

NEWSLETTER NO 5

NEWLY APPOINTED COUNCIL MEMBERS

The term of office of the previous members of the Council expired on 30 June 2006. The Minister of Justice has in terms of section 3(2) of the Debt Collectors Act, no 114 of 1998, appointed as members of the Council the following persons for a period of three years as from 1 July 2006:

- Adv J J Noeth SC As Chairman appointed in terms of Section (2)(a);
- Ms Z Moletsane A magistrate appointed in terms of section 3(2)(b)(1);
- Mr H van Rooyen An Attorney appointed in terms of section 3(2)(b)(ii);
- Ms R Ferreira,
Mr C Johnston
and Mr C Senzani Appointed in terms of section 3(2)(b)(iii);
- Mr J H E Joubert and Ms S Machaba Appointed in terms of Section 3(2)(b)(iv) as persons who in the Minister's opinion are fit and proper persons to serve on the Council;
- Ms I Wilken Appointed in terms of section 3(2)(b)(v) as representative of consumer interests;

One position, namely that of a debt collector has still to be filled as the person appointed is no longer available to serve on the Council.

INFORMATION SESSIONS

As you are no doubt aware, information sessions were held during March, April, May and June 2006 for the Pretoria/Johannesburg region, and at Polokwane, Bloemfontein, Cape Town, Port Elizabeth, East London, Durban and Nelspruit.

The information sessions were attended by 562 debt collectors of who 357 completed evaluation forms. Of those who completed evaluation forms 305 (85,4%) stated that the sessions met their expectations. 27 Replied that it only met their expectations to an extent or that it did not meet their expectations. A number (43) did not reply to the questions.

The fact that the Council required of persons who wished to attend to make a nominal contribution towards the costs of the sessions, no doubt made it possible for so many persons to attend.

Although this was a new venture for the Council it is clear from the comments received that the information sessions served a need and was a success and that the cost involved was justified. The Council learned a lot as a result of the interaction that took place and the comments received through the evaluation forms. From the comments received it is also clear that the majority who attended also benefited from the sessions.

What did become clear is that many, especially employees, did not know what the Act, Regulations and the Code of Conduct require of them and that there is a dire need for training.

Many employees indicated that newsletters are not brought to their attention. The Council as a result decided, although the cost in doing so is high, in future to send newsletters to every registered debt collector. In the past it was only sent to employers.

After evaluating the comments received, it is clear that the Council will have to consider to repeat the seminars although perhaps in a different format. It will consequently be appreciated if you would indicate whether you are of the opinion that there is a need for future seminars and if so, what in your opinion the format thereof should be and whether there are particular topics you want to be discussed in detail.

TRUST ACCOUNTS

The Council noted with concern that there are still debt collectors who practices for their own account who do not know exactly what the keeping of a trust account in terms of section 20 of the Act required of them. For that reason the basic principles that apply to a trust account which were published in newsletters No 1 are repeated:

“From enquiries received from debt collectors it is clear that a number of them, especially newcomers to the industry, do not fully understand how a trust account must be operated. The following is a few basic principles that apply to trust accounts.

In terms of section 20 of the Debt Collectors Act 114 of 1998, a registered debt collector must keep a separate trust account at a banking institution in the Republic. This trust account, the records and the trust ledgers must be audited by a registered accountant or auditor. Money held, received or collected by a debt collector, on behalf of any person, must immediately be deposited in the trust account and be paid over within a reasonable or agreed time to the person on whose behalf the money was received or held.

Trust money remains the property of the client on whose behalf the money has been received or is being held. As long as this money is in the hands of the debt collector, it must be safeguarded to the best of his / her ability. Trust money does not form part of the assets of the debt collector and may therefore not be claimed by a creditor of the debt collector.

It is important to distinguish between business money and trust money at all times. Two bank accounts as well as control accounts for trust creditors and business clients (debtors) are kept. Remember that trust money is held in trust and may never be used for any other purpose.

If the trust bank statement is debited with bank charges, the debt collector must transfer money from the business account to the trust bank account to cover these bank charges because there must never be a deficit on the trust bank account. The alternative method to ensure that bank charges cannot create an overdraft situation on the trust bank account is for the debt collector to make an arrangement with his / her bank to transfer charges on the trust bank account to the business bank account.

If the money held in trust earns interest, the interest shall be paid to the person(s) on whose behalf the money was deposited.

