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Dear Mr Mafojane

**INTERVENTION LETTER ON AN INVESTIGATION INTO ALLEGATIONS OF A FAILURE BY
THE OFFICE OF THE MASTER OF THE HIGH COURT TO PROCESS PAYMENTS FOR
FORMER EMPLOYEES OF THE LIQUIDATED ATS LIGHT ALLOY WHEELS SOUTH AFRICA
(PTY) LTD**

1. INTRODUCTION

1.1 The Public Protector's mandate is derived from section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the Public Protector Act No. 23 of 1994 (the Public Protector Act) to promote accountability, transparency and fairness in the public

sector. The Public Protector continuously reviews and monitors information gathered from complaints lodged with the Public Protector South Africa (PPSA) with the view of identifying the underlying root causes of problems, complaints and undesired events within public bodies or authorities, with the aim of formulating and agreeing on corrective action to mitigate or eliminate those causes and to produce significant long term improvements in public administration.

- 1.2 By addressing underlying deficiencies in the systems that are the root cause of complaints, the PPSA aims to reduce the number of individual complaints, in turn working collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent a recurrence.
- 1.3 This is an intervention letter issued in terms of section 8(1) of the Public Protector Act to the Chief Master of the High Court to make known the findings and recommendations in respect of the matter investigated by the Public Protector.
- 1.4 The intervention letter relates to an investigation into an allegation of the failure by the Office of the Master of the High Court: Pretoria, Gauteng (Office of the Master) to process payments to the former employees of ATS Light Alloy Wheels South Africa (PTY) Ltd (ATS Wheels) which was liquidated by order of the High Court, during 2007.

2. THE COMPLAINT

- 2.2 The complaint in this matter was lodged with the Public Protector by Mr Samuel Kgaladi and others (Complainants) on 03 February 2016. The Complainants alleged, amongst others, the following:
 - 2.2.1 They are former employees of ATS Wheels which was liquidated by order of the High Court in 2007, however, they were not paid their severance benefits. In 2015, they approached the Office of the Master for intervention and were advised that there were three (3) Liquidation and Distribution (L&D) accounts that were opened for the liquidation of ATS Wheels - two (2) of the accounts had been finalised and payment had been made to the creditors of ATS Wheels; and

- 2.2.2 Complainants were further advised that they would be paid their severance benefits on the third L&D account, however, no payment was made to them when the complaint was lodged with the Public Protector in 2016.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

- 3.1 The Public Protector is an independent constitutional institution, established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

- 3.2 Section 182(1) of the Constitution provides that:

“The Public Protector has the power, as regulated by national legislation –

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action”.*

- 3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

- 3.4 The Public Protector’s powers are regulated and amplified by the Public Protector Act which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in the conduct of state affairs.

- 3.5 Section 6(4)(c)(ii) provides that the Public Protector *“shall be competent at any time prior to, during or after an investigation, if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.”*

- 3.6 Since ATS Wheels was liquidated in 2007 and the complaint was lodged with the Public Protector on 03 February 2016, it was evident that section 6(9) of the Public Protector

Act, read with Rule 10(1) of the Public Protector Rules¹ would be applicable to this matter and a determination had to be made whether there were special circumstances in this matter to warrant an investigation. Under the circumstances, the following factors were considered:

