

CHIEF MASTER'S DIRECTIVE 6 OF 2009

REMUNERATION OF TRUSTEES, LIQUIDATORS, JUDICIAL MANAGERS AND SIMILAR FUNCTIONARIES.

PURPOSE

The purpose of this Directive is to set down certain uniform guidelines to assist the Master in circumstances where the Master is tasked by statute with the taxation of fees of Trustees, Liquidators, Judicial Managers and similar functionaries.

MOTIVATION

The current Directive in this regard is extremely outdated, making it very difficult for the Master to tax fees in certain matters; more especially in Judicial Management estates. In light hereof a need has arisen for this Directive to be updated urgently.

This Directive supersedes the previous (Pretoria) Master's Directive No 37 dated 12 August 1997 and signed by Mr BC Nell as well as all other related Directives or Instructions.

THE FOLLOWING HAS BEEN DECIDED:-

INSOLVENCY AND COMPANY MATTERS

- 1 On Securities (book debts etc.) Collected or Realised by the Secured Creditor after the Second (2nd) Meeting (See items 1.3, 1.4 and 1.6 below)

Fees: Tariff B of the Second Schedule to the Act, read with the provisions of section 63 of the Insolvency Act and section 384 of the Companies Act, dictates:

- 1.1 1% is due on the gross proceeds of money, cheques and postal orders found in the estate, on amounts standing to the credit of the estate in current, savings and other accounts and of fixed

deposits and other deposits at banking institutions, building societies or other financial institutions.

- 1.2 2% is provided for on the amount distributed in terms of a composition, excluding any amount on which remuneration is payable under any other item of the tariff.
- 1.3 3% is permitted on shares or similar securities sold, immovable property sold, life insurance policies and amounts recovered under mortgage bonds. This also includes the balance recovered on the sale of immovable properties sold before sequestration.
- 1.4 5% is allowed on the value of movable property taken over by the secured creditor.
- 1.5 6% is allowed on sales by the trustee carrying on the business of the insolvent, or any part thereof in terms of the provisions of **section 80** of the Insolvency Act 24 of 1936.
- 1.6 The tariff allows **10%** on other movables sold, promissory notes or book debts sold or collected, rent, interest and other income.

The abovementioned is subject to the total remuneration of a trustee not being less than **R 2 500.00 per estate**; not per account.

Section 83 of the Insolvency Act, No 24 of 1936 allows a secured creditor to realise his or her security before the second (2nd) meeting of creditors and directs him or her to pay the net proceeds to the trustee. The trustee has a claim against him or her for this amount. Whether this is considered as movables sold or as a claim in favour of the estate, the tariff remuneration is 10%. If the creditor has not realised the said security before the second (2nd) meeting he or she must hand it to the trustee who must realise it.

Where a secured creditor realises his or her security after the second (2nd) meeting he or she is contravening the Act if he or she is not acting on behalf of the trustee and more so if he or she does not pay the gross proceeds to the trustee.

Where a creditor collects the book debts after the second (2nd) meeting he or she can only do so as the authorised agent of the trustee and must pay the gross proceeds to the trustee who will be entitled to 10% thereon.

If the creditor is not the authorised agent of the trustee and retains the money so collected the trustee is not entitled to any remuneration thereon according to the tariff.

2 Debt Collections by an Agent

Section 77 of the Insolvency Act No 24 of 1936 requires the trustee to “forthwith recover payment from him (the debtor), if need be by legal proceedings”.

The trustee must first personally demand payment from the debtor and if he or she unreasonably instructs an “agent” to collect the debts he or she will be personally liable for the agent’s commission. In other words the trustee must personally endeavour to recover the debts first.

The trustee may only incur legal costs against specific debtors where he or she considers that the legal action is necessary and will result in the recovery of sufficient money at least to cover the costs incurred. The relevance of the provisions of section 73 must be borne in mind in this regard.

3 Judicial Manager’s Fees

The following is the guidelines tariff of the South African Institute of Chartered Accountants (SAICA), which establishes the manner in which their fees are determined, a guideline which is also to be applied as a starting point in fixing the Judicial Manager’s Fees:

A current maximum fee (1 April 2009 to 31 March 2010) of R 1 957.00 (excluding VAT) per hour, based on the complexity of the work done and the knowledge and experience required in connection with that work is provided for. If justification exists for an increase and same is duly motivated a higher fee will be considered in a specific matter. Likewise a fee may also be decreased should this be warranted. As Judicial Managers are remunerated individually and not in terms of the gross value of the assets per estate, the Master should guard against unnecessary multiple appointments which could further deplete the funds of an already struggling enterprise.

