

OUTSTANDING POINTS FOR COMMITTEE CONSIDERATION

29 NOVEMBER 2016

1. **Clause 188(4):** In the Committee meeting on 24 November 2016, the Committee requested that consideration be given to including wording to allow the Chief Ombud to appoint another person to Chair meetings of the Ombud Council, and also in discussions it was proposed that consideration be given to providing that if at least three ombuds submit a request to the Chief Ombud for a meeting to be convened, a meeting must be convened.

“(4) (a) The Chief Ombud must convene meetings of the ombuds on a regular basis, but at least four times a year, to discuss the effective operation of the ombuds system.

(b) The Chief Ombud chairs meetings of the ombuds, or, in the absence of the Chief Ombud, a person appointed by the Chief Ombud;

(c) If three ombuds in writing request the Chief Ombud to convene a meeting of the Ombud Council, a meeting of the ombuds must be convened.”.

2. **BASA submission on consequential amendments to the Insolvency Act:** Following further engagement with the Department of Justice and Constitutional Development regarding the BASA submission relating to amendments to section 83 of the Insolvency Act, the Department has indicated that they would be agreeable to the following amendments, which would update obsolete terminology and align the provision with the Financial Markets Act. These revisions would address a significant part of the concerns raised by BASA.

“The amendment of section 83—

- (a) by the substitution for subsection (2) of the following subsection:

“(2) If such property consists of [a marketable security] securities as defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012), [or] a bill of exchange or a financial instrument or a foreign financial instrument as defined in section [1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989)] 1(1) of the Financial Sector Regulation Act, 2016, the creditor may, after giving the notice mentioned in subsection (1) and before the second meeting of creditors, realise the property in the manner and on the conditions mentioned in subsection (8).”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) If such property does not consist of [a marketable security] securities or a bill of exchange, the trustee may, within seven days as from the receipt of the notice mentioned in subsection (1) or within seven days as from the date which the certificate of appointment issued by the Master in terms of subsection (1) of section eighteen or subsection (2) of section fifty six reached him, whichever be the later, take over the property from the creditor at a value agreed upon between the trustee and the creditor or at the full amount of the creditor's claim, and if the trustee does not so take over the property the creditor may, after the expiration of the said period but before the said meeting, realise the property in the manner and on the conditions mentioned in subsection (8).”; and

(c) by the substitution in subsection (8) for paragraph (a) of the following paragraph:

“(a) if it is [—

(i)] any property of a class ordinarily sold through [a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] an authorised user or an external authorised user, on an exchange or an external exchange, each defined in section 1(1) of the Financial Markets Act, 2012 (Act No. 19 of 2012) or, where applicable, a person prescribed by the Minister of Finance as a regulated person in terms of section 5 of that Act, the creditor may, subject to the provisions of [the said] that Act and[(where] applicable)] the] standards and rules [referred to in section 12 thereof, forthwith] in terms of that Act, immediately sell it through [a stockbroker] an authorised user, external authorised user or such regulated person, or if the creditor is [a stockbroker] an authorised user, external authorised user or regulated person, also to another[stockbroker] authorised user, external authorised user or regulated person; [or

(ii)] a financial instrument referred to in subsection (2) the creditor may, subject to the provisions of the Financial Markets Control Act, 1989, and rules referred to in sections 17 thereof, forthwith sell it through a financial instrument trader as defined in section 1 of the said Act, or, if the creditor is a financial instrument trader or financial instrument principal as defined in section 1 of the said Act, also to another financial instrument trader or financial instrument principal; and]”.

3. **Clause 106(3)(c)(v):** In response to BASA’s submission regarding these provisions, we would propose that clause 108(1)(q) be deleted, as proposed, and that clause 106(3)(c)(v) be amended to provide as follows:

“(v) principles guiding processes and procedures for the refusal, withdrawal or closure of a financial product or a financial service by a financial institution in respect of one or more financial customers, taking into consideration relevant international standards and practices, and subject to the requirements of any other financial sector law or the Financial Intelligence Centre Act, including—

(aa) disclosures to be made to the financial customer; and

(bb) report of any refusal, withdrawal or closure to a financial sector regulator.”.

