



SIU
SA

STRIKING AGAINST CORRUPTION

FINAL REPORT

to the President in terms of section 4(1)(f) of the Special
Investigating Units and Special Tribunals Act No. 74 of 1996 In Re:
Investigation into the then Department of Justice and Constitutional
Development as declared by Government Notice No. 42992 of
3 February 2020 Proclamation No R07 of 2020
September 2023

2023



and litigation agency.

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STRIKING AGAINST CORRUPTION

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LIST OF ABBREVIATIONS

ABBREVIATIONS	DESCRIPTION
ABRIPSA	Black Business Rescue and Insolvency Practitioners of South Africa
ACM	Acting Chief Master
ADG	Acting Director-General
AFU	Asset Forfeiture Unit
CAC	SIU Case Assessment Committee
Close Corporation Act	Close Corporation Act, No. 69 of 1984, as amended)
CMM	Cons Murch Mine (Pty) Ltd
CMS	SIU Case Management System
Companies Act	Companies Act, 2008 (Act No. 71 of 2008) and Companies Act, 1973 (Act No 61 of 1973) where applicable
Contingency Fees Act	Contingency Fees Act, 1997 (Act 66 of 1997)
DDG	Deputy Director-General
DG	Director-General
DOJ & CD	Department of Justice and Constitutional Development
eNatis	electronic National Traffic Information System
Estates Act	Administration of Estates Act, 1965 (Act No. 66 of 1965 as amended)
FAU	Forensic Audit Unit (of the DOJ & CD)
FICA	Financial Intelligence Centre Act, 2001 (Act No 38 of 2001)
FNB	First National Bank
GF	Guardian's Fund
GG	Government Gazette
Intestate Succession Act	Intestate Succession Act, 1987 (Act No. 81 of 1987)
Insolvency Act	Insolvency Act, 1936 (Act No. 24 of 1936)
Kaap Vaal	Kaap Vaal Trust: Insolvency Practitioners
Kameelhoek	Kameelhoek (Pty) Ltd
KNS	KNS Construction (Pty) Ltd
LA	Letter of Authority
Lechwe	Lechwe Lodge Game Farm CC
L & D account	Liquidation and Distribution account
LPA	Legal Practice Act, 2014 (Act No. 28 of 2014)
LPC	Legal Practice Council

ABBREVIATIONS	DESCRIPTION
Masters' offices	Masters' offices and Office of the Chief Master
Minister	Minister of Justice and Correctional Services
MOVIT	Masters' Own Verification Technology
NRSA	National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996)
NDPP	National Director of Public Prosecutions
NPA	National Prosecuting Authority
PRECCA	Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)
PAJA	Promotion of Administrative Justice, 2000 (Act No. 3 of 2000)
PDI	Previously Disadvantaged Individual
PFMA	Public Finance Management Act, 1999 (Act 1 of 1999)
PIC	Public Investment Corporation
POCA	Prevention of Organised Crime Act, 1998 (Act No 121 of 1998)
Proclamation	Proclamation No. R.7 of 2020 as published in Government Gazette Number 42992 on 3 February 2020
SAPS	South African Police Service
SARIPA	South African Restructuring and Insolvency Practitioners Association
SARS	South African Revenue Services
Schaappaats	Schaappaats 978 (Pty) Ltd
Sebal	Sebal Investments (Pty) Ltd
SIU	Special Investigating Unit
SIU Act	Special Investigating Units and Special Tribunals Act 1996 (Act No. 74 of 1996)
SMS Handbook	Senior Management Service Handbook
The Constitution	Constitution of the Republic of South Africa, 1996
TPCA	Trust Property Control Act 1988 (Act No. 57 of 1988)
Vestacor	Vestacor (Pty) Ltd
VAT	Value Added Tax

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EXECUTIVE SUMMARY

The SIU is honoured to present the final report to His Excellency, President Matamela Cyril Ramaphosa in terms of section 4(1)(g) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) ("the SIU Act") pursuant to the publication of Proclamation R07 of 2020 ("the Proclamation")

On 3 February 2020, and with the publication of the Proclamation the President referred certain allegations of impropriety in connection with the affairs of the then Department of Justice and Constitutional Development ("DOJ & CD") in the Masters' offices and the Office of the Chief Master (as defined in the SIU Act) to the SIU and provided the SIU with its terms of reference, which are fully set out in the Schedule to the Proclamation.

The investigation spans primarily the period 1 January 2014 and 3 February 2020 (i.e., the date of the Proclamation), but are relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule to the Proclamation or involve the same persons, entities or contracts investigated under authority of the Proclamation.

In terms of the SIU Act, as read with Proclamation No. R.118 of 2001 and the Proclamation, among the matters that the SIU was required to investigate were:

Any alleged –

- a) serious maladministration in connection with the affairs of the Masters' offices and the Office of the Chief Master;
- b) improper or unlawful conduct by officials or employees of the Masters' offices and the Office of the Chief Master;
- c) unlawful appropriation or expenditure of public money or property;
- d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- e) intentional or negligent loss of public money or damage to public property;
- f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) ("PRECCA Act") and which offences were committed in connection with the affairs of the State Institutions; or
- g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

in relation to following matter(s) as envisaged in the Schedule to the Proclamation, which took place between 1 January 2014 and 3 February 2020 (i.e. the date of publication of the Proclamation) or which took place prior to 1 January 2014 or after 3 February 2020, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of the Proclamation:

- "1. *Maladministration in connection with the affairs of the Masters' offices, in relation to the following functions of the Masters' offices as set out in the Administration of Estates Act, No. 66 of 1965, the Insolvency Act, No. 24 of 1936, and the Companies Act, No. 71 of 2008:*

 - (a) *The administration of estates of deceased persons;*
 - (b) *the winding up of estate of insolvent persons;*
 - (c) *the protection and administration of the funds of minors, contractually incapacitated and undetermined and absent heirs, which have been paid into the Guardian's Fund;*
 - (d) *the supervision of the administration of companies and close corporations in liquidation;*
 - (e) *the safeguarding of all documentary material in respect of estates, insolvencies and liquidations;*
 - (f) *the processing of enquiries by executors, attorneys, beneficiaries and other interested parties; and*
 - (g) *the appointment of executors, trustees, curators and liquidators.*
2. *Any losses or prejudice suffered by the Masters' offices or the State as a result of such maladministration.*
3. *The incurring of unauthorised, irregular or fruitless and wasteful expenditure in respect of travel, subsistence and accommodation costs for officials who perform work at Masters' offices other than the office at which they are or were appointed in terms of their employment contract.*
4. *The appointment of officials or employees at the Masters' offices in a manner that was contrary to applicable—*

 - (a) *legislation;*
 - (b) *manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or*

- (c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices.
5. Interference by certain senior officials of the Masters' offices in pending disciplinary proceedings against officials or employees of the Masters' offices or failure of certain officials in the Masters' offices to institute well founded disciplinary or other appropriate proceedings against such officials or employees;
6. The procurement of, or contracting for cleaning services by or on behalf of the Masters' offices and payments made in respect thereof in a manner that was—
- (i) not fair, competitive, transparent, equitable or cost-effective; or
 - (ii) contrary to applicable—
 - (a) legislation;
 - (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices,
- and any related losses or irregular or fruitless and wasteful expenditure incurred by the Masters' offices or the state as a result thereof.
7. The remuneration of fictitious officials or employees of the Masters' offices;
8. Any irregular, improper or unlawful conduct by—
- (a) employees or officials of the Masters' offices; or
 - (b) any other person or entity.

in relation to the allegations set out in paragraphs 1 to 7 of this Schedule."

Section 4(1)(f) of the SIU Act provides that one of the functions of the SIU is to report on the progress made in the investigation and matters brought before the Special Tribunal. On 28 October 2021 the SIU submitted one interim report to the Presidency which covered the period 3 February 2020 to 26 October 2021.

1. Number of matters deemed to be under investigation by the SIU

In preparation for the final report, a full reconciliation was done in respect of the total number of matters under investigation by the SIU and the final number of matters under investigation is 273.

- As a percentage of the number of the matters under investigation, 98.9% of these matters have been finalised and 1.1% are currently ongoing.

FINAL NUMBER OF MATTERS UNDER INVESTIGATION BY THE SIU AFTER RECONCILIATION

Investigation Status	Number of matters	Percentage of the number of matters
Finalised	270	98.9%
Ongoing	3	1.1%
Total	273	100%

The outcome of the ongoing matters will be included in a later supplementary report to this final report.

In respect of the matters finalised, it was found that there are matters where no maladministration was identified or that certain matters are out of scope or that there is insufficient information available to conclude the investigation. The table below reflects a breakdown of the outcomes.

FINALISED MATTERS - STATUS

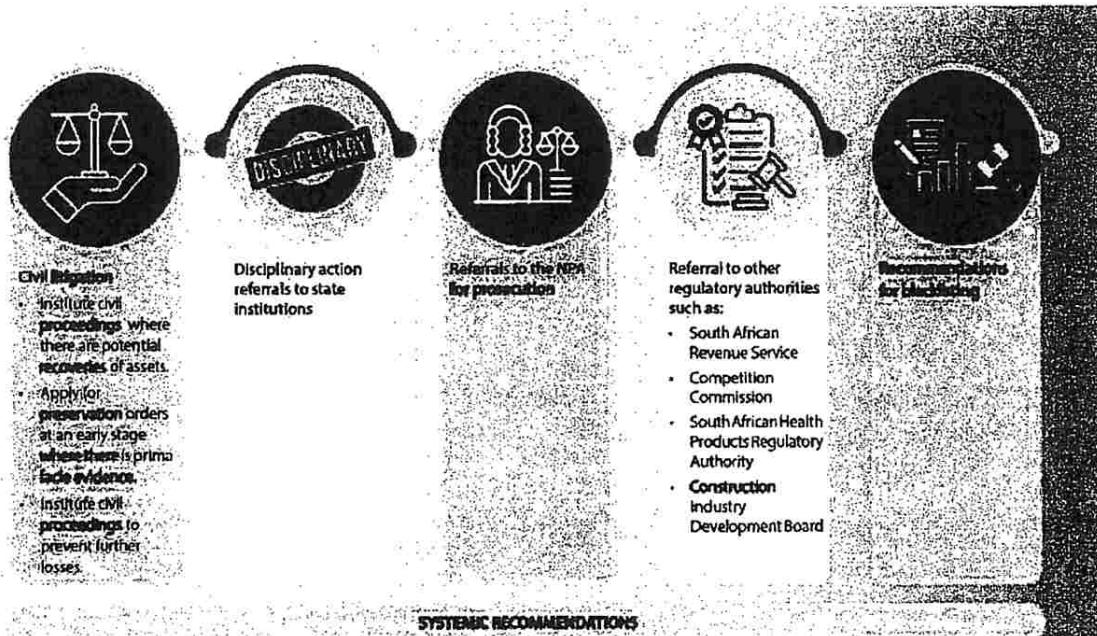
Irregularity	Number of matters
Irregularities identified	28
No maladministration identified	137
Out of scope	48
Insufficient information	37
Dealt with by other agencies	20
Ongoing	3 (irregularities identified)
Total	273

2. Steps taken

The following steps have been achieved to date from inception of the investigation:

STEPS TAKEN	Total Achieved
SIU Outcome	
Number of referrals made for disciplinary action against officials	21
Number of referrals made to the relevant National Prosecuting Authority ("NPA")	47
Number of referrals to the Legal Practice Council ("LPC")	12
Number of referrals to the DOJ & CD – Irregular conduct by liquidators	5
Number of referrals to the Asset Forfeiture Unit ("AFU")	3

1. SUMMARY OF OUTCOMES



1.1. Number of referrals made for Disciplinary Action against Officials and/or Executives

	Name and Job Title	Charges	No. of referrals	Date referred	Progress to date
1	Mr Reuben Maphaha, Deputy Master	Alleged intimidation and threats	1	7 February 2020	No action has been taken.
2	Ms Theresia Bezuidenhout ¹ , Chief Director	Gross dereliction of duties Misconduct	1	19 June 2020	The matter is under consideration by the DOJ & CD.
3	1) Ms Theresia Bezuidenhout ² , Chief Director 2) Ms Christene Rossouw, Deputy Master 3) Mr Billy Nteta, Assistant Master 4) Ms Mariaan Barnard, Deputy Master	a) Contravention of section 2 of the Estates Act; b) Contravention of section 386 of the Companies Act; c) Contravention of Chapter 6 of the SMS handbook; and d) Contravention of Chapter C1 and C4 of	8	15 April 2021	The DC process has commenced.

¹ Matter 1

² Matter 16 & 18

	Name and Job Title	Charges	No. of referrals	Date referred	Progress to date
	5) Mr William Sekete, Deputy Master 6) Mr Mmutle Modibela, Deputy Master 7) Mr Reuben Maphaha, Deputy Master 8) Mr Mmantoa Mokhonoana, Assistant Master	the Public Service Code of Conduct as set out in the Public Service Regulations, 2001.			
4	Ms Theresia Bezuidenhout ³ , Chief Director	Misconduct	1	26 April 2021	The matter is under consideration by the DOJ & CD.
5	Mr Reuben Maphaha ⁴ , Deputy Master	Misconduct	1	13 May 2022 26 January 2023	The matter is under consideration by the DOJ & CD.
6	1) Mr Hendrik Sithole ⁵ , Help Desk Operator 2) Ms Martha Sithole, Assistant Master	Misconduct	2	14 September 2022	The matter is under consideration by the DOJ & CD.
7	Mr Aviwe Makholiso ⁶ , Administration/ Registry Clerk	Misconduct	1	14 September 2022	The matter is under consideration by the DOJ & CD.
8	Mr Reuben Maphaha ⁷ , Deputy Master	Misconduct	1	23 November 2022	The matter is under consideration by the DOJ & CD.
9	Ms Theresia Bezuidenhout, ⁸ Chief Master	Misconduct	1	2 February 2023	The matter is under consideration by the DOJ & CD.
10	Mr Ntuwiseni Netshitahame, ⁹ Assistant Master	Misconduct	1	20 March 2023	The matter is under

³ Matter 21

⁴ Matter 3

⁵ Matter 242

⁶ Matter 250

⁷ Matter 1

⁸ Matter 3

⁹ Matter 188

	Name and Job Title	Charges	No. of referrals	Date referred	Progress to date
11	Mr Jan du Plessis ¹⁰ , Master	Misconduct	1	5 April 2023	consideration by the DOJ & CD.
12	Mr Azwihangwisi Munengiwa Estate Controller ¹¹	Misconduct	1	9 May 2023	The matter is under consideration by the DOJ & CD.
13	Mr Jan du Plessis ¹² , Master	Misconduct	1	19 May 2023	The matter is under consideration by the DOJ & CD.

1.2. Number of referrals made for Administrative Action

Name and Job Title	Charges	No. of referrals	Date referred	Progress to date
Ms MLM Kutumela-Sithole ¹³	Unethical conduct	1	14 September 2022	The matter is under consideration by the LPC.
1) Mr J Engelbrecht ¹⁴ (Liquidator) 2) Mr van Niekerk (Attorney)	Unethical conduct	2	23 January 2023	The matter is under consideration by the LPC.
Mr Colin Mabunda ¹⁵ (C Mabunda Incorporated)	Unethical conduct	1	20 March 2023	The matter is under consideration by the LPC.
1) Mr Lukhanyiso Gungqwa ¹⁶ (Attorney) 2) Mr Oscar Sithole (Attorney)	Unethical conduct	2	27 March 2023	The matter is under consideration by the LPC.
1) Mr O Noordman ¹⁷ 2) Mr S Rampoporo 3) Mr CB St Clair Cooper 4) Mr F Senekal	Unethical conduct	4	9 May 2023	The matter is under consideration by the LPC.

¹⁰ Matter 40

¹¹ Matter 227

¹² Matter 39

¹³ Matter 242

¹⁴ Matter 157

¹⁵ Matter 252

¹⁶ Matter 112

¹⁷ Matter 40

Name and Job Title	Charges	No. of referrals	Date referred	Progress to date
1) Mr O Noordman ¹⁸	Unethical conduct	2	13 June 2023	The matter is under consideration by the LPC.
2) Mr F Senekal				

1.3. Number of referrals made to the relevant Prosecuting Authority

No	Name and Job Title	Allegation	No. of referrals	Date referred	Progress to date
1	Mr Reuben Maphaha (Deputy Master) ¹⁹	Corruption	1	23 September 2020	The SIU is awaiting case number.
2	1 x Chief Director 1 x Deputy Master 1 x former Chief Master 1 x former Deputy Master 2 x private persons	Fraud Forgery Corruption	6	22 February 2021	The matter is confidential as it forms part of an existing criminal case.
3	Mr Faiz Jacobs ²⁰ (Private person)	Theft	1	22 February 2021	The SIU is awaiting case number.
4	Ms Ester Crowe ²¹ (Private person)	Fraud	1	28 May 2021	The SIU is awaiting case number.
5	1) Ms Hendrik Sithole ²² (Help Desk Operator) 2) Ms Martha Sithole (Acting Master) 3) Ms Motshwane Kutumela-Sithole (legal practitioner)	Corruption	3	14 September 2022	The SIU is awaiting case number.
6	1) Ms Mandy Mareleta ²³ (né Zuma) (former senior accounting clerk) 2) Mr L Mareleta (Private person)	Fraud	2	20 October 2021	The SIU is awaiting case number.
7	1) Mr T Khosa ²⁴ (Former Help Desk Operator) 2) Mr M Moloto (Former Estate Controller)	Corruption	2	8 November 2022	The SIU is awaiting case number.

¹⁸ Matter 39

¹⁹ Matter 198

²⁰ Matter 172

²¹ Matter 57

²² Matter 242

²³ Matter 190

²⁴ Matter 24

No	Name and Job Title	Allegation	No of referrals	Date referred	Progress to date
8	1) Mr Gary Wasilewsky ²⁵ (member of Southlink Investments Share Block (Pty) Ltd) 2) Mr Ahmed Imtiaz (Director Khairanwali Cash & Carry CC) 3) Mr Selwyn Trakman (liquidator)	Fraud	3	21 November 2022	The SIU is awaiting case number.
9	1) Mr Gert de Wet ²⁶ (liquidator) 2) Ms Olga Kotze (liquidator) 3) Mr Mandla Madlala	Fraud	3	21 November 2022	The SIU is awaiting case number.
10	1) Mr Johan Engelbrecht ²⁷ 2) Mr William Sekete (former official) 3) Mr Jacobus van Niekerk	Fraud	3	23 January 2023	Contributing to existing criminal case number.
11	1) William Sekete ²⁸ (former official) 2) Aubrey Moltjiwa	Corruption	2	23 January 2023	The SIU is awaiting case number.
12	1) Mr Mpho Dhlamini ²⁹ (executor of an estate) 2) Mr Vuyo Mfonzo-Songca (private person)	Fraud	2	20 March 2023	The SIU is awaiting case number.
13	Mr Collin Mabunda (C Mabunda Incorporated)	FICA	1	20 March 2023	The SIU is awaiting case number.
14	Mr Michael Mfokeng ³⁰ Nkodima	Corruption	1	26 April 2023	The SIU is awaiting case number.
15	1) Mr O Noordman ³¹ 2) Mr S Rampoporo 3) Mr CB St Clair Cooper 4) Mr F Senekal	Corruption	4	4 May 2023 9 May 2023	The SIU is awaiting case number.
16	1) Ms Mmadira Germina Maloka	Fraud Corruption Theft	3	12 June 2023	The SIU is awaiting case number.

²⁵ Matter 198

²⁶ Matter 95

²⁷ Matter 157

²⁸ Matter 157

²⁹ Matter 252

³⁰ Matter 109

³¹ Matter 40

No	Name and Job Title	Allegation	No of referrals	Date referred	Progress to date
	2) Mr Lukhanyiso Luyolo Gungqwa 3) Mr Oscar Jabulani Sithole ³²				
17	1) Mr O Noordman ³³ 2) Mr F Senekal	Various	2	13 June 2023	The SIU is awaiting case number.

1.4. Number of referrals made to the Relevant Prosecuting Authority – Assisting the DOJ & CD's Forensic Audit Unit ("FAU")

Name and Job Title	Allegation	No of referrals	Date referred	Progress to date
Private persons	Fraud	7	12 August 2022	Referral acknowledged. The SIU is awaiting case number.

1.5. Number of referrals made to the DOJ & CD – Irregular conduct by liquidators

Name and Job Title	SIU Reference	No of referrals	Date referred	Progress to date
1 x liquidator	198	1	21 November 2022	Referral acknowledged. The SIU is awaiting feedback.
3 x employees of Kaap-Vaal Trust (Pty) Ltd	95	3	21 November 2022	Referral acknowledged. The SIU is awaiting feedback.
1 x liquidator	157	1	23 January 2023	Referral acknowledged. The SIU is awaiting feedback.

1.6. Number of referrals made to the Asset Forfeiture Unit

Number of individuals	Date referred	Designation	SIU Reference
3	23 January 2023	1 x former Master 1 x liquidator 1 x attorney	157

2. INTRODUCTION

This Report presents the outcomes of the investigation into the examinations of the facts and circumstances pertaining to the various allegations listed in the Proclamation concerned with a view to determine whether any irregularities that pointed towards (*inter alia*) maladministration, commissioning of criminal offences,

³² Matter 112

³³ Matter 39

misconduct, causing of prejudice and/or losses to the State could be established as mandated by Proclamation R.7 of 2020.

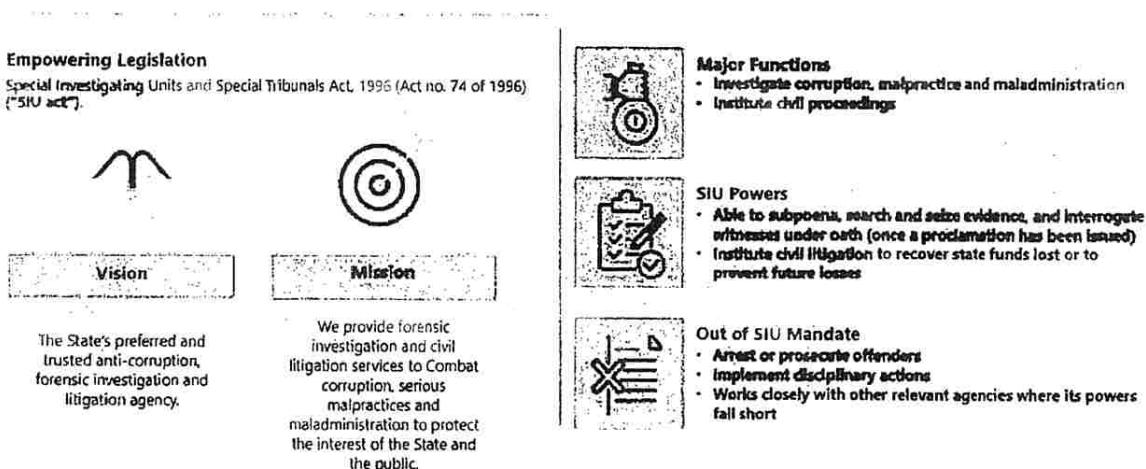
The matters were referred to the SIU by representatives of the Minister of the DOJ & CD as well as the Acting Director-General ("ADG") of the DOJ & CD.

While the allegations referred to the SIU specifically mention the Johannesburg, Polokwane and Mbombela branches of the Master of the High Court, the ADG indicated to the SIU that the proposed investigation should address all High Courts over which the Masters' offices have jurisdiction, as it appears, based on the ADG's view, that the nature of the allegations may be indicative of an endemic widespread problem.

The allegations referred to the SIU by the Minister's office are contained in the following sources of information:

- A letter to the (former) Minister of Justice dated 9 November 2018;
- A list of allegations dated 22 November 2019 compiled by six whistleblowers in the Johannesburg Master's Office;
- Transcripts of telephone conversations;
- WhatsApp screenshots;
- An investigation report dated 23 October 2019;
- A memorandum from Counsel dated 3 November 2019; and
- A report to the Speaker of Parliament, the Chair of the Portfolio Committee for Justice and Chief Whips of various political parties.

3. SIU'S LEGISLATIVE MANDATE



3.1. Key Objectives

The objectives of the investigation are as follows:

- Review compliance with the prescribed legislation, policies, procedures, directives and other relevant or applicable prescripts in respect of the affairs of the Masters' offices.
- Identify irregular/unlawful conduct on the part of the officials or employees of the State or any person.
- Refer evidence for the institution of appropriate disciplinary, administrative, executive and/or criminal proceedings against complicit parties.
- Provide recommendations on improvements of systemic weaknesses identified.

3.2. Key Deliverables

The deliverables of the investigation are as follows:

- Verify the validity of the allegations, regarding -
 - maladministration in connection with the affairs of the Masters' offices;
 - the incurrence of unauthorised, irregular or fruitless and wasteful expenditure in respect of travel, subsistence and accommodation costs;
 - the appointment of officials or employees at the Masters' offices contrary to the applicable legislative prescripts;
 - the interference of senior officials in disciplinary proceedings and/or the failure to institute such proceedings;
 - the procurement and/or contracting of cleaning services contrary to the applicable legislative prescripts; and
 - the remuneration of fictitious officials or employees of the Masters' offices.
- Quantify losses or prejudice suffered by the Masters' offices or the State as a result of such maladministration and initiate civil recoveries in instances where funds are found to have been misappropriated.
- Gather evidence where criminality is identified and make recommendations for prosecution to the relevant prosecuting authority;
- Gather evidence where misconduct is identified and make recommendations for disciplinary proceedings; and

- Identify systemic weaknesses that resulted in the failure to prevent/detect the irregularities perpetrated.

3.3. Investigation Methodology

The SIU investigation methodology includes the following:

- A review of all legislative prescripts governing the areas under investigation;
- The collection of documents utilising the powers as set out in sections 5 and 6 of the SIU Act;
- A review of all applicable documents against the legislative prescripts;
- Interviews with key witnesses, officials and whistleblowers;
- Conducting site visits;
- Obtaining computer forensic evidence through Cyber Forensics;
- Conducting Data analytics and searches on available data bases; and
- Quantification of losses for recovery/prevention of future losses through forensic accounting analysis.

4. LEGISLATIVE FRAMEWORK

In this section, we deal with the regulatory measures that governed the decisions made or actions taken in respect of Proclamation No. R.7 of February 2020.

4.1. Proclamation No. R.7 of 2020 dated 3 February 2020

Proclamation No. R.7 of 2020 dated 3 February 2020 was promulgated under GG number 42992 for the period between **1 January 2014 and 3 February 2020** (prior and afterwards if incidental and relevant thereto). Every case must fall within our proclamation's period and terms of reference.

The Schedule:

1. *Maladministration in connection with the affairs of the Masters' offices, in relation to the following functions of the Masters' offices as set out in the Administration of Estates Act, No. 66 of 1965, the Insolvency Act, No. 24 of 1936, and the Companies Act, No. 71 of 2008:*
 - (a) *the administration of estates of deceased persons;*
 - (b) *the winding up of estates of insolvent persons;*
 - (c) *the protection and administration of the funds of minors, contractually incapacitated and undetermined and absent heirs, which have been paid into the Guardian's Fund;*
 - (d) *the supervision of the administration of companies and close corporations in liquidation;*

- (e) the safeguarding of all documentary material in respect of estates, insolvencies and liquidations;
 - (f) the processing of enquiries by executors, attorneys, beneficiaries and other interested parties; and
 - (g) the appointment of executors, trustees, curators and liquidators.
2. Any losses or prejudice suffered by the Masters' offices or the State as a result of such maladministration.
 3. The incurring of unauthorised, irregular or fruitless and wasteful expenditure in respect of travel, subsistence and accommodation costs for officials who perform work at Masters' offices other than the office at which they are or were appointed in terms of their employment contract.
 4. The appointment of officials or employees at the Masters' offices in a manner that was contrary to applicable-
 - (a) legislation;
 - (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices.
 5. Interference by certain senior officials of the Masters' offices in pending disciplinary proceedings against officials or employees of the Masters' offices or failure of certain officials in the Masters' offices to institute well founded disciplinary or other appropriate proceedings against such officials or employees;
 6. The procurement of, or contracting for cleaning services by or on behalf of the Masters' offices and payments made in respect thereof in a manner that was-
 - (i) not fair, competitive, transparent, equitable or cost-effective; or
 - (ii) contrary to applicable-
 - (a) legislation;
 - (b) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (c) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the Masters' offices.

- and any related losses or irregular or fruitless and wasteful expenditure incurred by the Masters' offices or the state as a result thereof.
 - 7. The remuneration of fictitious officials or employees of the Masters' offices;
 - 8. Any irregular, improper or unlawful conduct by-
 - (a) employees or officials of the Masters' offices; or
 - (b) any other person or entity,
- in relation to the allegations set out in paragraph 1 to 7 of this Schedule."*

4.2. Administration of Estates Act, 1965 (Act No. 66 of 1965)

The preamble shows the relevance to this project:

"To consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons; ... and to provide for incidental matters."

Several sections are used in this investigation including but not limited to the following:

Sections 2 to 6 deals with the appointment of Masters, Deputy and Assistant Masters, their jurisdiction and the record keeping at the Masters' Offices; how to administer deceased estates (and insolvent estates as per other legislation), appoint executors for the preparation and finalisation of liquidations and distribution accounts and *inter alia*, the s 42(1) certificate by the conveyancers together with the latest regulations.

The roles of the Masters are as follows:

- The administration, supervision and advisory function of estates of deceased and insolvent person in accordance with the applicable statute prescription using an administrative and discretionary function;
- The protection of the interest of minors and legally incapacitated persons or absent heirs and the funds thereof, which have been paid in the Guardian's Fund ("GF"), a statutory trust established in terms of Chapter V of the Estates Act;
- The supervision of the administration of companies and closed corporations in accordance with the relevant statutory prescriptions, the determination and assessment of estate duties, by virtue of the delegation by the South African Revenue Service ("SARS");
- The supervision of trusts in terms of the *Trust Property Control Act 57 of 1988*;

- The said guardian of all documentary material received by the Master in respect of estates, insolvencies, liquidation, trusts etc.
- The processing of enquiries by executives, attorneys, beneficiaries and other interested parties; and
- The appointment of impartial and capable persons as executors, trustees, curators and liquidators.

These roles are under scrutiny. The public view in our investigation believes there is a larger fiduciary role of protection than practically being implemented with the term of Masters being a “creature of statute” used rightly or wrongly as a defence when a person has a complaint and is referred to the High Court.

The Master is regarded as an expert in this administrative and advisory function with a controversial discretionary power and an increasing workload.

The other sections deal with the practical aspects of registering and the administration of a deceased estate, the appointment of the executor and the finalisation of the liquidation and distribution account.

The Guardian's Fund (“GF”)

The GF is a statutory trust established in terms of Chapter V of the Estates Act (it was implemented by Proclamation R.242 of 29 September 1967 and the Regulations in terms of section 103 of the Estates Act promulgated the Proclamation R.1534 of 29 September 1967, as substituted by Government Notice R.473 of 24 March 1972 (as amended))

It is administered by the Masters of the various provinces who have the duty to ascertain that financial control and the administration of the GF is adequate.

The purpose of the GF is to protect and manage monies of persons deemed to be legally incapable or lacking the capacity to manage their own affairs as well as undetermined, unknown or absent heirs and untraceable persons.

