Definition:

The liquidation of a Company / Close Corporation is a legal process whereby the Company and its affairs are placed under the control of a liquidator who must realize the assets and divide the assets amongst creditors according to the stipulations in the Companies Act. The main aim of liquidation is to divide the yield from the sale of assets amongst creditors fairly and to dissolve the Company in an orderly manner.

Terminology:

Q: What is the difference between "sequestration", "bankruptcy", "liquidation", "insolvency" and "surrender of estate"?

A: "Sequestration", "bankruptcy" "insolvency" and "liquidation" are all different terms, which in layman's terms simply mean that a person or business is in such a bad financial state that creditors cannot get paid. The term "liquidation" refers to the bankruptcy of a company or close corporation and certain other legal entities. "The term "sequestration"refers to the bankruptcy of a natural person or a trust. "Surrender of estate" refers to the process where a natural person asks a court to declare him insolvent.

Q: What is a: "Trustee", "Liquidator" and "Curator"?

A: Once a natural person is sequestrated the Master of the High Court appoints a Trustee who must take control of the assets. In case a Company, Close Corporation or certain other legal entities are liquidated, the person appointed by the Master is referred to as a Liquidator. Curator can be either someone who is appointed to be guardian of the assets of an institution like for example an Art Gallery or Museum. A Curator is also the title used for a person appointed as guardian of someone who does not have the mental capacity to look after his own financial affairs. The name Curator is many times erroneously used when referring to a Trustee or Liquidator. Contrary to popular believe, Trustees and Liquidators do have feelings and their hearts are not made of stone (medically proven fact).

Q: Who is "The Master of the High Court"?

A: The Master of the High Court is an institution which is the guardian of all insolvents, minor children and the estates of deceased persons. Guardians, trustees, Liquidators and Executors all report to the Master in the execution of their duties.

QL28: What does "Debt Counselling" mean?

A: Debt Counselling is a process by which a natural person approaches a debt councillor who may assist him in re-arranging his debt payments. A company and Close Corporation don't qualify for debt counselling.
See "Sequestration" – debt counselling is discussed there.

QL29: What does "Sequestration" mean?

A: Click the tab "Sequestration" and learn more. Sequestration does not apply to companies and Close corporations.

QL114: What is a Secured creditor?

A: A Secured Creditor is a creditor which olds security for the credit. Examples: bond over your company's property, motorcar/asset finance etc. He stands first in line in the asset is sold.

QL101: What is a "benefit for creditors" and how is it calculated?

A: This principle does not apply to liquidations. It applies to sequestrations. You can look up the meaning under the tab "liquidation".

QL102: What is a Preferent creditor?

A: A preferent creditor is a creditor who holds security for his loans for example the creditor who has granted you a loan on your house or a hire purchase on your motor vehicle are examples of secured creditors. Apart from these creditors certain statutory creditors are preferent for example the taxman, employees, television licenses, costs owing to your doctor on your deathbed etc. The list is rather long and we will advise you on this.

QL103: What does the term "concurrent creditors" mean?

A: Concurrent creditors are those creditors who do not hold any security for the money you owe them. In practical and legal terms they stand at the very end of the cue when it comes to the hope or possibility of receiving anything from your Insolvent estate.

QL104: What does "contribution" mean?

A: In the winding-up of your company's estate it might happen that, even though preferent creditors receive a dividend, there are not enough funds to cover the administrative costs of the insolvent estate. You must keep in mind that preferent creditors are only obliged to pay the cost of realisation of the asset of which they hold security. They are not obliged to pay the "general administrative cost". Should there be a shortfall in the "general administrative cost" then each creditor who has proven a claim in your insolvent estate becomes liable for the administrative cost, pro rata to the amount of his claim.

QL105: I feel guilty!

A: Please don't tell the bank that you feel guilty. They will most properly have a service charge for that as well, do not feel guilty. If it was not your intention to incur debt intentionally and not pay your company's creditors, you would be worthy of your guilt feelings. I have ever so often explained to my clients that should you be a piano player who has a contract to play the piano every Friday night and you lose your fingers, you simply can't play the piano anymore, irrespective of whether you feel guilty or not. A simple matter of fact is that life happens. You simply do not have control over every aspect of your life. During the period 2007 until end of December 2009 the interest rates in South Africa hiked with 5,5%. Thousands upon thousands of people and companies were not able to bare this brunt and they went under. Feeling guilty could not change the situation.

QL106: I fear the unknown?

A: During about 1990 a toy company in America interviewed children. They wanted to determine if children could give them the ideas for the ultimate toy. They expected that boys would come up with a wonderful robot that would shoot laser beams and kill their younger sister. Once of the many questions that children were asked was to name the animal they feared the most. Guess what animal that was? A Dragon! A Dragon does not even exist! What we learn from this is that people fear the unknown. Our advice is that, should the ghost and dragons haunt you in the middle of the night, make a note of that which you fear and call us the next day. In our business we have enough experience to properly advise you to whether your fear is real or just a dragon.

Options:

QL10: What are my Company / CC's options if my Company / CC's Close Corporation can't pay its debt.

A: Under South African law there are 14 options. If your Company / Close Corporation is indebted the options are the following:

Pay the debt – (option 1)

Consolidate debt – (option 2)

Moratorium- (option 3)

Negotiate Extended repayment period – (option 4)

Do nothing about it (Sit back and Wait) (option 5)

Get investors on board- (option 6)

Sell shares- (option 7)

Borrow more money- (option 8)

Private Liquidation – (option 9)

Voluntary distribution – (option 10)

Liquidation- (option 11)

Trade out of the problem – (option 12)

Deregistration- (option 13)

Compromise (Section 311 of the Companies Act) – (option 14)

Judicial management (Falls away on 1 May 2011) – (option 14a) (Available for Companies only)

Company Rescue Procedure (New companies Act of 2010 – as from 1 May 2011) (Available for Companies & Close Corporations) (option 16b)

QL11: Pay your company's debt! – (Option 1)

A: If your Company owes money to your creditors, the first and logical option is to pay the debt. Payment can take many different forms, like for example rescheduling of payments, extension of the repayment period, etc.