- 3.6.1 When the Complainants lodged the complaint in 2016, they contended that they still had not received payment of their severance benefits although ATS Wheels had been liquidated in 2007. They contended that a period of approximately nine (9) years had elapsed during which they had not received any payment due to the conduct of the Office of the Master and the liquidators [Westrust (PTY) Ltd]. The nature of the complaint, therefore, indicates the possibility of an un-remedied prejudice that directly impacted the Complainants, whose livelihood had been affected by the liquidation of ATS Wheels.
- 3.6.2 In addition, during July 2016, the Public Protector Investigation Team conducted a preliminary investigation in terms of section 7(1) of the Public Protector Act to determine the merits of the complaint and the manner in which the matter should be dealt with, including whether or not a “full scale” investigation would be justified. The preliminary investigation consisted of an enquiry to the Office of the Master. It was established from that investigation that the Office of the Master had sufficient information that was readily available to conduct a “full scale” investigation and it was further determined that there were officials who had knowledge of the matter and could provide assistance to the Public Protector in the investigation of this matter.
- 3.6.3 Having considered the submissions of the Complainants as well as the information obtained during the preliminary investigation, the Public Protector formulated the reasonable view that there were special circumstances to justify investigating this matter in compliance with section 6(9) of the Public Protector Act.

4. THE INVESTIGATION

4.1 The Issue Identified for the Investigation

¹The *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018*¹ as amended (“Public Protector Rules”).

- 4.1.1 Based on the analysis of the complaint and the outcome of the preliminary investigation the following issue was identified to inform and focus the investigation:
- 4.1.2 Whether the Office of the Master failed to exercise oversight over the L&D Account of ATS Wheels and to ensure that former employees were paid their severance benefits after the company was liquidated in 2007 and if so, whether the conduct of the Master was improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

4.2 **The Scope of the Investigation**

- 4.2.1 The investigation was conducted in terms of section 182 of the Constitution, read with sections 6 and 7 of the Public Protector Act. The Public Protector Act further confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.3 **Approach to the Investigation**

- 4.3.1 The investigation was approached using an enquiry process that seeks to find out:
 - 4.3.1.1 What happened?
 - 4.3.1.2 What should have happened?
 - 4.3.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or improper conduct?
 - 4.3.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?
- 4.3.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Office of the Master failed to exercise oversight over the L&D Account of ATS Wheels and to ensure that former employees were paid their severance benefits after the company was liquidated in 2007.

- 4.3.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Office of the Master to prevent improper conduct and/or maladministration as well as prejudice.
- 4.3.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct or maladministration, where possible and appropriate where the Complainants would have been had the Office of the Master complied with the regulatory framework setting the applicable standards for good administration.

4.4 **Key Sources of Information**

- 4.4.1 Copy of a complaint from the Complainant dated 03 February 2016;
- 4.4.2 Copy of the letter from the Public Protector investigation team, dated 25 October 2016 addressed to the Complainant;
- 4.4.3 Copy of a review application, dated on 01 June 2017;
- 4.4.4 Copy of a letter requesting a meeting dated 17 May 2019 addressed to Mr Reuben Maphaha, Deputy Master: Insolvency Section: Master of the South Gauteng High Court;
- 4.4.5 Copy of email correspondences dated 09 July 2021 from the Guardian's fund with spreadsheet reflecting the details of the ATS Wheels' monies received from the liquidators; and
- 4.4.6 A copy of email correspondences dated 16 July 2021 from the liquidators with schedules for each account showing the awards due, amount paid and the date of payment.

4.5 **Meetings held**

- 4.5.1 A meeting on 28 May 2019 with the Office of the Master, represented by Mr Reuben Maphaha, the Deputy Master: Insolvency Section; Ms Natasha Luiters, the Assistant Master; and Ms Mamiki Mogotsi, the Estate Controller, the Complainants and the Public Protector Investigation Team;

- 4.5.2 A meeting with the Complainants on 17 May 2021;
- 4.5.3 An Alternative Dispute Resolution (ADR) session held on 04 June 2021, facilitated by the Public Protector CEO, Ms Thandi Sibanyoni, with the Complainants, Office of the Master and liquidators;
- 4.5.4 A meeting with the Complainants at Tshwane North TVET College in Temba on 22 October 2021; and
- 4.5.5 A meeting with the Complainants at Tshwane North TVET College in Temba on 10 February 2022.

