

South Africa

In South Africa the entire landscape upon which Insolvency Practitioners (IP's) are required to practise is still undergoing major revision, both in regard to legislation and policy.

Appointment of IPs

IPs are appointed by the Master of the High Court (the Regulator charged with such function), dependent upon the jurisdiction in which an Order of sequestration or liquidation is granted. There is presently virtually no regulation of the practice as an IP, although IP's seeking appointments are required to have their names included upon a panel of practitioners maintained by the Masters of the High Court in the various jurisdictions.

Regulation

Although the appointment and conduct of IPs is largely unregulated, steps are presently being taken to regulate the basis upon which IPs may be appointed by the Master of the High Court. A draft ministerial policy directive regarding the criteria for the appointment of IPs has been circulated by the Office of the Chief Master for comment. This directive is presently under consideration by the Department of Justice and Constitutional Development. The policy is intended *inter alia* to set standards as regards minimum criteria for entrance to the profession, qualifications of IPs, factors which would disqualify someone from practice, and deals with the basis upon which additional discretionary appointments will be made by the Master in the exercise of Black Economic Empowerment initiatives.

Professional organisations

There are two organisations, namely AIPSA (The Association of Insolvency Practitioners of

Southern Africa), which is a member association of INSOL, and AABIP (The Association for the Advancement of Black Insolvency Practitioners), which have their own internal regulatory measures in place. Membership of such organisations is, however, not mandatory for persons to practice as an IP; and, as pointed out above, the profession remains unregulated. Both organisations have raised the need for statutory regulation of the profession.

Remuneration

IP's are generally remunerated in accordance with a tariff prescribed by the Insolvency Act, 24 of 1936. This tariff is also applicable to the liquidation of Companies and Close Corporations. The Master of the High Court is required to assess the IPs remuneration in each instance. A recent Supreme Court of Appeal decision (reported as *Nel and Another NNO v. the Master 2005 1 SA 276 (SCA)*) has, however, shifted the emphasis away from a more rigid application of the tariff, in favour of reasonable remuneration for the work done, taking various factors into account.

New legislation

It is worth noting that the long-awaited legislation consolidating consumer and corporate insolvency into one Act is still under consideration by the Department of Justice and Constitutional Development and the Department of Trade and Industry. There is currently no indication as to when this important new legislation will be enacted.

A new Companies Bill has been published. This contains, *inter alia*, business rescue provisions in the draft Chapter VI. It would, however, appear that such provisions are unlikely to be implemented before early 2010.

Spain

Appointments

For all insolvency processes (whether voluntary or compulsory), the specialised judge appoints an Insolvency Administration made up of three people: namely, a lawyer (with at least five years' experience), an accountant or economist with the same minimum experience and one of the

ordinary or generally privileged creditors (or representatives). There are two different types of appointments within the new Spanish insolvency legislation but the same types of IP are appointed, although they could have different functions in the compulsory process and voluntary process.

