that the proposals need to be revisited to fall within the mandate of the office as well as the public consultative process and be able to stand up to constitutional challenge.

Yours sincerely,

Juanita Steenekamp  
Project Director: Governance and Non-IFRS Reporting