The functions of the GF are set out below:

- (a) The receipt and accounting of funds in terms of section 86 of the Estates Act;
- (b) Payments of funds to the Public Investment Corporation Ltd. in terms of section 87;
- (c) Calculation of interest in terms of the provisions of section 88 in respect of funds received on behalf of minors, mentally ill persons or persons with severe or profound intellectual disability, unborn heirs or any person having interest therein of a usufructuary, fiduciary or fideicommissary nature;
- (d) Applications by guardians to invest funds outside the GF in terms of section 90 (if such investment will benefit the minor);

- (e) Safekeeping and control of security deeds for money accruing to minors in terms of the provisions of section 43, 44 and 90(2);
- (f) Consider applications for payments to persons who have become entitled to receive funds in terms of section 89 such as inheritance;
- (g) Moneys which are unclaimed in the GF for a period of 30 years become prescribed and are forfeited to the State in terms of section 92;
- (h) The Master may consider payments to the guardian for and on behalf of the minor, as may be required for maintenance, education or other benefits, provided that the payment made, will not exceed R100 000 of the capital amount, unless sanctioned by court in terms of section 90; and
- (i) Compiling and publishing of the annual list(s) of unclaimed funds in terms of section 91.

There is a Masters' Own Verification Technology ("MOVIT") manual available which the Master's Office uses to prove identity.

Time Periods/Amendments

There have also been amendments in the legislation over the period of the SIU Proclamation including:

Section 18 (3) of the Estates Act provides as follows:

"If the value of any estate does not exceed the amount determined by the Minister by notice in the Gazette, the Master may dispense with the appointment of an Executor and give directions as to the manner in which any such estate shall be liquidated and distributed." [Emphasis added]

The amount at the relevant times ranges from R125 000 to R 250 000 so the period was relevant as it changed on 24 November 2014.

Section 5 of the Estates Act and Regulation 103(1)(a) cover that for liquidations, all records necessary to support that creditors and claimants that were paid and the assets were equitably distributed shall be retained by the custodian for five years following the date of license cancellation.

4.3. Chief Master's Directive 2 of 2015 ("Directive 2 of 2015")

Directive 2 of 2015 is titled *"Appointment of Executors and/or Master's Representatives in Deceased Estates by the Master"* and came into effect on 31 July 2015. It replaced Directive 4 of 2009 and introduced certain additional documents, which must be provided when registering an estate, based on the circumstances at hand. It states that where the gross value of the assets of the estate is more than R250 000, the Master, once satisfied that all requirements are met, must issue a Letter of Executorship and where the gross value of the Estate does not exceed R250 000 the Estate may be administered in terms of section 18(3) unless otherwise directed by the Master who may issue a Letter of Authority.

Legal advice was obtained that recommended legislative amendments and these can be seen under Systemic Recommendations.

In terms of paragraph 1.1 - The primary function of the Master is to regulate the administration of estates. It is the duty of the Master to ensure that the legal and financial interests of those affected in the administration of estate are taken care of in a compassionate manner.

Paragraph 1.2 - The conduct of the Master must at all times assures the public that the manner in which estates are administered is-

1.2.1 in compliance with the law; and

1.2.2 that the financial and legal interests of all those who may be vulnerable will be protected.

Paragraph 7.9(d) - If there is competition for the office of administrator, the Master shall give preference to:

(ii) an heir or his/her nominee,

...

(viii) it is advisable to follow the process of formal meeting in terms of section 18 where there is competition for the office executor in an estate.

4.4. The Intestate Succession Act, 1987 (Act No. 81 of 1987)

This Act came into operation on 18 March 1988 to regulate the law relating to intestate succession of persons who died from that effective date.

Section 1(1)(b) of the Intestate Succession Act stipulates that:

"If after the commencement of this Act a person (hereinafter referred to as the deceased) dies intestate, either wholly or in part, and is survived by a descendant, but not by a spouse, such descendant shall inherit the estate".

Many of the cases in the SIU investigation involved testate and intestate interfamilial complaints.

4.5. Trust Property Control Act, 1988 (Act No. 57 of 1988)

The purpose of the TPCA is to establish firmer control over trustees and their administration of trusts including testamentary trusts. The trust deeds need to be lodged with the Master at the relevant High Court who appoints trustees with a letter of authority/Master's certificate. Any person who feels aggrieved by an authorisation, appointment, or removal of a trustee by the Master or by any decision, order or direction of the Master made or issued under this Act, may apply to the High court for relief, and that court shall have the power to consider the merits of any such matter, to take evidence and to make any order it deems fit.

Trusts are mentioned under paragraph 1 of the Schedule of the proclamation (maladministration).

The TPCA covers the following aspects:

- Documents deemed to be trust instruments;
- The role of the High Court in respect of trusts and trustees;
- The role of the Master of the High Court in respect of trusts and trustees;
- The duties of trustees; and
- The powers of beneficiaries or interested parties.

The GF is in effect a Trust account. However, the accounting books, records, control accounts and bookkeeping must be done accordingly in terms of section 86 of the Estates Act.

4.6. National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996)

NARSA was enacted to provide for a National Archives, which includes the proper management and care of the records of governmental bodies.

Section 1(ix) defines "*head of a governmental body*" as the chief executive officer of a governmental body or a person who is acting as such.

Section 13(1) prescribes that the National Archivist shall be charged with the proper management and care of public records in the custody of governmental bodies.

Under the TPCA, the Master may issue a written request to Trustees to account to his/her satisfaction and in accordance with his/her requirements about the trustees' administration and disposal of trust property in terms of section 16. These records and documents should be kept safe until the expiry of a period of five years from the termination of a trust in terms of section 17 and may not be destroyed without the Master's written consent.

4.7. Insolvency Act, 1936 (Act No. 24 of 1936)

Several sections of this Act are used in this investigation. In terms of this Act, an insolvent is defined as:

"when used as a noun, means a debtor whose estate is under sequestration and includes such a debtor before the sequestration of his estate, according to the context."

An insolvent estate "means an estate under sequestration".

The Master in relation to any matter, means "*the Master of the Supreme Court within whose area of jurisdiction that matter is to be dealt with and includes an Assistant Master*".

A trustee is defined as "the trustee of an estate under sequestration and includes a provisional trustee".

Any act performed by the liquidator/trustee must be done in accordance with the wishes of the creditors and/or the consent of the Master or the Court. The Master's involvement in the process only starts once a provisional or final Court order (in instances of a voluntary surrender of a person's estate) is granted and the Master is regarded as a creature of statute and cannot perform any functions of duties that the Master is not empowered with in terms of the legislation.

The appointment of a provisional trustee/liquidator is discretionary so the Master may decide to ignore all requisitions received and may appoint any other trustee/liquidator that he/she deems to be a "fit and proper" person. It has however become practice that the Master considers a nomination for a provisional trustee/liquidator on the basis of value and number by adding a Previously Disadvantaged Individual ("PDI") as joint trustee/liquidator on a discretionary basis on each matter in terms of the Master's Office's initiative to address the inequities created by the past injustices.

The Master can also extend the powers to the provisional liquidators on application – usually to the purpose of selling property or for litigation, considering if it is to the benefit of the *concurrus creditorum*/general body of creditors.

After six months, after final appointment of a liquidator/trustee, such liquidator/trustee is obliged to submit to the Master the Liquidation and Distribution ("L & D") Accounts, which will reflect the assets of the entity/person, which the liquidator/trustee liquidated. It will furthermore contain all administration costs as well as the proven claims (and unproven claims in case of workers, portions of which are not required to be proven). Should there be a shortfall in the account, concurrent creditors, as well as the applicant creditor will be liable to pay the shortfall on a pro rata basis in accordance with the value of their claim.

A matter should take on average six months, but this has not been the finding of the SIU.

Records must be kept for five years.

4.8. Companies Act, 2008 (Act No. 71 of 2008) and Act, 1973 (Act No 61 of 1973)

Most of the SIU matters fell within their purview as complaints on sequestration and liquidation orders.

Several sections are used in this investigation including but not limited to the following:

Section 344 provides that:

"... a company may be compulsorily wound up by court at the application of a creditor, on various grounds, not necessarily related to the company's insolvency. Most commonly, however, creditors will seek to wind up a company involuntarily on the basis that the company cannot pay its debts."

Section 374 provides as follows:

"Master may appoint co-liquidator at any time. Whenever the Master considers it desirable he or she may, in accordance with policy determined by the Minister, appoint any person not disqualified from holding the office of liquidator and who has given security to his or her satisfaction, as a co-liquidator with the liquidator or liquidators of the company concerned."

The Estates Act has a definition section, which includes:

"act of insolvency" means an act of insolvency in terms of section 8 of the Insolvency Act.

4.9. Close Corporation Act, 1984 (Act No. 69 of 1984, as amended)

The liquidation and insolvency processes are creditor driven with voluntary or compulsory proving that the debtor has committed acts of insolvency (section 8 for sequestration and section 344 for liquidation or sections 66 to 81 of the old Close Corporation Act).

4.10. Legal Practice Act, 2014 (Act No. 28 of 2014)

The LPA was enacted on 22 September 2014 but only implemented on 1 November 2018, thereby replacing the Attorney's Act 53, 1979 in its entirety.

The SIU made referrals to the relevant Legal Practice Council ("LPC") for misconduct by lawyers.

4.11. Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)

Section 3(a) and (b) stipulates that:

- "3. Any person who directly or indirectly-
- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act personally or by influencing another person so to act in a manner-
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

- (ii) *that amounts to –*
 - (aa) *the abuse of a position of authority;*
 - (bb) *a breach of trust; or*
 - (cc) *the violation of a legal duty or a set of rules;*
- (iii) *designed to achieve an unjustified result; or*
- (iv) *that amounts to any other unauthorised or improper inducement to do so or not to do anything, is guilty of the offence of corruption."*

Section 4(1)(a) and (b) states:

"4.(1) Any -

- (a) *public officer who, directly or indirectly accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) *person who directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person,*

in order to act, personally or by influencing another person so to act, in a manner-

(i) *that amounts to the-*

- (aa) *illegal, dishonest, unauthorised, incomplete, or biased; or*
- (bb) *misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*

(ii) *that amounts to -*

- (aa) *the abuse of a position of authority;*
 - (bb) *a breach of trust; or*
 - (cc) *the violation of a legal duty or a set of rules;*
- (iii) *designed to achieve an unjustified result; or*
- (iv) *that amounts to any other unauthorised or improper inducement to do or not to do anything,*

is guilty of the offence of corrupt activities relating to public officers."

Section 10(a) and (b) bear reference to SIU referrals.

Section 26(1)(a) states that:

"26.(1) Any person who is convicted of an offence referred to in –

- (a) *Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable -*
 - (i) *in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life;*
 - (ii) *in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or*
 - (iii) *in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding five years."*

4.12. Prevention of Organised Crime Act, 1998 (Act No 121 of 1998)

Several sections are used in this investigation including but not limited to:

Chapter 3, Section 4(a) and (b) states that:

"Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and-

- (a) *enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or*
- (b) *performs any other act in connection with such property, whether it is performed independently or in concert with any other person,*

which has or is likely to have the effect-

- (i) *of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or*
- (ii) *of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere-*
 - (aa) *to avoid prosecution; or*

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

Chapter 3, Section 8 states that:

“(1) Any person convicted of an offence contemplated in section 4, 5 or 6 shall be liable to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30”.

Section 38 covers the Asset Forfeiture Unit (“AFU”) for an application to preserve stolen government property and to preserve the bank accounts of the syndicate, which is seen as instrumentalities to the committed crime.

4.13. Financial Intelligence Centre Act, 2001 (Act No 38 of 2001)

See Section 21(1) read with Section 46(1) stipulates as follows:

“21. Identification of clients and other persons

(1) When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding that single transaction or establishing that business relationship and in accordance with its Risk Management and Compliance Programme—

(a) establish and verify the identity of the client;

(b) if the client is acting on behalf of another person, establish and verify—

(i) the identity of that other person; and

(ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and

(c) if another person is acting on behalf of the client, establish and verify—

(i) the identity of that other person; and

(ii) that other person's authority to act on behalf of the client.”

Section 46 Failure to identify persons

“(1) An accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 21(1) or (1A) is noncompliant and is subject to an administrative sanction.”

4.14. Broad-Based Black Economic Empowerment Act, 2003 (Act 53 of 2003 as amended by Act 46 of 2013)

130. Other offences and penalties

- (1) A person commits an offence if that person knowingly
 - (a) misrepresents or attempts to misrepresent the broad-based black economic empowerment status of an enterprise;
 - (b) provides false information or misrepresents information to a B-BBEE verification professional in order to secure a particular broad-based black economic empowerment status or any benefit associated with the compliance with this Act;
 - (c) provides false information or misrepresents information relevant to assessing the broad-based black economic empowerment status of an enterprise to any organ of state or public entity; or
 - (d) engages in a fronting practice.
- (2) A B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity who becomes aware of the commission of, or any attempt to commit, any offence referred to in subsection (1) and fails to report it to an appropriate law enforcement agency, is guilty of an offence. (3) Any person convicted of an offence in terms of this Act, is liable
 - (a) in the case of a contravention of subsection (1), to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover; or
 - (b) in the case of a contravention of subsection (2) or section 13N, to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.
- (4) ... (determining the fine)

13P. Prohibition on business with organs of state following conviction under this Act for a period of 10 years from the date of conviction.

4.15. Contingency Fees Act, 1997 (Act 66 of 1997)

Section 5(1) deals with - Client may claim review of agreement or fees

"(1) A client of a legal practitioner who has entered into a contingency fees agreement and who feels aggrieved by any provision thereof or any fees chargeable in terms thereof may refer such agreement or fees to the professional controlling body or, in the case of a legal practitioner who is not a member of a professional controlling body, to such body or person as the Minister of Justice may designate by notice in the Gazette for the purposes of this section."

4.16. Constitution of the Republic of South Africa, 1996

Equality

- "9.(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."

4.17. Senior Management Service Handbook (Chapter 6)

Chapter 6 deals with the Ethics and Conduct and the "purpose of this chapter is to contribute to the development of high ethical standards in the Senior Management Service. It should not be viewed as a set of rules. Rather it serves to illustrate the values and principles that should underpin a manager's behaviour in the work environment. As such, this Chapter is advisory in nature except insofar as reference is made to specific statutory provisions that are binding on public servants generally or members of the Senior Management Service specifically".

4.18. Code of Conduct in the Public Service Regulations, 2016

Chapter 2, Part 1 relates to the performance of official duties:

- Section 11 (b) - An employee shall put the public's interest first in the execution of his duties.

- Section 12 (b) - An employee shall serve the public in an unbiased and impartial manner in order to create confidence in the public service.

Section 14 (d) - An employee shall execute his or her official duties in a professional and competent manner.

4.19. Public Finance Management Act, 1999 (Act 1 of 1999)

Section 81 deals with financial misconduct by officials in departments and constitutional institutions. Section 81(2) stipulates that:

"An official of a department, a trading entity or a constitutional institution to whom a power or duty is assigned in terms of section 44 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty."

4.20. Promotion of Administrative Justice, 2000 (Act No. 3 of 2000)

PAJA ensures procedurally fair administrative actions, giving people the right to request reasons for administrative actions and decisions and to have such actions reviewed in court.

5. LIMITATIONS

TABLE 1: LIMITATIONS

RISK/ISSUE/CONSTRAINT	STEPS TAKEN
Some of the officials at the Masters' offices worked on a rotational basis so there were delays in collecting the required documents.	<ul style="list-style-type: none"> • Telephonic consultations with witnesses were conducted. • Appointments with affected officials were rescheduled according to their availability. • Arrange interviews and meetings through MS Teams, use of other electronic means like emails.
In many instances the SIU received only partial records and had to go back for more comprehensive records. Physical searches for documents were conducted to try and find the documents.	<ul style="list-style-type: none"> • Section 5(2)(b) and (c) hearings were conducted. • Conducted search seizures in terms of section 6 of the SIU Act. • Physical visits to the Masters' offices and/or complainants and witnesses were conducted to obtain documentation. • Requested electronic documentation. • Extensive interviews were conducted. • Imaging of computers/laptops. • Reasonable attempts were made to obtain all relevant documents and evidence. If additional or new documentation or information is brought to the attention of the SIU after the date of this report and which affects the

TABLE 1: LIMITATIONS

RISK / ISSUE / CONSTRAINT	STEPS TAKEN
	findings detailed in this report, the SIU reserves the right to amend and qualify its findings accordingly.
Destruction of evidence (documentation, hardware devices such as computers and mobile phones).	Search and Seizure applications in terms of the SIU Act.
State institutions slow to release documentation.	Report to the relevant Masters' offices.
Unavailability of officials who had to quarantine or were working from home and did not want to have face-to-face interviews. ICT problems made virtual interviews very difficult and in certain instances, such interviews had to be rescheduled.	<ul style="list-style-type: none"> • Interviews were conducted at neutral venues and most of the witnesses came to the SIU offices for interviews. • Telephonic interviews and virtual meetings were conducted to overcome this challenge. • Reschedule meetings with officials at their preference and provide alternate dates.
Witnesses fear victimisation and/or feel unsafe and are hesitant to be interviewed, provide statements and/or evidence.	<ul style="list-style-type: none"> • Witnesses were allowed to bring their legal representatives, and some were sent interview questions, which they had to respond to and send it back to the investigating team. • Protected their identity and requested them to report matter to the SIU and the SAPS if they feel unsafe.
Slow turnaround time in relation to information requested from the banking industry.	<ul style="list-style-type: none"> • Constant follow up were done with bank manager and/or delegated officials. Some bank statements were received, and some are still outstanding. • Regularly communicate with banks to prioritise requests.
Certain investigators experienced a level of intimidation from certain external parties.	Reported this aspect internally.

As at the time of the submission of this final report, the SIU's view is that the steps taken to address the limitations were effective and assisted the investigations.

6. OBSERVATIONS

6.1. Most complaints relate to Deceased Estates

The many interviews conducted by SIU investigators with members of the public revealed dissatisfaction with the time lapse and manner that their matters are handled by the different Masters' offices.

Numerous complaints originate due to family disputes regarding the winding up of estates, coupled with the lack of understanding of the processes entrusted to the Masters' offices. By implication, this means that many of the complaints are misguided and/or misplaced.

6.2. The second most common complaints relate to the appointment of liquidators

The allegations are centred around the appointment process and the alleged interference of officials from the Masters' offices in favouring certain liquidators. Some of the matters are already in the High Court (*sub judice*) and thus closed.

6.3. Technological challenges

Largely manual systems and non-automation of some of the processes at Masters' Office allows for interference and manipulation of the processes.

6.4. Overlap of Projects

Overlapping occurred with some projects of the Public Protector and another SIU Project for the Deeds office under Proclamations No. R.7 of 2014, No. R.599 of 2015 and R32 of 2017 regarding the Deeds Registries in Pretoria, Cape Town, Bloemfontein, Johannesburg and Vryburg. Meetings were held with the SAPS, the prosecutor and role players to collaborate. Two SIU investigators and a manager straddled both projects to ensure no duplications plus the utilisation of training on the processes and legislation relevant to both State Departments.

6.5. Interpersonal disputes within certain Masters' offices

Many interviews with officials revealed that in certain instances there is a great degree of mistrust between employees of the Masters' offices, which has resulted in numerous complaints being lodged with the SIU.

6.6. Legislation and policy amendments

The liquidation process is credit and choice driven as the creditors request certain liquidators. Creditors only support established liquidators because of their long-standing relationship. Some of the creditors include State Owned Entities like SARS, PIC, etc. This creates a monopoly in that the same liquidators are often repeatedly appointed in different matters.

The appointment system from the Masters' List of liquidators including the appointment of co- liquidators who are previously disadvantaged, is sometimes not used in practice, and should be implemented to ensure an even distribution of appointment of provisional and final liquidators.

The Masters' Office has not developed a final policy that regulates the appointment of provisional liquidators as prescribed by the Insolvency Act so a discretion is used by the Masters, which discretion has created

problems. There must be a uniform policy across all the Masters' offices that is implemented across the country. See Systemic Recommendations.

6.7. The impact of incorrect decisions by Masters

Training by an expert on Master's matters and Administrative law, advice from a dedicated liquidation practitioner and a Legal Investigation Manual was received by the investigation team due to the specialised knowledge needed to apply to the investigations, which revealed that the discretion given to the Masters has resulted in a plethora of different precedents set by them and many dissatisfied members of the public who are affected and are informed that they have to go to the High Court to review their decision, which is expensive and lengthy.

7. SEARCH AND SEIZURE OPERATIONS

At the inception of the project (3 February 2020), the SIU conducted search and seizure operations at various Masters' offices. A total of 231 computers were seized and subsequently imaged by the Cyber Forensics Section of the SIU. See table 2 below.

This process was embarked upon to prevent the destruction of evidence in the form of correspondence between interested parties and documents saved. The random complaints necessitated this drastic measure to ensure the proper and thorough investigation of the matters. By 11 February 2020, the computer equipment was returned.

The value of this exercise was that the data was preserved and there was the accessibility of the data to relevant investigations being done by the SIU investigators (used extensively in a recent NPA referral) to link certain matters with the data retrieved.

TABLE 2: NUMBER OF COMPUTER EQUIPMENT SEIZED

No.	Region	No of Computers
1	Limpopo (Polokwane & Venda)	28
2	Johannesburg	37
3	Pretoria	9
4	North West	22
5	Bloemfontein	7
6	Kimberley	4
7	Western Cape	47
8	Eastern Cape (PE, Bisho, Mthatha & Grahamstown)	17
9	KZN (Durban & PMB)	54
10	Nelspruit	6
Total		231

8. SUMMARY OF FINDINGS

8.1 Matter 1 – Cons Murch Mine (Pty) Limited

8.1.1 Nature of allegation

The allegation relates to the alleged irregular appointment of liquidators. It is alleged that the former Acting Chief Master ("ACM") interfered in a meeting and instructed the presiding officer to close the meeting notwithstanding that the ACM does not have the authority to do so. The presiding officer complied under protest. A further undated report in respect of Cons Murch Mine (Pty) Limited ("CMM") mentioned, *inter alia*, that the Deputy Master erred/misdirected himself in appointing a co-liquidator and was complacent in properly overseeing the administration of this estate.

8.1.1.1 Summary of findings

CMM is a company that was placed in voluntary winding up. The provisional Court Order for such winding up was granted on 6 February 2015. The SIU applied s 374 of the Companies Act as amended relating to co- liquidators.

The law on sequestration and liquidation proceeds from the premise that, once an order of sequestration/liquidation is granted, a *concursus creditorum* (a "coming together of the creditors") is established, and that the interests of creditors as a group enjoy preference over the interests of individual creditors. Once the order is granted, the hand of the law is laid upon the estate, and at once the rights of the general body of creditors have to be taken into consideration. Therefore, no transaction can thereafter be entered into with regard to estate matters by a single creditor to the prejudice of the general body. Although the Master plays a vital role in overseeing the process of estate winding-up, the process is nonetheless creditor-driven.

Mr Maphaha (Deputy Master–Johannesburg), disregarded the law and decided to approve a private arrangement by trustees who appeared to be looking after their own interests rather than those of creditors. The provisions of section 374 of the Companies Act are clear that the discretionary appointment of a liquidator should be in accordance with the policy that has been determined by the Minister. Mr Maphaha failed to demonstrate as to which policy allows for the private arrangement of liquidators to be the basis of making a discretionary appointment. The existing policy or practice is that the discretionary appointments are made in a next-in-line method on an approved list of liquidation practitioners that is arranged alphabetically. It is important to note that when Mr Maphaha made the alleged discretionary appointment of Mr Monyela, other two discretionary appointments (i.e. Ms Lindiwe Florence Kaaba and Mr Clifford Thabang Maredi) were already made in accordance with the existing policy/practice. In his notice to the rest of the liquidators about his decision to appoint Mr Monyela, Mr Maphaha never mentioned that the decision was based on provisions of section 374, but rather that he was basing his decision on the fact that he considered the cell phone text messages as a valid agreement between insolvency practitioners.

The SIU made a submission that evidence obtained points to an act of misconduct committed by Mr Maphaha in that he acted unlawfully by appointing trustees based on a private arrangement that is not regulated by insolvency and liquidation laws. This resulted in the interests of the creditors of the insolvent estate being prejudiced in favour of selfish private interests of the trustees. Master officials are not allowed to appoint trustees based "on a private arrangement" between trustees.

On 15 November 2018, Ms Theresia Bezuidenhout, the ACM, appointed Mrs Moodley from the Pietermaritzburg Master's Office to conduct an internal investigation into the maladministration allegations on the insolvent estate of CMM. The SIU investigation has established that Mrs Moodley submitted an unsigned final investigation report to the ACM on 21 January 2019 through an email. The internal investigation report was in a Microsoft Word soft copy format. The ACM sent the report to Mr Leonard Pule, the Master of the South Gauteng High Court on 5 February 2019. Amongst other findings, the internal report found that Mr Maphaha erred in appointing a liquidator as a result of WhatsApp messages arrangement. The internal inquiry report made the following recommendations:

- (a) Corrective measures be taken against Masters' officials who have not upheld the law in their execution of their duties and made appointments when they were not empowered to do so and thus furthering liquidators' agendas, as well as not following prescripts and office procedure in dealing with complaints and almost turning a blind eye to allegations and not investigating same;
- (b) An urgent 381 enquiry be held into the conduct of the liquidators the Letter of complaint in this regard refers and the counsel be employed to conduct same on behalf of the Master;
- (c) That (a) above be held in abeyance until (b) above is finalised; and
- (d) That confirmation of the first account be held over until (b) above is finalised.

The findings in the internal investigation report should have been implemented soon after the report was issued. The irregular appointment of the liquidator by Mr Maphaha was shown in the report, including the proof of WhatsApp message exchanges between the liquidators. Amongst other recommendations the report recommended that: "*Corrective measures be taken against officials who have not upheld the law in their execution of their duties*".

The SIU investigation noted that the internal investigation report recommended that such corrective measures should be held in abeyance until a section 381 inquiry into the conduct of the liquidators is finalised. The affidavits of Mrs Moodley and Mr Mabetsela shows that there has never been a disciplinary inquiry that was held against Mr Maphaha or any other officials who might have committed acts of misconduct in this matter.

The misconduct of the liquidators and that of Masters' office officials are not interdependent and therefore there was no logic in permanently withholding the envisaged corrective measures against the Master's Office officials who have not upheld the law in executing their duties.

The evidence suggest that she may be guilty of the following acts or omissions, which we submitted amount to gross dereliction of duties and misconduct.

8.1.1.2 Steps Taken

- **Disciplinary Action**

- Ms Theresia Bezuidenhout (former ACM)

On 19 June 2020, the SIU referred evidence of gross dereliction of duties and misconduct to the DOJ & CD in that Ms Bezuidenhout has contravened section 81(2) of the PMFA and the prescripts of the Public Service and Administration SMS Handbook.

- Mr Reuben Maphaha (Deputy Master)

On 23 November 2022, the SIU referred evidence of misconduct to the DOJ & CD in that Mr Maphaha acted unlawfully by appointing trustees based on a private arrangement that is not regulated by insolvency and liquidation laws.

8.2 Matter 3 – Duro Pressings (Pty) Limited

8.2.1 Nature of allegation

This matter forms part of the allegations referred to the SIU by a group of whistleblowers who had written to the Minister of the DOJ & CD, Mr Ronald Lamola. In their correspondence dated 22 November 2019, the whistleblowers alleged that the Deputy Master at the Johannesburg Master's Office, Mr Reuben Maphaha, had irregularly convened a meeting of creditors to appoint liquidators in the Duro Pressings (Pty) Ltd. According to the whistleblowers, Mr Maphaha did not have the authority to convene this meeting as there were already liquidators appointed on the matter.

8.2.1.1 Summary of findings

The SIU's investigation revealed evidence that Mr Maphaha had on 29 August 2017 presided over a meeting of creditors in terms of section 377 of the Companies Act where Mr GLS De Wet of Kaap Vaal Trust (Pty) Ltd and Mr J Engelbrecht of Icon Insolvency Practitioners were nominated and appointed as additional liquidators as a result of the passing of former liquidator Mr CF De Wet.

In our respectful view, the evidence suggests that Mr Maphaha may be guilty of contravening section 377 of the Companies Act in that he acted *functus officio* and was not empowered to issue further appointments of liquidators in this matter of Duro Pressings (Pty) Ltd.

On 19 February 2020, the High Court issued the following Judgement:

- (a) The Court found that the Master was *functus officio* and not empowered to issue a second decision once the decision not to appoint the second and third respondent was made.
- (b) The Master's decision on 25 October 2017 to appoint the second and third respondents as liquidators of Duro Pressings (Pty) Ltd is reviewed and set aside.
- (c) The certificate of appointment dated 25 October 2017 purporting to appoint the second and third respondents as liquidators is set aside.
- (d) The Master's certificate of appointment dated 31 August 2017 is declared the valid certificate.

Icon Insolvency Practitioners and Kaap Vaal Trust then approached the Supreme Court of Appeal and on 4 June 2021 this Court then issued Judgement and made the order that the appeal is dismissed with costs.

The SIU interviewed Mr Maphaha as well as Mr Leonard Pule, the Master of the South Gauteng High Court, Johannesburg. Both officials had confirmed that they had communicated with Ms Theresia Bezuidenhout - the former ACM about this matter. Mr Maphaha had stated that he had followed an instruction of Ms Bezuidenhout and appointed the additional Liquidators.

The SIU's investigation revealed that on 29 September 2017 Ms Bezuidenhout as the ACM had sent an email to Mr Maphaha as well as Mr Leonard Pule (Master of the South Gauteng High Court) stating "*We need and have the power to correct*". She had also instructed that "*Please proceed to appoint the chosen Liquidators*".

8.2.1.2 Steps Taken

- **Disciplinary Action**
 - Ms Theresia Bezuidenhout (former ACM)

On 2 February 2023, the SIU referred evidence of misconduct to the DOJ & CD in that Ms Bezuidenhout may possibly be guilty but not limited to acts of misconduct in that she had acted in a gross and negligent manner. She accordingly contravened the Public Service Code of Conduct (Public Service Regulations dated 1 August 2016 published in Government Gazette No. 40167 on 29 July 2016) (acted outside her powers).

- Mr Reuben Maphaha (Deputy Master)

On 26 January 2023, the SIU referred evidence of misconduct to the DOJ & CD. The evidence suggests that Mr Maphaha may be guilty but not limited to acts of misconduct in:

- Contravention of the section 377 of the Companies Act;
- Contravention of Chapter 2 of the Code of Conduct for the Public Service C.3 Relationship among employees

An employee –

C.3.2 executes all reasonable instructions by persons officially assigned to give them, provided these are not contrary to the provisions of the Constitution and/or any other law.

C.4 Performance of duties

An employee –

C.4.1 strives to achieve the objectives of his or her institution cost-effectively and in the public's interest; and

C.4.4 executes his or her duties in a professional and competent manner.

8.3 Matter 4 – Doornhoek Hotel (Pty) Limited

8.3.1 Nature of allegation

This matter relates to the following allegations received from a whistleblower:

- "... *Irregular appointment of liquidator(s) when there is not voting of such liquidator(s) at First Meeting of creditors*...
- *N.B. Liquidators firms are being selected when this kind of meetings are convened*
- *The Mr Maphaha and Pule are selective in their illegal operation and look at certain liquidators..."*

These allegations relate to a matter between the City of Johannesburg and Doornhoek Hotel (Pty) Limited wherein the Honourable Judge Levin in the High Court of South Africa (Witwatersrand Local Division) on 05 December 2003 placed Doornhoek Hotel under final winding-up.

8.3.1.1 Summary of findings

During the SIU's consultation with the Master of the High Court in Johannesburg, Mr Pule informed the SIU that at the time when Ms Dube appointed Mr Khumalo as final liquidator on 11 July 2016, she (Ms Dube) did not follow the correct process in appointing the liquidator. On 17 August 2016, the Deputy Master, Mr Reuben Maphaha, submitted a letter to Mr Khumalo stating that:

"3.1 Kindly take notice that it has come to the attention of this office that you have been issued with certificate of appointment in respect of the above-mentioned matter which certificate was issued wrongly as the matter was referred back to panel for consideration. The only liquidator officially appointed in this matter by the panel is Ntsibande having issued with a JM1.