4.6 Legislation and other prescripts

- 4.6.1 The Constitution of the Republic of South Africa, 1996;
- 4.6.2 The Public Protector Act No. 23 of 1994;
- 4.6.3 Insolvency Act No. 24 of 1936;
- 4.6.4 Companies Act No. 61 of 1973;
- 4.6.5 Close Corporations Act No. 69 of 1984;
- 4.6.6 New Companies Act No. 81 of 2007; and
- 4.6.7 Administration of Estates Act No. 66 of 1965.

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

- 5.1 **Whether the Office of the Master failed to exercise oversight over the L&D Account of ATS Wheels and to ensure that former employees were paid their severance benefits after the company was liquidated in 2007 and if so, whether the conduct**

of the Master was improper in terms of section 182(1)(a) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act:

Common Cause Issue

- 5.1.1 The Office of the Master appointed Westrust Liquidators (Liquidators) in 2007 to process the liquidation of ATS Wheels.

Issue in Dispute

- 5.1.2 The issue for determination is whether the Office of the Master failed to exercise oversight over the L&D account of ATS Wheels and to ensure that the former employees were paid their severance benefits after the company's liquidation in 2007.

Background to the investigation

- 5.1.3 Upon receipt of the complaint on 03 February 2016, the Public Protector Investigation Team raised the matter with the Office of the Master and the response was that the first, second and third L&D accounts were accepted by the Office of the Master from the Liquidators on 13 March 2015 and payments were made to the affected parties including the employees as per each account.
- 5.1.4 The Office of the Master advised the Investigation Team that the unclaimed benefits were deposited into the Master's Guardian Fund in Pretoria since the claimants were untraceable. In view of the above response, the Public Protector closed the matter on 25 October 2016 and the Complainants were advised to contact the Liquidators directly.

Internal review process

- 5.1.5 The Complainants were dissatisfied with the closure of the file and submitted a request for review to the Public Protector on 01 June 2017 on the basis that they believed that the investigation was not properly conducted since the issues raised for investigation were not resolved. The review was upheld and the file was re-opened to establish the following:

- (a) The veracity of the allegations that there was still money in ATS Wheels' L&D accounts for distribution to the employees/Complainants. Furthermore, the re-investigation was to focus on whether the Complainants were paid the monies due to them.

5.1.6 A meeting was held between the Investigation Team and the Office of the Master: Johannesburg on 28 May 2019. The Complainants were duly represented by Mr Kgaladi and the Office of the Master by Mr Reuben Maphaha, the Deputy Master: Insolvency Section; Ms Natasha Luiters, the Assistant Master; and Ms Mamiki Mogotsi, the Estate Controller. During the aforesaid meeting, it was resolved that the Complainants would wait until the end of June 2019 for their payment to be effected.

Protest March by the Complainants

5.1.7 On 17 May 2021, the Complainants marched to the office of the Public Protector demanding an investigation report on the outcome of the investigation and alleged that their monies were still not paid as at end of June 2019 by the Guardian's Fund and the Liquidators as was resolved in the meeting that took place with the Office of the Master on 28 May 2019. The Public Protector's Chief Executive Officer, Ms Thandi Sibanyoni, met with the Complainants and undertook that the Public Protector will reconsider the matter.

ADR session with the Liquidators and Master's Office

5.1.8 Subsequent to the above protest march by the Complainants, an Alternative Dispute Resolution (ADR) session was held on 04 June 2021 with the Complainants and the Office of the Master. Mr Reuben Maphaha, Ms Natasha Luiters, Ms Mogotsi, Ms Penelope Roberts and Ms Elizabeth Sekome represented the Office of the Master. The Liquidators were represented by Mr Allan Pellow and the Complainants were represented by Mr Samuel Kgaladi.