QL12: What does "Consolidation" mean? – (option 2)

A: Consolidation is a simple commercial option in terms whereof your Company borrow more money to pay its debt. Your company's should be very careful when considering consolidation, because it could end your company's up in deeper trouble. The only instance where consolidation really works is if your company's consolidate short term debt into a long term loan (for example if your company's take a further bond on a property to pay off credit cards, motor vehicles and loans). The normal problem with consolidation is that, by the time the debtor tries to consolidate his debt, he is already listed on the credit bureaus and he does therefore not qualify for further loans. Be careful to not bail out your company if your company's are not sure it will be able to pay you back

QL13: What does "Moratorium" mean? – (option 3)

A: A Moratorium is where your Company enter into a agreement with its creditors in terms whereof they allow your Company a grace period during which your company's it is allowed to to skip monthly a number of instalments. This process only succeeds if you can dangle a very nice fat carrot in front of the donkey, for example where you proof that a policy will pay out in the near future and the funds in the policy will be enough to cover the debt. The creditors will normally only enter into a moratorium agreement if they are absolutely sure that they will get paid. Keep in mind that when you negotiate with a creditor, the creditor only wants two questions answered, namely: When will you pay them and how much?

QL14: Negotiate Extended repayment period (option 4)

A: This is very logical!

QL15: What happens if I sit back and wait? – (option 5)

A: Creditors will issue summons. The summons becomes a judgement where after the Sheriff of the Court will be send out by the creditor to attach your assets. Should your company's not have enough assets which can be sold to cover the debt, then a Skuldbeslag Order can be issued against terms whereof the creditor takes any money due to your Company. If this does not fulfil the debt, You, in your representative capacity will be summonsed to appear in front of a Magistrate. When you are subpoenaed to appear in front of the Magistrate, you will have to take along your Companies/CC's banking statements and any other documents that pertain to its financial situation. The Magistrate then holds an inquiry to determine whether there are any assets or income which can be attached to the benefit of your creditor.

QL16: Get investors on board- (option 6)

A: This is logical!

QL17: Sell shares- (option 7)

A: This is logical!

QL18: Borrow more money- (option 8)

A: This is logical!

QL20: What does "Private Liquidation" mean? – (option 9)

A: A Private Liquidation is a process by which you sell of your assets in an effort to bring your monthly expenditure under control. This is not a "Court process".

QL21: What does "Voluntary Distribution" mean? – (option 10)

A: Without making use of a court of law, your company can negotiate a deal with your creditors in terms whereof it voluntarily distributes a certain amount amongst them. In our experience it is very difficult to reach such an agreement.

QL22: Liquidation- (option 11)

A: Go to the top of this page for a definition.

QL23: Trade out of the problem – (option 12)

A: Logical!

QL24: Deregistration- (option 13)

A: If your company / close corporation is unable to pay its debt, deregistration is the exact wrong procedure to follow because, if your company / close corporation gets deregistered, the Directors become liable in person for all the debt that the company had before date of deregistration. Another effect of deregistration is that all the assets of the company immediately becomes the property of the State. Cipro is using this to their advantage because, if your company does not pay the annual Cipro fee, they then deregister you company.

QL25: Compromise (Section 311 of the Companies Act) – (option 14)

A: The purpose of a Section 311 compromise is to reach a binding agreement between the shareholders and creditors of the company with a view to modify their claims against the company in the common interest of all parties concerned. Section 311 therefore creates the machinery which enables the company to negotiate with members of a group of shareholders and / or creditors collectively and combine all the members of that group to the agreement reached by the majority of members of that group. The main aim is to rearrange a company's liabilities. This mechanism is normally used by rather big companies. The compromise must be agreed upon by a majority in number of creditors who must represent at least 75% in value of the debt owed by the company.

Furthermore, at least 75% of the shareholders must agree to the arrangement. A scheme can take many forms. Even companies who are not insolvent can apply for Section 311 if this would help the company to become more profitable. It is a rather involved process and we will advise you on this.

QL26: Judicial Management – (option 15)

A: Go to the tab "Company Rescues". Judicial Management will be replaced by a company rescue procedure on 1 July 2010.

QL27: Company Rescue – (option 15a)

A: Go to the top of the page to the tab "Business Rescues". This mechanism is effective from 1 May 2011 – New companies Act of 2010.

To be considered before you decide on Sequestration:

QL8: Who may apply for the liquidation of a company?

A: The "members" of the company may apply. The members mainly consist of creditors, and or employees and or shareholders. There are further classes of interested parties for example investors in pyramid schemes etc.

QL9: Under which circumstances will the court grant a Liquidation Order?

A: Section 344 of the Companies Act defines 8 circumstances. The Court will normally grant an order if it is proven that the company / close corporation is unable to pay its debts and that it is fair and equitable that a liquidation order be given.

QL95: How do I put my ducks in row before the liquidation application?

A: This is a short question with a very long and involved answer. We will advise you on this.

QL107: Will my Company / CC's Application for Liquidation succeed?

A: We have dealt with about 2300 insolvency cases. Thus far only 5 of these Applications did not succeed. We can't pretend that we will always succeed, but on a balance of probabilities we have succeeded in passing 99.85 of all applications that we handled.

Q: Which Attorneys should I use?

A: Make sure you use an attorney who is a specialist in Insolvencies. Insolvency law is specialised and an interesting fact is that Insolvency law in many instances differ vastly from "normal" law. Just one interesting example of this difference is that when you are involved in normal litigation, any settlement proposals by you is prejudice and may not be used against you in the case. The very opposite is the case in the Insolvency law. If you make a settlement proposal, that proposal can be detrimental to your case.

QL30: Does anyone care about my business?

A: No! Don't be ridiculous! Business is unfortunately lonesome affair. "You and those near to you" are the only ones who care.

QL89: What do I tell my Company / CC's creditors once I have decided to liquidate?

A: Do not try to negotiate to them yourself. Use the famous term: "Speak to my lawyer!"

QL87: Which attorneys should I use and why?

A: Please use a specialist! Insolvency is a very specialized field. Attorneys who specialise in insolvency law will not only know the insolvency law, they will also know their way around practically.

QL6: Will I be liable for the debts of my Company / CC because I am the director / member?

A: No. A shareholder in a company in essence only award enjoys rights – mainly the right to vote on shareholders meetings and it furthermore qualifies you for receiving dividends when a company has declared dividends. In the instance of a close corporation the member sits on two chairs. In his capacity as "manager" of the close corporation you must perform you duty diligently. The other chair that the members sit on is in a capacity comparable of that of a share holder, which means that he has certain rights regarding the profits of the close corporation. A director / member do not become liable automatically. You will liable for those debts of the company for which you have signed surety, irrespective of whether you are a member / director. If you have acted fraudulently or grossly negligent, and applicant can be brought against you in terms whereof the company veil be lifted you will be liable in person for all the company / close corporation's debt. The jackpot question is thus whether you have signed surety.

QL52: Must I keep up payment of my Company / CC's municipal levies after I have given instruction to my attorney to liquidate?