3.2 Take notice that your appointment herein was not done properly and procedurally as a result such appointment is accordingly nullified by the Master and that you are hereby instructed to return back the original certificate you are in possession of to the office with immediate effect..."

With reference to the section dealing with the maladministration in connection with the affairs of the Master's offices as set out in the Estates Act, for the administration of estates of deceased persons, the SIU took into consideration the Insolvency Act, and the Companies Act, No. 71 of 2008 as amended, in relation to the insolvency file G34/2004 - Doornhoek Hotel (Pty) Ltd that the decision of the Master in appointing liquidators/trustees who at the time was not listed on the panel of liquidators/trustees, was incorrect. As a result, another Master withdrew the appointment and appointed another liquidator/trustee which was valid.

However, in terms of the Estates Act, one Master cannot overrule a decision made by the Master. In the Act, "Master" is defined as the Master, Deputy Master, or Assistant Master.

The Chief Master's Directive 2 of 2015 stipulates –

- "1.1 The primary function of the Master is to regulate the administration of estates. It is the duty of the Master to ensure that the legal and financial interests of those affected in the administration of an estate are taken care of in a compassionate manner.*
- 1.2 The conduct of the Master must at all times assure the public that the manner in which estates are administered is-*
 - 1.2.1 in compliance with the law; and*
 - 1.2.2 that the financial and legal interests of all those who may be vulnerable will be protected..."*

In terms of a reported case *De Wet and Another v Khammissa and Others* (358/2020) [2021] ZASCA 70 (4 June 2021), the Supreme Court of Appeal (the Court) dismissed an appeal against an order of the Gauteng High Court, Pretoria, which upheld the respondents' application to review and set aside the decision of the Master, Gauteng Division, Johannesburg in terms of which the Master had purported to replace her earlier decision (the first decision) not to appoint the appellants as joint co-liquidators with the respondents, with a decision (the second decision) to appoint the appellants as joint co-liquidators with the respondents.

The Court found that the Master's first decision was final and binding; therefore, the Master had no power to rescind it and replace it with the second decision. The Master was therefore *functus officio*, and thus the second decision is a nullity. The principles of *functus officio* are that the decisions bind the Master, Deputy Master, or Assistant Master. Therefore, the Chief Master cannot review or correct an administrative decision. The Master is, in terms of the Acts governing the Masters powers, obliged to make appointments, decisions, rulings, orders, or give directions daily within the empowering provisions of these Acts. Furthermore, the Chief Master does not have the power to exercise control, direction, and supervision over the judicial decisions by Masters, Deputy, and Assistant Masters, which are only reviewable by the High Court.

Mr Khumalo was removed from the Master of the High Court's panel of liquidators (the green list) as he did not meet the requirements and was not deemed a fit and proper liquidator. Mr Maphaha acted within his powers by removing Mr Khumalo as a liquidator on the basis of not being a fit and proper liquidator and was not part of the approved list of panel liquidators.

The Master instituted disciplinary steps against Ms Dube and one of the charges was in relation to the appointment of Mr Khumalo. However, Ms Dube resigned.

8.3.1.2 Steps Taken

- **Systemic Recommendations**

- In a letter dated 6 October 2022, addressed to the DOJ & CD, the SIU identified that following preliminary systemic recommendations concerning the Masters that:

"the wording of "control", "direction", and "supervision" needs to be defined in the Act and amplified if the Chief Master is required to review any judicial decisions made by officials in the Master's Office. Alternatively, refer to our previous systemic recommendation whereby an Ombudsman is created with retired experts in the Master's field to adjudicate on Masters' decisions to save the costs of High Court to which the public have to revert to overturn Masters' decisions".

8.4 Matters 16 and 18 – interference by the Chief Master

8.4.1 Nature of allegation

Insolvency practitioners have levelled allegations of fraud and corruption against the Master and Deputy Master of the Johannesburg Masters' office (Insolvency section) in relation to the Bosasa Group of Companies ("Bosasa") which are known as the "Bosasa files". It is also intimated that the office of the Chief Master is interfering in the insolvency operations of Masters' offices around the country. The SIU investigated allegations of improper and /or unlawful appointments of provisional liquidators of Bosasa.

8.4.1.1 Summary of findings

The SIU investigation revealed evidence that Ms Theresia Bezuidenhout instructed various officials to appoint Mr Cloete Murray of Sechaba Trust *inter alia* as a provisional liquidator of Bosasa, without following certain established practices in appointing provisional liquidators. The SIU evidence suggests that Ms Bezuidenhout had assembled a team of Masters from different Masters offices to make an appointment on Bosasa despite them lacking jurisdictional authority and thus that she may be guilty of contravening section 2 of the Estates Act, and that she instructed the Masters to specifically appoint Mr Murray as a provisional liquidator, although Mr Murray did not qualify on the roster to be appointed at that time.

The established practice within the Master's Office is that after lodgement of the liquidation files with the Master's Office, the Master affords an opportunity for creditors to submit requisitions nominating their

preferred provisional liquidator. Creditors are given 48 hours to submit their requisitions. If there is a need to make an urgent appointment, the established practice is that the Master would appoint a PDI.

On 21 February 2019, Ms Bezuidenhout instructed different Masters to specifically appoint Mr Murray as a provisional liquidator. Ms Bezuidenhout indicating that she had made a decision that Mr Murray be appointed as a provisional liquidator on an urgent basis. As a result of her decision, Mr Murray was appointed as a provisional liquidator on 22 February 2019. Mr Murray is not a PDI and as such, does not qualify in terms of the Master's established practices, and that section 368 of the Companies Act only empowers the relevant Master and not the Chief Master to exercise discretion on appointment of provisional liquidators.

On 25 February 2019, Ms Bezuidenhout assembled a team of Masters from different offices to appoint provisional liquidators on the basis of value and number. Despite Mr Murray not having enough number or value to support his continued appointment, Ms Bezuidenhout nonetheless instructed the team to reappoint him.

The Master's power to appoint a provisional liquidator in the winding-up of an insolvent company is prescribed in section 368 of the Companies Act. On the plain reading of the definition of the term "Master" in the Estates Act, is described to mean a qualified person appointed by the Minister as Master, or Deputy Master, or Assistant Master in respect of one or more areas of jurisdiction of the High Court.

The Chief Master is appointed by the Minister and fulfils the role of being an executive officer of all Masters' Offices and also responsible to exercise control, direction and supervision of all Masters. Notable is that the Chief Master is not accommodated within the definition of "Master" under section 1 of the Estates Act. It is our view that the Chief Master's (functionary) role and power (functions) under section 2(1)(b) – to exercise control, direction and supervision over all the Masters – excludes the functionary's interference with the respective Masters' exercise of his or her discretion in appointing insolvency practitioners in matters or estates falling under their control and jurisdiction.

It is the SIU's view that: the purported discretion said to have been exercised by Ms Bezuidenhout in her capacity as ACM in appointing Mr Murray is non-existent in law and thus invalid and that the Chief Master has no authority in law to appoint or nominate a preferred insolvency practitioner for appointment in the administration of estates; and that the Chief Master's duty is that of an oversight role over the offices of the Master as an institution and providing guidance on the work of the Masters in the administration of estates placed under their supervision and care.

Furthermore, the external panel constituted by Ms Bezuidenhout was comprised of Deputy Masters who were not in our view competent to decide on the appointment of insolvency practitioners in estates lodged in an area of jurisdiction for where they were not appointed. The Deputy Masters referred to herein are Mr Sekete and Mr Modibela.

There is an established practice within the Master's Office, which in essence provides that the relevant Master, after receiving the lodgement documents for the liquidation and winding-up of a company, the Master's Office would provide affected parties with an opportunity to submit requisitions in which they nominate their preferred practitioners as the provisional liquidators for winding-up of a company. The 48-hour period commences at the time when the liquidation is lodged and registered with the relevant Master's Office. Furthermore, it was confirmed that there is an established practice within the Master's Office that there are instances where an urgent appointment of a provisional liquidator(s) is necessary prior to the lapsing of the 48-hour period. In such case, the Master, in exercising his or her absolute discretion, must appointment a provisional liquidator from a national list of PDI. Mr. Murray is not on the Master's PDI list as he does not meet the criteria for being considered as such.

The evidence obtained substantiate that despite the concerns and reservations having been raised, undue pressure was exerted on the relevant decision makers by the ACM, Ms Bezuidenhout, to proceed to appoint Mr Murray as provisional liquidator. Moreover, her instruction was not only given verbally, but also confirmed by email, which is contained on files. Furthermore, Mr Murray's appointment was noted to be a discretionary appointment in terms of Ms Bezuidenhout, having exercised a "supposed discretion". It is also our view that Ms Bezuidenhout's instruction to the *ad hoc* panel and Deputy Masters unduly interfered with the Masters' exercise of statutory power and thus fettered their statutory discretion under the pretext or misconception that she had the power and / or discretion to do so. This amounts to misconduct on her part in that her instruction and written confirmation thereof, signals an abuse of Ms Bezuidenhout's position or "perceived" power to channel her subordinates or colleagues to exercise their discretion in a particular manner.

Thus, the evidence obtained indicates that Ms Bezuidenhout acted in a high-handed manner, thus abusing her position and office in directing or imposing Mr Murray's appointment as sole liquidator and provisional co-liquidator on the respective Masters.

We are also of the view that the Masters officials who took part in implementing Ms Bezuidenhout's unlawful instruction, notwithstanding their knowledge that her instruction was unlawful, and their failure to recuse themselves from the proceedings, which led to Mr Murray's unlawful appointment, also be subjected to a disciplinary inquiry.

At all relevant times, the said officials owed a duty of care to the DOJ & CD, which duty of care required from them, *inter alia*, to perform their official functions and duties at the DOJ & CD with due care, in a professional and competent manner and in compliance with relevant statutory or other prescripts. This duty of care arises, *inter alia*, from:

- the common law trust relationship that is shared between an employer and its employees;

- the relevant provisions of items/paragraphs C1.3, C1.4 and C.4.4 and/or C.4.9 of Chapter 2: Code of Conduct for Public Service ("PS Code of Conduct"), as set out in the *Public Service Regulations, 2001 (GNR. 1 of 5 January 2001: Public Service Regulations) (Government Gazette No. 21951)*;
- that during the period between 20 February 2019 and 25 February 2019, she failed in her duty, was negligent and transgressed the SMS Handbook Code of Conduct when she unilaterally instructed the Masters to appoint Mr Murray on two (2) occasions as the provisional liquidator; and
- that the Masters mentioned above were negligent when they appointed Mr Murray.

The SIU sought advice from Senior Counsel in order to determine whether "*the SIU should take steps to remedy any irregularity there may have been in the two appointments of Murray initially as a provisional liquidator and subsequently as a provisional co-liquidator for the Bosasa group of companies. The focus is on (i) possible irregularities in securing specifically Murray's appointment at the instance of the Minister primarily through the conduct of Ms Bezuidenhout, the Acting Chief Master at the time; and (ii) the conduct of the] various other Masters who had a hand in securing Murray's appointment*".

Senior Counsel concluded that:

"In conclusion and in summary, counsel's advice is that despite the apparent unlawfulness of the administrative act in appointing Murray, the SIU should not seek to review his appointment as a provisional co-liquidator. Even if a court were to conclude that the appointment was unlawful there is so little to be gained by setting that decision aside that it is unlikely a court will be persuaded that after such a significant effluxion of time it is practical and in the public interest to grant relief."

Lastly and tragically, Mr Murray was killed in a drive-by shooting in December 2022.

8.4.1.2 Steps Taken

- **Disciplinary Action**

On 15 April 2021, respectively, the SIU referred evidence of misconduct to the DOJ & CD in that the officials, listed below, may be guilty but not limited to the acts of misconduct:

- Ms Theresia Bezuidenhout, a Chief Director in the Office of the Chief Master's Office;
- Christene Rossouw, Deputy Master, Pretoria;
- Billy Nteta, Assistant Master, Pretoria;
- Mariaan Barnard, Deputy Master, Pretoria ;
- William Sekete, Deputy Master, Mafikeng;
- Mmutle Modibela, Deputy Master, Bloemfontein;

- Reuben Maphaha, Deputy Master, Johannesburg; and
- Mmantoa Mokhonoana, Assistant Master, Pretoria.

8.5 Matter 21 – Irregularities in respect of disciplinary processes

8.5.1 Nature of allegation

The allegation relates to disciplinary proceedings against the Head of the Nelspruit Master's Office, Ms Bina Masuku, that were allegedly delayed by the former ACM, Ms Theresia Bezuidenhout, as the official in question had a friendship with the ACM. It is alleged that the disciplinary proceedings may have been instituted only because the Director-General ("DG") of the DOJ & CD was made aware of the matter.

8.5.1.1 Summary of findings

The SIU found that during the period of 29 September 2016 to 9 December 2016, Ms Bezuidenhout failed to perform her duties/functions with due care, in a professional and competent manner and in compliance with relevant statutory or other prescripts when on or about 29 September 2016, she failed to institute well founded disciplinary proceedings against Ms Masuku based on the report issued by the DOJ & CD's Forensic Audit Unit ("FAU") and instead issued Ms Masuku with an inappropriate sanction of a verbal warning.

8.5.1.2 Steps Taken

- **Disciplinary Action**

- Ms Theresia Bezuidenhout (former ACM)

On 26 April 2021, the SIU referred evidence of misconduct to the DOJ & CD.

The evidence suggests that Ms Bezuidenhout may be guilty of the following acts or omissions, which we submit amount to misconduct:

- At all relevant times, Ms Bezuidenhout owed a duty of care to the DOJ&CD, which duty of care required from her, *inter alia*, to perform her official functions and duties at the DOJ&CD with due care, in a professional and competent manner and in compliance with relevant statutory or other prescripts. This duty of care arises, *inter alia*, from:
 - the common law trust relationship that is shared between an employer and its employee; and
 - the Senior Management Service "SMS" Handbook, issued in terms of regulation 1 D of chapter 4 of the Public Service 2016 Regulations.

8.6 Matter 24 – Misconduct

8.6.1 Nature of allegation

The allegation relates to allegations that the Estate Controllers in the Polokwane Master's Office are assisting attorneys to tout for estate work. It is alleged that these officials refer members of the public to the attorneys in question, and, in return, the officials receive a fee from the attorney. Disciplinary proceedings were recommended against two officials for touting but due to the intervention of the ACM and the Acting Master in Limpopo (who the ACM appointed), no action was taken against said officials.

8.6.1.1 Summary of findings

It was established that the allegation was investigated by the FAU. The report concluded that the FAU would the "Law Society of South Africa" for their conduct by allowing Mr Itumeleng Kgankie Makutu to fraudulently use their company name. Messer's Ronnie Kolo Makutu and Wesley Thula Khosa resigned from DOJ & CD in 2018 and 2021 respectively, while Mr Moloto was dismissed from the DOJ & CD following the hearing that was instituted against him.

Ms Theresia Bezuidenhout deposed to an affidavit on 6 May 2021 and said that the practise of referring matters to attorneys to assist in the administration of deceased estates is unlawful and that her office has on numerous occasions warned Heads of Offices to ensure that this practice does not take place.

8.6.1.2 Steps Taken

- **Criminal Referral**

- Mr Wesley Thula Khosa (former Help Desk Officer)

On 8 November 2022, the abovementioned findings were referred to the NPA to inform them that the SIU's investigation has revealed the Mr Khosa may be guilty of contravening section 3(a) and 4(a) of the PRECCA in that on or about 17 August 2016 and 15 February 2018 he accepted gratification from Mr Moloto on the form of money to influence him to refer clients that visited the Office of the Master of the High Court in Polokwane for assistance, such as opening estate files.

- Mr Makwena Gustavus Moloto (former Estate Controller)

On 8 November 2022, the abovementioned findings were referred to the NPA to inform them that the SIU's investigation has revealed the Mr Khosa may be guilty of contravening section 3(b) and 4(b) PRECCA in that on or about 17 August 2016 and 15 February 2018 he offered gratification in the form of money from Mr Khosa on the form of money to influence him to refer clients that visited the Office of the Master of the High Court in Polokwane for assistance, such as opening estate files.

8.7 **Matter 39 – Liquidation: Sebal Investments Pty (Ltd) and Lechwe Lodge Game Farm CC**

8.7.1 **Nature of allegation**

The matter relates to alleged misconduct by the liquidators of Sebal Investments Pty (Ltd) ("Sebal") and Lechwe Lodge Game Farm CC ("Lechwe"). It is alleged that fees, more than that is allowed by law, were paid to the liquidators. In a civil matter, it was also found by the Court that the liquidation involved gross misconduct.

8.7.1.1 **Summary of findings**

The first company is Sebal, only owned the immovable property, the farm Oshoek, and it was never run as a business. The directors of Sebal were Sarel Wessels ("Wessels") and his sister, Elizabeth Maria Venter ("Venter") decided to apply for the voluntary liquidation of Sebal by a special resolution. Venter list Sebal's assets and liabilities on the CM100 to show the companies insolvency and register the liquidation with the Register of Companies.

On 22 November 2012 the Master appointed Ottlie Anton Noordman ("Mr Noordman") and Tsiu Vincent Matsepe ("TV Matsepe") as liquidators of this entity.

The second company is Lechwe Lodge Game Farm CC ("Lechwe") with registration number 2002/063812/23 is a business, that operated on the immovable property of Sebal as a game farm and accommodation business. First National Bank ("FNB") brought an application for liquidation in the Magistrate's Court in Kroonstad, on 24 August 2012. On 27 August 2012 Lechwe was provisionally liquidated in Magistrate Court Kroonstad under case number 1697/2012. The final liquidation was on 18 September 2012.

On 12 September 2012, Elrich Ruwayne Smith ("Smith") of Symington & De Kock Attorneys was appointed as liquidator of the Lechwe Lodge.

Mr Kobus Senekal ("Mr Senekal") of Senekal Inc, previously a director of Matsepes Incorporated, was the legal representative on record of the liquidators of Sebal, at all relevant times.

Lechwe had an overdraft facility with FNB. During 2012, FNB withdraw Lechwe's overdraft and called up the security over the property of Sebal Beleggings, as Lechwe Lodge could not service the outstanding overdraft facility. Sebal was placed under voluntary liquidation as a result of a special resolution passed by Sebal on 8 August 2012 and registered on 13 August 2012. This voluntary liquidation was to settle the FNB debt. Wessels and Venter's aim with the voluntary liquidation was to prevent the assets of Sebal being sold on an execution auction, and to take Sebal out of liquidation as soon as the FNB debt were settled.

The evidence points to Mr Noordman committing the following offences:

Conflict of interest

- Mr Senekal, previously a director of Matsepes Incorporated, was the legal representative on record of the provisional liquidators on record, at all relevant times.
- The liquidators appointed Mr Senekal knowing that it is conflict of interest as Mr Senekal was acting on behalf of the directors of the company while he also acted for the liquidators against the directors.
- Mr Noordman, as liquidator, and Mr Senekal are guilty of partiality or conflict of interest, since both the appointed liquidators and Mr Senekal were at the time practicing as attorneys at the same firm. The inference that the liquidators did not act independently, and their interest may have caused conflict with their duty as liquidators.

Appointment of Mr Senekal as the Legal Representative of the Liquidators

- The liquidators did not have any authority to mandate Mr Senekal to defend any action instituted by or against the solvent companies in liquidation. Mr Senekal did not have the authority in law to defend and legal action on behalf of the liquidators.
- Mr Noordman, as liquidator and Mr Senekal contravened Section 386(4) of the Companies Act. He did not have the authority in law to defend and legal action on behalf of the provisional liquidators.

Illegal fee agreement

- The director of Sebal wanted to uplift the voluntary liquidation of Sebal and Mr Noordman as liquidator and Mr Senekal managed to persuade Venter, to conclude an agreement that was drawn up. This agreement aimed to provide payment for the administration cost and the cost of the liquidators.
- The agreement provided as follows:
 - That the parties pay to the liquidators as administration costs an amount of R807 690, which amount includes VAT, being considered as the liquidators' fee, regarding the realisation of the assets, as well as the sale of the security of the creditors involved, and the trading fee.
 - Guarantee deeds premiums in terms of section 56 of the Insolvency Act - security guards R85 000.
 - Valuation cost to the evaluators R33 000.
- The total amount due to Matsepes as liquidators' compensation and administration costs an amount of R1 010 690. On 28 Augustus 2014, under case number 959/2014, Judge Naidoo, S issued an explanatory order declaring that, the agreement (A) constitutes an illegal agreement and

consequently is void ab initio. She also ordered that the cost of the action should be paid by the liquidators in their personal capacity.

- This illegal fee agreement is a violation of section 3 of the PRECCA.

Loan Agreement/Illlegal Fee Agreement

- Mr Noordman, as liquidator and Mr Senekal contravened the provisions of section 386(1)(c) and section 386(3)(b) of the Companies Act by incurring a financial liability on behalf of the company in liquidation without the creditors having passed a resolution to that effect.
- The loan agreement dated 29 January 2013 was entered into and between the liquidators, on behalf of the company and the Robyn Trust. The liquidators decided to sell some of the company's immovable properties to settle the amount of R6 725 395.59 owed to FNB in order to facilitate the cancelling of the bonds registered against the title deeds of four farms belonging to the company. The remaining secured creditor was BKB with a claim amounting to R1 965 153.70.
- Mr Noordman allowed and/or instructed Mr Senekal to negotiate a loan from Robyn Trust for R3 000 000 payable to the liquidators. The liquidators were to appropriate the amount to settle the claim of BKB and to settle a further amount of R40 000 owed by the company of FNB. The balance of the loan was to be paid to the liquidators for their administration costs.
- Mr Noordman, as liquidator, and Mr Senekal contravened the provisions of section 386(1)(c) and section 386(3)(b) of the Companies Act by incurring a financial liability on behalf of the company in liquidation without the creditors having passed a resolution to that effect.

Conduct of Mr Noordman and Mr Senekai

- At all relevant times, the Mr Noordman, as liquidator and Mr Senekal owed a duty of care to the public, the directors of the above-mentioned companies in liquidation, the Master for the proper execution of the liquidation, and to the Legal Practice Council of which he is a member, which duty of care required from him as a member, *inter alia*, to perform his official functions and duties effectively, efficiently, with due care and diligence, in a professional and competent manner and in compliance with relevant legislation and regulation.
- Mr Noordman, as liquidator, and Mr Senekal failed to adhere to the South African Legal Practice Council Code of Conduct made under the authority of sections 36(1) and 97(1)(b) of the Legal Practice Act, and its Amendment to Code of Conduct published on 10 February 2017 in Government Gazette No 40610.
- Mr Noordman, as liquidator, and Mr Senekal contravened Section 18(3) of the Insolvency Act when they failed his duty of care required from them, *inter alia*, to perform their official functions and duties

effectively, efficiently, with due care and diligence, in a professional and competent manner and in compliance with relevant legislation and regulation.

- Mr Noordman, as liquidator, and Mr Senekal may be guilty of the following offences in contravention of Article 3 read in conjunction with sections 1, 2, 24, 25, 26 (1) (a) of the POCA.
 - The breach of a position of trust; or violation of a legal duty or set of rules namely the provisions of section 384 of the Companies Act.
 - Which was intended to obtain an unlawful advantage, or which amounts to any other unauthorized or improper persuasion to do or not to do so in order to obtain the benefits for themselves, which are prohibited by section 384 of the Companies Act.

Mr Senekal's involvement in the winding up of the liquidation

- Mr Noordman allowed and/or instructed Mr Senekal to be actively involved in the winding up the liquidation of Sebal on behalf of the liquidators. Mr Senekal was appointed by the liquidators without permission from the creditors, the Master or approval from the Court.

Sale of the assets of the companies

- Mr Noordman, as liquidator, and Mr Senekal did not approach the Master or the Court in terms of for permission to sell the property of the company to pay the disbursements of the solvent companies. Mr Noordman, as liquidator, and Mr Senekal further had no right to appoint Matsepes as the conveyancing attorneys.
- Mr Noordman, as liquidator and Mr Senekal could only engage the services of a conveyancer to transport the farms in the new owner's name if they had the authority to do so.
- Mr Noordman as liquidator and Mr Senekal contravened the provisions of section 384(3) of the Companies Act by allowing Matsepes Attorneys to act as the conveyancers in respect of the transfer of the farms, registered in the name of the Company, to the Robyn Trust.

Payments made by the liquidators

- Mr Noordman, as liquidator, and Mr Senekal:
 - Failed to pay the amount of R9 189 010 as received from Robyn Trust into the estate's bank account;
 - Failed to deposit interest of R79 166.66 into the estate's account; and

- After FNB and BKB were paid, the surplus amounts to R352 000,00. On 11 April 2013 an amount of R352 000,00 was deposited into the estate's account, leaving a shortfall of R8 760.25.
- Clause 19 of the sales contract (loan agreement) determines that the purchaser is responsible for the payment of 2% commission of the sale transaction.
- In the settlement statement from Matsepes it seems that the purchaser was only paid 1% commission and the other 1% was collected from Sebal's estate account to the amount of R66 890.10 plus VAT to the amount of R9 364.61.
- The following payments were made from the R2 500 000,00 "loan" from Robyn Trust-
 - FNB on 4 February 2013: the amount of R6 725 395.59.
 - BKB on 15 February 2013: the amount of R1 968 700.80.
- The balance of the "loan" amount was only deposited into the estate's bank account on 11 April 2013.
- Interest was supposed to be paid for the period: 23 November 2012 to 11 April 2013. The amount of R40 630.10 interest was paid to purchaser (one month's interest).
- Mr Senekal and liquidators loaned money from Robyn Trust on behalf of the company in liquidation without the authorization of the Court in terms of Section 386 of the Companies Act.
- R5 000 was paid to Mr Senekal for traveling costs for the purpose of the activities of the business of Sebal. Mr Senekal was not entitled to these costs as he was not the liquidator of Sebal.

Liquidation and distribution account

- Mr Noordman, as liquidator, and Mr Senekal contravened Section 403 of the Companies Act in that they failed to frame and lodge with the Master, not later than six months after his appointment, an account of his receipts and payments and a plan of distribution or, if there is a liability among creditors and contributories to contribute towards the costs of the winding-up, a plan of contribution apportioning their liability.
- Mr Noordman, as liquidator, and Mr Senekal contravened Section 405 of the Companies Act: Failure of liquidator to lodge account or to perform duties.-(1) If any liquidator fails to lodge an account with the Master as and when required by or under this Chapter or to lodge any vouchers in support of such account or to perform any other duty imposed upon him by this Chapter or to comply with any reasonable demand of the Master for information or proof required by him in connection with the liquidation of the company, the Master or any person having an interest in the company may, after giving the liquidator not less than two weeks' notice, apply to the Court for an order directing the

liquidator to lodge such account or vouchers in support thereof or to perform such duty or to comply with such demand.

- Mr Noordman, as liquidator, and Mr Senekal receive their remuneration or part thereof, without permission from the Master or the court, and without the Master confirming such account or the account being taxed by the court.
- It is unlawful to draw remuneration from estates until the liquidation account in which the remuneration is reflected has been confirmed by the Master.
- Mr Noordman, as liquidator, and Mr Senekal may therefore not take a fee for legal services from the same estate that he is appointed to as liquidator and the creditors may not authorise him to do so. The liquidators and Mr Senekal contravened section 384(3) of the Companies Act when they appointed their own firm to deal with legal matters on behalf of the company in liquidation and took fees for the legal services from the estate.
- All money /remuneration Mr Senekal benefited from, he was not entitled to because he was a director at Matsepe Inc and Mr Noordman (the liquidator) was also an employee of Matsepe Inc.

Liquidators illegally running the business of Lechwe

- Lechwe Lodge was finally liquidated on 18 September 2012.
- The Sebal liquidators decided to continue the business of Lechwe that was located on the Sebal property. Following the alleged conversations between the Sebal liquidators and Lechwe liquidators, the Sebal liquidators approached the Master of the Free State High Court, Bloemfontein on 23 August 2012 (two days before the application for liquidation of Lechwe), requesting an extension of their powers to run the business at Lechwe. The Master of the Free State High Court, Bloemfontein, granted the permission to continue the business on 23 August 2012.
- The liquidator's letter to the Master requesting the continuation of the business, namely the reception and conference facilities of Lechwe Lodge and in the period that followed, alleged to Lechwe and / or the Master and / or Venter and / or Wessels that:
 - i. The liquidators of Sebal have permission from Lechwe's liquidators to continue the business of Lechwe at Lechwe.
 - ii. That they are / were entitled to take over Lechwe's business.
 - iii. That they were entitled to the money collected as part of the proceeds of the liquidation of Sebal.
 - iv. That the liquidators of Sebal were consequently also entitled to a monthly administration fee and thus by means of aforesaid false pretences, the said Sarel Johannes Wessels and Ms EM Venter

and / or Lechwe moved to their actual or potential loss and disadvantage to believe that what was presented to them is the truth and to allow it.

- While in essence and reality, this was false since:
 - i. There was no agreement with the liquidators of Lechwe authorising the takeover and continuation of the business of Lechwe by Sebal.
 - ii. The liquidators of Sebal had no right to take over Lechwe as it was not yet in liquidation.
 - iii. The liquidators of Sebal had no right to the income generated by Lechwe.
 - iv. That they were therefore also not entitled to a monthly administration fee.
- Thus, the liquidators are allegedly guilty of the crime of fraud.
- Mr Noordman, as liquidator, and Mr Senekal also contravened Section 384(3) of the Companies Act which prohibits the liquidator, his employer, employee or his partner from receiving any other remuneration out of the estate other than as provided for in the Act i.e., in terms of the tariff or as allowed by the Master by way of an increase in remuneration/special fee.
- The Lechwe liquidators deny the allegations of various conversations with the liquidators of Sebal.
- Thus, there was no agreement with the liquidators of Lechwe authorising the takeover and continuation of the business of Lechwe by Sebal. The liquidators of Sebal had no right to take over Lechwe as it was not yet in liquidation.
- The liquidators of Sebal had no right to the income generated by Lechwe and they therefore were not entitled to a monthly administration fee.

Perjury

- In case number 2696/2014, Mr Noordman stated that he had numerous discussions with Mr Carshagen, the representative of Lechwe. In case number 1716/2015, dated 10 June 2015 Noordman indicated under oath "that he wants to make it clear that his statement, in that regard is not factually correct".
- The Sebal liquidators decided to continue the business of Lechwe that was located on the Sebal property. Following the alleged conversations between the Sebal liquidators and Lechwe liquidators, the Sebal liquidators approached the Master of the Free State High Court, Bloemfontein on 23 August 2012 (two days before the application for liquidation of Lechwe), requesting an extension of their powers to run the business at Lechwe. That Master granted the permission to continue the business on 23 August 2012.

- Mr Carshagen, the legal representative of the liquidators of Lechwe, and Mr ER Smith, the liquidator of Lechwe, deny having any conversation with Mr Noordman regarding the assets of Lechwe. Mr ER Smith also stated that he had no authority to make such a decision before they were appointed as liquidators.
- Mr Noordman committed perjury in that (1) he took an oath to testify truthfully, (2) that he wilfully made a false statement contrary to that oath (3) that the declarant believed the statement to be untrue, and (4) that the statement related to a material fact, that he had permission from the liquidator of Lechwe to continue the business of Lechwe.

Crimen Injuria

- On 23 June 2015 at 09:15 am, Mr Senekal sent an e-mail addressed to Mr Andre Knipe and copied in certain recipients, in which he allegedly seriously impaired the dignity of Wessels.

