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Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

FINANCIAL MATTERS AMENDMENT BILL [B1 – 2019]

COMMENTS AND RESPONSES DOCUMENT

(only amendments to Insolvency Act and Government Employees Pension Law)

MARCH 2019

LIST OF COMMENTATOR(S)

	Name	Contact Person
1.	Banking Association of South Africa	Gary Haylett
2.	Liberty Group Limited	JM Parrate
3.	Allen & Overy LLP South Africa	Lionel Shawe

FINANCIAL MATTERS AMENDMENT BILL [B1 – 2019]			
Amendment of the Insolvency Act, 1936			
Commentator	**Section**	**Comment/s**	**Response**
BASA	General	The Banking Association South Africa ("BASA") would like to thank the National Assembly Standing Committee on Finance ('the Committee') for the opportunity afforded us to submit comments on the Draft Financial Matters Amendment Bill ("the Bill"), ahead of the Public Hearings taking place on Tuesday, 12 February 2019. BASA only had sight of the full proposed amendments late last week, however we are open to making an oral submission during the public hearings to highlight the key areas for concerns (as outlined in our response paper). We would also like to place our response on record as we have previously communicated to National Treasury ("NT") and the Department of Justice and Constitutional Development ("DoJ") that we believe that should the additional changes requested to the Insolvency Act, not materialise, systemic risk will be introduced into our economy.	Noted
BASA	General	One of the fundamental legal changes in the ever changing regulatory landscape of OTC Derivatives, is the requirement for regulated parties which come within the scope of the new laws to provide collateral (referred to as initial margin ("IM") to each other in respect of OTC Derivatives transacted between them. The law further requires the IM so provided to be immediately available to the secured party. If a party is not able to obtain IM on that basis from its counterparty it is precluded by law from trading with that counterparty.	Agreed
BASA	General	As the proposed amendments are currently drafted, the Insolvency Act will allow the secured creditor immediate access to its IM, but the proposed section 83(10B) then allows any other creditor or the Master to dispute the preference, and after considering submissions from both parties, if the Master is of the opinion that the dispute is well founded the secured creditor is obliged to pay the proceeds of the IM	Please refer to the proposed new draft at the Annexure. Clause (10B)(e) has been inserted to further clarify that the role of the Master will be an

		to the trustee. This effectively negates the right of immediate access. In our view, and in the view of our legal counsel, if such a process exists, it cannot be said that the collateral is immediately available to the secured creditor.	administrative function and not to resolve disputes on substantive issues.
BASA	General	We and our legal counsel are happy that other creditors', the trustee's and the Master's rights to approach a court for an order overturning the preference should not be curtailed, but allowing the Master to opine on the issue would not be acceptable with reference not only to our domestic legislation but also to the laws of the jurisdictions of our major international counterparties.	Please refer to the proposed new draft at the Annexure. The Bill does not confer powers on the Master that are not already in the Insolvency Act and it is aligned with section 45(3). Please see *PG Bison Ltd v Johannesburg Glassworks* (*Pty*) *Ltd* (*InLiquidation*) *and* Others [2007] ZAGPHC 274; [2008] 1 All SA 473 (W) (16 November 2007) where the court held that the Master's adjudication of claims was an administrative duty in terms of section 45(3) and an aggrieved creditor is entitled to approach a court to overturn the decisions of the Master
BASA	General	As set out above, and more fully in our detailed comments in Appendix 1, it is of critical importance that the ability of banks in South Africa to enter into OTC Derivatives with international banks, and with each other, not be curtailed because of a failure of the Insolvency Act to conform to the legal requirements allowing immediate access to collateral. Failure to have the ability to transfer or mitigate risk, will expose our financial markets to systemic risks and could result in the government and or tax payers having to step in, similar to the international crisis of 2008, but on a domestic scale.	Please refer to the proposed new draft at the Annexure. . The adjudication of disputes by the Master will **only** be related to disputes of preference in terms of clause (10B)(a) and the settlement of disputes by the Master will be in terms of the submitted documentation under clause (10A)(a)(i) of the new clause (10B)(e).
BASA	General	A very simplistic derivative trade explanation is as follows: A bank will take over a corporate's risk exposure through a derivative contract. The bank will then look to offset this risk, either fully or partly (depending on its own risk appetite).	Noted

