



Date: 17 May 2018  
The Chairperson  
Ms C. Mabuza  
South African Board for Sheriffs  
P O Box 15223  
VLAEBERG  
8018

Your Ref: Ms C Mabuza  
Our Ref: Pres/SMT/Compliance with legal obligations

Dear Madam,

## **COMPLIANCE WITH LEGAL OBLIGATIONS**

### **BACKGROUND**

SASS members reported various incidences where challenges are experienced in compliance with their legal obligations, payable to the South African Board for Sheriffs.

### **PURPOSE**

The purpose of this document is to outline challenges experienced by Sheriffs in the submission of legal obligations documents and to make recommendations to the Board for consideration.

### **CHALLENGES EXPERIENCED**

The following challenges were identified:

1. Communication to Sheriffs by the Board;
2. Audit of Trust Funds;
3. Issuing of Magistrate Certificates;
4. The exemption of R50 000.00 or 50 transactions; and
5. Interaction with Sheriffs.

#### **1.1 COMMUNICATION TO SHERIFFS**

- 1.1.1. SASS noted that the SABFS send out numerous notices and reminders to sheriffs to submit their legal obligations, however, communication with sheriffs after submission of documents is poor, therefore sheriffs do not know whether submissions have been received and secondly whether the submission comply with requirements.

- 1.1.2. The consequence of the above is that a sheriff could, for example, submit Legal Obligations 1, 2 and provide proof of insurance to the Board, but not receive his/her Fidelity Fund Certificate by the end of the year. Many sheriffs opened their offices in January 2018 without having received their Fidelity Fund Certificates.
- 1.1.3. Members reported that the Board has not communicated properly with them where something specific appeared to be outstanding. The issuing of the sheriff's Fidelity Fund Certificate was rather withheld and only raised these outstanding matters with the sheriff after lapse of the existing certificate.

## 2.1. AUDIT OF TRUST ACCOUNTS

- 2.1.1. Sheriffs with smaller offices often have to pay for the audit of trust accounts from their pocket, due to the fact that they do not earn sufficient interest to cover the amounts.
- 2.1.2. There is no official criterion for the auditing of sheriff trust accounts. Auditors therefore use different criteria, placing some sheriffs in a disadvantaged position.
- 2.1.3. Members found that auditors identify various minor mistakes or shortcomings causing a delay with the whole process of issuing of Fidelity Fund Certificates.

## 3.1 MAGISTRATE CERTIFICATE

3.1.1. Sheriffs often struggle to get their local Magistrates to sign the Magistrate Certificate. Various reasons exist for this, however, it is the opinion of SASS that this provision is outdated and that the Board should look for another alternative.

## 4.1 THE EXEMPTION: R50 000 OR 50 TRANSACTIONS

- 4.1.1. The majority of funds in sheriffs trust accounts originate from sales in execution.
- 4.1.2. Property prices escalated dramatically from the 1980's when the amount of R50 000 was fixed and should be reviewed as a matter of urgency.

## 5.1 INTERACTION WITH SHERIFFS

- 5.1.1. We have to report that sheriffs sometimes find the interaction with staff members of the Board to be unpleasant and offensive, in that sheriffs are threatened and being disregarded.

## **RECOMMENDATIONS**

The following recommendations are made for Board's consideration:

- a) The SABFS should acknowledge receipt of correspondence;
- b) Consider changing the date for the Professional Indemnity insurance from 30 November to 31 October to coincide with Legal obligation phase 2;
- c) Communicate with sheriffs on outstanding documents;
- d) Develop guidelines for auditing of Trust Funds, to ensure uniformity and clarity to auditors;
- e) To consider reviewing the amount for the qualification for the Magistrate's certificates from R50 000.00 to R350 000.00 and still maintain 50 transactions;
- f) The Finance department of the SABFS should deal with the verification of audit for smaller offices, alternatively allow smaller offices to utilise the services of registered accountants as they are cheaper than auditors;
- g) SABFS to issue Tax invoices for levies paid;
- h) Define the criteria for the non-issuing of Fidelity Fund certificates; and
- i) To provide reasons for the need to submit bank charges certificates when the auditors had already assessed the banking charges.

## **CONCLUSION**

This document is submitted by the South African sheriff society to the SABFS for consideration.