lawful manner.[313] The provisional trustee or liquidator must take instructions from the Master while the final trustee or liquidator, elected at the first meeting of creditors and duly confirmed by the Master, is not expected to do so.[314]

Following the amendment to section 18 of the Insolvency Act of 1936,[315] the Master must consult any policies issued by the Minister. In February 2014, the Minister promulgated a policy on the appointment of provisional trustees,[316] which was disputed by practitioners on constitutional grounds.[317]

The policy promulgated by the Minister was found to be defunct on numerous bases.[318] This decision was based on the following reasons: the records did not show that the policy was reasonably likely to achieve equality;[319] the policy was *ultra vires* by virtue of displacement of the Master's discretion;[320] the policy was arbitrary due to the exclusion of citizens born on and after 27 April 1994 without providing any reasons to justify such exclusion;[321] and the policy was irrational by virtue of failing to show that the policy was reasonably capable of achieving equality.[322]

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[313] See *Prosch v Standard Bank of South Africa Ltd* case no 14279/90 (W) (unreported). On file with author.
[314] For example, the provisional trustee or liquidator may be authorised by the Master or the court to sell property belonging to the estate.
[315] See the Judicial Matters Amendment Act 16 of 2003.
[316] Promulgated in accordance with s 158 of the Insolvency Act of 1936. See *Government Gazette* 37287 at no 77. The objective of this policy was intended to promote consistency, fairness, transparency and the achievement of equality in relation to those who previously experienced unfair discrimination, as per para 2 of the policy. Moreover, in terms of para 4 of the policy, the Minister looked to, *inter alia*, establish a uniform procedure for the appointment of IPs. In doing so, the policy, at para 5, provided for directives relating to the different categories of IPs, and was supplemented by para 7, which set out how the appointment of IPs should be carried out. The directive specifically provided for a ratio, in which the order set out should have been followed by the Master's Office. The ratio was set at A4: B3: C2: D1, where A represented African, Coloured, Indian and Chinese females, B represented African, Coloured, Indian and Chinese males, C represented White females, and D represented White males. Hence, the Master was expected to appoint those IPs in the ratio sequence, whilst having regard for the complexity of the matter and a potential senior IP being appointed jointly with the IP appointed in the sequence.
[317] See *Minister of Justice & Another v SA Restructuring and IPS Association & Others* 2017 (2) SA 95 (SCA); see also *Minister of Justice & Another v South African Restructuring and IPs Association & Others* 2018 (5) SA 349 (CC) (hereafter "*Minister of Justice v SA Restructuring and IPS Association*").
[318] It must be noted that since this decision by the Constitutional Court, there has been no further developments as it relates to a policy dealing with the appointment of provisional trustees and liquidators.
[319] *Minister of Justice v SA Restructuring and IPS Association* at para 40.
[320] *Minister of Justice v SA Restructuring and IPS Association* at para 32.
[321] *Minister of Justice v SA Restructuring and IPS Association* at para 54.
[322] *Minister of Justice v SA Restructuring and IPS Association* at para 58.

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This issue illustrates that ill-founded policies, in this case an attempt at endorsing equality when it comes to the appointment of IPs, affect the Master's ability to execute its duties – especially if there is some form of discretion allowed in respect of the duty to be executed. On the one hand, this problem is exacerbated by poor drafted legislative provisions in that the relevant insolvency legislation does not contain any formal criteria determining how IPs should be appointed, but only disqualifications.[323]

On the other hand, a lack of guiding provisions does not necessarily translate into deficiencies when it comes to the regulatory process, but it does increase the risk of procedural and substantive errors.[324] This sentiment is echoed by Burdette who states that the interaction between the statutory limitations on the Master and the practical reality of having to appoint the right person to administer an insolvent estate, could present constitutional challenges.[325]

The use of the requisition system for the appointment of IPs by creditors illustrates a law-based process that may circumvent the authority of the Master by providing creditors with significant power. Within the requisition system, there are a number of inherent weaknesses, such as the fact that these requisitions are not made under oath.[326] This means that many of the creditors that vote for the provisional and/or final liquidator may not yet have proven their claims against the estate in accordance with section 44 of the Insolvency Act of 1936. The likelihood that the person chosen by the "creditors" and endorsed by the Master, is not the choice of the majority of the proven creditors increases. The appointment of provisional IPs, which was supposed to be extraordinary in nature,[327] are being normalised in a manner that undermines the right of the creditors, who have a real stake in the administration of the estate, to choose the insolvency practitioner.[328]

[323] Calitz "System of regulation of South African insolvency law: lessons from the United Kingdom" 2008 *Obiter* 352 368.
[324] Procedurally it is conceivable that appointments are not carried out correctly and substantively it is possible that the wrong person for the job is chosen.
[325] Burdette "Reform, regulation and transformation: the problems and challenges facing South African insolvency industry" 2005 *Commonwealth Law Conference* 6-9.
[326] Calitz & Boraine 2005 *TSAR* 733.
[327] These appointments are seen as extraordinary because they are only supposed to occur when there would be severe lapses in time, or the matter is urgent.
[328] Burdette & Calitz 2006 *TSAR* 736.

