

5 FEBRUARY 2019

FINANCE & BANKING ALERT

IN THIS
ISSUE

BREAKING NEWS

THE INSOLVENCY ACT IS CHANGING - HAVE YOU COMMENTED?

On 8 February 2019, the period to comment on the Financial Matters Amendment Bill (the Bill) closes.

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THE INSOLVENCY ACT IS CHANGING - HAVE YOU COMMENTED?

These welcome changes come off the back of years of engagement with National Treasury and the Department of Justice.

The proposed amendments to the Insolvency Act will apply to any "master agreements" as defined in s35B of the Insolvency Act.

On 8 February 2019, the period to comment on the Financial Matters Amendment Bill (the Bill) closes.

The Bill aims to amend, among others, the Insolvency Act, 1936 (Insolvency Act) to provide that secured creditors holding property pledged as security for the obligations of a South African party arising under a "master agreement" may:

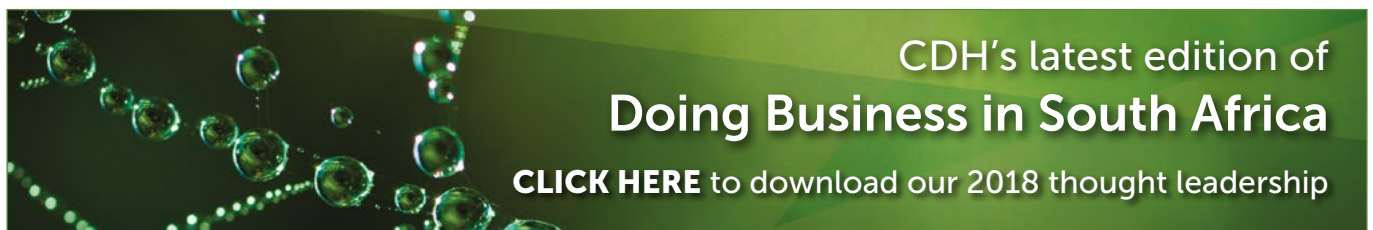
- immediately realise the property held as security under the "master agreement"; and
- retain the proceeds of realisation to extinguish the debts owing to the secured creditor under the "master agreement".

These welcome changes come off the back of years of engagement with National Treasury and the Department of Justice and seek to enable both foreign and local

traders of OTC derivatives to pledge initial margin to comply with the G20 regulatory reforms set out in:

- the new draft Joint Standard on Margin Requirements for non-centrally cleared OTC derivatives published by the Prudential Authority and the Financial Sector Conduct Authority; and
- the new margin laws published in terms of numerous pieces of foreign legislation, which bind the global counterparties with whom South African institutions trade.

The proposed amendments to the Insolvency Act will apply to any "master agreements" as defined in s35B of the Insolvency Act, so will also impact the



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THE INSOLVENCY ACT IS CHANGING - HAVE YOU COMMENTED?

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Submissions, and an indication to make oral presentation if desired, must be received by the Committee Secretaries before 12:00 on Friday, 8 February 2019.

securities lending market and repo market. The "master agreements" which are included are (among others) the International Swaps and Derivatives Association master agreement (ISDA), the Global Master Securities Lending Agreement (GMSLA) and the Global Master Repurchase Agreement (GMRA).

The efficacy of the current draft of the Bill is however undermined by the provisions of the Bill which unfortunately empower the Master's office to exercise a discretion, to unwind the retention of the realisation proceeds, where the Master's "opinion" is that a dispute of preference raised by another creditor is "well founded". Submissions need to be made ahead

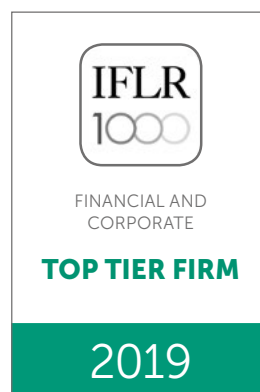
of the deadline, and indeed ahead of the parliamentary hearings on 12 February 2019, to cure this defect before the Bill can be passed into law.

Submissions can be made to the Committee Secretaries, Ms Teboho Sepanya, 3rd Floor, 90 Plein Street, Cape Town, 8000 or tsepanya@parliament.gov.za tel. 021 403 3738 and Mr Allen Wicomb, 3rd Floor, 90 Plein Street, Cape Town, 8000 or awicomb@parliament.gov.za tel. 021 403 3759. Submissions, and an indication to make oral presentation if desired, must be received by the Committee Secretaries before 12:00 on Friday, 8 February 2019.

Bridget King

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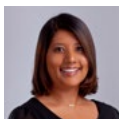
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