



CHIEF MASTER'S DIRECTIVE 7 OF 2009

1. PURPOSE

The purpose of this directive is to ensure a uniform approach by Masters nationally in respect of the issue listed below in accordance with the provisions of **Section 2(a) of the Administration of Estates Act No 66 of 1965**.

2. MOTIVATION / BACKGROUND

Certain role players have approached the Office of the Chief Master for clarity on specific matters. As part of the Chief Master's statutory obligations a decision has been made to provide the following guidelines to ensure a uniform approach to the matters raised.

All previous Master's Directives on points addressed by this Chief Master's Directive are hereby revoked.

3. THE FOLLOWING HAS BEEN DECIDED:

Substitution of bonds of security (for due and proper performance and administration covering loss and damage provided by short term insurers) lodged with the Masters.

- 3.1 A practice has arisen where bonds furnished to the Master are being replaced or substituted on a regular basis by other bonds for no apparent reason, or where no special circumstances exist, exposing the Master to

possible liability should losses occur under circumstances wherein which it cannot be determined at what time these losses have occurred; and thus which bond was in place at that time.

- 3.2 In **The Master v Talmud 1960 (1) SA 236 (K)** it was confirmed that the Master cannot act unless empowered to do so by statute; either expressly or by necessary implication; which is what provides the Master with the necessary authority in this area.
- 3.3 Relevant legislation referring to security which must be furnished to the "satisfaction of the Master" in this regard is the following:
 - 3.3.1 **The Insolvency Act No 24 of 1936 – Sections 18(1) and 56(2);**
 - 3.3.2 **The Companies Act No 61 of 1973 – Sections 368 and 375(1);**
 - 3.3.3 **The Close Corporations Act No 69 of 1984 – Section 66;**
 - 3.3.4 **The Administration of Estates Act No 66 of 1965 – Sections 12(2), 23 and 77;**
 - 3.3.5 **The Trust Property Control Act No 57 of 1988 – Section 6;**
 - 3.3.6 **The Prevention of Organised Crime Act No 121 of 1998 – Section 32(2); and**
 - 3.3.7 **The Mental Health Care Act No 17 of 2002 – Section 63.**
- 3.4 The appointee referred to herein, includes; but is not necessarily limited to:
 - 3.4.1 A Trustee / Liquidator / Judicial Manager;
 - 3.4.2 An Executor / Tutor / Curator; and
 - 3.4.3 A Curator ***Bonis*** / Administrator.
- 3.5 This practice of bond substitution is only to be allowed in exceptional circumstances paired with compelling reasons where certain situations have arisen which make bond substitution essential; such as, ***inter alia***:
 - 3.5.1 The liquidation of the company which has provided the existing bond;
 - 3.5.2 The company providing the bond is not / no longer in a position to fulfill its obligation to the Master, or has ceased to be an approved insurer;
 - 3.5.3 The sole appointee is deceased and the new appointee prefers to make use of another bond provider; or
 - 3.5.4 The sole appointee has been removed from office and the new appointee prefers to make use of another bond provider.
- 3.6 Each request should; however, be considered on its own merits.

- 3.7 It is essential that the Master must ensure that adequate security from an approved insurer whose name appears on the Master's list is in place at all times until the administration of the estate has been finalized.
- 3.8 Where bond substitution is necessary, the new bond should be firmly in place before the old / existing bond is cancelled.

4. EFFECTIVE DATE

This Directive will become effective as from the date of signature thereof.



**Ms K MBEKI
ACTING CHIEF MASTER**

DATE: 08/12/2009