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There is no system that enables the Master to record the submissions of requisitions in order to determine the legitimacy of the appointment that he or she endorses.[329] Whilst there is no provision which provides for the Master's ability to do so, it is submitted that there should be an empowering provision to do so. It also seems as if the gravity of the situation and the counterproductive effect on the creditor-focused regime that prevails in South Africa, has not yet been grasped – in *Khammissa*, the Deputy Master never provided reasons for the provisional appointment the second and third respondents as joint-liquidators.

4.2.3. The practical implications of the legislative provisions

In this section, I consider the practice of appointing IPs. The Master's office must supervise this process within the confines of its legislative duties but this discussion will show that there are instances where the Master must be involved but where common practices result in informal appointments. In other words, legislative provisions are not always formally adhered to because the circumstances are different to what the legislature anticipated.

This dissertation has previously outlined issues which arise at the appointment stages of a trustee or liquidator.[330] These issues were shown to be linked to the lack of clear empowering provisions which actively guide the Master during this stage. It is submitted that the ability of the Master to execute this duty is determined by three factors: one, the clarity of the empowering provision in section 18(1) of the Insolvency Act of 1936; two, the discretion bestowed on the Master; and three, the proper exercise of that discretion.

Insofar as the provision is concerned, the wording of section 18(1) of the Insolvency Act of 1936 does not contemplate the variety of scenarios in which the Master will have to consider a provisional appointment. Legally, the Master needs to consider whether the practitioner is a fit and proper person,[331] and whether the provisional appointment is necessary, or rather, whether it is urgent.[332] These two considerations are particularly tenuous because it is within the discretion of the Master to endorse the

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[329] Burdette & Calitz 2006 *TSAR* 735.
[330] See section 4.2.2. of this dissertation.
[331] *Lipschitz v Wattrus* 1980 (1) SA 662 (T) at page 668.
[332] Calitz & Boraine 2005 *TSAR* 732.

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appointment on these grounds. This is where the second factor becomes troublesome. Seeing as the Master is empowered to decide whether or not to appoint a provisional practitioner, it will have to consider numerous factors such as whether the situation calls for the appointment and the needs of the stakeholders.[333] In the premises, the decision becomes exponentially more difficult.

As to the third consideration, the exercise of the discretion is bound to vary from one Master to another - especially in the absence of ministerial policies,[334] clear guidelines for the exercise of the discretion and careful exercise of the discretion.[335]

With the above in mind, it is also true that the Master's discretionary powers are not the only reason as to why practical issues may arise at the appointment stage. A common practice has been established out of necessity. Creditors and commerce at large require insolvency proceedings to be dealt with expeditiously and with some urgency in order to provide creditors with a dividend from assets (some of which may depreciate or fetch a low value at a public auction).[336] It has become common practice for the Master to take control of appointments before the first meeting of creditors to deal with matters expeditiously and because creditors generally do not attend the first meeting of creditors.[337]

The implications are that the Master's Office has essentially become the pillar of this stage of the insolvency process and is making decisions *in lieu* of the above without necessarily receiving input from the body of creditors. This means that informal decisions are being taken outside of the legislative regime, which can undoubtedly lead to incorrect decisions or potential maladministration when there is little to no oversight. It should be noted, however, that the development of this common practice is also attributable to the insolvency sphere at large. At present there is a substantial push for the harmonisation of insolvency regulations, so that there are better chances

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[333] Calitz & Boraine 2005 *TSAR* 733.
[334] See section 4.2.2. of this dissertation.
[335] It should be noted that, in terms of the Draft Insolvency Bill of 2000 published by the South African Law Reform Commission, there is a provision in clause 32 that would allocate more responsibility to the creditors to elect a practitioner of their choice. This may be an attempt to alleviate the Master of the discretionary role and responsibilities – see also Calitz & Boraine 2005 *TSAR* 733.
[336] Calitz & Boraine 2005 *TSAR* 733.
[337] Calitz & Boraine 2005 *TSAR* 732.

