

# The Policy

## THE FIRST PROPOSAL

### Manual System

#### Introduction –

##### 1. Definitions:

Unless the context indicates otherwise, the following shall mean:

- “**Chief Master**” is the Executive Officer of All Masters’ Offices and shall exercise control, direction and supervision over all the Masters;
- “**Code**” means Code of Conduct under this Policy, as per Appendix ?;
- “**Conflict**” means a situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person’s self-interest and professional interest or public interest.
- “**Estate**” means an estate or assets of any natural person, trust, partnership, company, close corporation, or any other body or entity in respect of which a practitioner holds an appointment by the Master;
- “**Insolvency Practitioner**” means a natural person who is on the Chief Master’s National List of Liquidators and appointed by the Master as a *Curator Bonis*, Provisional Trustee, Trustee, Provisional Liquidator, Liquidator, Provisional Judicial Manager or Judicial Manager (judicial managers appointed before the repeal of Chapter 15 of the Companies Act 61 of 1973) – hereinafter also referred to as Practitioner;
- “**Master**” in relation to any matter, property or estate, means the Master, Deputy Master or Assistant Master of a High Court appointed under section 2 of the Administration of Estates Act 66 of 1965, as amended, who has jurisdiction in respect of that matter, property or estate and who is subject to the control, direction and supervision of the Chief Master;
- “**Mentor**” means an experienced and trusted Insolvency Practitioner “Mentorship” is the guidance provided by an Insolvent Practitioner to enable the Aspirant Insolvency Practitioner to develop skills and knowledge.
- “**Minister**” means the Minister of Justice and Constitutional Development
- “**Professional Body**” means an organisation with individual members practicing a profession or occupation in which the organisation maintains an oversight of the

knowledge, skills, conduct and practice of that profession or occupation, e.g.: SARIPA, **ABRIPSA**, SAICA, LPC

**“Services”** includes all things done and work rendered and performed by a practitioner in the exercise of his or her duties and functions during the winding up and administration of an estate;

**“Stakeholders”** include the Master of the High Court having jurisdiction and the relevant Liquidators, Trustees, Estate’s Creditors, Insolvent Debtor and Directors and Members.

**Insolvency Act 24/1936, as amended:**

Section 5 (2) - the appointment of a curator bonis after a notice of voluntary surrender.

Section 18 (1) - the appointment of a provisional trustee by the Master.

Section 54 (5) -the appointment of a trustee where none is elected by the creditors and no provisional trustee is in office.

Section 57 (4) - the Master declines to appoint an elected trustee.

Section 57 (5) - the Master considers it desirable to appoint co-trustees.

Section 62 (2) - the appointment of a provisional trustee pending the election of a trustee to fill a vacancy.

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.

**Companies Act 61/1973 as amended:**

Section 368 - the appointment of a provisional liquidator by the Master.

Section 370 (3) (b) - the Master again declines to appoint a person nominated at a further meeting.

Section 374 - the Master considers it desirable to appoint co-liquidator.

Section 377 (3) - the appointment of a provisional liquidator or liquidator for a vacancy or where a vacancy is not filled.

### **Close Corporations Act as amended:**

Section 74(1) - the appointment of liquidator (similar to a provisional liquidator for a company)

Section 66(1) - read with section 374 of the Companies Act- the appointment of a co-liquidator.

Section 76(3) (b) - the appointment of a liquidator where the Master declines to appoint an elected liquidator.

### **Policy Objectives:**

The objective of this Policy is to promote:

- ❖ consistency, fairness, transparency and achievement of equality for persons previously disadvantaged by unfair discrimination;
- ❖ create a uniform procedure in all Master's Offices for the appointment of Insolvency Practitioners.

### **Scope:**

#### ***This Policy:***

1. Replaces all previous policies, directives and guidelines related to the appointment of insolvency practitioners used in the Masters' offices; and
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:

### **Policy Statements:**

The Minister of Justice and Constitutional Development is committed to:

- ❖ addressing the imbalances of the past and transforming the insolvency industry;
- ❖ establishing uniform procedures for the appointment of insolvency practitioners;
- ❖ making the insolvency industry accessible to individuals from previously disadvantaged communities;
- ❖ preventing corruption and fronting;
- ❖ promoting transparency and accountability.

**This Policy does not apply to the appointment of an Insolvency Practitioner for a solvent company wound up voluntary in terms of section 80 of the Companies Act, 2008 (Act No. 71 of 2008)**

## **Guidelines:**

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

Different Lists of Insolvency Practitioners:

The lists comprise the following:

- Chief Master's list of Insolvency Practitioners
  - Transitional List
  - Aspirant Insolvency Practitioner List
- 

### **Chief Master's list of Insolvency Practitioners:**

Is a list of all Insolvency Practitioners that has been complied with the Chief Masters Requirements and is deemed to be a fit and proper person to be considered for Insolvency Appointments.

### **Transitional List:**

Is a list that comprises of current previously disadvantaged individuals (PDI's) that are included in the Chief Masters Insolvency Practitioners List.