		Most of the trade offset is conducted with international banks (as the local market could have the same directional view). To conduct the trade, the local bank will place Initial Margin ("IM") up front and Variation Margin ("VM") during the life of the transaction. In the event of a default by the SA bank, the offshore bank is relatively protected by the IM &VM, however, the bank will require the collateral immediately to allow it to offset its exposure. If our insolvency law does not allow for immediate access to the collateral, the foreign and or local counterparties will not look to take the risk on board at the onset of the trade. Either the SA bank then carries this full risk on its own or declines to take over the corporates risk. Both scenarios create systemic risk in our economy.	
BASA	General	We believe that failure to make the recommended changes to the Insolvency Act will also result in South Africa not securing a "clean" ISDA1 Collateral Legal Opinion. (All banks rely on this opinion for counterparty relationships and trading lines.)	Please refer to the new draft.
BASA	General	In the past, the trading of over-the-counter ("OTC") derivatives was a practice that was largely unregulated. Following the global financial crisis in 2008, G20 leaders noted that OTC derivatives were a significant contributor to the global financial crisis and as such the G20 leaders committed to reform the global OTC derivatives market and specifically stated that: "All standardised OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest. OTC derivative contracts should be reported to trade repositories. Non-centrally cleared contracts should be subject to higher capital requirements."	Agreed

<table>
<tr><td></td><td></td><td>BASA and its members fully support this and as South Africa is a member of the G20 and is required to comply with its commitment to the global OTC derivatives reform, South Africa began the process of developing the appropriate legislative framework, with the FMA2 providing the backbone for the required legislative changes.</td><td></td></tr>
<tr><td>BASA</td><td>General</td><td>Under the phased-in-approach of global legislative changes3, financial market participants have to place Initial Margin (“IM”) and Variation Margin (“VM4”) with counterparties (local and or international) to limit excessive and opaque risk-taking through OTC derivatives and to mitigate the systemic risk posed by OTC derivatives transactions, markets, and practices.

In short, IM and VM aims to protect a covered entity from loss in the event that its counterparty defaults.</td><td>Agreed</td></tr>
<tr><td>BASA</td><td>General</td><td>It should be noted that most local market participants are already exchanging VM and certain international markets have already commenced the phasing in of IM in 2016. Covered entities “come-into-scope” for IM depending on their aggregate month-end average gross notional amount of OTC derivative outstanding in a certain period.</td><td>Agreed</td></tr>
<tr><td>BASA</td><td>General</td><td>As South African banks come into scope with other major trading counterparties regulations for IM & VM as illustrated below;

<table>
<tr><th>Country</th><th>Phase 1
(IM/VM)
Sept 16</th><th>Phase 2
(VM)
March 17</th><th>Phase 2
(IM)
Sept 17</th><th>Phase 3
(IM)
Sept 18</th><th>Phase 4
(IM)
Sept 19</th><th>Phase 5
(IM)
Sept 20</th></tr>
<tr><td>US</td><td>$3 t</td><td>$8 b</td><td>$2.25 t</td><td>$1.5 t</td><td>$0.75 t</td><td>$ 8 b</td></tr>
<tr><td>EU</td><td>€3 t</td><td>€8 b</td><td>€2.25 t</td><td>€1.5 t</td><td>€0.75 t</td><td>€ 8 b</td></tr>
</table></td><td>Noted</td></tr>
</table>

		These systemically important financial institutions will be required to post IM and VM under foreign legislation5 in respect of their OTC derivatives trading with foreign counterparties. In order for these systemically important local institutions to continue to trade with foreign counterparties, they must be able to post IM such that it is immediately or promptly available to the secured foreign counterparty in the event of the South African institution's default.	
Allen & Overy	General	The Bill provides for the insertion of subsections 10A and 10B of section 83 of the Insolvency Act, 1936 (Insolvency Act) which provides that a secured party may retain the proceeds of the realisation of secured property for the settlement of a secured claim arising out of a "master agreement" as defined in section 35B of the Insolvency Act. The secured party is required to notify the trustee or the Master of the proceeds of the realisation of collateral and confirm the terms of the relevant master agreement, the nature of the claim, the nature and particulars of the realised security and the calculation of the net amount. Subsection 10B provides further that a creditor or a trustee may object to the realisation of the collateral after which a defined dispute resolution procedure must be followed as a consequence of which the Master may determine that objection is well founded in which case the secured creditor must pay over the realisation proceeds plus interest to the Master. Only after the secured creditor has paid over these realisation proceeds may the secured creditor then challenge such decision in court.	Please refer to the new proposed draft. Clause (10B)(f) has been re-drafted to allow for a court to direct a creditor under a Master Agreement to re-pay the net proceeds of the realized collateral following the Master's decision after the trustee has applied to court. Furthermore the trustee is required to serve notice on the Master Agreement creditor.
Allen & Overy	General	The Final Draft Joint Standard on Margin Requirements for Non-Centrally Cleared OTC Derivative Transactions published in August 2018 (the Draft Margin Joint Standard) in section 4.3(2) provides that a "Initial margin must be held in such a manner that it is available to the person who collected the initial margin in the event of the counterparty's default." Section 6 titled 'Eligible collateral' provides that a covered entity must have in place processes, procedures and board-approved policies to ensure that assets collected as collateral for purposes of initial or variation margin may be liquidated in time to generate proceeds to protect covered parties.	Agreed
Allen & Overy	General	Furthermore in terms of the requirements under the European Market Infrastructure Regulation (EMIR Regulations) counterparties are prohibited from using assets	Noted