A: You are not allowed to prefer one creditor above the others after you have made the decision to Liquidate.

QL53: Must I keep on paying water and lights after I have given instruction to liquidate?

A: It advisable to keep on paying your utility bill, otherwise they will cut off you water and lights.

QL54: Am I allowed to set up a new company / close corporation after liquidation of my Company / CC's?

A: Yes. There is no legal prohibition. A practical problem is however that SARS may, if your previous company / close corporation was liquidated and it owed SARS money, require that you signed surety in your personal capacity for the payment of taxes in your new company / close corporation.

QL81: What is the effect of my Company / CC's liquidation on a lease agreement?

A: Should you have leased premises at the time of your liquidation, the lease agreement is not automatically cancelled by your liquidation. In practical terms should you lease a residential property, you simply keep on paying your rent and you stay on in the property. Should you have leased a commercial property, or wish to terminate your lease in a residential property, the liquidator must give written notice to the landlord in which he terminates the lease in writing. Should the liquidator not give notice within three months of his appointment that he terminates the lease agreement the agreement is terminated automatically.

QL55: Can I buy back the company's assets after liquidation?

A: After the liquidation you, in your personal capacity, is in the same position as any other person who wants to purchase the assets. The liquidator is not allowed to prefer you. He will however not discriminate against you. This means that you can buy the assets from the liquidator if your offer is deemed to be a fair offer.

QL56: What happens to my Company / CC's insurance policies?

A: Insurance policies consist of different categories. A retirement annuity is protected against your insolvent estate. Also protected against your insolvent estate are any funds that pay out to you in terms of a claim for personal injury. Policies ceded to creditors have become the property of your creditors and they can deal with those policies in whatever manner they deem fit. All policies which are not ceded and does not fall under the Pensions Act or other protection in the Insolvency Act form an asset in your insolvent estate. There are legal ways to protect your policies if they fall within certain parameters on which we will advise you on.

QL57: Someone from the bank has called me and “they” want to collect my Company / CC’s car because the payments are in arrears. Must I hand it over?

A: The banks, instead of making use of proper legal process, use a point collection agent who will use intimidation to collect the vehicle. They work for a fee and their only interest is to collect their fee when collecting the vehicle/asset. The only person who is legally entitled to collect any asset is a Sheriff of the Court with a Court Order in his hand. The collection agents use intimidation to force you to sign a voluntary surrender of the vehicle/asset. In short, get legal representation.

QL31: Will my Company / CC’s Company / CC’s Application for Liquidation succeed?

A: The Leaned Appellate Judge Zullman is of the opinion that, if you brought a company to the cradle you have a right to take it to the grave. Courts will consider factors like positions of the employees, creditors as well as the prejudice to commerce (apart from formalities that must be adhered to). Creditors obviously have a right to oppose the Liquidation. Our firm has handled more than a thousand liquidations as so far each and every application has succeeded.

QL33: There is no “benefit for creditors” – can I still liquidate my Company / CC’s Company / Close corporation?

A: Contrary to law pertaining to sequestration, where there must be a “benefit for creditors” before the court will grant a sequestration order, a Company / Close corporation can be liquidated even if it possesses no assets.

QL36: Will my Company / CC’s name be put on a credit bureau if my Company / CC’s company is liquidated?

A: No. Financial institutions have the facility to check on Cipro whether you have liquidated a company / close corporation before. It is not practise that this information is deemed as adverse credit information.

QL49: Am I liable for debts of the company/close corporation/business trust?

A: There is a misconception that the mere fact that you are a Director of a company or member of a Close Corporation or liquidator of a trust makes you liable for the debt of that entity. You will only be liable for the debt of your company/close corporation/trust if you have signed surety for that legal entity’s debt. Should you have acted grossly negligent or fraudulent in your capacity as Director/member/trustee, the corporate veil can be lifted between yourself and your business and you can become liable in person. Only the Court can give an Order that the company veil be lifted.

QL45: How long will I be able to stay on in the house which falls into my Company / CC’s company’s insolvent estate?

A: From the day that you give us instructions to liquidate you, you will normally stay on in your company’s house for a period of at least 3 to 5 months. This is not because we can work magic and wonders. It is simply because it takes about 5 weeks to get a provisional Liquidation order. Where after the master of the high court appoints a provisional liquidator. It takes another five weeks to get the Final Liquidation order. Thereafter the Master of the High Court must make the liquidator’s appointment final. Under normal circumstances this takes about another two weeks. Once the liquidator is appointed, the two creditors meetings must be held. Give or take another 4 weeks for certain administrative necessities. The liquidator can legally not deal with the property before the second meeting of the creditors was held. If you then add up these periods, it is about 3 to 5 months.

QL46: How long will I be able to use my Company / CC’s company’s car which is under a finance agreement?

A: In the Liquidation process all execution steps against you stop. Once you have been liquidated and the liquidator has been appointed, the creditors would normally want their assets back immediately. The short answer is that you will keep your car until shortly after liquidation. We have over many years in thousands of cases only a few times had a situation where a banking institution approach the court before the liquidation

order was granted and asked the Court for an order in terms whereof they take possession of the vehicle simply to store it and keep it safe.

QL44: Can I be jailed for not paying my Company / CC's debt?

A: No. It is interesting to know that only as recently as in 1923 it was finally decided that insolvency in South Africa is a civil matter and not a criminal matter (Ex parte Pretorius). Before 1994 you could in fact be jailed for non payment of debt. A debtor could not be put in jailed because he owed money. The creditor's attorney would take the debtor to Court and would ask the Magistrate to make an Order in terms whereof the debtor should pay a certain amount per month. Should the debtor fail to make that payment, he could be jailed for not complying with the Court Order. After 1994 the law has changed and a debtor can't be jailed for non payment.

QL58: What can a creditor do if I do not pay my Company / CC's debt?

A: If your company's/ CC don't pay its debt, the creditor will first send a letter of demand. Thereafter summons is issued and if your company's don't have a proper defence, the summons turns into a Judgement against your company's. The judgement in itself does not mean that the creditor has money in his pocket. The next step is that the creditor will follow is execution steps against your company's. Under South African law the creditor can firstly attach movable assets, thereafter immovable assets, thereafter money owed to your company's (for example the surrender value on an insurance policy or the value of an investment that your company's have with a financial institution). Should the creditor not succeed in collecting the money in this manner he can summons, in your representative capacity to appear in the Magistrate Court where a financial enquiry is held. At such an inquiry you must produce your company's bank statements, financials etc. The Court can then make an Order that your company's pay the creditor a certain amount per month.

