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 TF Glaum (Chairperson Western Cape Region and Secretary / Treasurer) TG Bochedi (Chairperson Northern Region),  
 ND Buton (Chairperson Eastern Cape Region), GM Voigt (Chairperson Eastern Cape Region),  
 AS Harris (Director INSOL), L von W Bester, JJ Steenkamp, JF Klopper, R Steynsburg, C Van Niekerk  
 \*\* Association Member of INSOL International

- 4.3 Section 124 – deposit of unclaimed money in the guardians fund; and
- 4.2 Section 82 – dissolution of company (also in the amendment of this section in the Bill);
- 4.1 Section 80 – voluntary winding up of solvent company;
4. The definition as aforesaid has an impact on the following sections of the New Companies Act which makes reference to "Master":  
 "Master" means the [person holding the office of that name in terms of the Supreme Court Act, 1959 (Act No. 59 of 1959)] officer of the High Court, referred to in section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), who has jurisdiction over a particular matter arising in terms of this Act;
3. AIPSA confines its comments to the definition of "Master" as contained in the Companies Act 71 of 2008 ("the New Companies Act") and amended in the bill to provide as follows:  
 Practitioners of Southern Africa ("AIPSA").
2. The purpose of this correspondence is to furnish the Portfolio committee on Trade and Industry with comments on the bill on behalf of the Association of Insolvency Practitioners of Southern Africa ("AIPSA").
1. We refer you to Companies Amendment Bill [B40-2010] which was published for public comment by 26 November 2010 ("the bill").

**THE DEFINITION OF "MASTER"**

**COMMENTS BY THE ASSOCIATION OF INSOLVENCY PRACTITIONERS OF SOUTHERN AFRICA ON THE COMPANIES AMENDMENT BILL [B40-2010] PUBLISHED FOR PUBLIC COMMENT BY 26 NOVEMBER 2010**

Dear Sir

24 November 2010

THE COMMITTEE SECRETARY  
 PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY  
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**THE ASSOCIATION OF INSOLVENCY PRACTITIONERS OF SOUTHERN AFRICA**





4.4 Section 156(7) - report of Master in terms of Companies Act 61 of 1973 ("the Old Companies Act").

5. Although AIPSA agrees that the definition of "Master" as contained in the New Companies Act should be amended, it is not in agreement with the manner in which the definition is amended by the bill. The definition in its current form:

5.1 Is incorrect as the Master is not an officer of the High Court - the office of the Master of the High Court was established by Section 2 of the Administration of Estates Act; and

5.2 Creates uncertainty as it is not clear from the New Companies Act which office (or the Master of the High Court or otherwise) has jurisdiction over a particular liquidation matter arising from the New Companies Act.

6. AIPSA recommends that the Portfolio committee seek guidance from the provisions contained in the Old Companies Act which successfully dealt with the jurisdiction of the Master of the High Court by way of the following provisions:

6.1 The definition of "Master" as contained in Section 1 of the Old Companies Act, which provides as follows:  
"Master" means the Master of the High Court, and in relation to

(a) a company in respect of which application is made to a Court for a winding-up or judicial management order, the Master having jurisdiction in the area of jurisdiction of the Court where application is made;

(b) a company being wound up by the Court or under judicial management, the Master having jurisdiction in the area of jurisdiction of the Court which issued the winding-up or judicial management order;

(c) a company other than a company referred to in paragraph (a) or (b), the Master having jurisdiction in the area in which the registered office of that company is situated;

(d) any other body corporate, the Master having jurisdiction in the area where the main place of business of that body corporate is situated;"

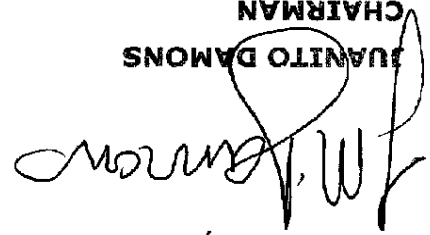
6.2 Section 12 of the Old Companies Act, which provides as follows:  
"12. Jurisdiction of Court under this Act and review of decisions of Registrar

(1) The Court which has jurisdiction under this Act in respect of any company or other body corporate, shall be any provincial or local division of the High Court of South Africa within whose jurisdiction the registered office of the external company concerned is situated, and such other body corporate is situated."

6.3 Section 334(2) of the Old Companies Act, which provides as follows with regards to an external company:  
"In subsection (1) the expression "the Court" means any provincial or local division of the High Court of South Africa within whose jurisdiction the registered office of the external company concerned is situated, and such Court shall have the power to issue such order in respect of any property wherever situate in the Republic."

- 7. The uncertainty caused by the wording of the New Companies Act as amended by the bill is apparent from the following:
- 7.1 Although it is possible to argue that the Master's office of the High Court which has jurisdiction to hear an application for liquidation of the company will have jurisdiction to wind-up such company, the New Companies Act does not contain a provision that indicates which High Court has jurisdiction over a particular company;
- 7.2 In addition to the aforesaid, it is not clear which Master's office would have jurisdiction to wind-up companies that has been wound-up voluntarily as there is no Court involved.
- 8. Since the New Companies Act does not contain provisions similar to the provisions contained in the Old Companies Act which expressly confers jurisdiction on the Master of the High Court to attend to the winding-up of a particular company, AIPSA recommends that the Portfolio committee on Trade and Industry urgently address this issue by:
- 8.1 Expanding the definition of "Master" to include provisions similar to the Old Companies Act; and
- 8.2 Inserting provisions in the bill similar to those contained in the Old Companies Act dealing with the jurisdiction of the Master of the High Court in the winding-up of Companies.
- 9. We trust that the aforesaid will be of assistance and we invite you to contact writer should you require any further input from AIPSA in respect of this issue.

Yours faithfully



Juanito Damons

CHAIRMAN  
JUANITO DAMONS