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for predictability and efficiency.[338] Without this, as has been previously alluded to,[339] there is a greater probability of informal decision being taken *in lieu* of lacking procedural and substantive empowering provisions within a dispersed system.[340] These practices may impede the certainty of procedure needed to ensure that insolvency law keeps abreast of external factors and makes changes that adequately account for these shifts in perspective, which include a culture of justification and accountability.[341]

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[338] The World Bank *Report on the observance of standards and codes – insolvency and creditor rights* South Africa (2012) 13 (hereafter "World Bank Report").
[339] See section 2.4. of this dissertation.
[340] World Bank Report 14.
[341] Burns and Beukes *Administrative law under the 1996 Constitution* (2006) 49; see also Calitz "State regulation of South African insolvency law – an administrative law approach" 2012 *Obiter* 457 460.

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Chapter 5: Recommendations and conclusion

5.1. Introduction

This dissertation analysed the role, functions, and powers of the Master's Office and compared these provisions to other similar internal bodies to gain an understanding of how the Master's Office is positioned as an insolvency regulator in comparison to these regulatory bodies. In addition, non-legal facets were also considered because the research showed that the Master's Office was a product of its legislative framing and the practical execution of its responsibilities. With the above in mind, the goal of this final chapter is to provide recommendations for reform that takes cognisance of the Master's Office's current position and the implications of its decisions as an administrative body.

At the outset of this dissertation, research questions were outlined.[342] The first question inquired into the roles, functions and powers associated with the Master's Office within the South African insolvency law regime. In short, it was shown that the Master's Office is a vital part of the process in relation to the administration as well as supervision of both individual and corporate insolvency procedures.[343] Next, the question of what legal and non-legal challenges arise by virtue of the Master's Office involvement in these processes. In doing so, it was revealed that legislatively the Master's Office was being stifled by a lack of referral provisions and on a practical level, less than optimal human resource qualification requirements and training were exacerbating issues of efficiency and effectiveness. In addition to this, it was also shown that at the appointment stage for IPs, the Master's Office was essentially acting informally and appointing IPs without creditor input by virtue of its assumed status and common practice occurring over the years. This issue was linked to the Master's Office legislative position and regulatory impracticalities.[344]

With these factors having been identified, the third question revolved around an internal comparative analysis of the DO and CIPC with the view of identifying commonalities and potential advantageous legislative interventions that could benefit

[342] See section 1.3. of this dissertation.
[343] See sections 2.3.2., 2.3.3., and 2.3.4. of this dissertation.
[344] See section 2.6. of this dissertation.

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the Master's Office regulatory position.[345] In doing so, it was highlighted that the DO and the CIPC have certain legislative interventions at their disposal to act efficiently and effectively, namely: proposed amendments of stricter personnel qualification requirements and training, referral provisions (i.e., both laterally and vertical) to oversight bodies, and discretionary guidance provisions under the Companies Act of 2008 for the CIPC.[346]

Based on the research findings and legal conclusions drawn in respect of questions 1 to 3, recommendations for reform are now considered which can be made to enhance the existing framework for the benefit of the Master's Office.

Another important observation made under Chapter two was the Pontius Pilate reference had in the *Khammissa*-case study. For recollective purposes, it was noted:

> "[T]he Pontius Pilate posture adopted by the Master is baffling. I agree with Mr Suttner SC, on behalf of the applicants, that it cannot be gainsaid that the matter is serious because the Master sits at the apex of insolvency law and practice, presides over important decisions affecting the appointment of liquidators and governs the custody of large assets. Which decision and appointment certificate prevails in this case involves important questions of law and is of importance to insolvency law practitioners and liquidators."[347]

This reference points to a need for accountability at the Master's Office, especially in relation to decisions it takes and the way in which it exercises statutory discretion, which are rooted in administrative law. The link between administrative law and the Master's Office was touched on in Chapter two.[348] In highlighting the need for accountability at the Master's Office, certain additional recommendations are provided below.[349]

[345] See sections 3.2., 3.3., 3.4.2., and 3.4.3. of this dissertation.
[346] See sections 3.4.2. and 3.4.3. of this dissertation.
[347] *Khammissa* para 13.
[348] See section 2.5. of this dissertation.
[349] See section 5.2.2.4. of this dissertation.