Contravention of Section 382 of the Companies Act

- Mr Noordman, as liquidator and Mr Senekal contravened Section 382 of the Companies Act when they proceeded with litigation without consulting the third liquidator, Mr Phillip Fourie.

Corruption: acceptance of a benefit

- That the liquidators are allegedly guilty of the following offence in contravention of Article 3 read in conjunction with sections 1, 2, 24, 25, 26 (1) (a) of the PRECCA.
- Mr Noordman, as liquidator and Mr Senekal and or Matsepes Inc unlawfully and with a corrupt intent either directly or indirectly offered to receive a benefit, obtain, or receive any compensation from another person either for his own benefit or the benefit of someone otherwise by trying to obtain from Wessels and / or Venter the benefits that the contract holds for the accused with the conditions such as the aforesaid-

Which amounts to:-

- i. The illegal, dishonest, inadmissible and or incomplete acquisition of benefits as set out in the preamble.
- ii. Which amounts to the abuse of a position of authority; or
- iii. The breach of a position of trust; or violation of a legal duty or set of rules namely the provisions of section 384 of the Companies Act; and
- iv. Which was intended to obtain an unlawful advantage, or which amounts to any other unauthorised or improper persuasion to do or not to do so in order to obtain the benefits for

themselves, which are prohibited by section 384 of the Companies Act and thus, the liquidators are guilty of the offence corruption.

- From the evidence detailed above it is submitted that Mr Noordman, as liquidator, and Mr Senekal had allegedly committed offences by not following the above legislation and therefore committed the allegations listed above.

Misconduct

- At all relevant times, Mr Du Plessis owed a duty of care to the public as the Master for abovementioned companies in liquidation and for the proper execution of the liquidation, and to the DOJ & CD which Mr Du Plessis is an employee, which duty of care required from Mr Du Plessis as a member, inter alia, to perform official functions and duties effectively, efficiently, with due care and diligence, in a professional and competent manner and in compliance with relevant legislation and regulation.
- The evidence suggests that Mr Du Plessis may be guilty of committing the following act(s) or were responsible for omission(s), which we submit amounts to misconduct and therefore falls within the ambit of the DOJ & CD to investigate this matter and pronounce on any outcomes:
 - Contravention of the Estates Act;
 - Contravention of the Companies Act; and
 - Contravention of Chapter 6 of the SMS Handbook issued in terms of regulation 1 D of Chapter 4 of the Public Service 2016 regulations, as amended, by contravening a duty of care to the DOJ & CD required by him inter alia to perform his official duties in a professional and competent manner and in compliance with the relevant statutory or other prescripts arising from the common law trust relationship between employer and employee and the SMS Handbook.
- Mr Du Plessis failed to act against the liquidators when they mandate Mr Senekal to defend any action instituted by or against the solvent companies in liquidation without authority. Mr Senekal did not have the authority in law to defend and legal action on behalf of the liquidators. As seen in the affidavit of Ms Venter there was a clear conflict of interest as Mr Senekal was the attorney of record for the directors at the time as he was appointed as attorney for the liquidators at Master of the High Court Free State Division, Bloemfontein.
- Mr Du Plessis contravened Section 403 of the Companies Act when he failed to act against the liquidators when they did not file the L&D account in time.
- Mr Du Plessis contravened Section 384 (3) of the Companies Act when he allowed Mr Senekal who is person with whom a liquidator is employed or who is a co-employee of the liquidator or who is in

To date, an audit has confirmed that 39 beneficiaries of these 71 files have received their monies (totaling R1 170 275.39) and Master is attending to the backlog.

10. SUMMARY OF FINDINGS – MATTERS OUT OF SCOPE OF THE PROCLAMATION

Table 4 below reflects the number matters the SIU assessed and found to be out of scope:

TABLE 4: MATTERS OUT OF SCOPE

OUT OF SCOPE	REASON	NUMBER OF COMPLAINTS RECEIVED
Matter does not fall within the scope of the Proclamation	Civil dispute between parties	3
	Allegation does not fall within the ambit of the Proclamation R7 of 2020	44
	Labour related issue	1
TOTAL		48

11. SUMMARY OF FINDINGS – MATTERS WHERE THERE IS INSUFFICIENT INFORMATION

In several matters, the SIU could not conclude the investigations due to insufficient information. In many instances, the complainants could not be traced to enable the SIU to clarify the allegations.

TABLE 5: MATTERS = INSUFFICIENT INFORMATION

CRITERIA	NUMBER OF ALLEGATIONS RECEIVED
Deceased estate	16
GF	1
Insolvency	5
Liquidation	1
Maladministration	1
Trust	1
Allegations not clear	12
TOTAL	37

12. SUMMARY OF FINDINGS – MATTERS DEALT WITH BY OTHER AGENCIES

The table below reflects matters already dealt with by other agencies so SIU could not duplicate, or the matter is *sub judice*:

TABLE 6: MATTERS DEALT WITH BY OTHER AGENCIES

NATURE OF ALLEGATION	AGENCY	NO OF COMPLAINTS RECEIVED
Deceased Estates	FAU	12
Insolvencies		
Manipulation of information		
Deceased Estate	In Court	3
Insolvencies		
Insolvency	Public Protector	1
Deceased Estates and Deeds matters	SAPS	4

TABLE 6: MATTERS DEALT WITH BY OTHER AGENCIES

NATURE OF ALLEGATION	AGENCY	NO OF COMPLAINTS RECEIVED
TOTAL		20

13. OUTCOMES

13.1 Systemic Recommendations

13.1.1 Letter to the DOJ & CD dated 20 April 2021

13.1.1.1 Preliminary systemic recommendations identified

- The Minister to prioritise the development of regulations in terms of Section 103 of the *Administration of Estates Act, Act 66 of 1965*, in respect of the appointment of executors in deceased estates;
- The frequency of annual accounting by curators bonis be increased to more regular accounting;
- The Minister reviews section 28 of the Estates Act as this section still compels the use of cheques that are more open to exploitation. Benchmarking against other state entities regarding the best practice on the handling of cheques be researched;
- Masters' officials to be rotated to different sections on a regular basis, especially officials dealing with funds in the Masters' offices;
- Prolonged Acting positions in the Masters' offices be reduced and a time limit be introduced for all Acting positions;
- The Minister re-examine the discretionary power of the Master of the High Court to appoint previously disadvantaged liquidators as this discretionary power is open to abuse. There could be a mechanism like a type of Masters Ombudsman, in place in order to deal with incorrect decisions of the Master. Currently the High Court review mechanism on any incorrect actions of the Masters is expensive and time-consuming and the outcomes are reached when it is too late for the "victims" of maladministration;
- A uniform policy that regulates the appointment of provisional/final liquidators as prescribed by the Insolvency Act should be implemented across all the Master's Offices in the country. To this end, the SIU sought the expertise of a selected Counsel in this field of policy drafting to assist for this and other gaps in governance within the practical machinations of the Masters' Offices so as to fulfill their statutory mandates in terms of the legislation;
- An independent monitoring of this appointment system from the Masters' List of liquidators including independent previously disadvantaged liquidators, should be implemented to ensure an even distribution of appointment of provisional and final liquidators;
- Stricter security and monitoring measures be implemented in the Registry section;

- The verification of documents be done from inception of a transaction to the closing of a transaction, especially, but not limited to the payment of Masters fees;
- The regular monitoring of the whistleblower's hotline in the DOJ & CD is ensured; and
- An interactive public awareness campaign to empower beneficiaries of deceased estates to understand their rights and responsibilities as well as providing them with an understanding of the processes and timelines when dealing with the finalisation of deceased estates, to ensure an expedited process (winding up of estates).

13.1.2 Letter to the DOJ & CD dated 22 February 2022

13.1.2.1 Findings and recommendations by appointed Counsel

- The SIU conducted interviews with members of the public who utilise the services provided at the offices of the Master. In summary, the result of the interviews produced a resounding concurrence on the inefficiencies, lack of understanding and perceived complexity of the processes from the majority of the members of the public interviewed who depend on the services offered by the Masters' offices and a general dissatisfaction in the lengthy delays and manner in which their matters are handled at the various offices of the Master. Although most of the complaints relate to the manner in which the Master's Offices deals with family related disputes in respect of the winding-up of deceased estates, a substantial number of the interviewees share the concern that besides matters taking a lengthy time to conclude, the officials therein evidenced a lack of understanding of the functions and / or services offered by the Master's Offices.
- We are of the view that the Masters' offices are not functioning optimally as a result of the lack of a proper legislative framework guiding the various office bearers (decision makers) of the Masters' offices in the exercise of their legislative powers in fulfilling their legislative roles and functions. Also, the processes applied at the Master's Offices in executing the relevant officials' duties and functions is not in sync with today's times and still substantially and does not sufficiently cater / accommodate for the increased volumes of matters which progressively increased in a manner which was not envisaged in the current system (which was probably devised pre-1994).
- In terms of Counsel's understanding of the issues, the following is a brief outline:
 - In the recent years, the insolvency industry has been no stranger to controversy and has been notoriously known as one of the very few industries which remain untransformed and dominated by the same individuals (known as individuals from previously disadvantaged backgrounds) being appointed as insolvency practitioners in lucrative estates, which have been placed under the supervision and care of the Master.

- Another complaint evidenced in our detailed findings on specific matters under the same subject matter supports the contention that 27 years into our constitutional democracy, far fewer previously disadvantaged individuals/PDI's/practitioners are being appointed by the various Masters as insolvency practitioners in lucrative estates placed under the care and supervision of the Master with high nett asset value."
- Counsel gave the following brief overview of the main facets of winding-up of an insolvent company:
 - The winding-up of companies is governed by two distinct and separate pieces of legislation. The winding-up of solvent companies is regulated in terms of sections 79 to 81 in Part G of Chapter 2 of the Companies Act, 71 of 2008 ("the new Companies Act"), whereas the winding-up of insolvent companies is regulated in terms of Chapter XIV of the Companies Act, 61 of 1973 ("the old Companies Act"). The legislative divide is created by section 79(1)(b) of the old Act and read with Item 9 of Schedule 5 to the new Companies Act (which prescribes the transitional arrangements of the Act with respect to existing legislation).
 - Item 9(1) of Schedule 5 provides that, despite the repeal of the old Companies Act, and until a date determined by the Minister by notice in the Government Gazette, Chapter XIV of the 1973 Act continues to apply with respect to winding-up and liquidation of companies under the new Companies Act, as if the old Companies Act had not been repealed.³⁹
 - The notice determining the date on which Chapter XIV of the Old Companies Act ceases to apply may not be given until the Minister is satisfied that alternative legislation has been brought into force that adequately provides for the winding-up and liquidation of insolvent companies.⁴⁰ In addition, the Minister may, by notice in the Gazette, prescribe any ancillary rules necessary to provide for the efficient transition from the provisions of the repealed old Companies Act to the provisions of the new alternative insolvency legislation.
 - A solvent company may be dissolved by:

³⁹ "However, certain sections of the old Companies Act do not apply to winding-up of a solvent company except to the extent necessary to give full effect to the provisions of Part G of the new Companies Act (see s 79(2)(10)). The excluded sections are ss 343, 344, 346 and 348 to 353. These sections deal with the modes of winding-up (section 343), circumstances in which a company may be wound up by the court (ss 344), the application for winding-up of a company (s346), commencement of winding up by the court (s348) and voluntary winding-up generally (ss349 – 353). In the event of a conflict between one of the provisions the old Companies Act that continues to apply and a provision of Part G of the new Companies Act with respect to a sovereign company the provisions in the new Companies Act will prevail.

⁴⁰ There is currently a legislative process underway that is intended to reform the law of insolvency generally and that will result in a unified insolvency Act. The arrangements alluded to above have been drafted with this in mind."

- A voluntary winding-up initiated by the company and conducted either by the company itself or by its creditors, as determined by the special resolution of the company; or
- Winding-up and liquidation by court order.
- The procedures for the winding-up of a solvent company, whether voluntary or by court order, are governed by the provisions of Part G of Chapter 2 of the new Companies Act and to the extent applicable, by the laws referred to in Item 9 of Schedule of the new Companies Act.
- If, at any time a company has adopted a special resolution contemplated in section 80, or an application has been made to a court as contemplated in section 81, it is determined that the company to be wound up is insolvent, a court may order that the company be wound up as an insolvent company. This will take place in terms of the laws referred to and contemplated in Item 9 of Schedule 5.⁴¹
- In terms of the winding-up of insolvent companies, Counsel stated that "the theory of law continues to be regulated by the provisions of the old Companies Act until such time as it has been replaced by other appropriate legislation" and gave the following brief overview of the main facets of the winding-up of an insolvent company:
 - We are informed that the current unwritten practice at the Masters' offices entails the following:
 - Prospective creditors, on becoming aware of an application for the provisional sequestration of an estate, would indicate their support for a provisional trustee by filing a requisition which indicates the extent of their claim against the estate, and their provisional trustee of choice.
 - The Masters office will then review their position and, once satisfied that the requisition is in order, ordinarily appoint a provisional trustee using the following as guidelines:
 - The candidate nominated by the creditor who held the majority of value in claims;
 - The candidate nominated by the creditors who hold the majority in numbers of claims;
 - The candidate who enjoys the support of the employees or trade union.
 - In addition, a PDI would be appointed from a list held by the Master.
 - All the individuals identified as suitable candidates to be appointed in that estate, would then be informed that they should immediately lodge with the Master bonds of security for the estimated value of the assets of the estate involved. Thereafter, the Master would issue certificates of appointment as provisional trustees.

⁴¹ Chapter XIV of the old Companies Act, 1973.

- The provisional trustee would then take charge of the estate and immediately administer the estate until the first meeting of creditors.
- At the first meeting, the creditors who had proved their claims against the estate are entitled to elect trustees and the persons receiving the majority of the votes, by number and value of claims, will be elected as trustee. If one person gained a majority in number, and another a majority in value, they will both be elected.
- The Master will then ordinarily confirm those who have been elected and will also confirm the appointment of the previously disadvantaged individual(s), if that person was not elected as trustee by the creditors. The Master has a discretion under section 57(1) of the Act in certain circumstances not to appoint a person elected as a trustee at the first meeting of the creditors. However, this happens fairly infrequently in practice.
- We are informed that this system, known as the requisition or referral system, has not achieved its purpose of including PDI's in the appointment of insolvency practitioners.
- Provisional trustees and provisional liquidators play a significant role in the liquidation of an estate and the winding up of a company or close corporation. They are appointed to control and administer the estate or property of a company until a trustee or liquidator has been appointed.
- Only persons / professionals included on a Masters' list of insolvency practitioners may be appointed as provisional trustees or liquidators, and their appointment must be done in accordance with the procedure set out in the proposed policy.
- Unlike a final trustee appointed at a first meeting of creditors, the provisional trustees take instructions from the Master, who stands in the position of the creditors (section 18(2) of the Act). Provisional trustees may only be authorised by the Master or the court to sell property belonging to the estate.
- Prior to the amendment of the Insolvency Act, in 2004, the Masters' power of appointment of provisional trustee or liquidator was entirely discretionary.
- Currently, in terms of section 18(1) of the Act, the Master, may after an estate has been sequestered, in accordance with the policy determined by the Minister, appoint a provisional trustee. The Minister exercises his powers in terms of section 158 of the Act when determining the policy envisaged in section 18. It is the Master who, in terms of this policy, appoints the provisional trustee, once a provisional sequestration order has been granted. The provisional trustee will administer or control the estate until such time that the trustee is appointed at the first meeting of creditors. The Master may still, however, be involved in as much as he or she is empowered by section 57(5) of the Act, whenever they consider it desirable, to appoint a co-trustee.

- The Judicial Matters Amendment Act, 16 of 2003 makes provision for the appointment of a Chief Master who serves as the Executive Officer of all the Master's Offices and exercises control, direction and supervision over all the Masters.
- The Minister's power to determine policy for appointment of practitioners is also provided for in the Judicial Matters Amendment Act, which confers on the Minister's power to lay down policy in relation to the appointment of insolvency practitioners.
- Prior to the 2001 policy, previous policies and directives were issued by the Minister during 1998 and 2001, aimed at making the insolvency industry accessible to previously disadvantaged persons. However, these policies were not policies promulgated in terms of any specific provision of the Act. The 2001 policy made provision for a PDI to be appointed as a co-provisional trustee in every estate. The rationale behind appointing a previously disadvantaged individual was that he or she could learn from the experienced trustee how properly to administer an estate, in order to gain sufficient experience and exposure in the industry. The Master, in accordance with the 2001 policy, created a separate panel of names for this category of practitioner.
- Subsequent to the promulgation of the Judicial Matters Amendment Act, the Chief Master revoked the "Lategan document", a document issued by a Deputy Master in Pretoria, which purported to deal with the appointment of practitioners.
- SIU files show various allegations of maladministration in the office of the Master, which relate to the purported collusion with certain liquidators. Furthermore, the allegations proffered are principally premised on the basis that the current system of appointment of liquidators and trustees through a process commonly known in the liquidation/insolvency industry as requisitions/nominations, is flawed; biased and fails to advance the constitutionally mandated transformation purpose imposed on the government of the Republic of South Africa.
- In amplification of the transformation imperative mentioned above, it is alleged that PDIs are systematically excluded from nominations in matters that involve companies or estates that have a substantial net asset value. It is further alleged that the current nomination system perpetuates the status quo by excluding the historically disadvantaged from participating in the economy. Accordingly, it is said that the nomination system as it stands appears to be benefit only an elite few and falls short of ensuring the transformation of this sector.
- The Minister of Justice is empowered by Section 158(2) of the Insolvency Act to create a policy that will regulate and guide a Master in appointing liquidators and trustees/curators.
- Section 18 of the Act states that the relevant legislative provisions governing the appointment of provisional trustees reads as follows:

- "(1) As soon as an estate has been sequestered (whether provisionally or finally) or when a person appointed as trustee ceases to be trustee or to function as such, the Master may, in accordance with policy determined by the Minister, appoint a provisional trustee to the estate in question who shall give security to the satisfaction of the Master for the proper performance of his or her duties as provisional trustee and shall hold office until the appointment of a trustee.
- (2) At any time before the meeting of the creditors of an insolvent estate in terms of section forty, the Master may, subject to the provisions of subsection (3) of this section, give such directions to the provisional trustee as could be given to a trustee by the creditors at a meeting of creditors.
- (3) A provisional trustee shall have the powers and the duties of a trustee, as provided in this Act, except that without the authority of the court or for the purpose of obtaining such authority he shall not bring or defend any legal proceedings and that without the authority of the court or Master he shall not sell any property belonging to the estate in question. Such sale shall furthermore be after such notices and subject to such conditions as the Master may direct."
- According to the above section the power to appoint provisional trustees resides with the Master, and the Master's discretion is to be exercised in accordance with the policy determined by the Minister in terms of section 158(2) of the Act.
 - The Minister is also empowered, in terms of section 10(1A)(a) of the Close Corporations Act, 69 of 1984,⁴² and the Old Companies Act, 61 of 1943 to determine the policy for the appointment of liquidators and provisional liquidators. Thus the proposed policy will apply to these appointments as well."
 - Counsel found that "the chief cause of the complaint is the nomination and appointment of provincial liquidators and trustees. We have established that there is a general lack of uniformity in the appointment of provincial liquidators and trustees by various offices of the Masters across the country. The policy as envisaged by Section 158(2) of the Insolvency Act has not been created and implemented. Plainly put, it is non-existent". Furthermore, Counsel found that:

⁴² And section 368. This section reads: "The Minister may determine policy for the appointment of a liquidator by the Master in order to promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination."

⁴³ This section reads that: "As soon as the winding-up order has been made in relation to a company, or a special resolution for a voluntary winding-up of a company has been registered in terms of section 200, the Minister may, in accordance with the policy determined by the Minister, appoint any suitable person as provisional liquidator of the company concerned, who shall give security to the satisfaction of the Master for the proper performance of his or her duties as provisional liquidator and who shall hold office until the appointment of a liquidator."

- There are further allegations that certain liquidators have close proximity to, or a close relationship with, certain officials in the office of the Master, which has created bias within the system that has unfairly benefitted them to the detriment of other potential liquidators and trustees and the public in general. It should also be noted that the Master enjoys an unfettered discretion in the performance of his or her function of appointing provisional liquidators and trustees. The Master is accountable to him-/herself.
- An estate is liquidated/sequestered through a court order or special resolution lodged with the Companies Intellectual Property Commission ("CIPC"). Once such steps have been taken to liquidate/sequester, the Master appoints a liquidator/trustee to take charge of the assets of the estate. Once the liquidator/trustee is appointed, the directors of the company are divested of their control of the company/estate assets. The assets vest in the hands of the master until a liquidator/trustee is appointed who then takes custody and control of the assets.
- The trustee/liquidators derive a benefit from their functions by charging a fee and commission for the administration and subsequent realisation of the assets of the estate or company. The assets are managed and realised for the general body of creditors (*concurius creditorium*)."
- The following shortcomings/ observations were identified:
 - In surveys conducted over the period 2011 to 2013 by the Chief Master, the picture appeared to be a bleak one for the advancement of PDI's. The numbers showed that far fewer p were appointed, than was reflected on the list of active insolvency practitioners.
 - In 2013, the National Statistics, which only focussed on race and gender, showed that the workload amongst insolvency practitioners was unevenly distributed:
 - White males received approximately 43%;
 - White females received approximately 10%;
 - African, Coloured, Indian and Chinese females received approximately 4%; and
 - African, Coloured, Indian and Chinese males received approximately 30%.
- The total numbers above are significantly short of the 100% required.
- A proposed policy is formulated against the backdrop set out above.
- The first policy of this kind was promulgated by the Minister in terms of his power under section 158 of the Act. This policy went through various phases, which included consultations, meetings and comments from interested parties.

- The justiciable right to equality entrenched in section 9 of the Constitution demonstrates the commitment to achieving equality and remedying the consequences of past discrimination. Section 9(2) clearly states that 'equality includes the full and equal enjoyment of all rights and freedoms. In addition, and more significantly for present purposes, the Constitution permits 'legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination', provided that those measures are taken 'to promote the achievement of equality.'
- Transformation is thus having political, social and economic implications. We cannot speak of transformation if the material conditions of the historically disadvantaged remains largely the same. If the exclusion from market/economic participation is present, equality is absent.
- It appears that there is no existence of a policy by the Minister of Justice to regulate the appointment of trustees and liquidators, to ensure that the transformation plays a crucial role when appointing liquidators and trustees.
- There is a lack of a uniform approach by various Master's Offices in the appointment of liquidators / trustees. This raises questions of an arbitrary appointments, which are characterised by bias and other irrelevant factors. Uniformity and consistency create much needed certainty and it ensures that the ethos of transformation is deeply ingrained within the structures of the Master's Office.
- The apparent preference by creditors of certain trustees/liquidators over others raises a number of significant concerns. This could breed bias and lead to anti-competitive behaviour that harms the economic.
- PDIs appear to be marginalised and side-lined by major creditors, in particular the major banks. Accordingly, this industry remains dominated by companies that are predominantly owned and controlled by natural and juristic persons who were privileged under apartheid and who had exclusive access. Business practices that are *prima facie* racial neutral, continue to perpetuate past inequalities because of overt social and economic discrimination.
 - The requisition/nomination system is not sanctioned by any legislation and is open to manipulation including submission of fake requisitions.
 - The current Chief Master's directive and unwritten practices in the various Masters offices regulating the appointment of provisional liquidators/trustees falls short of advancing transformation and skills transfer within the industry.
 - The current practice and procedures enable officials and industry role players to collude in the appointment of liquidators and trustees to the disadvantage of PDIs and stifle the country's transformation agenda.

- The insolvency and liquidation industry remains one of the very few industries which are untransformed in the 27 years of our constitutional democracy. Although on paper (the Masters' panel) it seems that a majority of the individuals listed therein are PDIs the reality is the minority, particularly white males, still enjoy the benefit of being appointed (mostly through requisitions) as liquidators and co-liquidators in estates with substantial net asset value.
- The participation of the majority of PDIs professionals or firms or businesses owned by PDIs across the spectrum that play a role in the liquidation industry still remains a minority when it comes to being appointed as liquidators or the procurement of their services in the administration of estates with substantial net asset value.
- There appears to be established relationship between creditors and certain practitioners.
- Counsel recommended the following:
 - The Minister of Justice to prioritise the determination of uniform regulations and / or policy for all Masters offices in terms of the relevant provisions of legislation⁴⁴ governing their existence, functions, practices and procedures providing for:
 - The Code of conduct of various officials of the Master's Offices and prescribing uniform practice and procedure to be observed therein.
 - The appointment procedure and criteria of insolvency practitioners (provisional and final) in insolvent estates and estates under the care and supervision of the Master, in line with the statutory objective to promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination.
 - The Minister to recommend to the relevant Parliamentary Committee to set up a high-level panel to review and revamp the various regulatory framework governing the insolvency industry in order to modernise and keep it abreast with current times and to consolidate the fragmented laws regulating the insolvency industry.⁴⁵
 - To review the organisational structure within the various Masters' offices, to efficiently fill vacancies minimising the prolonged acting tenures currently present at senior management level; and ensure affirmative action is applied within the organisational structure of the

⁴⁴ Section 158 of the Insolvency Act, 24 of 1936; section 103(c) of the Administration of Estates Act, 66 of 1965; and sections 368 and 374 of the Companies Act, 61 of 1973.

⁴⁵ The panel would be tasked to consider whether it would not be most ideal to establish an office of the ombudsman to hear complaints and review the Masters' decision in the appointment of insolvent estates. This, in our view, would also reduce the workload on the Minister's Office in considering those complaints and avoid potential litigation in the High Court which is mostly time consuming and costly.

Master's Office by, amongst others, employing competent, young and skilled black women to senior management positions.

- The establishment and promotion of a public awareness campaign to empower members of the public and beneficiaries of deceased estates to easily understand their rights and responsibilities in respect of deceased estates or estates under the supervision and care of the Master; and to provide them with an understanding of the procedures and timelines applicable at the Master's Offices from lodgement to finalisation of deceased estates to also ensure an expedited process.
- The institution of disciplinary proceedings against those officials of the Master who implicated in maladministration and misconduct.
- The Minister must in terms of Section 158(2) of the Insolvency Act immediately take steps for the creation of a uniform policy regulating and guiding the appointment of liquidators and trustees by all the Masters officials. The previous policy developed by the Chief Master unfortunately does not meet the constitutional muster to a larger degree and remains obsolete.
- In order to ensure that the envisaged policy is not successfully challenged, the Minister must ensure that the policy is constitutionally compliant. It goes without saying that certain role players will attempt to challenge the policy for one reason or another. The policy must be created on an urgent basis to avoid the continued perpetuation of the status quo in light of section 9(2) of the Constitution. The industry role players must of course be invited to comment before implementation of the policy.
- The Minister must take steps to propose the amendment and harmonisation various conflicting legislations applicable to the insolvency/liquidation industry. As a way of example, we refer to litigation that ensued between the Registrar of Banks and the office of the Master regarding the appointment of liquidators in the VBS matter, in terms of the Banks Act.
- The proposed policy must *inter alia* empower the Master to engage in robust discussions with creditors who resist transformation and persuade such creditors to comply. The appointed liquidators/trustees must also be persuaded to enlist the services of black owned service providers in the performance of their functions.
- The objective of the proposed policy is to "promote consistency, fairness, transparency and the achievement of equality for persons previously disadvantaged by unfair discrimination" and it is intended to form the basis for the transformation of the insolvency industry. It will replace all previous policies and guidelines in relation to the appointment of the insolvency practitioners, currently used in the Master's Offices and will apply amongst others, not only to the appointment of provisional trustees by the Master in terms of section 8(1) of the Act but also to a range of other

appointments. Further, the proposed policy will set out the procedure to be followed by the Master when making a discretionary appointment and their power to do so.

- Further, the policy will be aimed at discretionary appointments, done in terms of the Act, of insolvency practitioners by the Master. The policy will further oblige the Chief Master to issue directives to be used by all Masters in order to implement and monitor the application of the policy. All directives currently in place as issued by the Chief Master will be repealed.
- The policy will principally implicate the provisions of the Act that deal with the appointment of provisional trustees and co-trustees.
- The proposed policy is to replace all previous policy and guidelines relating to the appointment of insolvency practitioners and envisage that only persons included on the Masters' list may be appointed.
- Prior to implementation of the proposed policy the Masters' list will have to be revised. To be included onto the Masters' list an interested person must have:
 - Submitted an application in the prescribed form;
 - The applicant must have sufficient infrastructure within the area of jurisdiction of the Master in question; and
 - The applicant must also be appropriately qualified in the field of law and commerce and hold a four years' Batchelors degree or have five year suitable experience in administration and winding up of insolvent estates.
- The proposed policy will empower the Master to appoint provisional trustees in line with the exercise of their discretion as guided by the Minister and also balance in taking into account the wishes of the creditors to the discretionary appointments.
- Once a policy has been put in place, there should be consistent monitoring of its implementation periodically.
- Propose legislative amendments to the fragmented pieces of legislation regulating the insolvency industry in order to bring it in line with the Government's objective of transformation (race and gender) and the values underpinning the Constitution of the Republic.

13.1.3 Letter to the DOJ & CD/Dept dated 5 September 2022

13.1.3.1 Counsel's opinion on various legislative aspects

- A constitutional commitment to substantive equality is thus also a commitment to the eradication of such systemic inequalities. It establishes an aspirational ideal — the achievement of a society based on equality — and presumes that this is (at least partly) possible through law. In a constitutional sense,

therefore, substantive equality is both a value and a legally enforceable right. In addition, in South Africa, the value and the right of substantive equality are both central to ideas of social and economic transformation and the role of the law in achieving this.

- Recently, Langa CJ described the achievement of substantive equality as requiring a social and economic revolution in which all enjoy equal access to the resources and amenities of life and are able to develop to their full human potential. This requires the dismantling of systemic inequalities, the eradication of poverty and disadvantage (economic equality) and the affirmation of human identity and capabilities (social equality). Reformatory claims for redistribution, although lodged in a complex series of economic issues, should, at a minimum, enable forms of economic redistribution, and seek to reduce rather than entrench poverty and inequality.
- To this end, Counsel recommends that there are legislative amendments to various legislation to ensure that transformation is taken seriously and is not merely a political catchphrase with no practical effect. We turn to that now.
- In terms of the Insolvency Act, "this Act must be amended to include a provision, entitled 'Objectives', which will set out the objectives of the Insolvency Act. One such objective should be the transformation of the insolvency profession from one based on racial and gender discrimination to one that is based on substantive equality (as opposed to the formal equality). The achievement of equality is crucial for persons previously disadvantaged by unfair discrimination". Counsel made further recommendations in respect of the following sections of the Insolvency Act:
 - Section 5(2) of the Insolvency Act concerns the appointment of a curator bonis after a notice of voluntary surrender. The section reads:

"After the publication of a notice of surrender as aforesaid in the Gazette the Master may, in accordance with policy determined by the Minister, appoint a curator bonis to the debtor's estate, who shall forthwith take the estate into his or her custody and take over the control of any business or undertaking of the debtor, as if he or she were the debtor, as the Master may direct, including any business the debtor is licensed to carry on in terms of the Liquor Act, 1989 (Act 27 of 1989), but subject in every case, mutatis mutandis, to the provisions of section 70."
 - Counsel recommends that this section should be amended to be included that the appointment must be done in light of the constitutional injunction to transform the industry. The amendment may merely be an inclusion of the words to the effect that "*the Master may, in accordance with policy determined by the Minister, appoint a curator bonis, taking into consideration transformative objectives of section 9 of the Constitution of the Republic of South Africa.*"

- Section 18(1) of the Insolvency Act concerns the appointment of a provisional trustee by the Master and reads:

"As soon as an estate has been sequestrated (whether provisionally or finally) or when a person appointed as trustee ceases to be trustee or to function as such, the Master may, in accordance with policy determined by the Minister, appoint a provisional trustee to the estate in question who shall give security to the satisfaction of the Master for the proper performance of his or her duties as provisional trustee and shall hold office until the appointment of a trustee."