		classes referred to in Article 4(1) of the Technical Supplement published on 4 October 2016 as collateral where they have no access to the market for those assets or where they are unable to liquidate those assets in a timely manner in case of default of the posting counterparty.	
Allen & Overy	General	While the proposed amendments in subsections 10A and 10B of section 83 of the Insolvency Act are welcomed, the addition of the dispute resolution procedure that must be undertaken should an objection be raised by the trustee or a creditor will not satisfy the timely realization requirements in either the Draft Margin Joint Standard or the EMIR Regulations as the secured creditor will be required to pay over the realization proceeds. This will mean that parties that are required to post margin pursuant to an OTC derivative transaction will not be able to post securities that would be subject to section 83 of the Insolvency Act as theSe securities will not be considered as eligible collateral.	Please refer to the new proposed draft. Section 83(10B)(f) is proposed to be re-drafted to allow for a court to direct a creditor under a Master Agreement to re-pay the net proceeds of the realized collateral following the Master's decision after the trustee has applied to court. Furthermore, the trustee is required to serve notice on the Master Agreement creditor. The Master Agreement creditor will retain the proceeds throughout the dispute process and will only be directed to pay back the net proceeds of the realization by a court of law.
Allen & Overy	General	This will impact not only local entities that are required to margin but also from a cross-border perspective, foreign counterparties will not accept as collateral from South African counterparties securities subject to section 83 of the Insolvency Act.	Agreed.
Allen & Overy	General	We suggest that this wording be deleted as follows for the reasons set out above: "10B) (a) The trustee or any other creditor may dispute the preference in writing to the Master and shall provide reasons therefor by no later than 14 days of the second meeting of creditors. (b) The Master must immediately notify the creditor that has realized the property held as security under a master agreement as contemplated in subsection (10A) of the dispute.	Please refer to the proposed new draft at the Annexure.

		(c) The creditor that has realized the property may lay before the Master an objection and response to the dispute of the preference within 14 days of receipt of the notification contemplated in paragraph (b). (d) The Master must make a determination on the dispute of the preference within 21 days of receipt of such objection and may request any material information from the parties to be furnished in connection with the dispute. (e) If the Master is of the opinion that the dispute of the preference in terms of subsection (10B)(a) is well founded, the creditor must immediately pay the net proceeds, including any accruing interest, of the realization of the security to the trustee, and the creditor may thereafter apply to court, after notice of motion to the trustee and the Master, for an order to set aside the Master's decision, and the court may upon such application make any order as to it seems just."	
BASA	Section 83(10B)	A secured party who is directed to repay the realization proceeds retained under section 83(10A)(a) of the Insolvency Act may take the Master's decision on review in terms of section 151 of the Insolvency Act, thereby adding further delays to a time-critical process.	Please refer to the proposed new draft at the Annexure. The Master Agreement creditor will retain the proceeds throughout the dispute process and will only be directed to pay back the net proceeds of the realization by a court of law. Please see *Fourie's Poultry Farm (Pty) Ltd v Kwanatal Food Distributors (Pty) Ltd (in liquidation) and Others* 1991 (4) SA 514 (N) where the court held that "taking of the Master's decision on review" to the Court "*ipso facto* constitutes a bar to the confirmation of the account until such time as the review and the objection to which it relates have been finally determined"

