



14 August 2014

Per Email

Adv. L Basson
Chief Master
Department of Justice and Constitutional Development
Pretoria
0001
Email: lbasson@justice.gov.za

Dear Adv. Basson

RE: THE ROLE OF THE SHERIFFS OF THE COURT IN THE INSOLVENCY ENVIRONMENT

Dear Sir,

Following a number of communications between your office and the South African Board for Sheriffs (SABFS), various concerns were raised which, inter alia, are listed hereunder: -

1. The non-compliance of Sections 19 and 69(1) of the Insolvency Act 24 of 1936. It has become general practice that trustees take into possession the assets of the insolvent estate without the sheriff having the opportunity to compile the inventory of the insolvent's assets in terms of Section 19. This has often led to a source of corruption which, in turn, has escalated the costs of the insolvency process thereby flying in the face of the purpose of the enactment, namely that the insolvency should be to the benefit of creditors;
2. The Master's regular consent in allowing trustees to cancel a Sheriff's sale in execution of the execution debtor's immovable property which occurred prior to sequestration even though such cancellation might not be of benefit to creditors;
3. The abuse of the voluntary notice of surrender by execution debtors in order to avoid the sale of their assets in execution (especially immovable property) by virtue of the provisions of Section 5 of the Insolvency Act 24 of 1936.

Following the recent deliberations that took place between the Chief Master, the Masters of the various sub-divisions of the High Courts and the Sheriffs, the attached discussion document was prepared by the SABFS with a view to making recommendations as to the manner in which the Sheriffs could play a

88 Loop Street, Cape Town. PO Box 15223, Vlaeberg 8018
Tel: 021 426 0577, Fax: 021 426 2598, E-mail: contact@sheriffs.org.za
www.sheriffs.org.za

South African Board for Sheriffs - *Established Act 90 of 1986*
Charmaine Mabuza (Chairperson), Hlako Choma, Laura Best, Abel Mawela, Freda Moeletsi,
Hishaam Mohamed, Humphrey Ntsikeni, Nicholas Nxumalo, Petro Roodt, Thaka Seboka, Thami Tembe

more meaningful role within the insolvency environment and, in particular, pave the way for a more inclusive development of the Section 19 procedure by the role players. The “to do” lists that were put forward during the course of these deliberations have been repeated within the discussion document.

As has been suggested within the attached document, the SABFS recommends that introductory meetings between the Masters of the High Court and the Sheriffs be held to roll out the recommended process at which: -

- a) The Masters would indicate what information and documentation would be made available to the Sheriffs, depending on the type of sequestration;
- b) The frequency and manner of the information searches to be conducted by the Sheriffs can be determined;
- c) It can be decided whether further provision needs to be made to assist the Sheriff in: -
 - i. Searching and taking into custody “books and financial records” of the insolvent; and
 - ii. the attachment of the assets of the insolvent, the taking charge of these assets by way of any of the stipulations of the section, and, where necessary, securing and safeguarding the assets by removal, storage or placing a person in charge of the assets as required by Section 19 [1].
- d) The manner in which the Sheriffs could mentor insolvency practitioners in line with the Department of Justice’s new appointment policy.

We await your response thereto.

Yours faithfully,



Mrs C Mabuzza
Chairperson
South African Board for Sheriffs