- Similarly, this provision should be amended to note that the appointment reflects the constitutional demand to transform the industry.
- Section 54(5) makes provision for the appointment of a trustee where none is elected by the creditors and no provisional trustee is in office: Section 54(5) reads:

"If at any meeting of creditors convened for the purpose of electing a trustee, no trustee is elected and the estate is not vested at the time of that meeting in a provisional trustee, the Master may, in accordance with policy determined by the Minister, appoint a trustee and if he or she does not so appoint a trustee, the Master or the insolvent with the Master's consent, may apply, at the cost of the estate, to the Court by petition to set aside the sequestration and the Court may make such order thereon as it thinks fit."

- Again, the provision may be amended to reflect the need for transformation in the appointment of a trustee where none is elected.
- Section 62(2) pertains to the appointment of a provisional trustee pending the election of a trustee to fill a vacancy. It reads:

"When a sole trustee has vacated his or her office or has been removed from office, has resigned or died, the Master shall convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee, and in the meantime the Master may, in accordance with policy determined by the Minister, appoint a provisional trustee for the preservation of the estate."

- Again, the discretion of the Master may be fettered by directing the Master to take into account section 9(2) of the Constitution, which provides "[e]quality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken."

- Lastly, section 95(4) deals with 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. This section reads:

"Any creditor claiming to be entitled to share in the said distribution shall make written application to the Master for payment of his or her share, and the Master may pay out to such creditor or may hand the money to the trustee, if any, for distribution among the creditors entitled thereto, or, if there is no trustee, may, in accordance with policy determined by the Minister, appoint a trustee on such conditions as he or she may think fit to impose for the purpose of making such distribution."
- It is again recommended that this section be amended to take into account the need to transform the provision by directing the Master to take into account PDIs.
- Counsel made recommendations in respect of the following sections of the Companies Act:
 - Section 368, as amended by section 17 of the Judicial Matters Amendment Act 16 of 2003, concerns the appointment of a provisional liquidator; and reads:

"As soon as a winding-up order has been made in relation to a company, or a special resolution for a voluntary winding-up of a company has been registered in terms of section 200, the Master may, in accordance with policy determined by the Minister, appoint any suitable person as provisional liquidator of the company concerned, who shall give security to the satisfaction of the Master for the proper performance of his as provisional liquidator and who shall hold office until the appointment of a liquidator."
 - It is recommended that this section be amended to the extent that it provides that "the Master may, in accordance with policy determined by the Minister, appoint any suitable person as provisional liquidator of the company concerned, taking into consideration transformative objectives of section 9 of the Constitution of the Republic of South Africa...".
 - Section 377(3), as amended by section 18 of the Judicial Matters Amendment Act 16 of 2003, provides for the appointment of a provisional liquidator or liquidator for a vacancy or where a vacancy is not filled. This provision reads:

"(3) Subject to the proviso to subsection (1), if for any reason a vacancy is not filled as provided in this section, the Master may, in accordance with policy determined by the Minister, appoint any person as provisional liquidator or as liquidator to fill such vacancy."
 - To this end, it is recommended that the Master must appoint a provisional liquidator or liquidator in light of the requirements of transformation and substantive equality.

- In respect of the Close Corporations Act:

- Section 74(1), which deals with the appointment of a liquidator, reads:

"For the purposes of conducting the proceedings in a winding-up of a corporation, the Master shall appoint a suitable natural person as liquidator."

- It is recommended that this provision must be amended to reflect the reality of need to transform the liquidation industry and requiring the Master to appoint a liquidator taking into account of PDIs.
 - Section 76(3)(b) provides a provision for the appointment of a liquidator where the Master declines to appoint an elected liquidator. It provides:

"(3) If the Master again so declines for any reason mentioned in subsection (1) to accept the nomination for appointment as liquidator by any meeting referred to in subsection (2); or to appoint a person so nominated—

(b) if the person so nominated as sole liquidator has not or if all the persons so nominated have not been appointed by him, he shall appoint as liquidator or liquidators of the corporation concerned any other person or persons not disqualified from being liquidator of that corporation."

- We similarly recommend that the appointment must be done in light of the transformative project of the Republic.
- With reference and reliance on Regulation 910 of the Chief Master's Directive 2 of 2015, Counsel gave the following overview:
 - Regulation 910 prohibits the liquidation or distribution of the estates of deceased persons by any person other than an attorney, notary, conveyancer or law agent. It was issued under Section 30 of the Attorneys, Notaries and Conveyancers Admission Act 23 of 1934 and promulgated on 22 May 1968.
 - The question therefore arises as to whether Regulation 910 was also effectively repealed by the repeal of the Attorneys, Notaries and Conveyancers Admission Act, seeing that the regulation was made by the Minister of Justice pursuant to powers vested in him in terms of an act now repealed. However, the Attorneys Act caters for the continuance of the regulations made under an act repealed by it. In very broad terms it states that "*anything done or deemed to have been done*" under any provision of a law repealed by the Attorneys Act, will remain in force as if done by the

Attorneys Act⁴⁶. It logically follows that Regulation 910 remained in force as if done under the Attorneys Act.

- The Attorneys Act has, however, in the meantime also been repealed by the LPA⁴⁷. The same question therefore arises, namely whether Regulation 910 was effectively repealed by the repeal of the Attorneys Act, seeing that the Attorneys Act deemed Regulation 910 as something done under its provisions. Put differently, it is clear that should Regulation 910 fail if its empowering act fails. It would seem that the legislator kept this scenario in mind where the LPA provides that any regulation made under any law which is repealed by it and in force immediately before 1 November 2018⁴⁸ remain in force, except in so far as it is inconsistent with any provisions of the Act, until amended or revoked under the provisions of the LPA⁴⁹. It therefore also follows that even though the Attorneys Act is revoked in totality by the Legal Practice Act, the regulations will remain in force, and consequently that Regulation 910 remains in force.
- The LPA, however, goes even further in this regard and proceeds to state, in a similar broad fashion as the Attorneys Act did, that "*anything done in terms of a law repealed by this Act remains valid if it is consistent with this Act*"⁵⁰.
- The regulation would consequently remain valid. This validation of regulations made and actions done under repealed acts is, however, qualified by requiring that it should be consistent with the provisions of the LPA. It seems that Regulation 910 is indeed consistent with the provisions of the LPA, in as much as this act in itself empowers the Minister of Justice to make regulations regarding numerous aspects of the practice of legal practitioners. The Minister of Justice is empowered with a general catch-all regulatory power in that the Minister may make regulations relating to "*any other matter in respect of which regulations may or must be made in terms of this Act*".
- From the above it can be deduced that, notwithstanding that Regulation 910 was made under a repealed Act, and notwithstanding the changes the legal profession has undergone, the Regulation is still in force and stays still applicable today.
- Lastly, regarding the constitutionality of Regulation 910, The Law Reform Commission comments on the possibility that Regulation 910 could be unconstitutional⁵¹. The Law Reform Commission states that the unconstitutionality possibly relates to Regulation 910's restriction in the economic

⁴⁶ Section 86(3) of the Attorneys Act.

⁴⁷ Act 28 of 2014.

⁴⁸ Section 119(1)(a) of the Legal Practice Act.

⁴⁹ Section 120(4) of the Legal Practice Act.

⁵⁰ Section 119(3)(a) of the Legal Practice Act.

⁵¹ Law Reform Commission, Discussion Paper 110 (October 2005).

sphere, by restricting persons without certain qualifications or who are not in a certain occupation from the administration of deceased estates.

- The question of such a restriction in the economic sphere has, however, already been dealt with by the Constitutional Court. The case of *S v Lawrence* dealt with certain individuals who, in contravention of the Liquor Act⁵², sold alcoholic drinks after 20:00 and on a Sunday. The appellants contended that the provisions of the Liquor Act under which they were tried in Court were inconsistent with section 26 of the Constitution, which provides that everyone shall have the right to freely engage in economic activity. The Court consequently had to interpret the right to freedom of economic activity.
- The Court found that an economic restriction or a regulation limiting certain work to only certain persons with certain qualifications is constitutional as long as it is not done arbitrarily⁵³. Applying this principle laid down by the Court to Regulation 910, one can conclude that restricting the work of administering deceased estates to competent persons with the proper training and skills is not arbitrary. However, Regulation 910 is not consistent.
- It does not restrict the administration of deceased estate to only professionals but makes provision for laypersons to administer deceased estates too - this certainly drives Regulation 910 into the range of being arbitrary⁵⁴, and consequently possibly unconstitutional. Should it ever be found by a competent Court that Regulation 910 is in fact unconstitutional, on which ever grounds, it will obviously affect the applicability thereof.
- However, until such time that a Court makes a finding on this, the constitutionality of Regulation 910 remains moot and consequently remains applicable.”
- In respect of the role and function of a possible Masters' Ombudsman, Counsel found that there “is a dire need for a culture of governance that is based on the principles of transparency, integrity, accountability and stakeholder participation in the Master's Office and the broader insolvency profession”. Counsel stated that:
 - The fundamental function of the ombudsman would be to investigate and report on any complaints brought against the any of the Master's Offices across the country.
 - The existence of the office of the Ombudsman will ensure that there is a mechanism for citizens and insolvency practitioners who are affected by the decisions of a Master, which adversely impacts them.

⁵² *S v Lawrence* 1997 4 SA 1176 (CC).

⁵³ Ibid para 33.

⁵⁴ South African Law Reform Commission, Discussion Paper 110 para 5.3.5.

- Broadly speaking, the Ombudsman is an element in the democratic system of checks and balances. In short, the ombudsman plays an essential role in preventing the Master from gaining absolute power without constraints, accountability or controls. For, if the public is to have confidence in the Master, constraints must be imposed on the power it exercises.
- In contrast to a court of law, the Ombudsman will not give legally binding decisions. This is not a cause for concern because in a country where the rule of law and democracy is strong, the non-binding nature of the recommendations will be voluntarily adhered to by those Masters who are implicated.
- The advantage of having an ombudsman is that its procedures are more flexible than court procedures; act relatively quickly, cheaper processes which result with zero cost being incurred by the complainant.
- The Ombudsman will be able to identify and report on systemic problems within Master's Offices based on the patterns that emerge from the complaints.
- To function optimally, the Ombudsman must have its own staff and be institutionally independent from the Master's Office and functionally independent from the DOJ & CD, which will retain some financial oversight over the ombudsman office.
- The public must have easy access to the Ombudsman. To maintain good relations with the public, the Ombudsman has to be effective. The public must, after all, have confidence in the institution and to generate this confidence, it is essential that the ombudsman maintains a high profile and, above all, that his work yields result. For without these results, the public will soon feel that there is little point in turning to him. Confidence in the ombudsman also presupposes independence and impartiality - not only of the office, but also of the person holding it.
- Counsel's recommendations in respect of the Incorporation of the Association of Insolvency Practitioners of Southern Africa ("AIPSA")/ South African Restructuring and Insolvency Practitioners' Association ("SARIPA") in future changes to the industry, are as follows:
 - AIPSA broadened the scope of its activities to include business rescue and restructuring, and thus renamed itself SARIPA to reflect this change.
 - This body must be consulted and included in the policy decisions. However, this should be a broader call for public participation. There are a number of insolvency, restructuring and business rescue practitioners such as the Black Business Rescue and Insolvency Practitioners of South Africa ("ABRIPSA"). Other voluntary associations may form and have an interest in hearing this matter.

- It is recommended that the Master's Office must establish a Commission that will comprise a number of relevant stakeholders.
- To this end, we simply recommend that this can be done by ensuring that the Master consults this body before making any policy decisions. Whatever views are made by AIPSA (SARIPA) will not be binding but should be considered and taken into account. This could be achieved through making regulations or Ministerial Directives that make provision for such a consultation.
- In terms of the implication of SARIPA decisions, Counsel found that:
 - In its first affirmative action decision, Van Heerden⁵⁵, the Constitutional Court held that the South African equality right, including section 9(2), heralds the 'start of a credible and abiding process of reparation for past exclusion, dispossession and indignity'. Thus, according to the Court, the equality right 'embraces for good reason a substantive conception of equality inclusive of measures to redress existing inequality.' In Van Heerden, the Constitutional Court set down the standard that affirmative action measures would have to meet to pass constitutional muster — the Van Heerden test. Accordingly, the permissibility of quotas under section 9(2) hinges on whether they can pass this test. The Van Heerden test requires that an affirmative action measure must: target persons who have been disadvantaged by unfair discrimination (leg 1); be designed to advance and protect such persons (leg 2); and promote the achievement of equality (leg 3)⁵⁶.
 - The SARIPA HC⁵⁷ decision concerned a policy drafted by the Minister of Constitutional Development regarding the appointment of provisional trustees to administer insolvent estates pending the appointment of final trustees. The policy sought to redress a disproportionate allocation of work to white males in the insolvency industry and facilitate access to the industry and restore the previously disadvantaged insolvency practitioners' rights to equality, dignity and realise their right to follow their trade, profession or occupation.
 - Essentially, the policy embodied a quintessential quota system aimed at effecting transformation of the insolvency profession.
 - The policy was challenged on four key grounds – three of which had the excessive rigidity of the roster system as their underlying basis: the fetter on the Master's discretion; the irrationality of the Policy in and of itself; and, for our purposes, the Policy's noncompliance with section 9(2). In this latter regard specifically, the Policy was attacked on the basis that

⁵⁵ Minister of Finance & Other v Van Heerden [2004] ZACC 3, 2004 (6) SA 121 (CC) ('Van Heerden').

⁵⁶ Van Heerden para 37.

⁵⁷ South African Restructuring and Insolvency Practitioners Association v Minister of Justice and Constitutional Development; In Re: Concerned Insolvency Practitioners Association NPC v Minister of Justice and Constitutional Development [2015] ZAWCHC 1, 2015 (2) SA 430 (WCC) ('SARIPA HC')

the inflexible race and gender-based appointment process was inconsistent with the constitutional scheme of section 9(2), which requires remedial measures to be nuanced and context-specific by encouraging the balancing of a range of relevant considerations.

- In this vein, the case was pleaded on the common cause basis that the Policy imposed an impermissible quota system, which was prohibited not only under the EEA but also more broadly in respect of all section 9(2) remedial measures, including those applied in the insolvency context. Katz AJ upheld the challenge declaring the Policy to be inconsistent with section 9(2) of the Constitution.
- In addressing leg 1 of Van Heerden test he relied on the objectives of the Policy – particularly its goal of transforming the insolvency industry – as well as the categories of designated persons delineated in legislation and targeted by the Policy, to conclude that it did in fact target a class of persons who had been unfairly discriminated against. However, regarding the Policy's rationality and particularly whether, by its design, it was likely to improve the position of PDI's within the meaning of leg 2 of the test, Katz AJ offered two main reasons for his conclusion that it would not and was thus irrational: (i) there was a lack of evidence to show that the Policy was reasonably capable of meeting its transformative objectives and further, that the Minister had relied on inaccurate statistics in developing the Policy; and (ii) the roster system amounted to an impermissible quota regime and was thus an affront to section 9(2).
- Regarding (i), Katz AJ noted that evidence is 'critical' for determining whether a system adopted is rationally related to the objectives of the Policy and is thereby reasonably capable of achieving the envisaged outcome. He highlighted the following reasons why the evidentiary deficiencies compounded the irrationality of the Policy.
 - First, it could not be shown that the policy would ensure a proper match – essential given the fiduciary role of the practitioner – between the individual skill of a practitioner and the requirements of the job determined by the legislative framework as a whole. Secondly, there was insufficient evidence to show that the Policy would provide previously disadvantaged people with the necessary skills to develop successful practices and generate creditor confidence: 'a system that randomly assigns appointments is unlikely to assist people in building up sector specific expertise.' Thirdly, Katz AJ found the unexplained absence of a Policy 'expiry date' to be irrational, for (amongst other things) it 'directly counter[ed] the notion of empowerment as increasing skill and expertise' and 'the failure to provide clear timelines or targets [made] it difficult to determine whether it [was] likely to achieve its intended outcome'. Fourth, there was no compelling evidence to show that the Policy would in fact change creditor patterns of nomination and combat issues such as fronting and corruption – in fact, in respect of the latter goal, the scanty evidence seemed to suggest that the Policy

would actually exacerbate fronting practices. Finally, on the dubious statistical support for the ratios adopted in the Policy, Katz AJ noted that the inaccuracies and gaps showed that the factual basis for the Policy's design and adoption was flawed.

- In this regard, he lamented the difficulty in 'understand[ing] how a proper determination of an appropriate policy could be made with significant gaps in the information considered by the Minister', and held that this, in turn, '[diminished] the likelihood of the Policy achieving its stated objectives in the near future.'
- Regarding (ii), the rigidity issue, Katz AJ found that the appointment system in the Policy amounted to a quota and was thus irrational within the meaning of section 9(2) and thereby constitutionally invalid:

"The measure adopted is too rigid. The Policy introduces an inflexible race and sex-based appointments process. The Constitutional Court has emphasised that while the Constitution is a transformative one and that remedial action to address past injustices is a required and indeed lawful imperative, such measures need to be nuanced.⁵⁸"

- Katz AJ did not make a pronouncement on the merits but rather restricted himself to the two issues. The first one was that the policy put in place by the Minister put in a place a rigid, inflexible regime in which the Master was reduced to a rubberstamp, who had to appoint people, denuding the Master of a discretion they enjoyed.
- On appeal to the Supreme Court of Appeal,⁵⁹ a unanimous court of five judges agreed with the High Court: The Supreme Court of Appeal held that the Policy failed to meet the section 9(2) Van Heerden test essentially because – absent any 'saving discretion' – it was rigid, inflexible and thus irrational.
- Like the High Court, the Supreme Court of Appeal proceeded from the common cause assumption, that the quota ban applies outside the confines of the EEA to all remedial measures, but unlike Katz AJ, Mathopo JA did not attempt to propound a clear and principled basis for this landmark extension. He noted simply that-

"Rigidity in the application of the policy or which has the effect of establishing a barrier to the future advancement of such previously advantaged insolvency practitioners, is

⁵⁸ SARIPA HC Judgment para 321.

⁵⁹ Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association [2016] ZASCA 196, 2017 (3) SA 95 (SCA) ('SARIPA SCA').

frowned upon and runs contrary to section 9(2) of the Constitution. These principles emerge from the [recent] decisions of the Constitutional Court."⁶⁰

- The essence of Mathopo JA's section 9(2) analysis turned on the rigidity of the impugned clauses which entrenched a 'strict allocation of appointments in accordance with race and gender', and 'contain[ed] none of the flexibility and all of the rigidity that the Constitutional Court has said is impermissible'.
- Relying on Moseneke J's phrasing in Van Heerden to the effect that restitutionary measures cannot be 'arbitrary, capricious or display naked preference', Mathopo JA explained that an example of this is a quota system, 'or one so rigid as to be substantially indistinguishable from a quota.'
- The Policy was found to amount to such an impermissible quota and was thus irrational within the meaning of leg 2 of section 9(2). The so-called discretion in clause 7.3 – to appoint a joint practitioner along with the next inline practitioner on the roster, on suitability and/or complexity grounds – could not save the rote system from amounting to a quota for it did not constitute a 'general discretion' which would 'avoid the result of the Policy being applied'. Instead, all it did was–

*"provide the Master with a mechanism, in an ill-defined range of cases, to compensate to some degree for the fact that the policy dictate[d] the appointment of someone not qualified to undertake the task, either because of its complexity, or because of their unsuitability.... This power of appointment [did] not resolve the fact that clause 7.1 require[d] the Master to make an appointment in accordance with a rigid quota."*⁶¹

- Both the High Court and the Supreme Court of Appeal found the Policy to be too mechanical, alphabetised roster system for the appointment of insolvency practitioners to be excessively rigid for want of any general discretion to depart from the scheme. For this reason – on the strength of earlier dicta in South African Police Service v Solidarity obo Barnard [2014] ZACC 23, 2014 6 SA 123 CC and then Solidarity v Department of Correctional Services [2016] ZACC 18, 2016 (5) SA 594 (CC) – it was held to fall foul of the section 9(2) test. The Barnard and Solidarity cases were decided in the context of the Employment Equity Act, 1998 ("EEA"), which expressly prohibits quotas. The High Court and Supreme Court of Appeal decisions in SARIPA extended the quota ban to circumstances beyond the purview of the EEA.

⁶⁰ SARIPA SCA para 29.

⁶¹ SARIPA SCA para 34.

- On appeal before the Constitutional Court⁶², Jafta J did not challenge the approach taken by the lower courts, nor did he expressly endorse the approach. Instead, he found the impugned policy unconstitutional on other grounds.⁶³
- However, in his dissenting opinion, Madlanga J showed some scepticism towards the lower court's extension of the prohibition beyond the EEA. While he did not make any definitive findings, he reasoned that 'before invalidating a measure meant to achieve substantive equality for being rigid, it must be looked at in context or in a "situation-sensitive" manner. It can never be a one-size-fits-all'.⁶⁴
- The import of these decisions is that transformation as set out in section 9(2) of the Constitution is grounded in a purposive appreciation of a restitutive measure as a flexible and context-specific tool for the achievement of substantive equality.'
- With regard to proposals on how to resolve the practice of adopting insolvency practitioners to the exclusion of a PDI, Counsel recommended the following:
 - In light of the decisions discussed above, it appears that the best solution would be to make legislative amendments, which make transformation a priority. The Master is a creature of statute and thus, the best avenue would be to change the statutes that empower him / her.
 - Policies (exercise of executive power) that fetter the discretion of the Master's discretion will most likely not pass constitutional scrutiny."

13.1.4 Letter to the DOJ & CD/Dept dated 5 September 2022

13.1.4.1 Aspects indicating a failure to keep proper records

- Allegations of improper record keeping related to mail and files were received at the Master in Cape Town. It was found that a Circular or Directive to regulate record keeping in respect of mail and files were not in place.
- Group Registration Clerks of the different sections do not have a register system in place reflecting mail, which were uplifted by them for distribution in the various sections to the relevant officials.
- The filing room allocated for the filing of files, does not have an access control system to the room or a register reflecting the receipt of files and the movement of files from the filing room.

⁶² Minister of Constitutional Development & Another v South African Restructuring and Insolvency Practitioners Association & Others [2018] ZACC 20; 2018 (5) SA 349 (CC) ('SARIPA CC').

⁶³ SARIPA CC paras 41-43. The policy failed the *Van Heerden* test because, inter alia, the classification of its beneficiary groups would have the impact of perpetuating the disadvantage of Black male and female insolvency practitioners who were not citizens at the time of the democratic transition.

⁶⁴ SARIPA CC para 80.

- The following systemic recommendations are suggested:
 - All the Group Registration Clerks of the different sections collecting mail should open a register to reflect mail uplifted and then distributed to the relevant officials within their section. The registration of mail received should reflect the date when the mail was received and from whom it was received. The register should also reflect to whom the mail was presented and when. The register should also reflect the particulars of the relevant file. This recommendation in respect of mail management is made to address the inadequacy of the current system that lends itself to the loss of pertinent information.
 - Currently, only Post Office registered mail is captured on computer and not normal post office collected mail. Mail received over the counter is also not registered on computer. It is recommended that all forms of mail are electronically captured. The manual record keeping systems referred to in paragraph 3.1 above must also be electronically captured for back up record keeping purposes should the registers be lost.
 - It is recommended that the Cape Town Masters' office registry be capacitated with more suitable trained staff to deal with the large volume of correspondence received on a daily basis. There is currently only one suitably experienced official managing the work of a few people.
 - The filing room utilised for the storing of files should have an access control system in place. This filing room should have a register indicating the receipt of files. The relevant date when the file was received as well as the particulars of the file should be reflected in this register. The register should also reflect from whom the file was received. The upliftment of files should also be reflected in a register indicating particulars of the file as well as by whom and when the file was uplifted. The section to which the file is removed must also be reflected.
 - The manual record keeping systems referred to above must also be electronically captured for back up record keeping purposes should the registers be lost.
 - In respect of files in storage in the filing room, a staff member/s should be appointed to take responsibility for the administration of such a storage facility.
 - To ensure that correspondence and documents on file are properly recorded it is recommended that the official to whom a file has been allocated to create an index to correctly reflect all correspondence and documents on file. Once a file is removed from storage or returned to storage the person appointed to take responsibility for the administration of such a storage facility must ensure that the file is complete compared to the index. If the file is not complete a record must be kept of documents missing from the file and from whom the incomplete file was received.

- It is recommended that the record keeping procedures applicable to mail and files should be contained in a Circular or Directive to serve as guidance to the staff.

13.1.5 Letter to the DOJ & CD dated 6 October 2022

13.1.5.1 The appointment of liquidators

- With reference to the section dealing with the maladministration in connection with the affairs of the Master's Offices as set out in the Estates Act for the administration of estates of deceased persons, the SIU took into consideration the Insolvency Act, as amended, and the Companies Act, 2008 as amended, in relation to the insolvency file G34/2004 - Doornhoek Hotel (Pty) Ltd that the decision of the Master in appointing liquidators/trustees who at the time was not listed on the panel of liquidators/trustees was incorrect. As a result, another Master withdrew the appointment and appointed another liquidator/trustee, which was valid.
- However, in terms of the Estates Act, one Master cannot overrule a decision made by the Master. In the Act, "Master" is defined as the Master, Deputy Master, or Assistant Master.
- The Chief Master's Directive 2 of 2015 stipulates –
 - "1.1 *The primary function of the Master is to regulate the administration of estates. It is the duty of the Master to ensure that the legal and financial interests of those affected in the administration of an estate are taken care of in a compassionate manner.*
 - 1.2 *The conduct of the Master must at all times assure the public that the manner in which estates are administered is-*
 - 1.2.1 *in compliance with the law; and*
 - 1.2.2 *that the financial and legal interests of all those who may be vulnerable will be protected..."*
- In terms of a reported case *De Wet and Another v Khammissa and Others* (358/2020) [2021] ZASCA 70 (4 June 2021), the Supreme Court of Appeal (the Court) dismissed an appeal against an order of the Gauteng High Court, Pretoria, which upheld the respondents' application to review and set aside the decision of the Master, Gauteng Division, Johannesburg (the Master) in terms of which the Master had purported to replace her earlier decision (the first decision) not to appoint the appellants as joint co-liquidators with the respondents, with a decision (the second decision) to appoint the appellants as joint co-liquidators with the respondents.
- The Court found that the Master's first decision was final and binding; therefore, the Master had no power to rescind it and replace it with the second decision. The Master was, therefore *functus officio*, and thus the second decision a nullity.

- The principles of *functus officio* are that the decisions bind the Master, Deputy Master, or Assistant Master. Therefore, the Chief Master cannot review or correct an administrative decision.
- The Master is, in terms of the Acts governing the Master's powers, obliged to make appointments, decisions, rulings, orders, or give directions daily within the empowering provisions of these Acts.
- Furthermore, the Chief Master does not have the power to exercise control, direction, and supervision over the judicial decisions by Masters, Deputy, and Assistant Masters, which are only reviewable by the High Court.
- The SIU identified that:
 - following preliminary systemic recommendations concerning the Masters, that the wording of "control", "direction", and "supervision" needs to be defined in the Act and amplified if the Chief Master is required to review any judicial decisions made by officials in the Master's Office. Alternatively, refer to our previous systemic recommendation whereby an Ombudsman is created with retired experts in the Masters field to adjudicate on Masters' decisions to save the costs of High Court to which the public have to revert to overturn Masters' decision.

13.1.6 Letter to the DOJ & CD dated 2 March 2023

13.1.6.1 Letter of Authority for Funeral Purposes Only

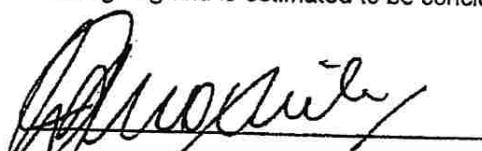
- With reference to the section dealing with the maladministration in connection with the affairs of the Masters' offices as set out in the Estates Act for the administration of estates of deceased persons, the SIU analysed an estate and found that a Letter of Authority for Funeral Purposes Only ("LOA for FPO") was discovered in the file. The LOA for FPO dated 1 October 2018, indicated that ABSA Bank could pay R50 000 from a certain account.
- The SIU requested a Deputy Master in the Office of the Chief Master, to provide the directive or applicable law that explains the process that needs to be followed to issue such a LOA for FPO. The Deputy Master responded that he/she had never seen such an appointment letter and the system does not generate it. There is no URN number or name of the approving Assistant Master but that does not mean it is not an invalid appointment.
- Section 11 of the Estates Act allows a person who holds estate assets to dispose of any such asset for the bona fide purpose of providing a suitable funeral for the deceased.
- However, the banks are not willing to pay out any funds without the appointment letter from the Master so the Masters have developed the MBU 12 form with which the Bank is requested to release a specific amount to specific person / institution for payment of funeral expenses, prior to issuing the appointment letter.

- This was used during the system hack of 2021, as the offices were unable to generate and issue appointment letters, or where the family of the deceased reported the estate but there are still outstanding requirements for the appointment, but they need to urgently bury the deceased.
- Procedurally, this document is what Masters' offices normally use where funds are needed for funeral purposes before the appointment can be made.
- However, this particular appointment was done in terms of section 18(3) and this section states that the Master can give directions in which manner an estate with a value of less than R250 000 should be liquidated and distributed.
- This means that, although there is a template they use for these types of appointments, the Master has the discretion to endorse the appointment letter with any further instruction he/she may deem necessary (there is no prescript on how such endorsement should look), which seems to have been done in this case. Whether it was done procedurally correct is debatable, but it is not incorrect in law.
- A section 18(3) appointment can only be used for the assets indicated on the appointment, which means that the appointee will not be able to transfer / obtain / dispose of / withdraw any other assets with it.
- Should there be other assets which need to be dealt with, the Master will either:
 - Issue an amended appointment letter indicating all the assets; or
 - If the value of the assets is R250 000 or more, withdraw this Letter of Authority and appoint a formal executor.
- The SIU interviewed an Estate Controller at the Polokwane Master's Office who stated that he was employed at the Polokwane Master Office in 2008 and this LOA for FPO has been in use since then and it is still in use today. He explained that the form is manually created where after the Assistant Master approves it. He stated that he has never seen the MBU 12 from the Chief Master's Office.
- The SIU interviewed a second Estate Controller who stated that the LOA for FPO is manually created and cannot be generated on the Integrated Case Management System ("ICMS"). The LOA for FPO assists the family to withdraw funds for the funeral of the deceased, is approved by an Assistant Master and was in use at the Polokwane Master's Office when he started working here in 2011. It is still in use and not withdrawn because it is a temporary measure. He was shown the MBU 12, and he responded that he was aware that his colleagues in Pretoria use it.
- From a review of the Chief Master's Directive 2 of 2015 – Appointments in deceased estates (dated 3 August 2015), the SIU could not find any directive, guidance or process in relation to the withdrawal of funds from the deceased's bank account for funeral purposes.

- The SIU determined that the Master's Office officials in Polokwane are not using the same document when they provide an official document to authorise the family members of the deceased to withdraw funds from the deceased's bank account for funeral purposes, in comparison with the MBU 12 that was provided by the Chief Masters Office.
- The SIU recommends the following systemic recommendations:
 - That a standard / uniformed approach be implemented when the Master's Office officials assist family members in providing official documentation to withdraw funds from a deceased's bank account under the gazetted amount for a matter requiring a LOA.
 - That the Chief Master's Directive 2 of 2015 – Appointments in deceased estates (dated 3 August 2015) be reviewed and a section be included to describe the process that needs to be followed when assisting family members in providing official approval to withdraw funds from the deceased's bank account for funeral purposes with the required supporting documentation or, in the alternative, an additional Chief Masters Directive should be issued.
 - That the reviewed / new directive and all MBU templates be brought to the attention of all relevant officials dealing with estates at all the Master's Offices.