BASA	Section 83(10B)	In addition, these are far reaching powers to confer on the Master and deviate from the typical functions performed by the Master. The Insolvency Act empowers the Master to make certain determinations of an administrative or procedural nature. Exercising judgement as to the merits of disputes (potentially involving significant sums of money) is at role typically reserved for the courts. In addition, the practical impact of managing and opining on the disputes would require suitably qualified persons and would place an additional burden on the existing resources of the Master's office. Requiring the repayment of the proceeds of collateral which had already been realised and applied to settle a debt owing under a Master Agreement should be referred to a court to decide. Unravelling the payments after they had been effected could cause undue hardship on the secured creditors, especially if the courts find that the Master's finding was incorrect.	Please refer to the proposed new draft at the Annexure and reference to *PG Bison Ltd v Johannesburg Glassworks* (*Pty*) *Ltd* (*InLiquidation*) *and* Others [2007] ZAGPHC 274; [2008] 1 All SA 473 (W) (16 November 2007) and section 45(3) of the Insolvency Act. As an additional safeguard, a new clause (10B)(g) has been inserted. Clause (10B)(g) defines 'well founded' to include an objective requirement through the inclusion of 'reasonable' to mean that any other person in the shoes of the decision maker would arrive at the same conclusion and a standard test through the inclusion of 'sufficient' to mean that the Master must be wholly convinced when balancing all of the information before him including the responses from the Master Agreement creditor.
BASA	Section 83(10B)	During the discussions at our consultation, we had been advised that it was not the intention of the legislature that the Master adjudicate on the validity and enforceability of the creditor's claims and security interests. We had been advised that the powers which would be conferred upon the Master would be limited to: •assessing the documents submitted by the secured creditor; •determining whether a "master agreement" and security document had in fact been provided; and •providing a prima facie determination on whether the creditor is a secured creditor or not.	Please refer to the proposed new draft at the Annexure. The adjudication of disputes by the Master will only be related to disputes of preference in terms of clause (10B)(a) and the settlement of disputes by the Master will be in terms of the submitted documentation under clause (10A)(a)(i) in terms of the new clause (10B)(e).

		We are concerned that these amendments are not reflected in the 2019 Amendment Bill.	
BASA	Section 83(10B)	We had been advised in previous meetings, that the proceeds of realisation would remain with the secured creditor (with no repayment to the trustee) if the three factors in the paragraph above had been met. We were also advised that a secured creditor would only be required to repay the proceeds of realisation at the instance of the Master if the secured creditor had failed to submit an affidavit, or failed to submit the correct documents substantiating the secured claim etc. This is a critical requirement to comply with the local regulation, Joint Standard.	Please refer to the proposed new draft at the Annexure. The Master Agreement creditor will retain the proceeds throughout the dispute process and will only be directed to pay back the net proceeds of the realization by a court of law. Please see Fourie's Poultry Farm (Pty) Ltd v Kwanatal Food Distributors (Pty) Ltd (in liquidation) and Others 1991 (4) SA 514 (N) where the court held that "taking of the Master's decision on review" to the Court "ipso facto constitutes a bar to the confirmation of the account until such time as the review and the objection to which it relates have been finally determined"
BASA	Section 83(10B)	Notwithstanding the practical and legal issues described above, the proposed process for creditors to dispute a secured creditor's preference to the Master and for the Master to make a determination as to whether the dispute relates to preference is well founded and whether the proceeds of the realised property must be paid back to the trustee, would be more palatable if, no repayment of the proceeds of realisation had to be made until resolution of the dispute. However, this should be clearly set out in a revised draft of section 83(10) to avoid any ambiguity. [Alternatively, we would propose that the party disputing the preference and the secured creditor be given a limited number of days to resolve the dispute by arbitration.]	Please refer to the proposed new draft at the Annexure and response above
BASA	Section 83(10B)	In circumstances where the legislature intends that the Master be empowered to adjudicate matters of substantive law, then an appeals procedure should be provided for. Although section 151 of the Insolvency Act allows for a decision of the Master	Please refer to the proposed new draft at the Annexure and response above