QL59: Can creditors attach my Company / CC's company's assets while during the process of liquidation?

A:

QL60: Why don't I simply wait for my Company / CC's creditors to liquidate me?

A: Creditors are not keen to bring a "hostile" Liquidation Application, because it is normally cheaper for them to follow execution steps via the Sheriff. Hostile liquidation Applications are normally brought against debtors who have very large estates and have hidden their assets from creditors. Such a creditor would most properly hold an insolvency enquiry against such a debtor. And insolvency enquiry is a process in the insolvency law by which the insolvent, his family, auditor, employees, auditors etc. can be in interrogated to get information regarding the assets and other relevant affairs pertaining to the insolvent estate.

QL61: How does the Liquidation process work?

A: Make an appointment with us. During consultation we will assist you in determining whether Liquidation is indeed the right option. Should you want to proceed with liquidation, there are a lot of legal formalities of which we take care. From date of the decision to Liquidate it normally takes about 5 weeks before we appear in Court and get the provisional Liquidation order. You don't have to appear in person, we appear on your behalf. During the process we negotiate with creditors. Legally the creditors can carry on with execution until the provisional liquidation order was given. Please do not leave the matter so late that we can't stop execution by your creditors. After the Provisional Liquidation Order has been granted, the Master of the High Court appoints a Liquidator who must take charge of your assets and liabilities. Once a Liquidator is appointed we set up a meeting with the Liquidator at which meeting we represent you. When meeting with the Liquidator we negotiate on your behalf certain important aspects. We get the final order about 5 weeks later.

QL62: What is the role of the Liquidator in my life after Company / CC's liquidation?

A: The Liquidator is not interested to be involved in your life. He has a job to do and that job is to realise the assets which fall in your company's insolvent estate, where after a dividend is distributed amongst creditors.

Before the dividend can be distributed amongst creditors the Master of the High Court must approve the distribution.

She's got nothing to do with Corporate

Structuring – we're just trying see if you

can focus under difficult circumstances!

During the Liquidation Process:

QL99: How long does the process take?

A: From the moment you give us instruction to do the liquidation it takes between four to six weeks before we have a provisional order which must be advertised in the Government Gazette, newspapers etc. There are some other formalities for example the service of the provisional order by sheriff etc. The final order is normally granted about three weeks after the provisional order. The liquidator gets appointed after the provisional order was granted and the full effect of the final order is in force once the provisional order has been granted.

QL98: What must I disclose to my Company / CC's liquidator?

A: Everything.

QL5: Should my Company / CC's Company keep on paying its creditors after I have given my Attorneys Instruction to liquidate?

A: No. Should your company's company keep on paying certain creditors, it prefers them above other creditors. Under South African Law this is not allowed.

QL35: Can creditors oppose the liquidation application.

A: Yes. If they proof that the company is not insolvent and that it is not equitable (fair and just) that the company be liquidated.

QL97: Should I attend court when the application for liquidation is presented?

A: No, liquidation is dealt with by way of "motion" procedure. This means that everything that you want to present to court must be on paper.

After the Liquidation:

QL108: What are my obligations after liquidations?

A: You are essentially obliged to do the following:

Attend a meeting with your liquidator (which we will set up). We will be present at this meeting to assist you – we don't know of any other attorney firm that represents their clients when meeting their Liquidator.

Make full disclosure to the Liquidator.

Assist the Liquidator in so far as it is possible.

Attend the meeting of creditors which will be held at either the offices of the Master of the High Court or at your local Magistrates Court (keep in mind that these creditors meetings are simply meetings). It does not mean that you will be interrogated. Should an interrogation happen, you will be afforded the opportunity to get legal representation. This happens very rarely. One of the reasons why you must attend the meetings, is because have

firsthand knowledge of the amounts that creditors are owed and you can assist the Liquidator to spot false claims against your insolvent estate.

Q: I have forgotten about one or two small creditors and they are no mentioned in my application for sequestration, will I be held liable to pay them?

A: It is no problem is you did not know about the creditor, If you houwever left out a creditor to whom you owe , for example a Million Rand, you will have to disclose to the creditor that you have left him out, If he is difficult aboout it, you might have to approach court again and ask the court to condone your oversight.

QL50: How long does the winding up of my Company / CC's estate take?

A: The process normally takes between six months to eighteen months and in involved estates, where for example the liquidator must take legal action against debtors etc, it could take many years. The winding-up process does not really involve you personally.

QL82: What are the consequences of liquidation?

A:

All share transfers after commencement of the winding up process is void

Disposition of any property after commencement of the winding up position is void.

All civil proceedings against the company are suspended from date of the court order until appointment of a final liquidator

Any attachment by creditors put enforce against the company / close corporation after the commencement of winding up is void

The Directors cease to be in charge of the company. They are however (if it is a hostile liquidation application against the Company), entitled to oppose the granting of the final order after the provisional order has been made

The property of the company falls under the custody of the Master who then hands it to the Liquidators once they are appointed

Sections 417 and 418 of the Companies Act come into play. This empowers the Master, the Court or a Commissioner to summons all people who have knowledge of the company's affairs to appear in a forum which is called an "insolvency Enquiry", where they can be interrogated.

QL32: What are my obligations before during and after liquidation?

A: Before and during liquidation you have an obligation to protect the assets of your company / close corporation. If you are unable to protect the assets we will assist you in placing guards at the premises etc. When applying for a liquidation order we ask the court that these people / institutions that has helped protect the assets be paid as an administrative cost from the company. After the liquidation you have an obligation to assist the liquidator by giving him all information, disclosure, books and paperwork and to furthermore disclose which assets belong to the company and where they are located.

QL1: How do I prove that stuff does / does not belong to my Company / Close Corporation?

A: Under South African law ownership is determined by facts. This means that, the mere fact that, for example a motorcar is registered in my Company / CC's name does not mean that I am the owner. If someone claims ownership of the vehicle then it must be proved by a balance of probabilities that the vehicle belongs to the person who alleges that the vehicle belongs to him. This will be determined by answering for example the following questions:

Who paid for the vehicle?

Who paid the insurance premium on the vehicle?

Who had use of the vehicle?

Who was responsible for repairs of the vehicle? Etc. etc. etc

There are certain exceptions to this rule where registration is deemed to be equal to ownership; like for example when an immovable property is registered in someone's name it is deemed to be a legal fact that that person is the owner of the property. The same rule applies to shares held in a company.

QL4: What is the position regarding assets or debt that I have in other countries than South Africa?