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5.2. Recommendations

5.2.1. Introduction

The recommendations refer to issues that were highlighted in chapters two, three and four. In respect of the chapter two, the recommendations refer to the need for stronger human resources protocols for training together with stricter qualification requirements, and the need for vertical referral provisions in terms of insolvency legislation. In respect of chapter three, the recommendations pertain to the need for encouragement of cooperation as well as the establishment of oversight bodies specifically dedicated to the operation of the Master's Office and the provision for discretionary guidance amendments of the insolvency framework. In chapter four, the assessment of the comparable internal bodies form the foundation for the recommendations.

The recommendations are founded in the realisation that Master's Office needs to be provided with all the necessary regulatory and practical tools to ensure that it is able to fulfil its duties, act in accordance with public interests, and operate in a manner that adheres to good administrative practices.

5.2.2. Recommendations to increase legislative certainty

5.2.2.1. Discretionary guidance

The Insolvency Act of 1936 was drafted during a different era in South African history. The population size was much smaller than it is today. On a macro-level, the number of companies that are established and people who take financial risks are increasing. South Africa has also experienced global financial stressors, which has affected economic growth and prompted a downturn in economic activity.[350] It follows that the Master's Office will become involved in more insolvency and liquidation procedures. The first point of departure is thus the re-evaluation of the Insolvency Act of 1936.

Reforming the Insolvency Act of 1936 should place emphasis on procedural efficiency and anticipate the decisions that the Master must make during insolvency

[350] Statistics South Africa "Economic growth", available at https://www.statssa.gov.za/?page_id=735&id=1 (last accessed on 12 July 2022).

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proceedings. For example, section 18(1) of the Insolvency Act of 1936 provides the Master with the discretion to appoint a provisional insolvency practitioner. This discretion, however, needs to be exercised with the urgency of the case in mind. Seeing as how the discretion is guided by the case at hand, it is conceivable that each Master will exercise this discretion differently. As previously mentioned, oftentimes in practice, the creditors indicate which practitioner they would like to administer the insolvency process. Hence, the provisional appointment of an IP may take place solely by virtue of the Master's decision, or the Master might be prompted by the creditor body. It is submitted that this is undesirable and to ensure certainty in the process, the Insolvency Act of 1936 should guide the Master as to how and when the appointment of a provisional IP is necessary and requires discretionary input. The wording of section 18(1) does not aid the Master in exercising its discretion. It merely states:[351]

> "As soon as an estate has been sequestrated (whether provisionally or finally) or when a person appointed as a trustee ceases to be trustee or function as such, the Master may appoint a provisional trustee…"

Hence, there should be subsequent provisions which better detail the situations where this appointment is necessary. This will curb informal decision making, expedite the process and ensure certainty of outcomes. It would also ensure that the Master's Office's decisions are not trespassing on the tenets of the administrative law. In other words, there would be more decisions that are lawful, reasonable, and procedurally fair – especially in the context of taking decisions that are rationally connected to the purpose of the provision. A further benefit of this change would be economic activity. If there is comprehensive institutional regulation, there is a chance of greater economic activity because society would have confidence in the insolvency regime to provide redress in the unfortunate event of illiquidity.

5.2.2.2. Consolidation and harmonisation

The Master's Office, as an insolvency regulator, is directly impacted by the overarching insolvency regime. It follows that, without the overarching harmonisation and consolidation of the insolvency law legislation, there will continue to be inconsistencies in procedure. This is particularly relevant to the Master's Office because it would follow

[351] S 18(1) of the Insolvency Act of 1936; own emphasis.

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that an overhaul of the insolvency regime would likely see welcomed changes in relation to its position as the apex insolvency regulator. Harmonisation of the various elements of insolvency processes, such as business rescues, liquidations, and insolvencies, would likely increase predictability and ease of use of the system, which directly benefits the Master's Office.[352]

5.2.2.3. Recommendations to curb personnel issues

There are indications that qualification requirement re-evaluations are underway within the DO.[353] It is submitted that the same re-evaluations should be occurring in respect of the Master's Office.[354] Section 2(2) of the Administration of Estates Act should be amended to ensure that competent individuals are being employed by the Master's Office. This viewpoint is also supported by the World Bank Report, which identified that there is currently no formal set of criteria that can be used to validate the qualification requirements, accreditation process, or the supervision of IPs in South Africa.[355] It is conceivable that the same issues exist as it pertains to the Master's Office's personnel.

