

# UNMASKING FINANCIAL MISCONDUCT: FORENSICS AT THE HEART OF INSOLVENCY ENQUIRIES



# INTRODUCTION



Presented by:  
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# MEET THE SPEAKERS



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Director  
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Counsel  
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Senior Associate  
Dispute Resolution



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# INSOLVENCY ENQUIRIES

- What are they?
- What is their purpose?
- When are they convened?

# NATURE OF THE PROCESS

- Sections 417 and 418 of the Companies Act 61 of 1973
- Summoning and examination of persons as to the affairs of the company
- Applicant for enquiry liable for costs and expenses
- Proceedings are private and confidential



# PROCEEDINGS AND POWERS OF THE MASTER, COURT, OR COMMISSIONER

- Summon: director, officer of company, or any person:
  - In possession of company property;
  - Indebted to the company; or
  - Capable of giving information regarding trade, dealings, affairs or property of the company
- Legal representation permitted
- Compel production of books or papers
- Examination of persons and documents
- Consequences of non-compliance: apprehend / lay criminal complaint; default constitutes an offence (fine or imprisonment)



# OVERVIEW

## The Evidentiary Foundation of Insolvency Practice

- Forensic investigations provide the evidentiary foundation for creditor recoveries, director accountability, and litigation strategies
- Financial records may be incomplete; transactions may be structured to obscure their true purpose
- Forensic investigators reconstruct what happened, why it happened, and who bears responsibility

### Key Objective

*Transform incomplete financial records into actionable intelligence that drives creditor recovery and director accountability.*





# IDENTIFYING ASSET DISSIPATION AND PREFERENCE PAYMENTS

- Preferential payments to insiders or favored creditors
- Transactions at undervalue designed to move assets beyond reach of the insolvent estate
- Outright misappropriation of company funds

## Red Flags

- Significant payments to director-related entities before insolvency
- Sudden supplier changes diverting margin to connected parties
- Grant of security interests to related creditors shortly before collapse



# SUPPORTING RECOVERY ACTIONS AND LITIGATION STRATEGY

## Viability Assessment

Forensic evidence determines whether claims (voidable transactions, misfeasance, wrongful trading, breach of fiduciary duty) are viable

## Quantification

Helps assess merits of claims, quantify losses, and build litigation strategy grounded in documentary evidence

## Multi-Audience Reports

Forensic reports serve creditor committees, courts, and settlement negotiations

## Evidentiary Strength

Transforms circumstantial cases into ones supported by traceable financial evidence



# PROTECTING CREDITOR INTERESTS

## **Accountability**

Ensures those who caused or contributed to losses are held accountable for their actions

## **Asset Recovery**

Identifies assets improperly removed from the estate for potential recovery and redistribution

## **Evidence Integrity**

Without forensic investigation, practitioners rely on incomplete records and self-serving accounts

## **Deterrence**

Knowledge of forensic review discourages misconduct by directors and officers



# DIGITAL FORENSICS AND E-DISCOVERY

Enhancing Traditional Financial Analysis



## Traditional Workstreams

- Financial statement analysis
- Banking/transactional data review
- Corporate governance examination
- Related-party transaction review



## Digital Forensics Enhancement

- Uncovers communications, intent, and decision-making context
- Recovery of deleted emails, messages, and electronic communications
- E-discovery platforms enable rapid processing via keyword searches and predictive coding
- Particularly valuable in complex structures or high transaction volumes



# METADATA ANALYSIS: REVEALING DOCUMENT BACKDATING

- Every electronic document carries embedded metadata: creation date/time, author identity, modification history, software version
- Backdated documents (e.g., board resolutions, loan agreements) are betrayed by metadata inconsistencies
- Discrepancies between "created" and "last modified" timestamps or between stated date and software version
- Patterns of coordinated document alteration in narrow time window after financial distress

## Example

*A board resolution dated January but metadata reveals creation in June — after the company was already in financial distress.*

Cross-referencing metadata against external events (winding-up petitions, creditor demands) further exposes fabrication.



# EVIDENTIARY WEIGHT: METADATA VS. WITNESS TESTIMONY



## Metadata Evidence

- System-generated, objective, resistant to subjective bias
- Courts increasingly recognize as contemporaneous and difficult to explain away
- Carries significant probative weight
- Weight enhanced by clear chain of custody and documented methodology



## Witness Testimony Challenges

- Viewed with caution in insolvency—witnesses often have personal exposure
- Incentive for self-serving accounts
- Courts prefer metadata over contradictory testimony absent credible technical explanation
- Metadata vulnerabilities: chain of custody, system migration, time zone issues