5.1.9 The following undertakings were made at the ADR hearing:

5.1.9.1 The Liquidators, Office of the Master and the Guardian's Fund will reconcile all L&D accounts to indicate how much was paid to each employee per L&D account and which bank the money was paid into;

- 5.1.9.2 The Liquidators should reconcile what was paid to the Guardian's Fund and provide the Public Protector with the information by Monday 07 June 2021;
- 5.1.9.3 The L&D accounts should clearly indicate which beneficiaries/persons were paid directly into their bank accounts and those whose monies were paid into the Guardian's Fund; and
- 5.1.9.4 Another meeting would be convened to provide feedback to the Complainants in Hammanskraal.

Documents received from Liquidators and Office of the Master after the ADR session

- 5.1.10 Subsequent to the above-mentioned ADR session, the Office of the Master submitted a spreadsheet to the Investigation Team on 09 July 2021 reflecting the details of the ATS Wheels' claimants whose monies were deposited into the Guardian's Fund since they could not be traced and were not paid out because banking details were not provided.
- 5.1.11 On 16 July 2021, the Liquidators submitted copies of four (4) L&D accounts reflecting how much was accumulated per each L&D account and how it was distributed to the claimants. The Liquidators advised that some of the monies were deposited into the Guardian's Fund.
- 5.1.12 The money collected by the Liquidators was as follows:

First L&D account

- Concurrent award R20 714 760,87;
- Amount paid to creditors R19 908 835,58 and
- Amount paid to the Guardian's fund R115 436,55.

Second L&D account

- Concurrent award R36 000 000,00;
- Amount paid to creditors 35 903 460,69; and
- Amount paid to the Guardian's fund R96 543.82.

Third L&D account

- Concurrent award R1 300 000,00;

- Amount paid to creditors R2 192 940,46; and
- Amount paid to the Guardian's fund R629 431,45.

Fourth L&D account

- Concurrent award R1 193 747,86;
- Amount paid to creditors R505 910,69; and
- Amount paid to the Guardian's fund R300 640,00.

First feedback meeting to the Complainants in Hammanskraal on 22 October 2021

- 5.1.13 The Investigation Team met with the Complainants at Tshwane North TVET College in Temba on 22 October 2021 to provide feedback on the status of the investigation and in compliance with the agreement of the ADR hearing of 04 June 2021. The Complainants and the officials from the Office of the Master (Mr Maphaha, Ms Luiters, Mr Tymon Moyo and Ms Friedelein Strauss) were present.
- 5.1.14 During the meeting, the above four (4) L&D accounts were presented to the employees and each employee who was present during the meeting was shown how much each was paid per L&D account as well as the money that was paid to the Guardian's Fund for employees who could not be traced. It was reported that the Complainants' payments were deposited into their respective bank accounts. Some of the Complainants acknowledged receipt of their monies, some could not remember and others denied ever receiving the money. It was agreed that those who could not remember and/or denied receiving the monies would verify information with their respective banks.
- 5.1.15 The Office of the Master further issued the Guardian Fund's claim forms to those Complainants whose monies were transferred by the Liquidators to the Guardian's Fund because they could not be traced. These Complainants had to complete the forms at their respective banks and personally submit them to the Guardian Fund's offices.
- 5.1.16 It was agreed that another meeting would be arranged at which the Complainants would provide feedback from their respective banks; the Liquidators would provide clarity on outstanding payments; and the Investigation Team would also report back to the Complainants on progress on the matter.

Second feedback meeting to the Complainants in Hammanskraal on 10 February 2022

5.1.17 A follow-up meeting, facilitated by the Investigating Team, was held at Tshwane North TVET College in Temba on 10 February 2022. The Complainants, officials from the Office of the Master, as well as Ms Cheryl Pincus representing the Liquidators, were present.

5.1.18 During the above-mentioned follow-up meeting, it was decided that:

5.1.18.1 Identified Complainants, whose outstanding payments were still with the Liquidators would submit their banking details to Ms Pincus and those whose monies were with the Guardian's Fund were provided with relevant Guardian Fund forms to complete and requested to submit them personally to the Guardian's Fund offices; and

5.1.18.2 An undertaking was made by the Liquidators and the Guardian's Fund officials that payments would be processed by end of March 2022, provided all correctly completed forms were submitted to the Guardian's Fund and correct banking details were submitted to the Liquidators.