Another manner in which personnel competency can be increased is the establishment of rigorous training protocols for new intakes at the Master's Office. The World Bank Report indicated that, at present, there is no formal set of training protocols for IPs.[356] It is contended that the same problem exists in relation to Master's Office personnel. There needs to be protocols and accreditation processes developed to ensure the competency of those who take up office in the Master's Office. The Chief Master should also opt for a directive delineating how one can be accredited and employed by the Master's Office.[357] In doing so, the Chief Master can consult with the Minister to develop a comprehensive framework for new intakes.[358]

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[352] World Bank Report 14-16; see also Uniform Insolvency Bill of 2003, available at https://www.justice.gov.za/master/m_docs/insolve-unified-insolvency-bill-july2003.pdf (accessed 29 October 2022) which has been in the pipeline for some time now. It looks to unify and harmonise the insolvency framework into one key piece of legislation. In other words, it looks to unify processes relating to individual and corporate insolvencies and liquidations.
[353] See section 3.4.2. of this dissertation.
[354] World Bank Report 15.
[355] World Bank Report 10.
[356] *Ibid*.
[357] S 2(1)(*b*)(*ii*)-(*iii*) of the Administration of Estates Act.
[358] S 2(1)(*b*)(*i*) of the Administration of Estates Act provides that the Chief Master is only answerable to the Minister. This provision seems to anticipate instances where correspondence between the Chief

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5.2.2.4. Additional recommendations

Practical issues presenting themselves at the Master's Office are essentially a culmination of the various issues identified above. Without clear and concise legislative empowering provisions, the consolidation and harmonisation of the various laws regulating insolvency in South Africa, and rigorous personnel requirements or training protocols, the Master's Office is less likely to perform properly.

It has been observed that the Master's Office acts informally in order to meet its responsibilities. In other words, the Master's Office makes practical compromises to deal with the inadequacies of other facets of the overarching framework. To remedy this, there would need to be a concerted effort to establish oversight entities, such as the Regulations Board or specialist committee in the case of the DO and CIPC. I deal with this in more detail below when I draw recommendation from the comparison with the DO and the CIPC.

Consideration needs to be given to the administrative law tenets, relating to accountability and transparency. As previously mentioned,[359] FISA has attempted to maintain communication with the Chief Master, who is responsible for the supervision of all the Master's Offices, but there has been little response from the Chief Master. It is submitted that the vital concepts of accountability and transparency should be emphasised to those in positions of power, such as the Chief Master. Without communication, there cannot be key information channels established for the benefit of the Master's office. There needs to be a strong institutional framework based on procedural fairness, accountability, and transparency if public confidence in the system is to flourish.[360] This starts with the top officials when they embrace an openness to discuss issues and receive input. It is submitted that the duty to communicate should be legislated in order to ensure that officials take it seriously – although constructive communication is consensual in nature, it is difficult to hold officials to account if there is no legislative foundation to communicate.

Master and Minister is necessary, which would likely apply to the establishment of a directive to this effect.

[359] See section 2.5. of this dissertation.

[360] World Bank Report 16.

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5.2.3. Recommendations linked to observations from the DO and CIPC

5.2.3.1. Regulatory board

One of the key regulatory interventions by the Deeds Registries Act of 1937 is the establishment of the Regulations Board. The Regulations Board has the propensity to change the way in which the DO operates, especially procedurally. This is important because the DO, as a regulatory body, needs to have clear and concise empowering provisions and a strong underlying policy to act efficiently. The Deeds Registries Act of 1937 allows the Regulations Board to consider the DO's regulatory position and create regulations that make the DO's functions procedurally efficient. The Board is able to address new challenges expeditiously, which is an advantage over the traditional legislative process.

It is submitted that, because the Master's Office plays a similar supervisory and administrative role as the DO albeit in different spheres, provision should be made for a similar body to deal with regulatory shortcomings in terms of the procedural efficiency and efficacy of the Master's Office.

5.2.3.2. Qualification requirements re-evaluation

The qualifications required for those who would take up positions at the DO recently received renewed attention, especially when it comes to officials such as the Registrar or Deputy Registrars. The proposals embodied in the Amendment Bill is welcomed and would be conducive to the Master's Office, with the necessary changes made to adapt the requirements to officials in the insolvency sphere. This is a pressing issue, given earlier discussions on the need for, and lack of, well-trained personnel at the Master's Office.

It follows that section 2(2) of the Administration of Estates Act should be amended to align with the qualification framework set out within the Amendment Bill. Raising the qualification standards enables the establishment of suited training protocols as officials enter the regulatory sphere with prior knowledge.