The lifespan of the Transitional List will be two years from date of implementation of this policy.

### **Aspirant Insolvency Practitioner List:**

Is a list of aspirant insolvency practitioners under a two year mentorship, aspiring to become an Insolvency Practitioner on the Chief Masters List of Insolvency Practitioners ie All New Applicants as at date of Implementation of the Policy;

In order for the Aspirant Insolvency Practitioner to be elevated to the Chief Masters List of Insolvency Practitioners, a report must be lodged by the Aspirant Insolvency Practitioner **and** his/her Mentor at the end of such mentorship i.e two (2) years;

Aspirant Insolvency Practitioners will only be appointed in the main centres where his/her business is situated for a period of two years. Once the Aspirant Insolvency Practitioner has completed his/her two year period and has complied with the necessary requirements as prescribed by the Chief Master, he/she will then be considered to be placed on the Chief Masters List;

The mentorship period may be accelerated at the discretion of the Chief Master. The Chief Master may consider a Fully Motivated application by the Aspirant Insolvency Practitioner and his/her Mentor.

## **Requirements to be placed on the Chief Masters National List of Insolvency**

### **Practitioners:**

#### **1. Qualifications:**

Any person who has the following qualifications **or** is an admitted attorney, may apply to be considered for inclusion in the Chief Master's National list of liquidators:

- a) LLB
- b) B Proc
- c) B Com Law/Accounting

#### **2. Proof of Mentorship** – Written confirmation by the Mentor confirming a Mentorship period of at least two years.

#### **3. Disqualifications:**

##### **Section 55 of the Insolvency Act - (Persons disqualified from being a Liquidator/Trustee):**

Any of the following persons shall be disqualified from being elected or appointed as a trustee:

- (a) any insolvent;
- (b)...
- (c) a minor or any other person under any legal disability;
- (d) any person who does not reside in the Republic;
- (e)...
- (f) a former trustee disqualified under section 72;
- (g) any person declared under section 59 to be incapacitated for election as trustee, while any such incapacity lasts, or any person removed by the court, on account of misconduct, from an office of trust;
- (h) a corporate body;
- (i) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, or perjury and has been sentenced to imprisonment without the option of a fine, or to a fine exceeding R2 000;
- (j) any person who was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he or she undertook that he or she would, when performing the functions of a trustee or assignee, grantor endeavour to grant to, or obtain or endeavour to obtain for any debtor or creditor any benefit not provided for by law;
- (k) any person who has by means of any misrepresentation or any reward or offer of any reward, whether directly or indirectly, induced or attempted to induce any person to vote for him or her as trustee or to effect or assist in effecting his or her election as trustee of any insolvent estate;
- (l)...

##### **Section 372 of Companies Act, 1973: (Persons disqualified from appointment as liquidator/Trustee):**

No person shall be qualified for nomination or appointment as the liquidator of a company, if he or she is -

- (a) an insolvent;

- (b) a minor or any other person under any legal disability;
- (c) a person declared under section 373 to be incapable of being appointed as a liquidator, while he or she remains so incapable;
- (d) a person removed from an office of trust by the court on account of misconduct or a person who is the subject of any order under this Act disqualifying him or her from being a director;
- (e) a corporate body;
- (f) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document or perjury and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding twenty rand;
- (g) any person who has by means of any misrepresentation or any reward, whether directly or indirectly induced or attempted to induce any person to vote for him or her in the nomination of a liquidator or to effect or assist in effecting his or her nomination or appointment as liquidator of any company;
- (h) ...
- (j) any agent authorized specially or under a general power of attorney to vote for or on behalf of a creditor at a meeting of creditors of the company concerned and acting or purporting to act under such special authority or general power of attorney.

**4. Conflict of Interest. Must be addressed at workshop**

**FIRST PROPOSAL** (Not Computer generated)

(Assessment Dates and Centres to be determined by the Chief Master)

**Assessment Criteria/process:**

**Intakes for new applicants will take place twice annually. The closing dates for submission of new applications will be published on the website.**

**Assessments of new applicants consist of a Written Test and/or an Oral Test as determined by the Chief Master as per Circular/Directive/Regulation/Resolution.**

**Candidates should have knowledge of the following in preparation of such assessment:**

- a) Insolvency Act 24 of 1936;
- b) Companies Act 61 of 1973;
- c) Companies Act 71 of 2008;
- d) Close Corporations Act 69 of 1984;
- e) Relevant Case Law;
- f) Latest developments in the insolvency and liquidation industry.