5.1.18.3 The Investigation team undertook to monitor the process and update the Complainants regularly. The Liquidators and the Guardian's Fund indicated to the Investigation Team that payments are being processed for claimants who had submitted their claim forms and banking details.

Application of the relevant legislation and prescripts

5.1.19 The Master is a creature of statute and can only exercise its duties as prescribed by the Statutes. The legislation that is relevant to the supervision of liquidation matters is the Insolvency Act No. 24 of 1936, the Companies Act No. 61 of 1973, the Close Corporations Act, No. 69 of 1984 and the New Companies Act No. 81 of 2008.

5.1.20 In terms of Section 361(1) of the Companies Act, once an order is granted placing a company under liquidation, the assets of the company vests in the Master until liquidator/s are appointed. The Master's offices have a uniform approach in ensuring that provisional liquidator/s are appointed expediently through a requisition system whereby creditors can nominate on a value and number basis, for the provisional liquidator/s of their choice.

- 5.1.21 The Master also adds and appoints a previously disadvantaged individual (PDI) as per the National List of Approved Liquidators. The Master will proceed to issue a Provisional Certificate of Appointment on receipt of the necessary documentation (Bond of security to full value of the estate, undertaking and affidavit of non-interest in terms of section 372 of the Companies Act, as amended).
- 5.1.22 Once in possession of a final court order, the Master, in terms of section 364 of the Companies Act, read with section 40 of the Insolvency Act, has a statutory duty to convene the first meeting of creditors by publishing in the Government Gazette, stating the date and time of the meeting. At such a meeting, the statement of affairs of the company is considered, creditors may prove their claims and nominate a person or persons for appointment as (a) final liquidator/s. Upon receipt of the minutes of the first meeting, the Master will proceed with the issuing of the Final Certificate of Appointment.
- 5.1.23 These procedures were complied with and the Final Certificate in the matter of ATS Alloy Wheels was issued on 7 December 2007.

Duties of a liquidator

- 5.1.24 Section 391 of the Companies Act as amended, states that:

“A liquidator in any winding-up shall proceed forthwith to recover and reduce into possession all the assets and property of the company, movable and immovable, shall apply the same so far as they extend in satisfaction of the winding-up and the claims of creditors, and shall distribute the balance among those who are entitled thereto”.

- 5.1.25 The provisional liquidator therefore must take physical control of the assets and affairs of the estate until his/her final appointment as set out in sections 386(1),(a), (b), (c), (e) and 4 (f) of the Companies Act, as amended.
- 5.1.26 Once the Final Certificate of Appointment had been issued by the Master in terms of sections 386(1)(a-e) and 4(f) of the Companies Act, the appointed liquidators must collect and realize the immovable and movable assets belonging to the company in liquidation by way of a private treaty or public auction. The liquidators are expected to attend to all their responsibilities with diligence and independence, obtain consent from the Master whenever so required, report on certain actions during their administration

and lodge with the Master a Liquidation and Distribution account within six (6) months after the Final Certificate had been issued, unless a timeous application was made for an extension due to further assets to be collected.

- 5.1.27 The liquidator is required to convene, as per section 40(3) of the Insolvency Act, read with section 366 of the Companies Act, the second meeting of creditors at which the liquidator will also table his report in terms of section 400, stating amongst other matters, the reasons for liquidation, assets and liabilities, the progress made in the winding-up, further enquiries, offences by directors and afford proven creditors to adopt the tabled resolutions.
- 5.1.28 Therefore, the role of a liquidator is to take control and realize the assets of the company with the aim of distributing the proceeds amongst those who are entitled thereto. Once the account is open for inspection and no objections had been lodged or objections had been dealt with according to the stipulations of section 407 of the Companies Act, the account will be confirmed by the Master. The proceeds and amounts available for distribution are first applied in payment of the administration expenses and thereafter the remaining funds are applied in satisfying the claims of proven creditors, **in their order of preference.** (Own emphasis)