Other staff of the Judicial Managers used in connection with the running of the company would be remunerated on the same basis as the guidelines tariff laid down by SAICA from time to time for work done on behalf of the Auditor-General. A schedule of the current appropriate rate of remuneration is incorporated hereunder.

These fees, as fixed and amended annually by the SA Institute of Chartered Accountants (SAICA), will be applied in future to the remuneration of Judicial Manager's, doing away with the need to amend this Directive on a regular basis in order to keep up with existing rates. The relevant date to determine which fees are applicable is the date of the applicable Judicial Management court order.

Maximum Rates of Partners/Specialists: R 1 957.00 per hour.

Staff:

MONTHLY EARNINGS: R	TARIFF PER HOUR: R	MONTHLY EARNINGS: R	TARIFF PER HOUR: R
2 500 and more	71	17 000 and more	446
2 700 and more	76	17 800 and more	466
2 900 and more	82	18 600 and more	487
3 100 and more	87	19 400 and more	494
3 300 and more	93	20 200 and more	514
3 500 and more	99	21 000 and more	534
3 800 and more	108	21 800 and more	554
4 100 and more	116	22 600 and more	574
4 400 and more	124	23 400 and more	594
4 700 and more	132	24 200 and more	644
5 000 and more	140	25 000 and more	664
5 300 and more	148	25 800 and more	685
5 600 and more	156	26 600 and more	706
5 900 and more	165	27 400 and more	727
6 200 and more	174	28 200 and more	761
6 600 and more	185	30 000 and more	817
7 000 and more	196	32 500 and more	883
7 400 and more	207	35 000 and more	948
7 800 and more	218	37 500 and more	1 014
8 200 and more	229	40 000 and more	1 079
8 600 and more	240	42 500 and more	1 144
9 000 and more	250	45 000 and more	1 210
9 400 and more	261	47 500 and more	1 275
9 800 and more	278	50 000 and more	1 341
10 600 and more	299	52 500 and more	1 406
11 400 and more	321	55 000 and more	1 471
12 200 and more	343	57 500 and more	1 537
13 000 and more	343	60 000 and more	1 602
13 800 and more	364	62 500 and more	1 668
14 600 and more	384	65 000 and more	1 733
15 400 and more	405	67 500 and more	1 798
16 200 and more	425	70 000 and more	1 864

The application for these fees should be supported by a sworn affidavit by the Judicial Manager setting out, among others, the hours spent on the affairs of the company for the period under consideration by him or her and his or her staff and reflecting the salaries of each such member of staff. The time sheets kept must be specific and comprehensive.

These fees of a Finally appointed Judicial Manager should be considered after each Judicial Manager's report is received as is provided for in terms of **section 433 (g), (h) and (i) of the Companies Act.**

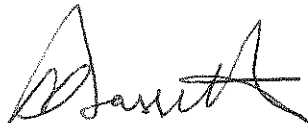
4 Agricultural Credit Matters (Farmers Assistance) – Repealed by Government Gazette Number 22913 of 7 December 2001.

5 General

- 5.1 A special / increased fee should only be allowed in a final account unless there is good reason for reflecting it in an earlier account and the Assistant Master (relevant official) grants approval for this.
- 5.2 Regarding reasons for disallowing fees, etc.: Read **Wulfson v Kearney NO 1963(1) SA 782 (T)**.
- 5.3 Regarding the reduction of fees: Read **Nel v The Master 2005 (1) SA 276 SCA**.
- 5.4 Regarding an increased fee which was approved by the court, but which was also not opposed by the Master: Read **Klopper v The Master 2475/08 (Cape of Good Hope Provincial Division) – 13 June 2008**.
- 5.5 In a matter where an increased fee was disallowed by the Master, which decision was taken on review and then on appeal and both courts ruled in favour of the Master: Read **Klopper v The Master (643/07) [2008] ZASCA 155 (27 November 2008)**.

EFFECTIVE DATE

This Directive will come into effect as from the date of its signature.



LGS BASSETT
ACTING CHIEF MASTER
BRANCH: MASTERS OF THE HIGH COURTS
DATE: 27 July 2009