A: The general assembly of the United Nations has on 15th December 1997 adopted a resolution, which was also sponsored by South Africa after which the South African Parliament has adopted the cross border insolvency Act No 42 of 2000. The essence of the cross border insolvency act is that, if your company's have debt overseas your company's have to notify those creditors if your company's apply for liquidation. They then have the same rights to claim from your company's estate than the South African creditors. With regards to your company's assets that are held in another country, they form part of your company's insolvent estate and your company's trustee/liquidator may apply to the competent court in that country that your company's liquidation order be extended to that country. This also applies to companies.

QL93: What about my company / close corporation's assets in other countries?

A: Once a company is liquidated all its assets, irrespective where its assets are located, it falls under the control of the liquidator.

QL34: How does the liquidator get paid?

A: There is a schedule that forms part of the insolvency act which prescribes that the liquidator gets paid from the sale of the assets. For example he gets 3% from the sale of immovable property, 10% from the sale of movable assets, 1% of cash in the estate etc. When a company is liquidated and it has no assets it creates a problem because it costs the liquidator a substantial amount to wind up the estate even if there are no assets. In these circumstances we always advise our clients to pay the liquidators fee and expenses because the liquidator does not want to incur losses in the winding up progress.

QL83: What about court actions pending against my company / close corporation?

A: Creditors are not prohibited from proceeding with legal steps until the provisional Liquidation order has been granted.

QLL84: My company / close corporation have instituted legal action against a third part – what happens after liquidation?

A: After the liquidation has been granted the Liquidators can decide whether they want to take the legal action further. Remember the legal action is only suspended once the Liquidation Order has been granted.

QL85: If the Liquidator does not want to proceed with legal action after the Liquidation Order has been granted, what is my Company / CC's legal position?

A: You or anyone else can negotiate with the Liquidator to buy the right from the Insolvent Estate to proceed with the legal action in your private capacity. The price of the acquisition of this right will be determined by the probability of success as well as the quantum the action. The purchase price can range from R1 to millions of Rands.

Employees, Creditors & SARS:

Q110: I have not heard from a creditor for more than 3 years. Is the debt written off?

A: If the debt became due and payable and the creditor has not issued summons against you in 3 years, the debt has prescribed. The creditor cannot sue you anymore. If they have taken judgement against you, the mere fact that your name does not appear on the credit bureau, does not mean that the debt is written off. If the judgment was taken in a magistrate's court, it is valid for 30 years and the creditor can still act against you. If the judgment was taken in a High court, it is valid for the rest of your life. What sometimes happens in practice is that the attorney who acts for the creditor cannot collect the debt, because the debtor is unable to pay and he has no assets which can be sold. He then advises his client to let it be and he closes his file. Back at the ranch, judgment was taken. Big problem: the banks often sell their old debtors book. The institution which buys the debtors book can execute against you.

Q111: I did not even know that they took judgment against me!

A: Once you sign a agreement and you choose a legal address (a so called "domicilium" adress) then the creditor can serve the summons on the address that you have chosen, where after it is legally deemed than you have received the summons. The service was legal and the judgement taken is also legal.

Q112: Can a judgment against me be set aside?

A: Only under certain circumstances. You must, within 21 days after you have learned that summons was taken against you, issue court papers in which you ask the court to set aside the judgment. You must, in essence, prove to court that you have a valid defence that is strong enough that there is a good chance that, if you were aware of the summons and defended it, you would have succeeded. It is almost impossible to defend the summons if you are summonsed because you did not keep up the payment of your car, equipment or property.

Q91: What about parking tickets, television licences, water accounts etc?

A: Some debts are deemed to be statutory debts (in other words obligations in terms of some law by which you must pay Government or Semi-Government institutions). These do not fall in the insolvent estate and must be paid. What normally happens is, when you for example register a motor vehicle in your company / close corporation's name they require a person of that company / close corporation to sign a "proxy". That person who has signed the "proxy" will be liable in person for payment of these debts. We will properly advise you on the avenues you may follow to avoid payment of these obligations.

QL94: my Company issued cheques which were not honoured – what is the legal position?

A: All cheques post dated to a date after liquidation becomes void and the creditor who has received such a cheque becomes a normal creditor for the amounts not honoured. Cheques that was due and payable before date of liquidation is a different story. Should you have issued quite a number of cheques which were dishonoured it can be deemed that you acted fraudulently and the creditor can charge the member / director criminally. If you have however issued a cheque with the reasonable expectation that the cheque would be honoured and something contrary to your expectation happened, the creditor is burdened to prove all the elements of a crime, which will be very difficult.

QL40: What do I tell the Company / CC's creditors?

A: Once you have given us instructions, you use the famous term "Speak to my lawyer". Once you have given us instructions, you must not try to deal with your company's creditors yourself. That is why we get paid. There are a lot of creditors who will tell you that they don't speak to attorneys. The simple answer to this is that, if they do not wish to speak to your attorneys, they will speak to nobody. It is a basic principal under South African Law, that once you have an attorney on record, you opponent is obliged to speak to your attorney and not to you in person. The practical problem is that many of the creditors have call centres a large number of

untrained, unsympathetic, sometimes half brainless people sit in front of a computer screen and there only instruction is to call the name that appears on the screen. They will call you, threaten you, or do any other legal or illegal thing to convince you to pay them. You might even hear from them that if you don't pay by the end of the day they will have you arrested. If you can't handle your company's debt don't be intimidated. Get professional help.

QL39: What is the position of people who work for me?

A: Your Company's liquidation does not terminate their employment contracts. If you have not terminated their employment contracts, the Liquidator must, after his appointment decide whether he wants to do so. The employees however rank second to creditors who hold security (bondholders etc) and they even rank before SARS.

QL86: What claims do employees have after the liquidation order has been granted?

A: Your employees stand second in line for payment after creditors who hold security like for instance bonds over immovable properties. They are preferrent claims and the preference of their claims is determined as follows:

Salaries or wages (for a maximum of three months) are prefferent up to an amount of R12,000.00.

Leave pay accrued in the year of insolvency or the previous year is prefferent up to an amount of R4,000.00.

Any payments due for any other form of paid absence for a maximum of three months prior to date of insolvency is preferent in the amount of R4,000.00.

Severance or retrenchment pay is preferent up to an amount of R12,000.00

Contributions payable by the insolvent company / close corporation as employer in respect of any employees to any pension, provident fund, medical aid, sick pay, holiday, unemployment, training or any other similar scheme is preferent to the amount of R12,000.00.

Any amounts due to the employee over and above the monies for which the employee has a preferent claim, becomes a concurrent claim. This means that he stands in line with the creditors which did not hold security.