Duties of the Master once a liquidator is appointed

- 5.1.29 The Master's duties once the liquidator is appointed are to oversee, supervise and regulate the administration processes of the insolvent estate for the benefit of creditors. The Master supervises the liquidators by way of the liquidation account and plan of distribution or contribution. Once the Master had issued the Final Certificate of Appointment, the liquidator must, within six (6) months of such appointment or such longer period as the Master may direct, file the Liquidation Account and plan of distribution or contribution with the Master in terms of sections 9-107 of the Insolvency Act.
- 5.1.30 The Master has the authority in terms of section 386(2)(B) of the Companies Act, to give consent to the liquidators to sell the property belonging to the company in liquidation. This consent is usually requested before the statutory second meeting of creditors when there is good cause to do so or urgency to sell. The Master has a strict approach when considering the approval of sales as applications must contain sworn valuations,

consent by secured creditors and affidavits by all liquidators motivating the reasons and feasibility for the sale, as ultimately, the proceeds will contribute to the awards given to proven creditors.

- 5.1.31 Other permissions before the second meeting of creditors which the Master may be approached on, is to consider the written request to obtain assistance from an attorney or counsel in respect of urgent legal proceedings, as well as the cancellation of leases. At the second meeting of creditors, proven creditors will usually then adopt the tabled resolutions which will direct the liquidators' actions in the further administration of the estate. The liquidator may also convene a special meeting for purposes of proving further claims.
- 5.1.32 Once the L&D account has been lodged, the Master will examine the account and verify the items listed in the account. The L&D account consists of a bank reconciliation statement, free residue account, encumbered asset accounts, trading account and distribution account. The account is checked against the vouchers, claims and bank statements lodged. The Liquidators' fees are verified according to Tariff B of the Second Schedule and the Master's fees according to the Third Schedule to the Insolvency Act, whereas the awards to creditors are checked for correctness according to their ranking, namely secured, preferent or concurrent creditors.
- 5.1.33 Employee claims are dealt with in section 98A of the Insolvency Act, as amended, subject to the maximum amounts determined by the Minister of Justice from time to time, to a preference for:
- “(i) any salary or wages for a period not exceeding three months, due to an employee (maximum R12 000);*
 - (ii) any payment in respect of any period of leave or holiday due to the employee which accrued as a result of his or her employment by the insolvent in the year of insolvency or the previous year, whether or not payment thereof is due at the date of sequestration (maximum R4000);*
 - (iii) any payment due in respect of any other form of paid absence for a period not exceeding three months prior to the date of sequestration of the estate (maximum R4000); and*
 - (iv) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract or wage-regulating measure (maximum R12 000). The*

insolvency Amendment Act 33 of 2002 expanded this preference to include severance or retrenchment pay as a result of termination of contracts of service in terms of section 378 of the Insolvency Act.”

- 5.1.34 The Master will, with each L&D account submitted, issue a query sheet which the Liquidators are expected to comply with. If there is no preliminary requirement raised in such query sheet or the Master is of the opinion that the account is in any respect incorrect and had been amended to the satisfaction of the Master, the liquidator will then proceed to advertise in terms of section 406 of the Companies Act, as amended.
- 5.1.35 The advertisement of the account consists of publishing in the Government Gazette, and due notice of the account to lay for inspection at the Magistrate or Master where the registered address of the company was.
- 5.1.36 Any interested party may at any time before the confirmation of the account submit an objection to the account with the reasons to the objection in writing to the Master. The liquidator will receive a copy of the objection and supporting documents and have fourteen (14) days to submit his remarks to the Master. The Master will give his/her ruling and either refuse the objection with reasons or sustain the objection and instruct the liquidator to amend the account.
- 5.1.37 Once the account has lain for inspection free from objection and the Master is in receipt of the advertisement requirements and proof of payment of Master's fees, the Master will issue the confirmation notice in terms of section 408 of the Companies Act.
- 5.1.38 The Fourth and Final L&D account in the ATS Wheels was confirmed on 4 March 2019. A confirmation notice has the effect that the Master is *functus officio* as section 408 of the Companies Act states that the confirmation of the account “*shall have the effect of a final judgment*” subject to an aggrieved party approaching the Court to set aside the confirmation and re-open the confirmed account.
- 5.1.39 In this instance, after the liquidation accounts were confirmed, no objections were lodged against any of the L&D accounts before the confirmation notices were issued. The aggrieved parties were expected to approach the Court to set aside the confirmation and re-open the confirmed account as per Section 408 of the Companies Act.