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5.2.3.3. Co-operation and referrals

The CIPC is an important statutory body. The Companies Act of 2008 has clearly taken a co-operative approach through its establishment of communication channels with various regulatory authorities.[361] It seems as though the legislature intended to leverage co-operative provisions to ensure proper enforcement of the Companies Act of 2008 and other intersecting pieces of legislation.[362] The provisions within the Companies Act of 2008 ensures that its provisions can be enforced, which necessitated the establishment of the CIPC.[363]

The effect of this concerted effort at enforcement is that where a regulatory body such as the CIPC finds itself dealing with an issue which also falls within the jurisdiction of another authorities, they are expected to enter into consultations with one another.[364] These consultations include the passing of information between these bodies and encourages active participation in matters that are of common interest.[365] Moreover, this also ensures that there is consistency in the manner that the Companies Act of 2008 is applied notwithstanding that there may be various entities involved.

It is submitted that there needs to be a protocol on who the Master's Office must co-operate with during insolvency proceedings. This may entail the establishment of other regulatory bodies in insolvency or related areas which are able to consult with the Master's Office, as well as in the converse.[366] As the Master's Office also deals with companies, clear guidelines should be drafted on communication and collaboration between the CIPC and the Master's Office.

5.2.3.4. Guiding provisions

Another key regulatory intervention relates to *guiding* provisions for the benefit of the CIPC's operations. The Companies Act of 2008 provides the CIPC with various

[361] Just from the perspective of the Companies Act of 2008 itself, there are other regulatory authorities such as the Takeover Regulation Panel; the Financial Reporting Standards Council; and the Companies Tribunal.
[362] Farisani "The potency of co-ordination of enforcement functions by the new and revamped regulatory authorities under the new Companies Act" 2010 *Acta Juridica* 433 444.
[363] *Ibid*.
[364] *Ibid*.
[365] S 188(3)(*a*) of the Companies Act of 2008; see also Farisani 2010 *Acta Juridica* 445.
[366] The Master's office needs to be able to consult with other bodies where necessary, in the interests of the public as well as the pursuit of transparent administrative action.

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nuanced *guidelines* following the provision of the CIPC's functions. Section 188 is a perfect example of forward-thinking legislation – the CIPC is given various examples of how it can go about fulfilling one of its functions, namely ensuring public knowledge and awareness of company and intellectual property law.[367]

I submit that the Insolvency Act of 1936 should be amended to provide the Master's Office with guiding provisions which suggest out how the Master could effect its roles and functions. This is an important recommendation because, as previously outlined, there is little to no provisions that guide the Master on how certain duties that require discretionary or merit-based decisions should be approached.

5.2.3.5. Specialist committee

The Companies Act of 2008 provides for a specialist committee that may be assigned by the Minister.[368] It is intended to operate as a supervisory tool for the CIPC. It may, for example, oversee how the CIPC manages its resources and step in where change is needed to preserve the functions of the CIPC. In other words, it should act as a structural regulatory tool to ensure that the CIPC executes its functions as efficiently as possible.

With this in mind, provision should be made for a committee similar to the specialist committee that the Minister may elect for the benefit of the Master's Office. This would ensure that the Master's Office's resources are preserved and would encourage consistent oversight of the management of the Master's Office.

5.3. Conclusion

In this chapter, recommendations linked to observations from the DO and CIPC were proposed. The DO-linked recommendations were the establishment of a Regulatory Board, similar to the one provided for in the Deeds Registries Act of 1937, and qualification requirements as set out in the Deed Registries Amendment Bill. The CIPC-linked recommendations proposed that the co-operative spirit of the Companies Act of 2008 should be used as inspiration for the amendment of the Insolvency Act of 1936 to establish communication protocols with other entities. I emphasised the need

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[367] S 188(2) of the Companies Act of 2008; see also section 3.3.3. of this dissertation.
[368] S 191(1) of the Companies Act of 2008; see also section 3.3.4. of this dissertation.

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It is no secret that the success of the insolvency law regime is fundamentally linked to the Master's Office functioning properly.[369] In light of this, it follows that there needs to be a revised regulatory structure that actively supports the Master's Office as the central structure of insolvency proceedings. Outdated provisions relating to the Master's Office need to be re-evaluated and amended to ensure public service rooted in accountability and transparency. Cognisance must be taken of how administrative law implores administrative bodies to act in the interests of lawfulness, reasonableness, and procedural fairness when making decisions.

At the foundation of these recommendations lies an awareness of the importance of a strong institutional framework based on procedural fairness, accountability, and transparency.

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[369] Calitz & Boraine 2005 *TSAR* 742.

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