QL41: Parking tickets, Television licenses, speeding fines etc?

A: Parking tickets, speeding fines, television licenses etc. are all excluded from your company's liquidation and it must still be paid.

QL64: My Company / CC's owes VAT (value added tax) – will I be held liable?

A: Section 30 of the VAT act places you in a position of a trustee of the government's money. You are suppose to receive it, keep it save and pay it over to SARS. Previously SARS had a problem because, whenever they wanted to enforce payment from yourself for you company / close corporation's VAT that was not paid over, they had to rely on Section 48(8) of the VAT Act. This means that they had to bring an application to lift the company vale proving that you have acted fraudulently or grossly negligent where after they could hold you liable. SARS has not ever succeeded in such an application. During middle 2007 a new Section was inserted in the VAT act, namely Section 48 (9). Section 48(9) simply states that any member / director / person who have regularly partaken in the management of the company are liable for the company / close corporation's VAT in person. This means that SARS has very sharp teeth if they want to bite you in the backside. What normally happens is that they issue a criminal summons. In practise you cannot afford to let the criminal summons run its full course. Should you appear in Court and you have to plead you will definitely be found guilty if you have not paid VAT. We have handled about 800 of these cases for clients of ours and we have, with the expectance of one in every instance been able to avert criminal judgement. You would normally have to pay a rather stiff fine

to get out of this situation. The bottom line is that you will need proper legal representation if your company goes into liquidation and it owes VAT to SARS.

QL65: What is the position of my Company / CC's UIF?

A: The exact same situation as in the case of VAT.

QL66: My Company / CC's has deducted UIF from its employees and the monies have not yet been paid to SARS!

A: The rule is that, once the employee can prove that UIF was deducted from his salary, he is eligible to claim remuneration from the unemployment fund.

QL67: My Company / CC's Company has failed to pay Company tax, LBS, skills development levy and other forms of taxes. What can "they" do to me?

A: Contrary to the position where VAT and UIF are not paid, the other taxes are deemed to be "civil" debt. This means that the money owed to SARS simply gets written off if SARS does not get a dividend from the Company / CC's insolvent estate. Keep in mind however that SARS can also in the instance of these other taxes not having been paid issue criminal summons against you.

QL68: "SARS's 4 types of Customers"!

A: I have given taxpayers my own (descriptive) names;

SARS's dream child – this is a taxpayer who on time submits its VAT, UIF and other tax forms and also pays on time. The forms are filled in correctly.

SARS's shy son – this person does not submit a tax form and neither does he pay taxes.

SARS's stepchild – this person submits the forms on time, the figures are filled in correctly, but the taxes are not paid.

SARS's criminal son – this is a tax payer who fraudulently submits forms with wrong information. This is normally done to show a lower amount payable so as to put the company / close corporation in a position. My advice is to never submit fraudulent figures. There has been many cases in the press where people who have does this were made an example. You can receive up to fifteen years jail sentence for submitting false information. It is better to rather not submit forms or to submit forms without payment than to submit forms with fraudulent figures / information.

QL69: What happens at SARS?

A: SARS is a preferent creditor in your insolvent estate and SARS ranks in order of preference after the secured creditors and employees who might have claims against your insolvent estate.

QL70: At the time of my Company / CC's liquidation I owed SARS VAT (value added tax)?

A: SARS has a preferent claim in your insolvent estate. In layman's terms this means that SARS gets paid before your company's concurrent creditors (those creditors who do not hold any security). When presenting your company's liquidation application to Court, your company's must proof to Court that your preferent claims will be paid in full. A Court will not give a liquidation Order if this is not proven in the Court papers. Should, during the winding up of the estate, the yield from the realisation of your assets not yield full amount owed to SARS, in practise the shortfall on your VAT gets written off. There are however very strict stipulations in the VAT act which allows SARS to institute criminal actions against you, should your VAT not be paid in full, irrespective whether you are Liquidated or not. The technical aspects regarding VAT are rather involved and we

advise that you consult a competent lawyer who can assist you, should SARS issue criminal summons. We have dealt with hundreds of criminal summons issued by SARS in this regard, and our success rate is extremely high.

QL71: What can a creditor do if your Company does not pay its debt?

A: VOEG SEKWESTRASIE GEDEELTE HIERIN. If your Company / Close Corporation has lost the ability to pay its debts, you will be summonsed in person to appear on behalf of the company. You will thus appear in your representative capacity and you will have to explain why the company is unable to pay its debt. The creditors can summons you (in you representative capacity) to appear in Court again and again. If the company cannot pay its debts, it is advisable to liquidate the company because the creditor cannot summons you to appear in court after liquidation.

Interesting:

QL38: Can't I simply hide my Company / CC's company's assets and then say that I have lost all my Company / CC's money at Monte Casino?

A: In terms of Section 135(3)(b) of the Insolvency Act it is a criminal offence if you, at a time when your liabilities exceeded your assets (insolvent) gambled or made speculative investments. You could also be held liable for all your company's/cc's debt, if you did not act diligently as director/ member.

QL47: What is an insolvency inquiry?

A: Section 415 & 417 of the Companies Act stipulates that your liquidator (under instruction of one or more creditors) can hold an insolvency inquiry. The aim of an insolvency inquiry is to obtain information about your company's insolvent estate should you not have made full disclosure or should you have hidden assets and the liquidator finds out about it. The act allows the liquidator to subpoena yourself, your family members, your employees as well as any person who has information about your insolvent estate. If you are subpoenaed to appear in an insolvency inquiry and you refuse or fail to attend the inquiry, you can be charged criminally. If you or anyone else who is subpoenaed to appear at the inquiry fail or refuse to make full disclosure about the affairs in your company's estate you can also be charged criminally.

QL51: I have a purchaser who is interested to buy my Company / CC's immovable property?

A: Once you have started the process of liquidation your company's estate is in limbo. Even if you have received an offer on your company's property and you have for example accepted the offer, you are not allowed to sell the property during liquidation. After the liquidation, the liquidator gets appointed and he must elect whether to go ahead on the offer/agreement to purchase the property or not. Should the liquidator decide to not accept the Offer to Purchase, he will ask the relevant creditor whether the creditor agrees. Should the creditor agree then further permission must be obtained from the Master of the High Court. Once the second Creditors meeting was held, the Liquidator is normally authorized to sell the assets without the consent of the Master of the High court.

QL37: My Company / CC's company / Close corporation own an undivided share in an immovable property – how is this dealt with?

