



LAW SOCIETY
OF SOUTH AFRICA

OFFICE OF THE CHIEF EXECUTIVE OFFICER

27 August 2010

Via e-mail: mcronje@justice.gov.za

Mr M Cronje
Office of the Chief Master
Department of Justice and Constitutional Development
Private Bag X81
PRETORIA
0001

Dear Sir

**SUBMISSION ON THE PROPOSED AMENDMENT OF REGULATION 910 UNDER
THE ADMINISTRATION OF ESTATES ACT**

Attached hereto the submission by the Law Society of South Africa.

Please confirm receipt hereof.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Raj Daya', written over a horizontal line.

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**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
WITH REGARD TO THE PROPOSED AMENDMENT OF REGULATION
910 (REGULATIONS PROHIBITING THE LIQUIDATION OR
DISTRIBUTION OF THE ESTATES OF DECEASED PERSONS BY ANY
PERSON OTHER THAN AN ATTORNEY, NOTARY, CONVEYANCER
OR LAW AGENT)**

1. We refer to a document dated 21 September 2009 received from the Department of Justice and Constitutional Development (the Department), which document with enclosures is, for ease of reference, annexed hereto.
2. The South African Institute of Professional Accountants (SAIPA) has requested the Office of the Chief Master to consider an amendment to paragraph 3 of Regulation 910 to include full members of SAIPA as persons exempted from the prohibition in paragraph 2 of the Regulation.
3. The LSSA has been invited by the Department to comment on whether it agrees with SAIPA's proposal and also to comment on problems experienced with the wording of Regulation 910 which should be addressed by amendments to the Regulation.
4. The LSSA is not in agreement with and hereby formally notes its objection to the proposal that paragraph 3 of Regulation 910 should be amended to include full members of SAIPA as, it is respectfully submitted, such proposed amendment will not be in the public interest.
5. The liquidation or distribution of the estate of deceased persons is a branch of fiduciary law which requires specialist knowledge and training.
6. The educational requirement for full membership of SAIPA is a Bachelor of Commerce (BCom) degree with the following subjects, namely:- Accounting III, Taxation, Management Accounting, Commercial Law II and Auditing 1; successful completion of a learnership with a recognised professional body or 6

years verifiable experience in the accounting field. The candidate also has to complete a professional evaluation examination but there are numerous exemptions therefrom e.g. full membership of ACCA, SAICA or CIMA or an Honours Degree in Accounting, etc. The membership policy of SAIPA is set out in Chapter 9 of its quality control manual.

7. It is abundantly clear from the foregoing that there is no compulsory requirement to pass any examination in the administration of estates or any other compulsory training in the administration of estates in order to become a full member of SAIPA.
8. In our view, it would be grossly untenable and against public interest to allow SAIPA members to attend to the winding up of estates without any structured accredited professional qualification and practical experience to do so. Professional standards need to be maintained.
9. The LSSA disputes that SAIPA members receive the same level of academic training as accountants who qualify for exemption in terms of paragraph 3 of Regulation 910. A candidate chartered accountant must obtain a Bachelor of Commerce (BCom) Honours degree in accounting at a single sitting as a prerequisite for writing part 1 of the qualifying examination. It is not a requirement for a full member of SAIPA to have a BCom Honours degree. There are also other significant and material differences in the levels of academic training. Our chartered accountants are internationally acknowledged for their academic standards and professional excellence.
10. We dispute the assertion that a large number of members are well qualified to administer estates. We have not seen any supporting evidence of this assertion.
11. The statement that SAIPA has implemented compulsory indemnity insurance for its members, which covers duties during the administration of estates, is

noted. We however draw attention to the fact that the Professional Indemnity Insurance is for the benefit of the members and not on behalf of the members, that this insurance only provides cover for the members' personal actions and not the trading entity. Furthermore, neither SAIPA insurance arrangements nor the top-up insurance provides cover for the theft or misappropriation of any money or property belonging to the member's client or any other party. This is completely different and distinct from Attorneys Fidelity Fund cover which provides for unlimited cover for misappropriation of funds.

