SEQUESTRATION OF THE ESTATE OF A MEMBER

This circular deals with the procedures followed by the Disciplinary Committee where the estate of any member is provisionally or finally sequestrated or where he has entered into an arrangement with his creditors.

The Disciplinary Committee has the responsibility, in terms of By-law 30.2, of deciding whether or not to order the cancellation of the membership of the member in such circumstances.

SAICA and the Independent Regulatory Board for Auditors (IRBA) may reach different conclusions as to whether a person’s membership or registration should be cancelled. This is because of the different nature of the two bodies.

The Disciplinary Committee has to decide whether or not there were exceptional circumstances relating to the sequestration or arrangement which would justify its not cancelling the person’s membership.

Having taken legal advice, the policy followed by the Disciplinary Committee of SAICA in deciding whether or not there were exceptional circumstances is summarised as follows:

(a) Every case is considered on its own facts; no general rule can be laid down.

(b) A strict construction is placed on the words “exceptional circumstances”.

(c) There must be an element of occurrence beyond the control of the person concerned if the committee is to conclude that there are such “exceptional circumstances”.

(d) The circumstances must not have been foreseen by the person concerned or, if they had been foreseen, the person should have guarded diligently against their occurrence.
.06 It will be evident from the above criteria that the Disciplinary Committee of SAICA will not easily be convinced that exceptional circumstances exist to justify the non-cancellation of the membership of the insolvent member.

Johannesburg
December 1993

KG Mockler
Chief Executive