14. CONCLUSION AND SIGN OFF

The investigation into 270 matters under Proclamation No R7 of 2020 is concluded and three matters are still ongoing and is estimated to be concluded by August 2023.



Adv. JL Mothibi

Head of the Special Investigating Unit

Date: 21/09/2023

the ordinary service of the liquidator is entitled to receive compensation from the asset of the company concerned not rendered for services at its liquidation and no liquidator is entitled to either himself or through his partner to receive compensation for his services from the asset of the company not except the compensation on which he is entitled under this Act.

- Mr Du Plessis allowed the liquidators to contravene Section 394(7)(a) & (b) of the Companies Act in that they without lawful excuse, retain or knowingly permits their co-liquidators to retain any sum of money exceeding forty rand belonging to the company concerned longer than the earliest day after its receipt on which it was possible for them or their co-liquidators to pay the money into the bank, or uses or knowingly permits their co-liquidator to use any assets of the company except for its benefit.
- Mr Du Plessis, therefore, did not exercise reasonable care and diligence as set out in Section 100 of Estates Act: Exemption from liability for acts or omissions in Master's Office:

'No act or omission of any Master or of any officer employed in a Master's office shall render the State or such Master or officer liable for any damage sustained by any person in consequence of such act or omission: Provided that if such act or omission is mala fide or if such Master or officer has, in connection with such act or omission in the course of his duties or functions, not exercised reasonable care and diligence, the State shall be liable for the damage aforesaid.'

- Mr Du Plessis contravened Section 381 of Companies Act:
 - 381(1): He failed to take cognisance of the conduct of liquidators and failed to enquire into the matter and take such action when the liquidators did not faithfully perform their duties and duly observing all the requirements imposed on them by any law or otherwise with respect to the performance of his duties, or if any complaint is made to him by any creditor, member or contributory in regard thereto.
 - 381(2): He failed request the liquidators to answer any enquiry in relation to any winding-up in which such liquidator is engaged, and may, he failed to examine the liquidators or any other person under oath concerning the winding up.
 - 381(3): He failed to appoint a person to investigate the books and vouchers of the liquidators.
- The Master contravened section 36 of Estates Act when he failed to act against the liquidators when they did not lodge their account.

Failure by executor to lodge account or to perform duties

"(1) If any executor fails to lodge any account with the Master as and when required by this Act, or to lodge any voucher or vouchers in support of such account or any entry therein in accordance with a provision of or a requirement imposed under this Act or to perform any

other duty imposed upon him by this Act or to comply with any reasonable demand of the Master for information or proof required by him in connection with the liquidation or distribution of the estate, the Master or any person having an interest in the liquidation and distribution of the estate may, after giving the executor not less than one month's notice, apply to the Court for an order directing the executor to lodge such account or voucher or vouchers in support thereof or of any entry therein or to perform such duty or to comply with such demand.

(2) *The costs adjudged to the Master or to such person shall, unless otherwise ordered by the Court, be payable by the executor, de bonis propriis."*

- The core purpose of the Master is to supervise the administration of the insolvent estate to ensure an orderly winding up of the financial affairs of the estate. Yet, the Mr Du Plessis has failed to protect the insolvent estate and financial affairs as accounting officer therefore he has contravened Estate Act Sections 35(2) and (2A).
- Mr Du Plessis agrees that the illegal fee agreement might be a violation of section 3 of the PRECCA he failed to report the matter. The court has issued a declaratory order that the fee agreement is illegal, but even then, he stated that he could not find anything wrong with the liquidators entering into an illegal fee agreement.
- Mr. Du Plessis failed to act against the liquidators when they committed perjury.
 - In paragraphs 5.13 to 5.16 of Mr Noordman's founding affidavit under case no. 2696/2014, he stated that he was in conversation with the liquidators of Lechwe Lodge. According to him the liquidators indicated that they will not continue the reception and conference business, where after the liquidators of Sebal consequently approached the Master for expansion of their powers to continue the business known as Lechwe by Sebal.
 - In his founding statement under case no. 1716/2015, dated 10 June 2015 Mr Noordman indicated under oath "that he wants to make it clear that his statement, in that regard is not factually correct".
- Mr. Du Plessis contravened sections 60 of the Insolvency Act and 379(1) of the Companies Act. The Master as the accounting officer had the duty to oversee the conduct of the assistant masters and to adhere to any complaints received by his office. Therefore, the Master has failed to protect the estate and its financial affairs therefore he has contravened the Estate Act, Sections 35(2) and (2A) Liquidation and distribution accounts. The Master may remove a trustee or liquidator from office if, *inter alia*, the trustee or liquidator was not qualified for appointment, or has become disqualified from appointment, or has acted on authority of a power of attorney to vote on behalf of a creditor, or has failed to perform satisfactorily any duty imposed upon him by the Act or to comply with a lawful

demand of the Master, or if in the opinion of the Master the trustee or liquidator is no longer suitable to be the trustee of the estate concerned.

- It is clear from the above that the role of the Master of the High Court is regulatory, supervisory, advisory, administrative (in a clerical sense of the word) and administrative (within Section 1 the definition of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). Mr Du Plessis contravened the PAJA act when he failed to exercise a public power or performing a public function in terms of any legislation.
- The Master did not remove the liquidators even when Judge Van Zyl, in case no 2688/2014 ordered that the liquidators are prohibited from proceeding with the liquidation process, pending the investigation by the Master. The Master declared on 25 February 2015 that the application to remove the liquidators is rejected. He is not convinced that the liquidators are no longer suitable to act as liquidators of Sebal in liquidation.
- The core purpose of the Master is to supervises the administration of the estate, to ensure an orderly winding up of the financial affairs of the estate and protection of financial interests of the heirs.
- Mr Du Plessis as the Master has failed to protect the estate and financial affairs as accounting officer therefore, he has contravened of the Estate Act, Sections 35(2) and (2A) Liquidation and distribution accounts.
- From the evidence detailed above it is submitted that Mr Du Plessis had committed offences by not following the above legislation and therefore committed misconduct.

8.7.1.2 Steps Taken

- **Disciplinary Referral**
 - Mr Jan Abraham du Plessis, Master . Free State Provincial Division, Bloemfontein:

On 19 May 2023 the SIU referred evidence of misconduct to the DOJ & CD.

- **Criminal Referral and Referrals for Administrative Action**
 - Messrs. Noordman and Senekal

On 13 June 2023, the evidence obtained was referred to the NDPP and the LPC.

8.8 Matter 40 – Liquidation: Kameelhoek (Pty) Ltd and Schaappaalts 978 (Pty) Ltd

8.8.1 Nature of allegation

The allegation relates to a complaint received from Mr Sarel Wessels in that the Master in Bloemfontein allowed that his liquidation was done in a corrupt way. He alleges that fees more than allowed by law was

paid to the Liquidators. In a civil matter it was also found by the Court that the liquidation was a gross misconduct.

8.8.1.1 Summary of findings

The first company is Kameelhoek (Pty) Ltd ("Kameelhoek") registration number 1979/00200/07, only owned the immovable property, the game farm, and it was never run as a business. Master of High Court case number B110/2012. The shareholders of Kameelhoek were Robert Petrus Jansen Knipe ("Knipe") and his siblings, Carol Knipe, Jacqueline Knipe, John Knipe, and Andre Knipe.

The second company is Schaappaats 978 (Pty) Ltd ("Schaappaats") with registration number 1979/004048/07 is a business, that operated on the immovable property as a game farm and accommodation business.

On the 4 September 2012, an application for liquidation was brought in the Free State High Court in Bloemfontein. On the 4 September 2012 Kameelhoek and Schaappaats were provisionally liquidated in Bloemfontein High Court under case number 1936/2011 and case number 1937/2011.

On 30 August 2012, Mr Noordman of Matsepe's Incorporated ("Matsepe's"), St Clair Cooper ("Cooper") of Coopers Trust and Simon Malebo Rampoporo ("Rampoporo") of Honey Attorneys were appointed as provisional liquidators. Mr Senekal of Senekal Incorporated, previously a director of Matsepes Incorporated, was the legal representative on record of the provisional liquidators on record, at all relevant times. The final liquidation of Kameelhoek and Schaappaats was done on 27 June 2013. On 28 August 2017, Cooper of Honey Attorneys was appointed as liquidator of the Kameelhoek and Rampoporo, of the same law firm. The two (2) Companies Kameelhoek and Schaappaats were involved were liquidated in terms of Section 344(h) of the Companies Act in that it appeared to the Court that it was just and equitable that the two companies should be wound up. The two companies involved were solvent and were able to pay their debts. An affidavit was obtained from Knipe setting out the background.

Role and mandate of the provisional liquidators

Mr Jacobus Strauss, an Assistant Master, submitted a comprehensive process affidavit explaining the process of the Master's Office and duties of the liquidators.

Powers of provisional liquidator: In practice the Master limits the provisional liquidator's powers to those in section 386(1)(a), (b), (c), (e) and (4)(f) of the Companies Act. In terms of Section 18(3) of the Insolvency Act, a provisional trustee has the powers and duties of a trustee, except that the provisional trustee may not

- without the authority of the court bring or defend legal proceedings; and
- without the authority of the Master or the court sell property of the estate.

Subsection (3) provides that a liquidator in a winding-up by the court, with the authority granted by a meeting of creditors and members or contributories or on the directions of the Master given under section 387, shall have the powers mentioned in subsection (4). Such directions by the Master arise only once the general meeting of creditors have been held and in practice the Master does not give a provisional liquidator the power in terms of subsection 1(d) to convene such a meeting. In practice creditors or the Master can therefore not give a provisional liquidator the powers in subsection (4). Included in these powers is the exercise *mutatis mutandis* of the same powers conferred upon a trustee by section 35 (uncompleted acquisition of immovable property) and section 37 (effect of sequestration upon a lease), provided that the powers conferred by section 35 shall not be exercised unless the company is unable to pay its debts. The actions of a liquidator can be ratified retroactively by directions given at a meeting of creditors.

The provisional trustee must satisfy the court that a departure from the normal course of events is warranted, and where the institution of proceedings to enforce a claim is contemplated, that some degree of urgency exists, that the cause of action is *prima facie* enforceable; and that the interests of creditors will not be prejudiced by the earlier institution of proceedings.(See Warricker & Another NNO v Liberty Life Association of Africa Ltd 2003 (6) SA 272 (W) 276G; Van Zyl and Another NNO v Kaye NO and Others 2014 (4) SA 452 (WCC) par [47]). Subject to the above, the Master may, before the first meeting, give such directions to the provisional trustee as could be given to a trustee by creditors at a meeting.

In terms of Section 18(2): Powers which may be exercised by a final trustee, only if authorised by creditors, may be exercised by a provisional trustee only before the first meeting of creditors and with the consent of the Master. Certain powers may only be exercised with the consent of the Master.

Appointment of Mr Senekal as legal representative

Mr Senekal was the legal representative on record of the provisional liquidators on record, at all relevant times. The liquidators contravened Section 18(3) Insolvency Act when they appointed Mr Senekal without the permission of the Master or the Court.

Section 359(1) of the Companies Act suspends all civil proceedings by or against the company until appointment of a liquidator. A provisional liquidator has no power under Section 386(4) of the Companies Act to bring or defend proceedings not even with the authority or directions as envisaged by Section 386(3)(a) and the Master cannot grant him the authority by the provision of section 386(4)(a). if any proceedings by the company require to be taken the liquidator must apply to court to procure the vesting in him in his official capacity.

The provisional liquidators did not have any authority to mandate Mr Senekal to defend any action instituted by or against the solvent companies in liquidation. Mr Senekal did not have the authority in law to defend and legal action on behalf of the liquidators.

Mr Senekal's involvement in the winding up of the liquidation

In 2012 Mr Senekal started winding up the liquidation of the two estates Kameelhoek Bloemfontein Master of the High Court reference B110/2012 and Schaappaarts reference B111/2012 on behalf of the provisional liquidators. Mr Senekal was appointed by the provisional liquidators without permission or approval from the Court. Mr Senekal travelled to the farms of the companies to consult with the family members and employees of the companies. He convened meetings to conclude the loan agreement and the fees agreement and the sale agreement of the immovable property, those were the duties of the liquidators. None of the resolutions taken by the creditors at the second meeting authorised the liquidators to appoint an attorney to attend to the functions normally performed by a liquidator.

On behalf of the Master, it was submitted that the liquidators, both being attorneys, had no need to appoint an attorney to assist them with the liquidation process. The Master raised concerns about this practice, stating that the liquidators should and could have dealt with their duties and obligations without the assistance of Mr Senekal. Clearly there was no need to appoint Mr Senekal or Mr Haarhoff (also an employee of Matsepes Attorneys) to consult with the family members and explain their rights to them or to assist with the completion of the claim documents. Those were the functions and duties of the liquidators. As in the case of a trustee, a liquidator may appoint an agent to perform an act of administration on his behalf; but he is not allowed to delegate his statutory powers or obligations generally to another. His attempt to have done so is to be regarded as misconduct which would ordinarily justify his removal from office³⁴.

Mr Senekal was appointed by the provisional liquidators without permission or approval from the Court therefore Mr Senekal was not entitled to claim on estate liquidation account of Kameelhoek and Schaappaarts. Mr Senekal is guilty of conflict of interest as he was acting on behalf of attorney Mr Viljoen the dubious creditor while he also acted for the liquidators.

The provisional liquidators and Mr Senekal scheduled a general meeting of creditors on the 16 April 2013 to get directions by the creditors on the winding up of the two solvent companies in liquidation.

General meeting of creditors

The provisional liquidators and Mr Senekal could not deal with the affairs of the solvent companies in liquidation because all civil proceedings by or against the companies concerned were suspended in terms of section 359(1)(a) of the Companies Act until the appointment of the final liquidator unless they approach the court for special leave. They therefore did not have the authority to schedule a general meeting of creditors. No claims of creditors could be proven, and the validity of claims could not be explored.

³⁴ See Matsepe NO and Others v Master of the High Court Bloemfontein and Another [2019] JOL 44812 (FB)

Mr Johnny Knipe was therefore forced to apply to court to set aside the general meeting of creditors to protect the interest of the estates in liquidation.

Sale of the assets of the companies

The liquidators and Mr Senekal did not approach the court in terms of sections 387(3), 386(5) read with section 386(4) of the Companies Act for permission to sell the property of the company to pay the disbursements of the solvent companies. The liquidators and Mr Senekal further had no right to appoint Matsepes as the conveyancing attorneys and could only engage the services of a conveyancer to transport the farms in the new owner's name if they had the authority to do so.

In Matsepe NO and Others v Master of the High Court Bloemfontein and Another³⁵, the Master held that the liquidators contravened the provisions of section 384(3) of the Companies Act and the common law by allowing a firm of attorneys to act as the conveyancers in respect of the transfer of the farms, registered in the name of the Company. Creditors cannot waive the benefit conferred upon them. Where public policy demands the observance of a statute, then the benefit of its provisions cannot be waived by the individual, because he is not the only person who has an interest in the liquidation. Even though the fees payable to the conveyancer were not being paid out of the assets of the company in liquidation but by the purchaser, the conclusion that the agreement of sale contains certain conditions that were not complied with due to the liquidators failure to abide by the terms thereof, was unsettling and causes grave misgivings about the degree of care, skill and diligence with which they performed their duties as liquidators. The Master's decision to remove the liquidators from office in these circumstances cannot be criticised.

Remuneration of provisional appointee

If the provisional appointee is appointed finally, he or she charges remuneration for the administration as a whole when the liquidation and distribution accounts are lodged if the provisional appointee is not appointed finally (whether another person is appointed or the provisional or final order is set aside) the provisional appointee is entitled to reasonable remuneration determined by the Master, but not to exceed the rate of remuneration of a final appointee. According to a decision of the High Court, the provisional appointee is not entitled to draw remuneration until the account that reflects the remuneration has been advertised and confirmed³⁶.

Section 73 of the Insolvency Act provides that the trustee of an insolvent estate may with the prior written authorisation of the creditors engage the services of any attorney or counsel to perform the legal work specified in the authorisation on behalf of the estate. If the trustee is unable to obtain the prior written authorisation of the creditors due to the urgency of the matter or the number of creditors involved, he or she

³⁵ See Matsepe NO and Others v Master of the High Court Bloemfontein and Another (5081/2017) [2019] JOL 44812 (FB) par [42].

³⁶ See Strydom NO v Master of the High Court [2011] JOL 26650 (GNP) par [27] – [32]. Also, Warricker NO v Master of the High Court Johannesburg (28265/15) [2017] GJ (14 March 2017) par [19].

may obtain the prior written authorisation of the Master. If it is not likely that there will be any surplus after the distribution of the estate, (surely the position in almost all cases) the trustee may at any time before the submission of the accounts obtain written authorisation from the creditors. In most cases it will be impractical to obtain the written consent of all creditors and in practice trustees will probably have to seek the prior authority of the Master.

A liquidator may not receive his remuneration or part thereof, unless the Master or the court permits same, until such account has been confirmed by the Master. The Master concluded that the liquidators should be removed from office *inter alia* due to his finding that the liquidators were no longer suitable to be the liquidators of the Company. The High Court, Free State Division, Bloemfontein case number 956/2014 agreed that the appointment of Mr Senekal created a suspicion of partiality or conflict of interest since both the appointed liquidators and Mr Senekal were at the time practicing as attorneys at the same firm. The interference that the liquidators did not act independently, and their interest may have caused conflict with their duty as liquidators was not far-fetched.

Mr Andre Knipe paid R347 041.89 in respect of costs orders of in the estate bank accounts. Mr Senekal took the funds for himself in contravention of Section 384(3) and 394(7) of the Companies Act. The liquidators and Mr Senekal has also contravened Section 394(7)(a) & (b) of the Companies Act:

- (a) *"Any liquidator who without lawful excuse, retains or knowingly permits his co-liquidator to retain any sum of money exceeding forty rand belonging to the company concerned longer than the earliest day after its receipt on which it was possible for him or his co-liquidators to pay the money into the bank, or uses or knowingly permits his co-liquidator to use any assets of the company except for its benefit, shall, in addition to any other penalty to which he may be liable to pay to the company an amount not exceeding double the sum so retained or double the value of the assets so used".*
- (b) The amount which the liquidator is liable to pay, may be recovered by action in any competent court at the instance of the co-liquidator, the Master or any creditor or contributory. The money was retained on the 17 October 2022 not within 24 hours.

The liquidators paid an amount of R2 045 000 to Mr Senekal without authority, without consulting document and without applying their minds before doing so.

The Assistant Master, Mr Strauss, who was assigned to the two estates Kameelhoek and Schaapplaats, confirmed that the R2 045 000 paid to Mr Senekal must be paid back to the estate account.

The provisional liquidators Mr Noordman, Mr Rampoporo and Mr Cooper, authorised payment to Mr FJ Senekal of an amount R47 424 owed to Advocate Zietsman for fees rendered to different matters. The copy

of Mr Senekal's Standard Bank customer all payments final audit report and a letter from Advocate Zietsman to Mr Luke Saffy (Honey Attorneys) was obtained³⁷.

It is unlawful to draw remuneration from estates until the liquidation account in which the remuneration is reflected has been confirmed by the Master.

All money /remuneration Mr Senekal benefited, he was not entitled to because he was a director at Matsepe Incorporated and Mr Noordman ("the liquidator") was also an employee of Matsepe Incorporated.

All the money/remuneration paid to Mr Senekal should have been deposited in the Kameelhoek Pty and Schaappaats estate bank account pending the finalisation of the L&D account.

The SIU is of the opinion that where the liquidators appoint their own firm to deal with legal matters on behalf of the company in liquidation, no fee for the legal services may be taken from the estate³⁸.

Where the liquidator allows the legal fees to be debited as suggested in the scenario in question, the liquidators may be held liable to repay to the estate, an amount not exceeding double the sum that was debited in terms of section 394(7) of the Companies Act which funds may be recovered by action proceedings.

8.8.1.2 Steps Taken

- **Disciplinary Referral**
 - Mr Jan Abraham du Plessis (Master)
 - The investigation found that Mr du Plessis, Master, Free State Provincial Division, Bloemfontein with identity number 630216 0023 085 who was ACM at the DOJ & CD at the relevant times, stationed at the Bloemfontein Master's Office, may be guilty of various acts of misconduct.
 - At all relevant times, Mr du Plessis owed a duty of care to the public as the Master/Acting Chief for abovementioned companies in liquidation and for the proper execution of the liquidation, and to the DOJ & CD of which he is an employee, which duty of care is required from him, *inter alia*, to perform official functions and duties effectively, efficiently, with due care and diligence, in a professional and competent manner and in compliance with relevant legislation and regulations.
 - Mr du Plessis may be guilty but not limited to acts of misconduct in:

³⁷ Thulo v Road Accident Fund [2012] JOL 29418 (GSJ) [51] and Muller v The Master 1992 (4) SA 277 (T) at 284.

³⁸ The decision in the Symington NO matter, the provisions of section 384(3) of the Companies Act.

- Contravention of the Estates Act;
- Contravention of the Companies Act; and
- Contravention of Chapter 6 of the SMS Handbook
- The acts of misconduct identified above has been referred to the DG of the DOJ & CD on 5 April 2023.
- **NPA Referrals and Referrals for Administrative Action**
 - Messrs. Senekal, Noordman, Simon Melbo Rampoporo and Chavonnes Bedenhorst St Clair Cooper
 - Mr Senekal contravened Section 386(4) of the Companies Act. He did not have the authority in law to defend and legal action on behalf of the provisional liquidators.
 - Mr Senekal may be guilty of conflict of interest as he was acting on behalf of attorney Mr Viljoen- the dubious creditor- while he also acted for the liquidators. Mr Senekal may be guilty of partiality or conflict of interest, due to the fact that both the appointed liquidators and Mr Senekal were at the time practicing as attorneys at the same firm. The inference that the liquidators did not act independently, and their interest may have caused conflict with their duty as liquidators.
 - Mr Senekal attended to the functions normally performed by a liquidator without the authority to do so.
 - The provisional liquidators and Mr Senekal could not deal with the affairs of the solvent companies in liquidation because all civil proceedings by or against the companies concerned were suspended in terms of section 359(1)(a) of the Companies Act until the appointment of the final liquidator unless they approach the court for special leave. They therefore did not have the authority to schedule a general meeting of creditors. No claims of creditors could be proven, and the validity of claims could not be explored.
 - The provisional liquidators and Mr Senekal did not approach the Court in terms of sections 387(3), 386(5) read with section 386(4) of the Companies Act for permission to sell the property of the company to pay the disbursements of the solvent companies. The provisional liquidators and Mr Senekal further had no right to appoint Matsepse as the conveyancing attorneys. The provisional liquidators and Mr Senekal could only engage the services of a conveyancer to transport the farms in the new owner's name if they had the authority to do so.

- Mr Senekal contravened the provisions of section 384(3) of the Companies Act and the common law by allowing a firm of attorneys to act as the conveyancers in respect of the transfer of the farms, registered in the name of the Company.
- Mr Senekal contravened the provisions of section 384(1) of the Companies Act as he took the following fees before the Master taxed the account.
- Mr Andre Knipe paid R347 041.89 in respect of costs orders of in the estate bank accounts. Mr Senekal took the funds for himself in contravention of Section 384(3) and 394(7) of the Companies Act.
- The liquidators paid an amount of R2 045 000 to Mr Senekal without authority, without consulting document and without applying their minds before doing so. That the liquidators and Mr Senekal are guilty of contravention of Article 3 read in conjunction with sections 1, 2, 24, 25, 26 (1) (a) of the PRECCA.
- Mr Senekal contravened manner and in compliance with relevant legislation and regulation. In terms of Section 18(3) Insolvency Act when he failed his duty of care required from him as a member, *inter alia*, to perform his official functions and duties effectively, efficiently, with due care and diligence, in a professional and competent manner and in compliance with relevant legislation and regulation.
- Mr Rampoporo contravened Section 130(1)(a)-(d) of the B-BBEE Act of 2003 as amended, as he delegated Mr Luke Saffy to do provisional liquidators and liquidators' duties on his behalf without the written Power of Attorney.
- The liquidators and Mr Senekal failed to adhere to the LPC Code of Conduct
- The acts of criminality identified above has been referred to the NDPP in a letter dated 4 May 2023 as well as the conduct of the liquidators identified above has been referred to the LPC.

8.9 Matter 57– Deceased estate of Mr RW Crowe

8.9.1 Nature of allegation

The late Mr Robert William Crowe with Id No: 5002045066082 passed away 29 October 2018. He is survived by five children, two daughters from his first marriage: Ms Jacqueline Dawn Crowe and Ms Natalie Crafford and three daughters, Ms Esther Crowe, Ms Mariza Nadine Steyn and Ms Lara Ann Elizabeth Burger from the second marriage.

Of the two sisters from the first marriage, the complainant, Ms Natalie Crafford, speaking on behalf of her sister Ms Jacqueline Herbst, raised concerns relating to their late father's deceased estate. They felt aggrieved about the fact that they are being prejudiced by their sisters from their father's second marriage

for self-gain and are favoured by the executor, Mr Francois Hamman ("Mr Hamman") from Schoeman & Hamman Attorneys.

8.9.1.1 Summary of findings

In correspondence to the SIU, Ms Natalie Crafford detailed several complaints regarding the L& D account and the winding up of the estate and the transfer of two properties in Gauteng. The will stipulates that the five beneficiaries inherit equally. The transfer must therefore occur into the names of the relevant beneficiaries. The deed of transfer, however, reflects that the properties in Gauteng are subject to a *fideicommissum* which resulted in an additional three people being entitled to the properties or the income generated through the sale of the properties.

According to an interview held with Ms C Vermaak on 3 June 2021, she explained that the Master's Office must ensure that all beneficiaries receive what is due to them in terms of the will. The intention was to register a company by all those entitled to the property and affect transfer directly to the company. The executor, Mr Hamman, indicated that it must first be transferred to the beneficiaries before a transfer to the company can take place to ensure that tax payable to the SARS is not evaded. The registering of a company is a decision of the beneficiaries over which the Master has no control. There is no maladministration against the Masters' office or the executor in this regard as the conditions of the will must to be complied with.

Ms Natalie Crafford complained about an alleged lack of a list consisting of smaller movable assets (loose items) for redistribution.

Mr Hamman was only officially appointed as executor during February 2019 as the initial Letter of Executorship received on 06 December 2018 was not stamped. The stamped letter was received on 22 February 2019.

Prior to his appointment, an inventory was completed by Esther Crowe on 30 October 2018. This inventory did not list any furniture or other loose items of value. At the time when the executor was appointed the family had already distributed furniture and other items amongst themselves. It is not possible to determine the value of the items taken by the sisters. According to Deputy Master, Ms C Vermaak, she did not find it strange that a value was not attached to the loose items as, in terms of her experience, such items normally have a minimal value and do not form part of the saleable assets in an estate. In answer to this allegation Mr Hamman explained that the remaining loose items were of minimal value which did not justify any expenditure towards storage and Esther Crowe was entrusted by the other heirs to look after the assets. Mr Hamman indicated that no one showed interest in the purchase of the loose items nor did auctioneers express an interest in disposing of these items by auction due to the low values. Mr Hamman indicated that he instructed the collection thereof by a scrap collector to generate some income for the deceased estate. The proceeds of the sale of the scrap metal generated an income of R7 825.90 as reflected in a letter dated 10 January 2022 but the amount could not be traced in the L&D account. During consultation on 12 July

2022 with Mr Hamman acknowledged that he had failed to include the proceeds of the sale of scrap metal in the L&D and undertook to rectify the omission.

One of the vehicles in the estate, a 2014 Ford Figo was the subject of a higher purchase agreement with Wesbank. Ms Natalie Crafford made an offer of R45 000 for the said vehicle. This offer never materialised as Wesbank repossessed the vehicle. During consultation on 12 July 2022 with Ms Esther Crowe, she explained that Ms Natalie Crafford had made an offer for the 2014 Ford Figo and not the 2012 Ford Figo. Nothing came of this as the vehicle was repossessed by Wesbank and sold on auction to defer costs. The shortfall of this higher purchase was R48 620.32 which is reflected as claim 25 against the estate. This vehicle (2012 Ford Figo) is reflected in the L&D account as an asset valued at R45 000.

With reference to a Toyota DVD 2.5 litre bakkie, the vehicle was not found under eNatis on the late Mr Crowe's name. In an affidavit dated 08 October 2019 Ms Jacqueline Herbst stated she wanted to purchase the vehicle for herself for R100 000, she stated the vehicle was purchased by her father and repaired and was to be sold for R250 000. She also stated that Esther suggested to sell the bakkie and pay for the funeral and divide the balance amongst the sisters excluding Natalie.

The investigation revealed that the Toyota Hilux bakkie had been deregistered and is not reflected on the ENatis list of vehicles owned by the deceased. During consultation with Mr Hamman on 12 July 2022, he explained that he could not determine ownership because the vehicle was not registered in the name of the deceased. It was a code three (write off) bakkie that the deceased had purchased. On 12 April 2019, at a meeting between the executor and the heirs at the executor's office, Ms Esther Crowe indicated that it was a vehicle her father purchased to restore and that it is an asset of the deceased estate of her late father. She agreed to pay R73 000 for this vehicle and that this amount would be deducted from her share of the estate. According to her she already commenced with the restoration of the vehicle and invested in such restoration. This asset and an amount towards the purchase of the vehicle was reflected in the initial L & D account. It was not reflected in the subsequent L&D account which was brought to the attention of the Master.

During a site visit on 12/07/2022 to 14 Tuin Street Hopefield, the residence of the deceased at the time of his death, the Toyota bakkie referred to in the paragraph immediately above was found on site. The site visits also revealed that there were four Porsche vehicles (not in a roadworthy condition) on site whereas on the L&D account submitted to the Master, only one Porsche is reflected whereas two Porsche's are reflected on eNatis. A letter was written to the Master in which the Master was requested to ensure that the vehicles are correctly reflected in the L & D account.

According to the relevant eNatis printout, of all the vehicles owned by the late Mr RW Crowe, 13 vehicles were registered to his name. The latest L&D account submitted by the executor Mr Hamman to the Master, does not reflect all the vehicles in the L&D account. As indicated in the paragraph above a letter was written to the Master requesting to ensure that the vehicles are all accounted for as per the eNatis record.

Natalie Crafford raised questions about investment accounts held by the deceased and what income the deceased estate generated from these investment accounts. Prior to his death the deceased had investment accounts at Stanlib and ABSA. The investigation and financial statements in respect of both investments revealed that there were no active investments at the time Mr Crowe passed away and that these accounts were closed prior to his death. The closure of these accounts occurred prior to the death of the deceased and does not warrant investigation by the executor.

One of the heirs, Ms Herbst, alleged that the executor failed in his duties by failing to pay the Municipal account relevant to the immovable property located in Gauteng. The property generated rental income which created the expectation that the Municipal account could be paid by utilising the rental income. The investigation revealed that rental income payments were made into Ms Esther Crowe's, personal ABSA bank account, with account no: 9344682905 from December 2018 to date. The rental income referred to relates to rentals received towards properties of the deceased estate situated at 12 Regal Place Crown Gardens and Shell Marie Court, Turffontein. This rental income should have been paid into the deceased estate's bank account which did not occur. These payments must be reflected in a comprehensive reconciliation as part of the final L & D account. Bank statements in our possession confirmed the payment of the rental income into the personal account of Ms Esther Crowe.