		to be taken on review, we submit that the parties must be able to lodge an appeal against the decision of the Master. The appeal of an administrative decision is based on the merits of a case, not merely on whether the process followed was procedurally fair.	
BASA	Section 83(10B)	Administrative appeals allow for the reconsideration of decisions by a higher authority to challenge the merits of a particular decision. Appealing an administrative decision is appropriate in circumstances where an interested party is of the view that the decision maker (in this case the Master) came to the incorrect conclusion based on the facts presented or the law. The person or body to whom the appeal is made would step into the shoes of the original decision maker and decide the matter anew. Therefore, in appealing a decision taken, the second decision maker (i.e. the courts) will be entitled to declare the first decision right or wrong. Therefore, the parties must be able to appeal against the Master's decision, and not to merely take it on review in terms of section 151 of the Insolvency Act. We request that section 83(10B) of the Insolvency Act be reconsidered (and re-drafted) in light of the above.	Please refer to the proposed new draft at the Annexure and response above
BASA	Section 83(10A)(a)(i)	The amendments to Section 10A(a)(i) contain a new requirement that the documents must be authenticated. The challenge we see is that a lot of the international counterparties have moved to signing online and do not use wet ink originals anymore. Does authenticated for such purposes mean parties can merely print that document and have it certified internally or would authentication mean parties would require a notarised document with seals?	Please refer to the proposed new draft at the Annexure
BASA	Section 83 (10A)(a)(i)	Our understanding of "authentication" when applied to a document, is that for any document executed in any place outside South Africa (which is the case with most of the cross border master agreements), such document shall be deemed to be sufficiently authenticated for the purpose of use in South Africa if it be duly authenticated at such foreign place by the signature and seal of office:	Please refer to the new draft

		•of the head of a South African diplomatic or consular mission or a person in the administrative or professional division of the public service serving at a South African diplomatic, consular or trade office abroad; or •of a consul-general, consul, vice-consul or consular agent of the United Kingdom or any person acting in any of the aforementioned capacities or a pro-consul of the United Kingdom; or •of any Government authority of such foreign place charged with the authentication of documents under the law of that foreign country; or •of any person in such foreign place who shall be shown by a certificate of any person referred to in paragraph (a), (b) or (c) or of any diplomatic or consular officer of such foreign country in the Republic to be duly authorised to authenticate such document under the law of that foreign country; or •of a notary public in the United Kingdom of Great Britain and Northern Ireland or in Zimbabwe, Lesotho, Botswana or Swaziland; or •of a commissioned officer of the South African Defence Force as defined in section one of the Defence Act, 1957 (Act No. 44 of 1957), in the case of a document executed by any person on active service.	
LIBERTY	Section 83(10A)(a)(iii)(b)	This provision is unfair to creditors who realise security under a section 35B master agreement as such creditors will be treated differently from other secured creditors who, after having realised their security and being entitled to payment of the proceeds for proved claims in terms of the prior sub-sections of Section 83, may submit a claim as a concurrent creditor for the payment of the balance from the residue of the estate. There is no rationale for denying creditors in terms of a master agreement the opportunity to prove a concurrent claim in the event that the security which they realise is insufficient to discharge their claim against the insolvent estate. Further, this provision renders the rights granted to a secured creditor, who chooses to rely solely on the proceeds of the property which constitutes his security for the satisfaction of their claim, in terms of section 89(2), not applicable to secured creditors in terms of section 35B master agreements.	The provision was amended in the version before Parliament

		There is no rationale for denying creditors in terms of a master agreement the rights available to other secured creditors in terms of section 89(2). Excluding creditors who realise collateral in terms of a master agreement contemplated in section 35B from the right to submit a claim as a concurrent creditor for the balance of a claim, after having settled a portion of their claims from the proceeds of secured assets, will have a negative effect on the over the counter derivative market. Parties to a section 35B master agreement will inevitably seek additional collateral and/or adjust the pricing of transactions to make up for any losses that may occur as a result of forfeiting concurrent claims. In our submission this sub-section should be removed.	
LIBERTY	Section 83(10B)(e)	Provision should be made in subsection (e)(i) for the creditor to provide security to the satisfaction of the Master for the repayment of the proceeds, together with accrued interest, provided that an application to court as contemplated in subsection (e)(ii) is made within 60 days of receipt of the direction of the Master.	Please refer to the proposed new draft at the Annexure
Amendment of the Government Employees Pension Law, 1996			
None	N/A	N/A	✓
Proposed corrections			An amendment is proposed to — ✓ clause 12, change reference to "subsection (1)" to "subsection (2)" ✓ clause 13, change reference to "24(2)(d)" to "24A(2)(d)"

ANNEXURE: PROPOSED NEW WORDING FOR CLAUSE 1 OF FINANCIAL MATTERS AMENDEMNT BILL – AMENDMENT TO INSOLVENCY ACT

1. Section 83 of the Insolvency Act, 1936, is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

"(5) The creditor shall, as soon as possible after he has realized such property, other than property held as security in favour of a secured creditor for obligations arising out of a master agreement defined in section 35B(2) (including eligible collateral in terms of the applicable standards made under the Financial Sector Regulation Act, 2017 (No. 9 of 2017) or the Financial Markets Act, 2012 (No. 19 of 2012)), prove in terms of section 44 the claim thereby secured and he shall attach to the affidavit submitted in proof of his claim a statement of the proceeds of the realization and of the facts on which he relies for his preference.";