12. The assertion with regard to continued professional education according to international standards is noted, but we are unable to understand what continued professional education is imparted in regard to the administration of estates in the absence of existing professional education on the subject matter.
13. We note the statement in an e-mail dated 3 May 2010 from Mr Trevor Labuschagne to Mr M Cronje that members currently receive comprehensive training via Unisa's Diploma in Estate Administration. However, the University of South Africa does not offer a diploma in Estate Administration but a certificate course. It would be interesting to establish how many current full members of SAIPA have successfully completed the estates administration course through UNISA. SAIPA has not furnished full and comprehensive details of training programs provided by it.
14. The fact that SAIPA has implemented strict investigation and disciplinary procedures, that its members perform certain statutory assurance functions and that membership is dependent on the successful completion of its Professional Evaluation examination is irrelevant and cannot possibly constitute any basis for the amendment of paragraph 3 of Regulation 910.
15. SAIPA is a voluntary body which is not regulated by an act of Parliament, whereas auditors are regulated by the Auditing Professions Act No. 26 of 2005 and attorneys, notaries and conveyancers are regulated by the Attorneys Act

No. 53 of 1979.

16. We have not encountered any significant problems with the wording of Regulation 910. However, where appropriate, reference to now repealed statutes should be replaced.

Proposed amendment of Regulation 910

1. The Office of the Chief Master is attending to a request by The South African Institute of Professional Accountants (“Institute”) that paragraph 3 of regulation 910 should be amended to include full members of the Institute as persons exempted from the prohibition in paragraph 2 of the Regulation. Regulation 910 is attached for ease of reference.
2. A submission by the Institute dated 16 August 2006 is attached. At a recent meeting representatives of the Institute repeated the substance of this submission. The Institute motivates the proposed amendment as follows:
 - 2.1. The Institute’s members receive the same level of academic training as accountants who qualify for the exemption in paragraph 3.
 - 2.2. A large number of members are well qualified to administer estates, but cannot assist their clients unless they are appointed in the will of a deceased person.
 - 2.3. The Institute has implemented compulsory indemnity insurance for its members, which covers duties during the administration of estates.
 - 2.4. The Institute provides for Continued Professional Education according to international standards.
 - 2.5. The Institute provides a comprehensive training program on the administration of estates for those not already competent.
 - 2.6. In terms of its Constitution, Code of Conduct and By-laws, members are precluded from providing services to the public if they are not skilled, suitably trained or competent.
 - 2.7. The Institute has implemented strict investigation and disciplinary procedures.
 - 2.8. Members may perform certain statutory assurance functions, for instance, they qualify as accounting officers in terms of section 60 of the Close Corporations Act 69 of 1984.
 - 2.9. Membership is dependant on the successful completion of the Institute’s Professional Evaluation.
3. Paragraph 3 of Regulation 910 exempts from the prohibition to liquidate or distribute the estate of a deceased person (amongst others) “any public accountant as defined in section 1 of the Public Accountants’ and Auditors’ Act, 1951 (Act No 51 of 1951), and registered as an accountant **and** auditor under that Act”. The 1951 Act was replaced by the Public Accountants’ and Auditors’ Act 80 of 1991, which was in turn replaced by the Auditing Profession Act 26 Of 2005. The reference to “public accountant” in Paragraph 3 must be construed as a reference to “an individual or firm registered as an auditor with the Regulatory Board” - the Independent Regulatory Board for Auditors established by section 3 of the

Auditing Profession Act. This Act provides for the registration of auditors but not for the registration of accountants.

4. **Please let me have your comments on the following, preferably in electronic format, before 9 November 2009 or a later date arranged with me:**

4.1. **Do you agree with the proposal that paragraph 3 of Regulation 910 should be amended to include members of The South African Institute of Professional Accountants?**

4.2. **Please comment on problems experienced with the wording of Regulation 910 which should be addressed by amendments to the Regulation. (You are encouraged to propose the wording of amendments to address any problems.)**

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21 September 2009

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