Further, it was revealed that a storeroom at Shell Marie Court, one of the assets of the deceased estate, was let by Ms Esther Crowe for an amount of R950 per month since June 2020 to date. These payments were also paid into the abovementioned ABSA bank account of Ms Esther Crowe and not into the deceased estate's bank account. Bank statements in possession of the SIU confirmed the payment of the rental income into the account of Ms Esther Crowe.

During consultation on 12 July 2022 with Mr Hamman, he explained that he had allowed Ms Esther Crowe to retain this rental of R950 per month for services rendered by her as the "managing agent" for the properties in Gauteng. However, this R950 per month must also be reflected in the L & D account as both rental income and as expenditure. Mr Hamman further explained that he allowed the monthly rental income in respect of 12 Regal Place Crown Gardens and Shell Marie Court, Turffontein to be paid into the personal bank account of Ms Esther Crowe as the tenants were used to make payments into this account. A letter was sent to the Master requesting the Master to ensure that all rental income received by Ms Esther Crowe on behalf of the deceased estate is accounted for in the reconciliation and the income reflected in the L & D account. This arrangement, that the rental income could be paid into the personal bank account of Ms Esther Crowe exposed the heirs of the deceased estate to a financial risk should Ms Esther Crowe not be able to refund the money she received on behalf of the executor.

As income received was not reflected in the L&D account and was not received into the bank account opened in the name of the deceased estate, it was recommended that the Master requests the executor to provide

a bank statement in terms of section 28(2) of the account opened in terms of section 28(1) of the Estates Act.

An allegation was made that Esther Crowe received money to the amount of R10 000 from the deceased prior to his death with an instruction to pay Marcel Ely. This allegation was allegedly discussed during a meeting with the executor on 12 April 2019. The audio recording does not reflect such a discussion. It is impossible to prove that Esther Crowe was given this money by the late Mr Crowe. The first draft L&D account also reflects Mr Ely has a claim to the amount of R10 000 against the deceased estate. This is not reflected in the latest L&D account issued to the Masters' office.

During consultation on 12 July 2022 with Mr Hamman and Ms Esther Crowe she explained that the claim was valid for mechanical work done on the Toyota Hilux bakkie prior to the death of Mr Crowe.

It was alleged that withdrawals from the bank account of the deceased occurred after his death. It was further alleged that the bank statements of the deceased were not provided by the executor when requested. These bank statements were obtained by the SIU and after analysis it was determined that 5 x R3 000 ATM withdrawals from 03/11/2018 till the 07/11/2018 did occur after the death of the deceased but that it occurred with the approval of the executor to cover the cost of the funeral.

It was alleged that Mr Hamman as executor of the deceased estate did not act in the best interest of the heirs as he failed to provide security in respect of securing the movable property stored at 14 Tuin Street Hopefield. Mr Hamman stated it would cost R900 a day for a security guard to secure the property. It was agreed that Esther Crowe could stay on the property to secure the movable assets left on the property as this would be much cheaper than employing a security firm or grant.

Regarding an allegation that Mr Hamman failed to generate rental income in respect of the property located at 14 Tuin Street, Hopefield, by allowing Esther Crowe to stay for free, Mr Hamman stated that a week after the funeral Ms Herbst indicated to him, she trusted her sister Esther to look after the property and to secure the remaining assets. As Esther Crowe lived on the property it would furthermore bring about a saving of R900 per day. On this basis Esther Crowe was allowed to remain on the property.

It was also alleged that Mr Hamman failed to provide information about his appointment as executor. The appointment of Mr Hamman was delayed and did not occur immediately. All the beneficiaries did receive notice of his appointment as executor once his appointment had been finalised during February 2019 as the certificate was not stamped when issued on 6 December 2018.

It was alleged that Mr Hamman did not protect and secure the movable assets. Ms Lara Ann Burger, in an affidavit dated 30 October 2019, and in an affidavit by Ms Esther Crowe dated 25 October 2019 stated how items were taken in trailers by two of the sisters namely, Ms Jacqueline Herbst and Ms Natalie Crawford. Furthermore, Ms Lara Ann Burger made mention that a number of items were stolen during a break in at the property located at 14 Tuin Street Hopefield. The matter was reported at the SAPS after which a police case

was opened. In an affidavit dated 08 October 2019 provided by Ms Jacqueline Herbst she refers to an inventory that Mr Hamman never compiled. Mr Hamman replied to these allegations stating that the furniture had minimal value and did not justify payments for storage. To hire a security guard per day would cost R900. The executor was constrained by the lack of funds available in the estate and acted on the information received from the heirs that Esther Crowe could be trusted. On this basis Esther Crowe was allowed to stay on at the property of the deceased located at 14 Tuin Street, Hopefield to look after the movable assets. If it is alleged that these items were stolen the matter should have been reported to the SAPS.

On the available evidence there is not sufficient evidence pointing to the commission of an offence related to the stealing of estate assets as all the heirs took items from the house after Mr Crowe's death. However, the SIU referred a matter where a death policy was claimed by Esther Crowe where she falsely alleged that she was the beneficiary of the policy, to the NPA with a view to institute criminal charges against Esther Crowe.

It was further alleged that Mr Hamman failed to ensure that arrear accounts were paid. Mr Hamman indicated that there were no funds in the estate to allow for such payments. He further indicated that he did not pay the account as the amount was in dispute as an incident occurred during which a water pipe burst occurred which resulted in a huge account. The SIU requested the Master to ensure that the executor provides a detailed reconciliation of all monies generated from rental income as well as the sale of assets.

Allegations were made that Mr Hamman unfairly raised the prices of estate assets for one sister compared to the other sisters. It is the duty of the Executor to accept the highest price possible to ensure an outcome most favourable to the estate. A difference occurred in respect of the evaluation of the immovable property located at 14 Tuin Street Hopefield. This difference in value was due to an additional evaluation obtained by Jacqueline Herbst and Natalie Crafford which evaluation was not considered to be objective. The available facts do not support the allegation that the executor favoured one set of sisters above the other.

Allegations were made that Mr Hamman kept the L&D account details away from the heirs. The L&D account must be filed at the Master's office to which the heirs would have had access. The evidence does not support the allegations.

Allegations were made that Mr Hamman, as a result of an alleged failure to properly deal with the estate, is not entitled to a fee of 3.5% of the total value of the deceased estate. An analysis of the matter indicated that delays occurred to finalise the matter. However, both sets of sisters complained and accused the other of irregularities related to the deceased estate which contributed to the delay in winding up of the estate. Mr Hamman is entitled to the standard fee of 3.5% of the total value of the deceased estate.

- **Criminal Referral**
- **Ms Esther Crowe**

- The evidence revealed that the individual committed an act of fraud by unlawfully and intentionally submitting a false Assupol Absolute Advantage Funeral Plan death claim, with Policy Number: ASDIR170000239767, to Assupol Life. The authorised value of the claim is R19 663.
- It is further submitted that the evidence revealed that the individual, committed acts of fraud, forgery and uttering by unlawfully and intentionally altering and submitting to Assupol Life, an ABSA bank statement for account No: 009344682905, date stamped 20 November 2018, to read "MEV EM CROWE". The nominated beneficiary was Mrs Marguerite Estelle Crowe with ID No: 5803190110082.
- The acts of criminality identified above were referred to the NDPP in a letter dated 28 May 2021.

8.10 Matter 61.12 – Record keeping in the Cape Town Master's Office

8.10.1 Nature of allegation

The allegation relates to a whistleblower who had concerns about the record keeping system in the Cape Town Masters' office applicable to both mail received and office files.

8.10.1.1 Summary of findings

It was found that a Circular or Directive to regulate record keeping in respect of mail and files were not in place.

Group Registration Clerks of the different sections do not have a register system in place reflecting mail which were uplifted by them for distribution in the various sections to the relevant officials.

The filing room allocated for the filing of files, does not have an access control system to the room or a register reflecting the receipt of files and the movement of files from the filing room.

8.10.1.2 Steps Taken

- **Systemic Recommendations**
 - The systemic recommendations identified were referred to the DG in a letter dated 5 September 2022.
 - Refer to paragraph 12.1.4 for a detailed description of the recommendations made.

8.11 Matter 95 – Vestacor (Pty) Ltd

8.11.1 Nature of allegation

Allegations of irregularity were raised against officials of the DOJ & CD for failure to address complaints brought against the Kaap-Vaal Trust practitioners and directors in the Vestacor (Pty) Ltd ("Vestacor") and KNS Construction (Pty) Ltd ("KNS") in liquidation. It is alleged that requisitions were inflated to ensure that

the Kaap-Vaal Trust liquidator can be appointed as the leading provisional trustee and have a better chance to be appointed as the final liquidator. Furthermore, it is alleged that the Master failed to investigate the conduct of the Liquidators (KNS Construction and Vestacor) as ordered by the court.

8.11.1.1 Summary of findings

On 02 December 2021, the Honourable Justice Fisher J of the High Court Gauteng local division in Case Number 30238/2019 delivered a judgment stating the following concerning the liquidators:

- The behaviour of the liquidators in relation to the deliberate non-opposition of the order in the main application was not merely unreasonable it was reprehensible. (Their conduct falls so far short of the standards expected of liquidators in carrying out of their duties that it invokes *prima facie* the interference that they have colluded).
- De Wet's founding affidavit bases the claim on what is referred to as the amended final account of Botha. This affidavit is a misrepresentation of the facts relating to the alleged indebtedness.
- The court was also falsely told that there was no arbitration agreement in place between KNS and Vestacor.
- The Court made various cost orders against the various liquidators.

Furthermore, he made the following remarks concerning the liquidators; Mrs Kotze and Mr Madlala:

- The manner and ease with which the irregular appointment of Kotze was orchestrated is astounding and states that this bodes ill for the administration of liquidations. Such appointments are obviously a crucial part of the economy.
- Kaap-Vaal asserted claims of KNS Construction and its former director Saunders in a staggering aggregated amount of some R345 million. (The only mentioned claim by KNS Construction was the claim in arbitration to be R8.4 million in the winding up before Lamont J.)
- None of the claims making up the requisition amount of R345 million had ever featured before in the history of the parties and they have not seen the light since. It seems they were simply fabricated. But they did the trick and Kotze achieved the desired provisional appointment.
- If the amount owing to KNS was deliberately misstated by Kaap-Vaal to ensure the appointment of Kotze then this is fraud.
- The failure by the liquidators Kotze and Mr Madlala to oppose/resist proof of the KNS claim is rationally inexplicable as the claim was patently without foundation.

The evidence obtained points towards the commission of fraud by the liquidators.

- The evidence points to Mr Gert de Wet, a co-director of Kaap-Vaal Trust, with Mrs Kotze (registration nr 188/000022/07) committing fraud under oath basing the claim of KNS on what is referred to as the amended final account of Mr Botha.
- Furthermore, the evidence points to Mrs Kotze, a co-director of Kaap-Vaal Trust, asserting claims of KNS and its former director, Saunders, in a staggering amount of some R345 million. (The only claim by KNS Construction that had been mentioned was the claim in the arbitration to be R8.4 million in the winding up before Lamont J.)
- None of the claims making up the requisition amount of R345 million had ever featured before in the history of the parties, and they have not seen the light since. It seems they were fabricated to get Mrs Kotze appointed as provisional liquidator.
- If the amount owing to KNS was deliberately misstated by Kaap-Vaal to ensure the appointment of Mrs Kotze, then this indicates fraud.
- The failure by the liquidators Mrs Kotze and Mr Madlala, to oppose/resist proof of the KNS claim is rationally inexplicable as the claim was patently without foundation. Mr Gert de Wet, Mrs Kotze, and Mr Madlala committed fraud in manufacturing/creating fraudulent requisitions to ensure the appointment of Mrs Kotze as the provisional liquidator in the Vestacor insolvency. Mr Gert de Wet, Mrs Kotze failed in their duties to act in the best interest of all creditors and did not carry out their duties without fear, favour, or prejudice.

8.11.1.2 Steps Taken

- **Criminal Referral**

- Mr Gert Louis Steyn de Wet, Mrs Olga Kotze (néé de Wet) and Mr Mandla Professor Madlala (Kaap-Vaal Trust (Pty) Ltd).
- The acts of criminality identified were referred to the NDPP in a letter dated 21 November 2022.

8.12 Matter 109 – Lifestyle analysis

8.12.1 Nature of allegation

The SIU conducted a limited lifestyle audit as a whistleblower flagged an official, Mr Nkodima, employed at the Master in Pretoria, of having been involved in corrupt activities.

8.12.1.1 Summary of findings

The audit identified that on certain dates Mr Nkodima received multiple cash deposits. The official was interviewed. He claimed that the R20 000 and R28 600 cash deposits into his account were the money received from a trust. He indicated that he would make the supporting documentation available on 16

November 2022 to the SIU. However, during a follow-up interview with Mr Nkodima he informed the SIU that the other trustees to the trust do not want him to give out their contact details to the SIU for any verification. The SIU was unable to trace the trust documents at the Master's Office with only the name supplied to us.

8.12.1.2 Steps Taken

- **Criminal Referral**
 - There is a reasonable suspicion of potential fraud and/or corrupt activities and as such the matter was referred to the NDPP in a letter dated 26 April 2023 for further investigation.

8.13 Matter 112 – Touting

8.13.1 Nature of allegation

It was alleged that a member of the public, Ms Joyce Mothemokhulu Railo visited the North Gauteng Master's office to apply for the Letter of Authority for the estate of her late husband, where she met Ms Germina Maloka who told her that she can refer her to an attorney who will help her quickly as the assets to the estate were too huge.

It was also alleged that Ms Maloka demanded money for "cool drink" from Ms. Railo for Ms Railo to get the Letters of Authority quickly from the recommended attorneys.

It was further alleged that Ms. Railo was not married to the late Zandisile Hillman Neli and should have not been issued with the Letters of Authority.

8.13.1.1 Summary of findings

The matter was initially investigated by the FAU. The report was referred to the SIU for further assistance. The SIU found that Ms Maloka failed to comply fully with the SIU's investigation. Ms Maloka (an Estate Controller) contradicted herself several times when answering questions put to her. She failed to furnish the SIU with the required affidavit detailing the aspects put in both section 5(2)(a) requests and section 5(2)(b)(c) Notices.

Ms Maloka failed without reason to appear before the SIU in order to be questioned under oath or affirmation and to produce the required records in terms of section 5(2)(b)(c) of the SIU Act.

The SIU investigating team arrived at a finding that Ms Maloka abused her position as an Estate Controller and further had a corrupt relationship with legal practitioners namely Mr Gungqwa and Mr Sithole who benefitted from the corrupt and/or unethical relationship they have had with Ms Maloka. Mr Gungqwa has admitted to giving Ms Maloka money while Mr Sithole denied ever giving Ms Maloka any money, despite Ms Maloka having admitted receiving money from both legal practitioners. Both Mr Gungqwa and Mr Sithole admit that Ms Maloka may have referred clients of the Master to their offices. The SIU investigating team found that Mr Gungqwa and Mr Sithole touted at the Master's Office and Ms Maloka aided in that unethical conduct.

Ms Railo has approached the Master's Office several times in order to apply for the Letter of Authority and was a victim of a corrupt and unethical relationship between Mr Gungqwa and Ms Maloka.

The SIU investigating team is of the view that Ms Maloka's sudden resignation was merely to avoid being questioned under oath or affirmation by the SIU.

The SIU investigation team has already submitted a referral to the LPC in respect of unethical conduct by Mr Gungqwa and Mr Oscar Sithole.

8.13.1.2 Steps Taken

- **Administrative Referral**
 - On 27 March 2023 the SIU investigation team submitted a referral to the LPC in respect of unethical conduct by Mr Gungqwa and Mr Oscar Sithole.
- **Criminal Referral**
 - On 12 June 2023 the SIU investigation team submitted a referral to the NDPP in respect of alleged criminal conduct by Mr Gungqwa, Ms Mmadira Maloka and Mr Oscar Sithole.

8.14 Matter 140 – Deceased estate of Damaria Machele Selebogo

8.14.1 Nature of allegation

The allegation relates to fraud allegedly committed by officials at the Masters' offices whereby the Assistant Master: Mr Mphatheleni Mphanama ("Mr Mphanama") reported a fraudulent endorsement of a Power of Attorney letter issued on the estate of the late Damaria Machele Selebogo (estate number 32252/2014). The matter was investigated by the FAU.

8.14.1.1 Summary of findings

The matter was investigated by the FAU and it was found that the fraudulent Power of Attorney was not issued by the Master's Office but an unknown external person. No evidence could be found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

8.14.1.2 Steps Taken

- **Criminal Referral**
 - On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.15 Matter 142 – Deceased Estate: Fraudulent Letter of Authority

8.15.1 Nature of allegation

The allegation relates to fraud allegedly committed by officials at the Masters' offices whereby it was alleged that a fraudulent letter of authority was issued in the Kewnamore estate (016716/2016).

8.15.1.1 Summary of findings

The matter was investigated by the FAU, and it was found that the fraudulent Letter of Authority was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

8.15.1.2 Steps Taken

• **Criminal Referral**

- On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.16 Matter 144 – Fraudulent Letter of Authority

8.16.1 Nature of allegation

The allegation relates to a fraudulent letter of authority issued in relation to the Liquid Gold Trust IT/7050/99.

8.16.1.1 Summary of findings

The matter was investigated by the FAU, and it was found that an alleged fraudulent Letter of Authority was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

Steps Taken

• **Criminal Referral**

- On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.17 Matter 147 – Fraudulent Letter of Authority

8.17.1 Nature of allegation

The allegation relates to a fraudulent letter of authority issued in relation to the estate of the late Lina Nkomo (14632/2008).

8.17.1.1 Summary of findings

The matter was investigated by the FAU, and it was found that the fraudulent Letter of Authority was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

Steps Taken

- **Criminal Referral**
 - On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.18 Matter 150 – Deceased estate of the late Mpambaniso

8.18.1 Nature of allegation

The allegation relates to a Letter of Authority issued in relation to a fraudulent death certificate in the estate of the late Mpambaniso (30595/2015).

8.18.1.1 Summary of findings

The matter was investigated by the FAU, and it was found that the Letter of Authority issued on the fraudulent death certificate was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

Steps Taken

- **Criminal Referral**
 - On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.19 Matter 151 – Deceased estate of Hester van der Walt

8.19.1 Nature of allegation

The allegation relates to a fraudulent Letter of Authority dated 31/02/2015 issued in relation to the estate of the late Hester Johannna Cornelia Catherina van der Walt (758/2014).

8.19.1.1 Summary of findings

The matter was investigated by the FAU, and it was confirmed that the fraudulent Letter of Authority was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

Steps Taken

• **Criminal Referral**

- On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.20 Matter 154 – Deceased estate of Mbongeni Ndlovu

8.20.1 Nature of allegation

The allegation relates to a fraudulent Letter of Authority dated 24/04/2014 issued in relation to the estate of the late Mbongeni Zakhela Ndlovu (7849/2014).

8.20.1.1 Summary of findings

The matter was investigated by the FAU, and it was found that the fraudulent Letter of Authority was not issued by the Master's Office but an unknown external person. No evidence was found by the FAU that an official was involved in the act of criminality but the SIU assisted the FAU in obtaining evidence for referrals.

Steps Taken

• **Criminal Referral**

- On 12 August 2022, the SIU referred the evidence file to the NDPP in terms of Sections 4(1)(d) and 4(1)(2) of the SIU Act.

8.21 Matter 157 – Allegations of fraud and corruption

8.21.1 Nature of allegation

The SIU received allegations pertaining to an alleged possible corrupt and/or irregular relationship and/or relationships between a liquidator, Mr Johan Engelbrecht ("Mr Engelbrecht"), who is on the Masters' offices National Panel of Liquidators and certain officials who are or were previously employed at the Masters' offices.

8.21.1.1 Summary of findings

Mr Engelbrecht provided Mr William Sekete ("Mr Sekete"), a former Assistant Master and Master, with a loan during the period under review and Mr Engelbrecht and Mr Sekete maintained a corrupt relationship during the period under review.

This relationship influenced Mr Sekete's actions in respect of an enquiry held in terms of section 381 of the Companies Act against Mr Engelbrecht, as well as possibly influencing appointments of Mr Engelbrecht to several liquidations at the Pretoria Master's Office.

Mr Jacobus van Niekerk ("Mr Van Niekerk") was a party to the loan agreement (in that he appears to have drafted the loan agreement) between Mr Sekete and Mr Engelbrecht and Mr Aan Niekerk's business bank

account was utilised to repay the money owed by Mr Sekete back to Mr Engelbrecht – thereby making Mr Van Niekerk aware of the corrupt relationship between Mr Sekete and Mr Engelbrecht.

Mr Van Niekerk had a duty, as a practicing attorney, to report the loan agreement (as it constitutes an offence in terms of Part 1 and Part 2 of PRECCA) to the SAPS.

The method in which Mr Sekete re-paid the loan; namely from the account of Maentja to that of JI van Niekerk and then to Icon Insolvency Practitioners (Pty) indicates that Mr Sekete and Mr Engelbrecht were attempting to disguise the nature of these funds by utilising JI van Niekerk's bank account.

The source of a deposit which Mr Sekete paid in respect of a property which he purchased (Erf 2223 Theresapark, Ext 46) has not, as yet, been determined; however, from the evidence obtained, it appears as if Mr Engelbrecht was assisting Mr Sekete in applying for a home loan in respect of Erf 2223.

Mr Engelbrecht, never enrolled for or completed a BProc: Baccalaureus Procurationis at the University of Pretoria ("UP"); however, Mr Engelbrecht submitted a CV as part of supporting documents for an insurance facility from Liquidation Bonding Services, in which he listed "BProc: Baccalaureus Procurationis – University of Pretoria/ University of South Africa (inc)" from the UP under his education. Although the letter "inc" appears next to this, Mr Engelbrecht was never actually enrolled for a BProc at UP. In addition, this same CV was sent to Mr Sekete as evidence supporting the allegations against Mr Engelbrecht during the section 381 enquiry.

In addition, the SIU identified a R3 000 cash deposit which was made on 24 July 2019 into Mr Sekete's Capitec bank account with the reference "Ephraim Makhese". An internet search of the name "Ephraim Makhese" indicated that Mr Ephraim Makhese ("**Mr Makhese**") is employed at Kaap Vaal Trust: Insolvency Practitioners ("Kaap Vaal") and Mr Makhese is included on the Masters' offices National Panel of Liquidators.

The SIU's investigation revealed that Mr Sekete and Mr Aubrey Moitiwa ("**Mr Moitiwa**") may have maintained a corrupt relationship during the period 2017 – 2020, which may have influenced Mr Sekete to appoint Kaap Vaal to certain liquidations and estates, due to the following:

- In an interview held by the SIU with Mr Sekete on 10 August 2021, Mr Sekete provided the SIU with false information regarding the source of the cash deposit of R3 000. Mr Makhese indicated that Mr Sekete confirmed to him that the deposit was indeed made by Mr Moitiwa.
- There is no indication in Mr Makhese or Kaap Vaal's bank accounts that the R3 000 came from any of their accounts.
- Mr Sekete received a number of payments from various sources during the period under review (a total of R549 816 between the period 1 January 2014 – 3 February 2020).
- A total amount of R4 500 was paid to Mr Moitiwa from Mr Sekete.

- Mr Moitiwa indicated that his roles and duties as a Kaap Vaal employee at the time included, *inter alia*, securing appointments for Kaap Vaal to liquidation and estate matters.

In relation to the abovementioned paragraphs the following offences may have been committed by the following individuals:

Mr Engelbrecht may be guilty of the following offences:

- Fraud in that during 2009, he misrepresented his qualifications on his CV in order to secure insurance for liquidations to which he was appointed, and it is likely that he used this same CV to be appointed to the National Panel; and
- Criminal offence(s) in terms of section 3(b) and section 4(b), as read with section 26(1)(a), of PRECCA in that he provided a loan to Mr Sekete during 2012/2013.

Mr Sekete may be guilty of the following offences:

- Criminal offence(s) in terms of section 3(a) and section 4(a), as read with section 26(1)(a), of PRECCA in that he accepted a loan from Mr Engelbrecht during 2012/2013.

Mr Van Niekerk may be guilty of the following offences:

- Criminal offences in respect of section 20, as read with section 26(1)(b), of PRECCA as he was a party to the loan agreement between Mr Sekete and Mr Engelbrecht; and
- Criminal offence(s) in respect of section 34(2), as read with section 26(1)(b) of PRECCA as he had a duty, as an attorney, to report the loan agreement to the SAPS and did not report it.

Mr Engelbrecht, Mr Sekete and Mr Van Niekerk may be guilty of offences in terms of section 4(a) and (b), as read with section 8 of POCA, as they attempted to conceal the true nature of the loan re-payment from Mr Sekete to Mr Engelbrecht.

Mr Moitiwa may be guilty of criminal offence(s) in terms of Section 3(b) and Section 4(b) of PRECCA in that he made a payment of R3 000 to Mr Sekete on 24 July 2019, which payment may have influenced Mr Sekete, as an Assistant Master, Pretoria, working within the liquidation section of the Master's Office, to ensure that Kaap-Vaal be appointed to a number of liquidation matters and/or to influence other Master's Office officials to appoint Kaap-Vaal.

Mr Sekete may be guilty of criminal offence(s) in terms of Section 3(a) and Section 4(a) of PRECCA in that he accepted the payment of R3 000 from Mr Moitiwa on 24 July 2019, which payment may have influenced Mr Sekete, as an Assistant Master, Pretoria, working within the liquidation section of the Master's Office, to ensure that Kaap-Vaal be appointed to a number of liquidation matters and/or to influence other Master's Office officials to appoint Kaap-Vaal.

8.21.1.2 Steps Taken

- **Criminal Referrals**

Mr Johan Engelbrecht, Mr William Sekete, Mr Jacobus van Niekerk and Mr Aubrey Moitiwa

- On 23 January 2023, the SIU referred evidence of alleged criminality, as stated above, to the NDPP in terms of Section 4(1)(d) and 4(2) of the SIU Act.

- **Administrative Referral**

Mr Jacobus van Niekerk

- On 23 January 2023, the SIU referred evidence of unethical conduct to the LPC.

- **Irregular Conduct Referral**

Mr Johan Engelbrecht

- On 23 January 2023, the SIU referred evidence of the alleged contravention of the Masters' offices Code of Conduct to the DOJ & CD.

- **Civil Referral**

Mr Johan Engelbrecht, Mr William Sekete and Mr Jacobus van Niekerk

- On 23 January 2023, the SIU referred evidence to the AFU.

8.22 Matter 188 – Castle Crest Properties 16 (Pty) Ltd

8.22.1 Nature of allegation

On 08 June 2022, Mr UJ Vather of Vathers Attorneys forwarded a complaint from his client Dr Mahendren Munsamy ("Dr Munsamy") to the SIU. Dr Munsamy made the following complaint (*summarised version*)-

- The complaints are directed against the Deputy-Master Mr Maphaha and liquidator, Mr Richard Keay Pollock ("Mr Pollock"), and alleged creditors Standard Bank ("SBSA") and Chevron SA (now called Astron Energy) and/or alternatively their respective law firms; ENS and Fairbridges.
- The Companies:
 - Gas2Luids (Pty) Ltd ("Gas2Luids") with registration number 2005/007759/07 with director Dr Munsamy;
 - Midnight Feast 4 (Pty) Ltd ("MNF4") with registration number 2006/025263/07 with director Dr Munsamy;

- Castle Crest Props 16 (Pty) Ltd ("Castle Crest") with registration number 2006/016587/07 with director Dr LF Adonis ("Dr Adonis") the wife of Dr Munsamy. Castle Crest owns three (3) properties namely:
 - 124 Patricia Road, Athol Sandton 2146 ("Athol Property");
 - 112A, 9th Road Hyde Park Sandton, 2196 ("Hyde Park Property"); and
 - 14 Flamingo Road, Melkbosstrand, Western Cape ("Melkbos Property").
- The three companies associated with Dr Munsamy (Gas2Liquids (Pty) Ltd; Castle Crest Props 16; MNF4) were placed under liquidation by SBSA who were represented by an attorney of ENS.
- Mr Pollock was appointed as the joint liquidator of companies: Gas2Liquids (Pty) Ltd, Castle Crest Props 16 and MNF4 with Chevron as the alleged creditor of Gas2Liquids.
- Dr Munsamy/Gas2liquids (Pty) Ltd at all times disputed overall indebtedness to SBSA and Chevron/Astron Energy. These disputes were referred to respectively via the court order to arbitration before Advocate W Trengrove SC (the arbitration was postponed after pre-arbitration meetings) and Advocate Rose-Innes SC (the arbitration commenced and continued for almost twoyears and suspended when the companies went into liquidation).
- Castle Crest Props 16 and MNF4 signed limited suretyship in favour of SBSA and security bonds on behalf of Gas2Liquids.
- In turn Dr Munsamy/Gas2Liquids issued summons against SBSA for R23 million and Transnet SOC for R28,6 million, and a counterclaim against Chevron/Astron for R166 million in arbitration.
- The joint liquidators:
 - Mr Pollock from Harvard Corporate Rescue and Mrs Corne van Der Heever from DT Trust were appointed as liquidators of Gas2Liquids with a third liquidator, Mr Marks Christian (Master's file G990/2015).
 - Mr Pollock and Mr Hassim Yunis Ismail were appointed as liquidators of Castle Crest Props 16 (Masters file G988/2015).
 - Mr Pollock and Mr Kevin Chow were appointed as liquidators of MNF4 (Master's file G989/2015).
- All three entities were allocated to Advocate Mpande, a Master at the Johannesburg Masters' Office.
- Dr Munsamy alleges that Mr Maphaha, a Deputy Master incorrectly allowed Gas2Liquids to be taken out of the market.

- Dr Munsamy made an application to the Master's Office to remove all the liquidators. It is alleged that Advocate Mpande evaluated the application.
- At the same time, Mr Maphaha prejudiced the company by furtively accepting a parallel application by SBSA and ENS and convened a creditors meeting.
- Dr Munsamy alleges that Mr Maphaha allowed the creditors meeting to obtain documentation which were held by the Sheriff of Sandton under seal of a Court Order. The Sheriff of Sandton handed over the documentation to ENS and not the Commissioner Mr Krige.
- Serious allegations of fraud were levelled against Mr Maphaha and was supported by another Master, Ms P Dube.
- The liquidator Mr Pollock allowed SBSA to submit claims of R49 million against Castle Crest Props 16. This was done as Castle Crest Props 16 owns three high value properties.

8.22.1.1 Summary of findings

The documentation from the Master's files reflected that Mr Netshitahame irregularly acted outside his authority by issuing a report of which the content of the report contradicted the report Mr Mabaso to the Court. This has significant bearing on the reputation and administration of the Master's Office. The Master's Office cannot allow an official to deal with matters in an unstructured way or on a how he/she wants. The complainant, Dr Munsamy, relies on an affidavit of a former Master official, Mrs Dube, who also abused her powers and was dismissed.

In this matter the complainant and his attorneys were aware that the matter was dealt by the Insolvency Section headed by the Deputy Master, Mr Maphaha, and Assistant Master, Mr Mabaso. It is evident that the complainant made various unsubstantiated allegations against Mr Maphaha. The Master, Mr Pule, clearly stated that Mr Netshitahame was moved due to operational reasons from the Insolvency Section; however, Mr Netshitahame refused to execute the instruction. The effect again is significant as it leads to prolonging the matter and it is to the disadvantage of creditors who will eventually lose money.