Role of the Master in the process of payments

- 5.1.40 With reference to section 409 of the Companies Act, the Liquidator must proceed to pay out creditors according to the confirmed L&D account. In terms of section 410(2) of the Companies Act:

“(2) If any dividend remains unpaid for a period of two months (or such longer as the Master may approve) after the confirmation of the relevant account, the liquidator shall pay the amount to the Master for deposit in the Guardians’ Fund for the account of the creditor or member concerned.”

- 5.1.41 It is in the interest of the proven creditors to update their banking details with the liquidator responsible for the day-to-day administration of the estate. The payment of dividends in terms of untraceable creditors is administered by the Guardians’ Fund in Pretoria.

Role of the Guardian’s Fund and charging 5% commission when processing payments

- 5.1.42 The Guardian’s Fund falls under the administration of the Master (Master of the High Court) and is created to hold and administer funds which are payable into the hands of the Master on behalf of various persons known or unknown and is governed by the Administration of Estates Act no 66 of 1965 (Administration of Estates Act).
- 5.1.43 In terms of section 93 of the Administration of Estates Act, the Guardian’s Fund receives creditors’ unclaimed monies and upon all unclaimed moneys being paid into the hands of the Master, in pursuit of section 93 of the Act or for account of absent or unknown creditors of any estate or for account of absent or unknown creditors or contributors of any company, a commission in the amount paid, of five percent (5%), shall be payable in cash and be deducted from the unclaimed money so paid in the hands of the Master, as stipulated in terms of Schedule 2, paragraph 3, of the Administration of Estates Act.

6. CONCLUSION

- 6.1 After assessing all the evidence and information, the investigation revealed that the Office of the Master as the administrator and facilitator of the L&D accounts complied with the

provisions of the Insolvency Act and other relevant legal prescripts when dealing with ATS Wheels' liquidation.

- 6.2 Although some of the Complainants could not be paid their outstanding severance benefits because the Liquidators and Guardian Fund could not trace their whereabouts, there was a delay by both the Liquidators and Master to finalise the payment of outstanding claimants after the intervention of the Public Protector in May 2019. It was at the May 2019 meeting between the Public Protector and Office of the Master in which an undertaking was made by the Office of the Master to finalise the processing of the outstanding payments by the end of June 2019.

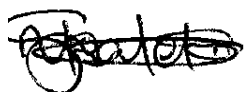
7. INTERVENTION

- 7.1 It is recommended, in terms of section 6(4)(c)(ii) of the Public Protector Act that since the ATS Wheels' former employees have been traced, the Office of the Master, the Guardian's Fund offices in Pretoria and the Liquidators should ensure that the employees are paid all the outstanding money due to them within sixty (60) days from the date of this intervention letter.

8. MONITORING

- 8.1 The Public Protector will monitor the process of payments on a monthly basis until all payments have been made to affected employees of ATS Wheels.

Yours sincerely, **Accountability • Integrity • Responsiveness**



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF SOUTH AFRICA
DATE: 30 SEPTEMBER 2022

Assisted by: Ms P. Mogaladi

Executive Manager: Investigations