A: The basic principal is that the share that vests in your companies name forms part of its insolvent estate. Let's refer to this as the "insolvents undivided share". The liquidator must sell the "insolvents undivided share" to someone. In practical terms, the person/s who owns the "other undivided share" in the immovable property is normally the "natural" purchaser. The problem that faces the person/s who owns the "other undivided share" in the property faces a problem, namely that they have normally signed surety for the full outstanding bond along with your company.

Because the Insolvency Act prescribes that all property belonging in your company's estate must be sold, the person that owns the "other undivided share" in the property cannot simply "take over" the "insolvents

undivided share" and keep up payments to the bank. This means that the other person must obtain a bond for your company's undivided share and buy your company's undivided share from the insolvent estate. The purchase price of your companies' undivided share must be paid into your company's estate account which is under control of your company's Liquidator. The Liquidator then deducts the administrative costs in your estate from the amount that was paid into the liquidators account and he then pays the remainder of the purchase price to the bondholder once the estate is finally wound up and the Master of the High Court has approved the Liquidator's distribution account.

My advice to clients who holds an undivided share in an insolvent estate is normally to obtain a bond for the full value of the property at another financial institution than the bank which held the bond in the first instance. I give this advice for practical reasons namely that the banking institution that, in the first instance held the bond over the property normally gets totally and utterly confused if this is dealt with in any other way.

Should the solvent person who holds the undivided share refuse to buy the insolvents share the liquidator can in the end sell the insolvents undivided share to a 3rd person for a nominal amount of say for example R1,000.00. This creates a major problem for the solvent person who holds the undivided share, because the 3rd person now owns for example one half of the property whilst he is not legally responsible to pay the bond. The legal mud pool does not end here. The solvent person who owns the "other undivided share" and who would normally be the surety and co-principal debtor for the debt of the insolvent is, in terms of his agreement with the financial institution, is liable to pay the full bond because the 3rd person who purchased the undivided share for a nominal amount (here a R1,000.00) can now be held liable by die solvent partner for expenses incurred by him on the communal property. This might sound rather confusing. My advice: – get proper legal advice in this regard.

QL42: Who appoints the liquidator and how does he get appointed?

A: The liquidator is appointed by the Master of the High Court. The Master has an absolute discretion when appointing a liquidator. Normally the liquidator who has been supported by creditors gets appointed on the basis that he must have rallied the support of creditors in number and value. This means that if your company's have example ten creditors and a certain liquidator has rallied the support of the majority, say for example six creditors he will get appointed. If the creditor was also supported in value, for example your company's total debt is R100,000.00 and the liquidator has the support of creditors who's claim amounts to R50,001.00, that liquidator will get appointed. If there are two different liquidators who have rallied support and one liquidator has the majority in number and the other has majority in amount, they will both be appointed. In any event the Master will also appoint a previously disadvantage liquidator normally does not partake in the day to day administration of the insolvent estate.

QL43: I have received a subpoena to appear in Court. Must I still appear in Court after I instructed my attorney to attend to my Company / CC's liquidation?

A: Yes. Only the Magistrate can excuse you from appearing in Court. In practise however Magistrates has an arrangement between attorneys by which you can be excused from Court. We will deal with these negotiations with the opposing attorney on your behalf.

QL48: What is a bank mandate and why is it important?

A: When you obtain credit from a financial institution, or even if you open a bank account, you sign a load of documents. Amongst these documents are normally sureties, permission to the bank to should one of your accounts be in the black and another in the red, apply etc. It is important to; once you have paid off your debt at the bank, demand that sureties be cancelled. The mere fact that your business for which you have signed surety have paid off its debt does not mean that the surety is cancelled. The cancellation of the surety by the bank must be in writing.

Dispositions:

QL72: What is meant by a "disposition" in the Insolvency Act?

A: If you “get rid” of assets in your estate, whether you are insolvent or not, you have “disposed” of an asset. There are certain manners in which you can dispose of an asset namely: You can donate it to someone, you can demolish it, you can gamble it away, you can hand it over to someone else in terms of a agreement, you can hand it over to the Sheriff of the court in terms of a Court Order or you can consume it.

QL73: I have heard that all dispositions that I have made longer ago than six months before my Company / CC’s liquidation was granted is safe. Is this true?

A: The urban myth goes as follows: You can dispose of any asset and then wait for a period of six months, then Liquidate and the disposal is safe. This is absolute and utter hogwash. There is another urban legend which says that if you have ten creditors and you don’t treat them equal when paying them, in other words, you prefer one or more creditor above the others when it comes to payment, you simply have to wait six months where after the creditor (normally your father, brother, wife or son) who was preferred above the other creditors are safe. This is a fairy tale. In the FAQ’s that are answered hereunder we deal thoroughly with this.

QL74: What are the so called “voidable dispositions”?

A: Certain acts by an insolvent in terms whereof he has disposed of assets prior to liquidation are known as “voidable dispositions”. A “disposition” in laymen’s terms means that you have gotten rid of an asset by, for example donating it to someone, selling it, hiding on someone else’s name, lawfully or unlawfully dealing with it in such a way that the value decreases, demolishing it or allow someone to acquire a legal right over the asset which right is stronger than the claims of creditors.

QL75: What are the categories of “voidable dispositions”?

There are 5 categories of voidable dispositions, namely Dispositions without value, (sec 26 of the Insolvency Act), Voidable Preferences (Section 29 of the Act), Undue preferences (Section 30 of the Act) and Voidable transfer of business (Section 34 of the Insolvency Act). Collusive dealings (Section 31 of the Act) are not voidable disposals as such; it intends to punish those who assisted you in hiding assets.

QL76: What is a disposition without value?

A: Certain legal actions by an insolvent prior to his liquidation are defined as a disposition without value. This type of transaction can be set aside by the liquidator and the assets which were deposed of can be repossessed by the liquidator and, if the assets have been lost, the liquidator can claim from the person who enjoyed the benefit of the disposition (or the value by which he was enriched in this manner). The main feature of such a disposition is that there was no legal obligation on the insolvent to dispose of the asset. An example is where you would simply transfer an asset to someone who did not have a legal claim on the asset. Should a liquidator wish to set aside such a disposition, the liquidator must proof that

the insolvent has of his own free will disposed of the asset

that the disposition was made in favour of another person and

the insolvent received no or insufficient *pro quo* for the asset.