1. All Applicants will be required to participate in a written test. The Pass Mark is 65% (60);

2. Should an applicant obtain the pass mark of 65% (60) or more in his/her written/oral test, s/he qualifies to be placed on the Chief Masters List of Insolvency Practitioners;
3. Where an applicant obtains a mark of 50% – 64% (50 – 59) in his/her written test, s/he will be required to undergo an Oral Test;
4. Where an applicant obtains a mark of 65% (60) and above in his/her Oral Test s/he will qualify to be placed on the Chief Masters List of Insolvency Practitioners;
5. Where an applicant obtains a mark below 50% (Written/Oral) s/he will be regarded as unsuccessful;

**An Illustration of the Assessment Process is indicated Below:**

<b><u>Assessment Process</u></b>	
<b>All Applicants will be required to participate in a Written Test. Based on his/her Mark in the Written Test, the following will apply</b>	
<b>Written Test</b>	<b>Oral Test</b>
Where Applicant obtains a Mark of 65% and above, No further assessment is required and Applicant qualifies to be placed on the Chief Masters List of Insolvency Practitioners.	Applicant must have obtained a Mark of 50% – 64% in the Written Test to qualify for Oral Test.
Where Applicant obtains a Mark of 50% – 64%, s/he qualifies for an Oral Test.	Applicant must obtain a Mark of at least 65% in the Oral Test to qualify to be placed on the Chief Masters List of Insolvency Practitioners.
Where Applicant receives a Mark below 50%, Applicant is unsuccessful.	Where Applicant obtains a Mark below 65%, Applicant is unsuccessful.

*Where an Applicant is unsuccessful in a particular Intake Session, same shall not preclude him/her from applying at the Next Intake Session.*

**Provisional Appointment Procedure:**

- 1) **Insolvent Estates & Companies in Liquidation** - Provisional Appointments will be made on a rotational basis from the transitional list and /or Chief Masters List and/or Aspirant Insolvency Practitioner lists;

- 2) **Close Corporations** - Final Appointments will be made in a Close Corporation from the transitional list and /or Chief Masters List and/or Aspirant Insolvency Practitioner lists;
- 3) Any Practitioner who declines an appointment in three (3) matters countrywide, may be suspended from the list pending an investigation;
- 4) The practitioners appointed from the Transitional list and /or Chief Masters List and/or Aspirant Insolvency Practitioner lists will remain until the matter is finalised, unless removed by Court/Master.
- 5) Upon the expiry of the transitional period (two years after implementation of the policy), all provisional appointments will be made from the Chief Masters National List of liquidators and or the Aspirant Liquidators list. Practitioners appointed as above will remain on the matter until completion unless removed by Court/Master.

**Provisional Appointments initially made from Aspirant Practitioner List & Transitional List & Thereafter Chief Master’s National List & Aspirant Practitioners List.**

**All Appointments will be made in Alphabetical Order**

<b>APL – New Applicants only 2 Years Transitional Period</b>	<b>Transitional (Current PDI List) 2 years Transitional Period</b>	<b>NATIONAL Current National List which Includes PDI – No Additions until expiry of 2 Years where APL’s and PDI’s will be Accelerated to National List</b>
<ul style="list-style-type: none"> <li>• Max of 10 Appointments per year;</li> <li>• Applicant will only be allowed to take appointments where his/her Office is situated;</li> <li>• Each Province will have a APL List;</li> <li>• For Acceleration to National List, OCM will require report from Mentee &amp; Mentor on the expiry of the 2 years</li> </ul>		
<p><b><u>Mentor’s Report must contain:</u></b></p> <ul style="list-style-type: none"> <li>• Matters attended to;</li> <li>• Progress report on each matter;</li> <li>• Actual Training received;</li> <li>• Practical Experience gained;</li> <li>• Area’s still to be developed;</li> <li>• Mentor’s Assessment of Mentee which should include the Mentee’s</li> </ul>		

<p>competence to be able to take sole appointments;</p> <p><b><u>Mentee's Report must contain:</u></b></p> <ul style="list-style-type: none"> <li>• Matters attended to;</li> <li>• Progress report on each matter;</li> <li>• Actual Training received;</li> <li>• Practical Experience gained;</li> <li>• Area's still to be developed;</li> <li>• Mentee's comments on the Mentorship.</li> </ul>		
--	--	--

**Circular/Directive/Regulation/Resolution**

(See Resolutions 5/2017 & 19/2017)

**RESOLUTION: - 19/2017**

- Pass rate on written in 65%. Candidate between 50 & 64% are allowed to do the oral. If 50% is achieved during the oral then the candidate is successful.

**RESOLUTION: - 5/2017**

- The first part of the interview will be the written exam and those who scored between 50-64 will be proceed to second part which is oral interview. The Passing Mark is 65%

**Conflict of Interest (Practitioners from the Same Firm)**

Opening the Files – when do we start capturing of documents

**Rotational Basis** – Masters discretion is not fettered by Alphabetical System – The Discretion is applied by placing the Practitioner on the Chief Masters National List or not – The Alphabetical System is merely implemented to create Transparency and Uniformity Countrywide.

(At least have 5 years' experience in the Insolvency Industry and must still be on the National List)

An Insolvency Practitioner must lodge a Renewal Affidavit annually on or before the end of March of every year, failing to do so will result in his/her name been removed from the Chief Masters List.

### **Disciplinary Procedures:**

Non-compliance with the code of conduct may lead to disciplinary action been taken against a practitioner.

This needs to be evaluated.