The evidence revealed that Mr Netshitahame (an Assistant Master) had acted irregularly and outside his authority when on 1 February 2022 he issued a report to the Court in the liquidation matter of the insolvent estate of Castle Crest Properties 16 (Pty) Ltd. The contents of Mr Netshitahame's report had contradicted the report of the Assistant Master Mr Mabaso who rightfully was authorised to submit such report. Mr Netshitahame's report had a significant bearing on the reputation and administration of the Master's Office.

The evidence points to acts of possible misconduct committed by the said official and the evidence suggests that Mr Netshitahame may possibly be guilty but not limited to acts of misconduct in that he had acted in a negligent manner. He accordingly contravened:

- The Disciplinary Code and Procedures for the Public Services: - Schedule 1;

- Chapter 2 Part 1: Code of Conduct for the Public Service Paragraph 12 and Paragraph 13; as well as
- The Master's Directive 2 of 2011.

8.22.1.2 Steps Taken

- **Disciplinary Referral**

- On 20 March 2023, the SIU referred evidence of misconduct to the DOJ & CD.

8.23 Matter 190 – Guardian's Fund

8.23.1 Nature of allegation

The allegation relates to allegations of theft of GF money by certain officials working in the GF's office of the Master at the North Gauteng High Court. An investigation was conducted by the FAU in relation to these allegations. Mr Morodi Charles Monye ("Mr Monye"), a Senior Forensic Auditor, submitted an affidavit wherein he stated that he conducted the said investigations and has obtained evidence to indicate that an official by the name of Ms Lihle Zuma (a.k.a. Mandy Lihle Maretela ("Ms Lihle Maretela")) committed an act of fraud.

It is alleged that an official made a misrepresentation by unlawfully and intentionally changing the banking details of beneficiaries to the bank details of her husband, causing actual prejudice to a beneficiary, Ms Phethile Pretty ("Ms Ntuli"), for an amount of R195 056.87.

8.23.1.1 Summary of findings

On 23 February 2021, Standard Bank supplied the information regarding the relevant bank transactions. From analysis of the information supplied it was established that the Standard Bank account number 422097810 belongs to a company called Doctor Ofitlhile (Pty) Ltd. The CIPC documents that were also supplied by the bank, indicated that Mr Maretela Doctor Lebogang with ID Number 760518 5560 082, is the owner of this company. FICA documents also supplied by the bank confirmed the address for this account number (as per a copy of a lease agreement). In this lease agreement it was established that the suretyship was signed by his spouse, Ms Maretela with Identity Number 880629 0631 086. Ms Maretela is a former employee of the office of the Master of the North Gauteng High Court.

On 14 August 2017, an amount of R195 056.87 was deposited into the Standard Bank account 422097810, with reference PTAGF 56416. These are the funds that were meant to be paid out to Ms Ntuli, the beneficiary.

Ms Maretela has since been dismissed from the employ of the Master North Gauteng. It was found that an offence of fraud and theft of monies belonging to Pretty Ntuli (R195 056.87) was committed by Mr and Ms Maretela.

8.23.1.2 Steps Taken

- **Criminal referral**
 - On 20 October 2021, this matter was referred to the NDPP with the relevant evidence.

8.24 Matter 198 – South Link Investments Shareblock (Pty) Ltd**8.24.1 Nature of allegation**

The allegation relates to a complaint lodged by Mr Enver Motala ("Mr Motala") on behalf of Rothbart Incorporated (attorneys). Mr Motala alleged that the Master's Office in Gauteng made irregular appointments of Liquidators for the South Link Investments Shareblock (Pty) Ltd ("SouthLink Shareblock").

8.24.1.1 Summary of findings

The evidence points that the claims submitted on which the Master acted and appointed a liquidator provisionally were "fraudulent claims".

The liquidator Mr Trakman colluded with Mr Wasilewsky and Khairanwali's in submitting a claim in numbers and value to the Master's Office.

The evidence obtained points towards the commission of fraud by the following individuals and the liquidator:

NO.	INDIVIDUAL / ENTITY
1	Mr Gary Wasilewsky
2	Mr Ahmed Imtiaz, director of Khairanwali Cash & Carry
3	Mr Selwyn Trakman (liquidator)

8.24.1.2 Steps Taken

- **Criminal Referral**
 - On 21 November 2022, the evidence obtained was referred to the NDPP.
- **Referral to hold an enquiry - Liquidator**
 - On 21 November 2022, the evidence obtained was referred to the DOJ & CD in respect of which the SIU recommended that the DG hold an enquiry about the conduct of the liquidator in terms of section 381 of the Companies Act.

8.25 Matter 227 – Touting**8.25.1 Nature of allegation**

The allegation relates to allegations of touting committed by an official at the Polokwane Master's Office.

8.25.1.1 Summary of findings

The evidence obtained indicated that an official, Mr Munengiwa (an Estate Controller), referred beneficiaries to a specific law firm, NKP Manamela Incorporated Attorneys, to deal with claims in respect of the following estates during 2019:

- Estate number 7302/2019;
- Estate number 2241/2019;
- Estate number 2962/2019;
- Estate number 8579/2019; and
- Estate number 3899/2019.

On 23 March 2023, the SIU interviewed the Master Polokwane, Mr Mulaudzi, regarding the procedure to register an estate. He confirmed that estate controllers or any employees are not allowed to refer clients to law firms. To support his argument, he provided a Circular and a document as proof that the estate controllers know they are not allowed to refer clients to law firms. Mr Mulaudzi also confirmed on the ICMS system that Mr Munengiwa was the first estate controller that worked on these estates.

The following Directive applies:

DUTIES OF THE ESTATE CONTROLLER AS PER THE CHIEF MASTER'S DIRECTIVE 2 OF 2015

Paragraph 1.1 - The primary function of the Master is to regulate the administration of estates. It is the duty of the Master to ensure that the legal and financial interests of those affected in the administration of estate are taken care of in a compassionate manner.

Paragraph 1.2 - The conduct of the Master must at all times assures the public that the manner in which estates are administered is-

- 1.2.1 in compliance with the law; and
- 1.2.2 that the financial and legal interests of all those who may be vulnerable will be protected.

Paragraph 7.9(d) - If there is competition for the office of administrator, the Master shall give preference to:

- (ii) an heir or his/her nominee,
- ...
- (viii) it is advisable to follow the process of formal meeting in terms of section 18 where there is competition for the office executor in an estate.

The Code of Conduct as prescribed in the Public Service Regulations, 2016: Chapter 2, Part 1 relates to the performance of official duties:

- Section 11 (b) - An employee shall put the public's interest first in the execution of his duties.
- Section 12 (b) - An employee shall serve the public in an unbiased and impartial manner in order to create confidence in the public service.
- Section 14 (d) - An employee shall execute his or her official duties in a professional and competent manner.

8.25.1.2 Steps Taken

- **Disciplinary Referral**

- On 9 May 2023, the SIU referred evidence of misconduct to the DOJ & CD.

8.26 Matter 242 – Allegations of corruption

8.26.1 Nature of allegation

The allegation relates to an anonymous complaint, which was sent to various officials at the Master's Office on 20 July 2018. The complainant alleged that Hendrik and Martha Sithole were running their own business with the attorney firm, MLM Kutumela Attorneys.

It was further alleged that MLM Kutumela Attorneys came into existence since Hendrik and Martha Sithole were deployed at the Master's Office in Nelspruit; that there were numerous matters which Hendrik and Martha Sithole referred to MLM Kutumela Attorneys of which it is alleged that they received a fee/remuneration for the referral and that MLM Kutumela Attorneys purchased a vehicle with for Hendrik and Martha Sithole.

8.26.1.1 Summary of findings

The SIU reviewed a report with a subject heading "*Presentation of documents to the SIU in Lieu of Proclamation 42992: Investigation into Master's offices*" dated 12 February 2022, compiled by the former ACM, Ms Teresia Bezuidenhout. The report accompanied a file which reference various emails and/or documentation. The Acting Director: Mr AM Zwane ("Mr Zwane") of the FAU investigated the abovementioned allegations, issued a report, 47/2018, on 27 June 2019 and recommended that the DOJ & CD should consider instituting disciplinary action against Mr Hendrik Sithole for referring members of the public to MLM Kutumela Attorneys. The report states that -

- The FAU searched for the 37 listed files and obtained only 23 files.
- They verified the 23 files and determine that all of them were referred to MLM Kutumela Attorneys.
- The FAU interviewed eight (8) of the twenty-three (23) appointed executors and ascertained that:

- Mr Hendrik Sithole referred the executors to MLM Kutumela Attorneys and/or to Joel (the same attorneys MLM Kutumela).
- In most instances, the executors complained that they did not receive all the necessary documentation of the winding up of the respective estates dealt by MLM Kutumela Attorneys reported in 2017.
- From the inventory lists of the estates, they noted that some of the estate's bank accounts reflected large sums of monies; however, on consultation with the executors, they could not confirm whether the funds were still in the deceased bank accounts.
- MLM Kutumela Attorneys became aware of the consultations with the executors and made a payment to one of the executors, Ms Mabaso.
- The representative of MLM Kutumela Attorneys is Joel Mokhonoana.
- Mrs Martha Sithole is an Acting Master and Mr Hendrik Sithole is a Helpdesk Operator at the Master's Office, Nelspruit.

The SIU found that the Masters' Office did not institute any disciplinary action against Mr Hendrik Sithole nor was the matter reported to the SAPS for further investigation. Furthermore, it established that the FAU did not request a report from the eNatis which reflect vehicles purchased or the history of vehicles registered in name of Mr Sithole.

Subsequent analysis of eNatis information, bank statements and affidavits obtained it was established that MLM Kutumela paid R30 000 towards the vehicle for Mr Sithole and that the matter be referred to the DoJ&CD to institute disciplinary steps against Mr Hendrik Sithole.

The evidence suggests that Ms MLM Kutumela-Sithole and/or Kutumela-Sithole INC may be guilty of contravening section 10(b) of the PRECCA by offering a gratification in the amount of R30 000 to Mr Hendrik Sithole and Mrs Martha Sithole, both officials in the employ of the Master office, Nelspruit.

Furthermore, Ms MLM Kutumela-Sithole and/or Kutumela-Sithole Inc may have contravened:

- The then relevant Attorneys Act, 1979 (Act No 53 of 1979); and
- The Rules of the Attorneys Profession with effect from 1 March 2016.

8.26.1.2 Steps Taken

- **Disciplinary Referral**

- On 14 September 2022, the SIU referred evidence that points towards misconduct, committed by Mr Sithole (a Help Desk Operator) and Ms M Sithole (a Deputy Master), to the DOJ & CD.

- **Criminal Referral**
 - On 14 September 2022, the SIU referred evidence that points towards possible corruption to the NDPP.
- **Administrative Referral**
 - On 14 September 2022, the SIU referred evidence that points towards possible corruption and contraventions of the Attorneys Act etc., committed by Ms MLM Kutumela-Sithole and/or Kutumela-Sithole Inc, to the LPC.

8.27 Matter 250 – Deceased Estate

8.27.1 Nature of allegation

The SIU received an allegation that Mr Aviwe Makhohliso ("Mr Makhohliso") an Admin/Registry Clerk, irregularly referred a walk-in public member who wanted to report an estate to Ms Fikile Mbatha and/or PGA Incorporated Attorneys.

8.27.1.1 Summary of findings

On 8 September 2020, Mr Makhohliso referred Mr Daniel Mvongwe, a member of the public, to Ms Fikile Mbatha and/or PGA Attorneys to be appointed as the agent/executor of the late Ms Adnes Lawrence's estate.

Masters' officials are not allowed to refer clients to attorneys.

Mr Makhohliso prejudiced the DOJ & CD's administration, discipline, or efficiency when he referred Mr Mvongwe to Ms Mbatha and/or PGA Incorporated to act as his agent and/or executor of the Estate Lawrence.

In doing that, preferential treatment was given to Ms Mbatha and/or PGA Attorneys.

8.27.1.2 Steps Taken

• Disciplinary Referral

- On 14 September 2022, the SIU referred evidence that points towards misconduct, committed by Mr Makhohliso (an Administration/Registry Clerk), to the DOJ & CD.

8.28 Matter 252 – Property: Hijacked

8.28.1 Nature of allegation

The allegation relates to a complaint received from Mr Motodi Maseko ("Mr Maseko") and Mrs Jessie Maseko ("Mrs Maseko") who alleged that Mr Mpho Dhlamini ("Mr Dhlamini") hijacked their property situated at 8878B Hennessey Street in Orlando West, property which they bought from Ms Octavia Tshabalala in 2010 and occupied until 2016 when they relocated to Atteridgeville.

8.28.1.1 Summary of findings

Mr Dhlamini sold a property over which he held no ownership rights thereby committing fraud.

Mr Collin Mabunda, the conveyancer, failed to verify either his client, Mr Mfono-Songca, or Mr Dhlamini on whose behalf Mr Mfono-Songca was acting. As such, he (Mr Mabunda) contravened Sec 21(1) read with Sec 46(1) of the FIC Act.

Mr Mabunda was also found to be in contravention of section 36(1)(17.18) of the Code of Conduct, as authorised by the Legal Practice Act by failing to take all such steps as may be necessary from time to time to ensure compliance at all times as an accountable institution with the requirements of the FICA.

Preliminary investigation points to a breach of fiduciary duties by Mr Aphane (an official). However, the missing estate files has negatively affected the conclusion of the investigation relating to his conduct. Thus, no recommendation for a disciplinary hearing could be made.

As part of its investigation, the SIU has come across evidence that points to the commission of a criminal offence/s of fraud by the individuals and / or entities named hereunder who are connected to an investigation into the affairs of the DOJ & CD in the Johannesburg Master's Office.

The SIU's evidence further revealed that an individual and/or entity holding the title of an accountable institution, acted improperly during the course of his or its duties thereby contravening the FICA.

Steps Taken

- **Criminal Referrals - Fraud**
 - On 20 March 2023, the SIU referred evidence that points towards the offence of fraud committed by Messrs. Dhlamini (an executor on the estates of the late Sonnyboy William Plaatjes and Naughty Nelly Plaatjes) and Vuyo Mfono-Songca ("Mr Mfono-Songca"), the middleman between the Johannesburg Master's Office and the conveyancer to the NDPP.
- **Criminal Referrals - FICA**
 - On 20 March 2023, the SIU referred evidence that points towards Mr Mabunda contravening the FICA in that:
 - Mr Dhlamini fraudulently acquired and sold a property over which he had no ownership rights;
 - Mr Vuyo Mfono-Songca impersonated an attorney or used the title "attorney" to create an impression that he was admitted to practise when that was not the case;
 - Mr Mabunda and / or C Mabunda Incorporated contravened section 21(1), read with section 46(1) of the FICA by failing to:

- establish and verify the identity of the client, Mr Vuyo Mfonzo-Songca;
 - establish and verify the identity of the other person being Mr Dhlamini on whose behalf the client (Mr Mfonzo-Songca) was acting; and
 - establish and verify the client's (Mr Mfonzo-Songca's) authority to establish the business relationship or to conclude the single transaction on behalf of the other person (Mr Dhlamini).
- **Administrative Referral**
 - On 20 March 2023, the SIU referred evidence that points towards Mr Mabunda/C Mabunda Incorporated and contravening section 36(1)(18.17) of the Code of Conduct, as authorised by the LPA which provides that legal practitioners, candidate legal practitioners and juristic entities shall take all such steps as may be necessary from time to time to ensure compliance at all times as an accountable institution with the requirements of the FICA.

9. SUMMARY OF FINDINGS – WHERE NO MALADMINISTRATION WAS IDENTIFIED

The SIU investigated 137 allegations received from various parties and upon conclusion of the said investigations, the SIU did not identify any maladministration on the part of the various Masters' offices implicated in these allegations. Table 3 below depicts a breakdown of the allegations investigated:

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No.	Region	Criteria	Investigation Details
2	Gauteng	Insolvency	The L&D account was confirmed before the lapse of the requisite 14 days for aggrieved parties to object.
5	Gauteng	Insolvency	Certain liquidators were favoured for appointment by officials in the Johannesburg Master's Office.
6	Gauteng	Deceased Estate	Estate of the late Muza Hadebe.
7	Gauteng	Operational complaints	Whistleblower complaints regarding the handling of complaints received.
8	Gauteng	Operational complaints	Whistleblower complaints regarding archiving.
9	Gauteng	Operational complaints	Allegations of alleged irregularities in respect of the appointment of officials.
10	Gauteng	Operational complaints	The Johannesburg Master's Office is paying ghost employees.
11	Gauteng	Operational complaints	The Acting Office Manager for the Master's Office is involved in a scheme of employing relatives of her friends.
12	Gauteng	Procurement	The Office Manager allegedly has a hand in awarding cleaning tenders to people who are known to her.
13	Gauteng	Operational complaints	The Johannesburg Masters' office has implemented a section called "FastTrack" which is intended to expedite the resolution of queries. It is alleged that this system is

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No.	Region	Criteria	Investigation Details
			abused as it serves the interests of a particular race group.
14	Gauteng	GF	The ACM is interfering in the operation of the Curatorship Section.
15	Gauteng	Operational complaints	The component of the Johannesburg Masters' office is dysfunctional and is unable to service the needs of the public. Members of the public are referred to the Pretoria Master's Office.
19	Gauteng	Operational complaints	It is alleged that task teams are appointed that consist of employees who are loyal to the ACM and that they are compromised in terms of their independence and objectivity.
20	Gauteng	Operational complaints	It is alleged that the Johannesburg office is paying for unnecessary travel and accommodation expenses.
22	Mpumalanga	Deceased Estate	Estate of the late Betha Topic.
23	Limpopo	Operational complaints	It is alleged that there was no transparency with the appointment process in respect of certain officials.
26	Limpopo	Deceased Estate	Ms Sina Mpokeng Moichela lodged a complaint at the offices of the SIU about her late son's girlfriend known as Elizabeth Mokaba that she claimed her son's estate without including the children.
27	Limpopo	Deceased Estate	Estate of the late Thobekile Moshibudi Grace.
28	Limpopo	Deceased Estate	Estate of the late Mehale Audi Bennet.
30	Limpopo	Deceased Estate	Estate of the late Mamonare Lilian Ramalepe.
33	Eastern Cape	Deceased Estate	Estate of the late Ebenezer Sopazi.
34	Eastern Cape	Deceased Estate	Estate of the B.L. Ndamase.
35	Eastern Cape	Deceased Estate	Estate of the late Mr JHH De Waal.
38	Gauteng	Deceased Estate	Estate of the late Monono Corine Komane
42	Free State	Deceased Estate	Estate of the late NA Buthelezi
43	KwaZulu-Natal	GF	Whistleblower alleged that his late father left his GEPF funds of R60 230.83 with the GF. Beneficiary still awaiting his funds.
44	KwaZulu-Natal	GF	Whistleblower alleged that he did not receive the benefit due to him from the GF
45	KwaZulu-Natal	Insolvency	The complainant alleged that his stock was fraudulently stolen by the liquidator by not listing it when it was eventually bought. The liquidation process was flawed
46	KwaZulu-Natal	GF	Alleged irregularities in respect of the GF regarding unclaimed funds

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No	Region	Criteria	Investigation Details
48	KwaZulu-Natal	Insolvency	Allegations against a Magistrate and liquidators and the complainant has never received a report or response from the Master's Office, Durban and that the liquidator was involved with shady dealings
49	KwaZulu-Natal	Trust	Issues that were raised as to whether the Masters' decision of appointing an independent trustee was legitimate, whether the trustee executed their mandate and whether the verification of members finalised
53	Western Cape	Deceased Estate	Estate of the late Mr Foot, Senior
54	Western Cape	Insolvency	The complainant alleged that that Theodorust Scholtz and his attorneys manipulated the compilation of the inventory which resulted in her suffering a loss
55	Western Cape	Deceased Estate	Estate of the late FC Burgher
56	Western Cape	Deceased Estate	Estate of the late Mr Volkwyn
58	Western Cape	Deceased Estate	Estate of the late AS Botha and JB Botha
59	Western Cape	Deceased Estate	Alleged irregularities in respect of deceased estates involving officials of the Masters' office in George
61.2	Western Cape	Corruption	The whistleblower alleged that officials of the Masters' Office are suspected of authorising payments in return for undue benefits
61.3	Western Cape	Deceased Estate	It is alleged that Masters' office officials do not adhere to timeframes with reference to the liquidation process
61.5	Western Cape	Deceased Estate	The whistleblower had concerns about the re-appointment of Mr Africa as a joint liquidator after irregularities occurred in matters for which Mr Patel, the principal liquidator, was responsible
61.6	Western Cape	Liquidation	Allegations regarding the appointment of liquidators
61.7	Western Cape	Deceased Estate	The whistleblower alleged that the Assistant Master, Mr Mabusela, failed to ensure that there was sufficient security raised for the liquidation process and that the executor failed in his fiduciary duties by not ensuring that his co-liquidator did not misappropriate money from the estate
61.8	Western Cape	Deceased Estate	The joint liquidators were allegedly in dereliction of their duties as they did not faithfully perform their duties by duly observing the law; and that the Masters' Office has failed to interrogate the liquidators under oath because of the complaints, formal objections, and prejudice to creditors, which points to maladministration. Alleged irregularities in respect of deceased estates involving officials of the Master's Office in Cape Town
61.9	Western Cape	Subsistence and travel	Irregularities regarding subsistence and travel claims

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No.	Region	Criteria	Investigation Details
61.11	Western Cape	Cost orders	The whistleblower had concerns about the various cost orders that have been granted against the of the Cape Town Master's Office
61.13	Western Cape	Deceased Estate	Alleged irregularities in respect of deceased estates involving officials of the Master's Office in Cape Town
62	Western Cape	Trust	A Letter of Authority contained the incorrect details in respect of his name and identity number. Since the letter was issued, the complainant could not succeed to rectify the matter with the Master. As a result, the complainant could not perform the duties bestowed on him as stipulated in the Letter of Authority
63	Western Cape	Insolvency	Alleged irregularities regarding the appointment of the liquidators as well as irregularities regarding the manner in which the case is being dealt with by the Master's Office in Cape Town
67	KwaZulu-Natal	Deceased Estate	Estate of the late Margaret Money Mchunu
68	Free State	Deceased Estate	Estate of the late Mahadi Neria Motsididi
74	Gauteng	Deceased Estate	Shannon Beetge
76	Gauteng	Deceased Estate	The complainant alleges that he was appointed as the executor of his father's late estate and later he found out that some official not known to him created a second account without his knowledge and suspects possible fraudulent activity might have happened
78	Gauteng	Deceased Estate	Estate of the late Maria Magdalena Raath
79	Gauteng	Deceased Estate	Estate of the late Eugene Breedt
80	Gauteng	Deceased Estate	GG Van Westhuizen
84	Gauteng	Deceased Estate	The complainant alleged that the attorney appointed as an executor fraudulently transferred the joint estate property and after she reported the matter, he was removed as an executor; however, the property is still registered in his name
91	Gauteng	Deceased Estate	Confidential query in respect of an estate
92	Gauteng	GF	Curatorship-Nersen Pather RAF 92/1211964/13/0 19/11/09
94	Gauteng	Insolvency	Cedric de La Harpe
96	Gauteng	Insolvency	Insolvent Estate Renaldo Nicolaas van Eck
98	Gauteng	Deceased Estate	Deceased Estate: 23310/2014: AT Mashaba
99	Gauteng	Lifestyle Audit	Theresa Bezuidenhout

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No.	Region	Criteria	Investigation Details
100	Gauteng	Lifestyle Audit	Ntsoane Nthabiseng
102	Gauteng	Lifestyle Audit	Patrick Mathoba
103	Gauteng	Lifestyle Audit	Thrheni Shiphamela
104	Gauteng	Lifestyle Audit	Lawrence Mokale
105	Gauteng	Lifestyle Audit	Uncent Mashao
106	Gauteng	Lifestyle Audit	Nomhle Hebe
107	Gauteng	Lifestyle Audit	Charles Shimbabu
108	Gauteng	Lifestyle Audit	Friedelin Strauss
111	Gauteng	Insolvency	The complainant alleges that ABSA owed him an amount of +-R60 million from sale of stands that was mandated to ABSA
113	North West	Trust	It is alleged that the Thambe Trust which was registered with the Master's Office in exclusion or without consulting other descendants
115	Gauteng	Trust	Cavin Valloo
116	North West	Deceased Estate	Ms Nomkhitha Applegreen levelled allegations against the executor (Mr Maritz) and officials at the Master's Office
119	Western Cape	Insolvency	Mr Denyssen complained about irregularities in respect of the liquidation of his ex-employer
120	Gauteng	Deceased Estate	Allegations regarding the distribution of an estate
121	Gauteng	Trust	Van Deventer Trust
126	Gauteng	Insolvency	G 385/2009 Wilder View Pty - Liquidation
131	Gauteng	Deceased Estate	Dimakatso Dingakane (late Justice Silulami Xasa)
136	Gauteng	Insolvency	A beneficiary from a RAF claim unsatisfied with the way funds were administered
145	Gauteng	Deceased Estate	Fraudulent Letter of Executorship
148	Gauteng	Insolvency	Allegations of misconduct by a Master of South Gauteng High Court by a whistleblower that he had been receiving kickbacks from liquidators
152	Gauteng	Deceased Estate	Allegation of bribery. Allegation was that an official had taken a bribe to include a family member as a beneficiary in a certain estate

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No.	Region	Criteria	Investigation Details
153	Gauteng	Deceased Estate	Fraudulent letter of Authority re the estate of the late Jeffrey Simelane
159	Gauteng	Trust	It is alleged that the appointment of the trustees in respect of Mr T Nkoana's Trust were irregularly appointed
160	Gauteng	Insolvency	Irregular capturing of liquidator against appointment panel recommendations
161	Gauteng	Insolvency	Irregular capturing of liquidator against appointment panel recommendations
162	Gauteng	Insolvency	Attempted irregular removal of a liquidator
163	Gauteng	Insolvency	An Assistant Master signing as deponent on non-interest affidavits of a liquidation practitioner's relative
164	Gauteng	Insolvency	An Assistant Master signing as deponent on non-interest affidavits of a liquidation practitioner's relative
165	Gauteng	Insolvency	Skymo Telecom (Pty) Ltd (G133/2014)
166	Gauteng	Insolvency	An Assistant Master signing as deponent on non-interest affidavits of a liquidation practitioner's relative
167	Gauteng	Insolvency	An Assistant Master signing as deponent on non-interest affidavits of a liquidation practitioner's relative
171	KwaZulu-Natal	Trust	The Roland Manickum Trust
173	Gauteng	Insolvency	Complainant was a co-Director in a family business. The family decided to rescind his Directorship and placed the businesses under liquidation. He now objects to the appointment of liquidators
174	Gauteng	Insolvency	The complainant alleges collusion by a liquidator, the Master's Office, the auctioneers, and lawyers in this matter
175	Eastern Cape	Deceased Estate	Estate of the late TD Feketa. Forged Will
177	Gauteng	Deceased Estate	Estate of the late Robert C Turner
178	Limpopo	Deceased Estate	Estate of the late Joseph Mulaudzi
179	Limpopo	Deceased Estate	Estate of the late MCan Kriel
182	Eastern Cape	Deceased Estate	Estate of the late N Tiyeka
184	Free State	Deceased Estate	Estate of the late Lebohang Andrias Moholeng
185	Western Cape	Guardian's Fund	The complainant accused the Master, Cape Town for not paying his grant/ allowance from his late father's estate
195	Western Cape	Deceased Estate	Estate of the late Raverso Hilton September
200	Western Cape	Deceased Estate	The complainant alleged that a hostile executor was irregularly appointed by the Cape Town Master

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No	Region	Criteria	Investigation Details
202	Gauteng	Deceased Estate	Estate of the late Josephine Clementine Ramollo
203	Gauteng	Deceased Estate	Estate of the late Mzayifani David Nosenga
205	KwaZulu-Natal	Insolvency	The complainant stated that TBP Buildings and Civils was liquidated on 16 November 2012 and a provisional order made final on 23 January 2013. In his affidavit during the liquidation, he states that the claim of Guar Risk (claim 55) had to be verified and not finalised. A Court order has reduced the claim 55 from R109 485 434.80 to R72 867 820.02. Master has not addressed the Court order and shows blatant contempt of court
206	KwaZulu-Natal	GF	The beneficiary indicated that she receives her money from the GF late
209	North West	Deceased Estate	Complainant stated that her sister has been irregularly appointed as an executor of their late parent's estate
211	Gauteng	Insolvency	De-registration of Batsomi Investments
212	KwaZulu-Natal	Trust	Complainant stated that the KZN Master's Office fraudulently allocated a Trust title to another property Trust to whom the Master's Office consequently issued with a fraudulent Letter of Authority
214	KwaZulu-Natal	Deceased Estate	The whistleblower alleged that duplicate Letters of Authority were issued for the same file by the officials at the Master's Office
215	KwaZulu-Natal	GF	Complaint regarding delayed payments in favour of a minor from the GF
217	Gauteng	Trust	MK Veterans Trust
218	KwaZulu-Natal	Deceased Estate	The complainant alleged that through fraud and corruption in the Master's Office, the estate of the late SS Jacobs was wound up and distributed, in breach of an interdict, which was granted due to a contested will
221	Limpopo	Deceased Estate	Alleged fraud, corruption and maladministration by officials attached to the Polokwane Master in the administration of a deceased
222	Limpopo	Deceased Estate	Alleged fraud, corruption and maladministration by officials attached to the Polokwane Master in the administration of a deceased
224	Eastern Cape	GF	Estate of the late MP Mjo
225	Western Cape	Deceased Estate	Estate of the late Mr Ismail Allie
226	Limpopo	Deceased Estate	The complainant disputes the introduction of a third child by an aunt as a beneficiary
229	Gauteng	Deceased Estate	Estate of the late RA Reddiar
231	Eastern Cape	Deceased Estate	Estate of the late Ndumiso Alban Mvunelo

TABLE 3: NO MALADMINISTRATION IDENTIFIED

Matter No	Region	Criteria	Investigation Details
232	Eastern Cape	Deceased Estate	Estate of the late Dora Mhlauli
233	Gauteng	Deceased Estate	Estate of the late NM Maphosa
237	Gauteng	Deceased Estate	Irene Pope
238	Eastern Cape	Lifestyle Audit	Various officials
239	Gauteng	Deceased Estate	The complainant's aunt passed away in January 2017 and her estate was reported to Pretoria Master's Office. The executor was a lawyer appointed by a family member. She has been struggling since 2018 to get any feedback from the executor and the Master's Office and have also submitted objections to the L&D
240	Western Cape	Deceased Estate	Estate of the late Hildegard Silberberg
244	KwaZulu-Natal	Deceased Estate	Ashika Morris
245	Gauteng	Deceased Estate	Marilize Roelofze
248	Gauteng	Liquidation	Allegations of irregular conduct by certain liquidators.
251	Gauteng	Trust	Approval of special fee
253	Limpopo	Deceased Estate	Lucy Thobejane
257	Gauteng	Deceased Estate	The complainant alleged that the Master Johannesburg failed to process enquiries by her as executor and that her co-executor hindered her with the winding up of the estate
250.2	Gauteng	Deceased Estate	Estate of the late Mangaliso Bam
250.3	Gauteng	Deceased Estate	Estate of the late Antonio Bernardino

In Matter 46 the SIU dealt with the following complaint received in respect of the GF.

9.1. Matter 46 – Guardian's Fund (unclaimed funds)

The SIU assisted the Master's Office regarding 71 unclaimed GF matters. The investigation revealed that payments were not made to beneficiaries and/or minors as they could not be traced at that time.

Subsequently, nine (9) beneficiaries have been traced by SIU investigators to assist the beneficiaries to claim outstanding monies totaling R77 248.78 from the GF which would not have been done but for the SIU investigators' assistance.