(b) by the substitution for subsection (10) of the following subsection:

"(10) Whenever a creditor has realized his security, other than property held as security in favour of a secured creditor for obligations arising out of a master agreement defined in section 35B(2) (including eligible collateral in terms of the applicable standards made under the Financial Sector Regulation Act, 2017 (No. 9 of 2017) or the Financial Markets Act, 2012 (No. 19 of 2012)), as herein before provided he shall forthwith pay the net proceeds of the realization to the trustee, or if there is no trustee, to the Master and thereafter the creditor shall be entitled to payment, out of such proceeds, of his preferment claim if such claim was proved and admitted as provided by section forty-four and the trustee or the Master is satisfied that the claim was in fact secured by the property so realized. If the trustee disputes the preference, the creditor may either lay before the Master an objection under section one hundred and eleven to the trustee's account, or apply to court after notice or motion to the trustee, for an order compelling the trustee to pay him forthwith. Upon such application the court may make such order as to it seems just."; and

(c) by the insertion after subsection (10) of the following subsections:

"(10A)*(a)* Whenever a creditor has realized property held as security in respect of claims arising out of a master agreement defined in section 35B(2) (including eligible collateral in terms of the applicable standards under the Financial Sector Regulation Act, 2017 (No. 9 of 2017) or the Financial Markets Act, 2012 (No. 19 of 2012)), such creditor may retain the proceeds of the realization for the settlement of the secured claim and must as soon as possible after realization—

(i) give written notice of that fact to the trustee or the Master and provide the trustee or the Master with a certified copy of the master agreement and an affidavit confirming

(aa) that the master agreement had been entered into and

(bb) the nature and particulars of the claim, including the net amount calculated at the date of sequestration; and

(cc) the nature and particulars of the realized security

as proof of the secured claim;

(ii) if the net proceeds of the realization exceed the value of the claim, pay to the trustee or the Master the balance, after payment of those claims, and such amount shall be added to the free residue of the estate in question; and

(iii) if the net proceeds of the realization are less than the value of the claim, the creditor shall be entitled to rank against the estate in respect of the excess as an unsecured creditor.

(b) Upon receipt of the notice submitted under subsection (10A)(a)(i), the trustee or the Master shall notify all creditors at the second meeting of creditors of the realization of the property held as security and inform them of their right to lodge an objection disputing the secured creditor's preference.

(10B*)(a)* The trustee or any other creditor may dispute the preference in writing to the Master and shall provide reasons therefor by no later than 14 days of the second meeting of creditors.

(b) The Master must immediately notify the creditor that has realized the property held as security under a master agreement as contemplated in subsection (10A) of the dispute.

(c) The creditor that has realized the property may lay before the Master an objection and response to the dispute of the preference within 14 days of receipt of the notification contemplated in paragraph (b).

(d) The Master must make a determination on the dispute of the preference within 21 days of receipt of such objection and may request any material information from the parties to be furnished in connection with the dispute.

(e) The Master must examine the documentation submitted in terms of subsection (10A)(a)(i) for the purpose of ascertaining whether the dispute of the preference is well founded.

(f) If the Master is of the opinion that the dispute of the preference in terms of subsection (10B)(a) is well founded, the trustee must apply to court after notice of motion to the secured creditor for an order to set aside the secured creditors retention of the net proceeds in terms of subsection (10A) including any accruing interest and the court may upon such application make such order as to it seems just.

(g) For purposes of this subsection "well founded" means the Master must be satisfied that the reasons provided by the trustee or any other creditor reasonably and sufficiently challenge the validity of the documentation submitted in terms of subsection (10A)(a)(i) as proof of the secured claim.

(h) The creditor that has realized the property held in terms of subsection (10A)(a), whether or not the creditor has proved a claim against the estate in terms of subsection (10A)(a)(i), shall be liable to contribute not less than what the creditor would have had to contribute if such creditor had proved the claim, provided that where the secured creditor relies for the satisfaction of his claim solely on the proceeds of the property which constitutes his security, he shall not be liable for any costs of sequestration other than the costs specified in section 89(1) and other than costs for which he may be liable under (a) or (b) of the proviso to section 106.