Once a liquidator is appointed he should determine whether dispositions were made. If this dispositions were made the liquidator must determine whether the disposition was made within two years before the liquidation or longer ago than two years. If the disposition was made longer ago than two years, the liquidator must prove that the insolvent’s assets were less than his liabilities directly after the disposition and he must also proof that the insolvent did not receive a proper *pro quo* (counter value). Should the disposition have been made within two years before liquidation, the the burden of proof vests in the insolvent and/or the person who has received the benefit that the disposal cannot be set aside. They must proof that either the insolvent’s assets exceeded his liabilities directly after the disposition, failing which, he must proof that he has received a proper counter value

when disposing of the asset. Section 26 does not try to inhibit the normal conduct of business. It prohibits extra ordinary transactions.

QL77: What does voidable preference mean?

A: Should the liquidator proof that there was a voidable disposition, the disposition becomes nil and void. Section 29 envisages a proper pro rata division of the assets of the insolvent amongst his creditors. In essence a disposition of Section 29 differs from a disposition in terms of Section 26 in that the disposition under Section 29 has been made to one of the insolvent's creditors, whereas a disposition under Section 26 has been made to someone who was not a creditor of the insolvent. If a liquidator wishes to succeed in setting aside such a disposition, he must proof the following:

There was a disposition

The disposition was made not more than six months prior to the liquidation

The disposition was made in favour of a creditor of the insolvent

The effect of the disposition was that the creditor who has received the benefit was preferred above other creditors

The insolvent's liabilities exceeded his assets immediately after the disposition.

There are two defences namely:

The disposition was done in the normal conduct of business

There was no intention of preferring the creditor who was has received the benefit.

Should you prove these two defences, it is deemed that there was no legal voidable preference.

QL78: What does Undue preference (Section 30) mean?

A: Many clients have told me that they heard "that a magical six months which applies to the disposition of assets". According to this rumour any disposition made prior to a period of six months preceding the liquidation is "safe". This is hogwash. Section 30 of the Insolvency Act stipulates that, should the liquidator proof that:

There was a disposition

The insolvent exceeded his assets after the disposition

The disposition prejudiced the creditor who has received this benefit

The insolvent had the intention of preferring one creditor above the other.

If all the above elements are present, then the disposition can be set aside irrespective of how long ago the disposition was made.

Under Section 30 there is no specific time period which inhibits Section 30. The effect of a disposition under Section 30 is of lesser importance. The Court considers in essence the intention to prefer the creditor. In the matter *Pretorius N.O. versus Stock Owners Corporation* the Court determined that the liquidator must, should he have no direct evidence that the insolvent intended to prefer one creditor over the other, proof that the insolvent has considered liquidation at the time of the disposition.

QL79: What does "collusion" mean? (Section 31)

A: The most import element of Section 31 is that the insolvent must have colluded with someone else when in disposing of his assets. This is very logical. Should any person pass his assets to another person there will

always be at least two parties involved. The insolvent must have colluded with someone else to dispose of his assets in such a manner that it would prejudice his creditors. There must have been a secret collusion. Section 31(1) stipulates "…… the Court can set aside such legal action". In the case *Gert de Jager (Pty) Ltd versus Jones N.O.* the Court decided that the liquidator must proof that the parties who have colluded with the insolvent must have known that the debtor was insolvent and that other creditors would be prejudiced or that an undue benefit was created for a creditor. Someone who is involved in such collusion is:

Liable for the damages that the insolvent estate has incurred because of this disposition

He forfeits his claim against the Insolvent Estate and

He can be fined with an amount equal to the benefit he would have enjoyed, should the disposition have not been set aside.

QL80: What is meant by a voidable transfer of business?

A: Should a trader transfers his business or any part thereof in terms of a contract outside the normal conduct of business and he has not published his intention to dispose of his assets in too Afrikaans and English papers as well as in the Government Gazette within a period of at least 30 days maximum 60 days before the transfer of the assets, then the sale of that business (or part of the business) is void with regard to its creditors and for a period of six months it is void against a claim by die liquidator should he be Liquidated within six months of such transaction. In terms of Section 34(2) the effect of the publications is that all liquidated claims which would became payable in future becomes payable immediately.

QL92: Should I start a business on someone else's name after my company / close corporation was liquidated?

A: No!!!! A very basic principal in business is that you must stay in control. We will advise and assist you in this.

QL100: Am I allowed to apply set-off before or during liquidation?

A: The following situation occurs frequently. Person A is insolvent and he owes B say R100,000.00. In an unrelated transaction B owes A R50,000.00. It is normal practise in commerce that A would only owe R50,000.00 after having deducted the money B owes to A.

Section 46 of the Insolvency Act stipulates that if two persons have entered into a transaction whereof the result is set-off, wholly or in part, the debts which they owe one another and the estate of one of them is Liquidated within six months after the set-off, or if the person had a claim against another person (referred to as the debtor), has collected that claim to a third person against whom the debtor had a claim at the time of the session with the result that the one claim has been set-off, wholly or in part against the other, and within a period of one year after the session the estate of the debtor is Liquidated, then the liquidator of the Liquidated estate may abide by the set-off, or he may, if the set-off was not effected in the ordinary business with the approval of the Master disregard it and call upon the person concerned to pay to the estate the debt which he would owe it but for the set-off, and thereupon that person shall be obliged to pay the debt and may proof his claim against the estate as if no set-off has taken place, provided that any set-off shall be effective and binding on the liquidator of the insolvent estate if it takes place between and exchange or market participant as defined in Section 35 and any other party in accordance with the rule of such exchange or if it takes places under an agreement defined in Section 35(b)

Wow, a mouth-full – just read it 3 more times, it will become clear!

Criminal offences:

Q: Trading In Insolvent Circumstances

A: DP moet antwoord – bring ook art 129(7) van New Act IN

QL96: What can happen to those who helped me hide the company's assets?

A: Hiding assets is a criminal offense. Any person who assisted you in hiding assets from the liquidator can be sentenced to a maximum of three years jail sentence. Such a person furthermore looses the right to claim against the insolvent estate, even if he is a true creditor. He can also be sentenced to pay to the insolvent estate an amount equal to the amount that the insolvent estate would be prejudice.

QL109: Under which circumstances can my Company / CC's liquidator lay criminal charges against me?

A: You can be charged criminally if you commit the following acts; if you have;

Hidden assets or business books from your Liquidator (Section 132),

within 2 years before your company's liquidation, hidden liabilities or lied about your company's assets when obtaining credit (Section 133),

Failed to keep proper books and records of your business (Section 134)

Fraudulently preferred creditors or incurred debt without the reasonable expectation that your company can pay such debt (Section 135),

Neglected or refused to give information, assets or documents to your liquidator on his request (Section 136)

Failed to appear at a meeting convened to hold a enquiry about your Company's insolvent estate (section 139)