# CONVERGENCE OF EVIDENCE: BUILDING COMPELLING CASES

## Convergence Scenario

- Metadata shows security agreement created after insolvency onset
- Banking records confirm no funds advanced on purported date
- Emails reveal discussions about "papering" the transaction
- Cumulative force of converging evidence overwhelms witness denials
- Metadata reshapes the evidentiary landscape, shifting burden of explanation onto respondents
- Strengthens both litigation and settlement negotiation positions



# KEY TAKEAWAYS

- Forensic investigations are essential, not peripheral, to effective insolvency practice
- They transform raw financial data into actionable intelligence
- Digital forensics and metadata analysis provide objective evidence that courts increasingly favor
- Convergence of forensic evidence creates compelling, difficult-to-rebut cases
- Practitioners armed with forensic evidence are better positioned to protect creditors and pursue claims
- The insolvency process delivers accountability and recovery outcomes creditors are entitled to expect

Forensic evidence is the cornerstone of creditor protection and director accountability.



# WHAT NOW?

The insolvency enquiry has been conducted, and a forensic report has been prepared.



# IMPEACHABLE TRANSACTIONS: INSOLVENCY ACT 34 OF 1936

**Section 26:** Dispositions without value

**Section 29:** Voidable preferences

**Section 30:** Undue preference

**Section 31:** Collusive Dealings



# DIRECTOR'S PERSONAL LIABILITY

- Breach of fiduciary duties
- Reckless trading

How about delinquency proceedings against directors?



# **Q&A Session**

*Thank you for your participation*



# ABOUT THE SPEAKERS

**Lucinde Rhoodie** is a Director in our Dispute Resolution practice and a member of the Corporate Debt, Turnaround & Restructuring sector. She has vast experience in complex commercial litigation matters, corporate debt, turnaround & restructuring, Companies Act litigation matters and disputes, financial markets and market abuse litigation and corporate investigations. Lucinde is involved in major High Court litigation matters, as well as complex domestic and international commercial arbitrations.

Lucinde has been a Director since 2005. She holds the following internationally recognized rankings: Chambers Global: Dispute Resolution: 2023 – 2026; Chambers Global 2026 ranked in Band 4 for Restructuring & Insolvency; Legal EMA 500 2021 - 2026: Dispute Resolution; Legal 500 Private Practice Arbitration Powerlist for Africa during February 2023 and Best Lawyers 2020 - 2025: Insolvency and Reorganization Law, as well as Arbitration and Mediation.



# ABOUT THE SPEAKERS

**Annemari Krugel** is a Director in our Dispute Resolution practice and the Corporate & White-Collar Investigations sector. Her leadership in investigations extends to national and provincial treasury departments, including noteworthy assignments from 2018 to the present involving National Treasury, Gauteng Provincial Treasury, and Limpopo Provincial Treasury.

Annemari started her career with the Department of Justice in 1984, where she initially served as a Prosecutor. Over the years, she ascended through the ranks, assuming roles such as Control Prosecutor and assistant Senior Prosecutor at the Pretoria Magistrate Court. Her responsibilities later expanded to overseeing operations across all District and Regional Courts, totaling 52 in number. From 2003 onwards Annemari delved into the realm of forensic investigations, notably assisting the SEOU of the SAPS in complex matters. Throughout her career, Annemari managed a myriad of high-profile projects on behalf of Local and Provincial Government entities. These investigations have encompassed a wide range of offenses, including corruption, fraud, and statutory violations. Annemari's most recent role as Head of Forensics at a business advisory, audit, tax, and outsourcing firm saw her playing a crucial role in overseeing and directing the forensic investigations and services to clients.

The Legal 500 EMEA 2026 recommended Annemari in dispute resolution.



# ABOUT THE SPEAKERS

**Rimo Benjamin** is Counsel in our Dispute Resolution practice and in the Corporate & White Collar Investigations sector. He is a forensic specialist with 21 years of experience in conducting investigations into fraud, corruption, theft, money laundering and workplace misconduct.

Rimo joined CDH as Counsel in August 2025.



# ABOUT THE SPEAKERS

**Muwanwa Ramanyimi** is a Senior Associate in our Dispute Resolution practice. She has experience in commercial and corporate litigation dealing with a variety of issues relating to the Companies Act, insolvency and business rescue and property related disputes. Muwanwa is knowledgeable in dealing with different types of court proceedings (in lower and superior courts) and alternative dispute resolution mechanisms such as Mediation and Arbitration.



# ABOUT THE SPEAKERS

**Lara Sneddon** is an Associate in our Dispute Resolution practice. She has assisted in commercial and corporate litigation dealing with a variety of issues relating to the Companies Act, insolvency and business rescue, contract- and property-related disputes including evictions. Lara has assisted in dealing with different types of court proceedings (in lower and superior courts) and alternative dispute resolution mechanisms such as arbitration.



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