The trust account of a debt collector must be audited annually before the last day of the financial year of the debt collector. The certificate issued by the accountant or auditor shall state specifically that payments made in terms of section 20 (3) of the Act, were duly made to persons on whose behalf money was deposited in the trust account. The certificate must also include the fact that the balances of the trust creditors account total-up to the same amount that appears in the trust creditor control account as well as the trust bank account. The certificate shall be forwarded to the Council within 90 days from the date of completion of the audit. “

CHANGE OF PARTICULARS

In previous newsletters it was pointed out that not all employers and employees inform the Council of any change of particulars as required by Regulations 2A. Although there has been an improvement as far as compliance with Regulation 2A is concerned, it is still far from satisfactory. Although the Council in the past was very tolerant and accommodating as far as the non-compliance with Regulation 2A is concerned, this cannot be allowed to continue. The Council will in future, if the trend not to comply with Regulation 2A continues, be left with no other option than to charge the debt collectors concerned with improper conduct.

DISCIPLINARY HEARINGS

The Council gained the impression that there is a perception with some debt collectors that in the majority of cases where a complaint is received against a debt collector, the debt collector is charged with improper conduct. The following statistics for the period 1 March 2005 – 28 February 2006, however show that if such a perception does exist, the situation is quite different:

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| Complaints received that complied with the requirements of the Act | 327 |
| Investigations finalized – decided not to prosecute | 199 |
| Number of cases still to be decided by Executive Committee | 23 |
| Charges of misconduct still to be heard | 13 |
| Finalized after trial | 30 |
| Under investigation | 61 |
| Charges past heard | 1 |

AWARENESS CAMPAIGN

The Council during last year undertook a campaign to make the general public aware of the Council's existence. The campaign hinged on the effective use of national radio services for a period of two weeks. The commercials and the talks were presented in the 11 official languages, which ensured that all messages were niche focused. For the duration of the campaign more than 21 million South Africans were reached.

As a result of the fact that the public was made aware that only a registered debt collector can collect debt on behalf of another, the Council experienced a substantial increase in the number of new applications to register. This indicates that unregistered persons who are trying to collect debts are finding it more and more difficult to do so, as the public becomes aware of the fact that only registered debt collectors can collect debts.

During June of this year a follow-up high-impact awareness and PR campaign was undertaken. The key objectives of this follow-up campaign were:

- Implement a national awareness campaign to extend public interest and understanding how the Council protects the rights in debt collection;
- Promoting the Council for Debt Collectors;
- To make the public aware that only registered debt collectors are allowed to collect debts on behalf of another.

In the follow-up campaign the Council focused on making use of 57 community radio stations as partners in the campaign and live interviews were conducted with many of the community radio stations. The Chairman was also interviewed on E-tv.

PAYMENT OF FEES

With regard to the payment of fees into the Council's bank account, an appeal is once more made to debt collectors to furnish the Council with the necessary proof of payment and also to indicate clearly in respect of whom a payment was made. Without this information it is very difficult and sometimes impossible to allocate the money received correctly. If the Council is unable to allocate the money as a result of insufficient information it can result in the suspension or withdrawal of a debt collector's registration.

LEGISLATION IN THE PIPE-LINE

In the previous newsletter attention was drawn to certain amendments to the Act which were passed by Parliament. These amendments have to date not yet been put into operation. The moment that it is done, the information will be available on the Council's website at www.debtcol-council.co.za.

THE NATIONAL CREDIT ACT

Attention is drawn to the fact that 1 June 2006 was in terms of section 173 of the National Credit Act 2005 (Act No 34 of 2005) fixed by the President as the date on which:

- (a) Sections 1 to 11 (Chapter 1); sections 12 to 25 and 35 to 38 (Chapter 2 Part A,C and D); section 39 to 59 (Chapter 3); section 69; section 73; section 134 to 142 (Chapter 7); section 153 to 162 and section 164 to 170 (Chapter 8 excluding section 163); section 171 to 173 (Chapter 9); Schedule 1; Schedule 2 and Schedule 3 came into operation;
- (b) 1 September 2006 as the date on which sections 26 to 34 (Chapter 2 Part B); sections 67, 68, 70 and 72 shall come into operation;
- (c) 1 June 2007 as the date on which sections 60 to 66 (Chapter 4 Part A); section 71; section 74 to 88 (Chapter 4 Part C and D); sections 89 to 123 (Chapter 5); sections 124 to 133 (Chapter 6); and section 163 shall come into operation.

Regulations made in terms of the Act were also published in the Government Gazette. According to information these Regulations will only become operational as from the beginning of July 2007.

The Council is aware of the fact that many debt collectors are concerned that the National Credit Act and Regulations will allegedly have a negative effect on debt collectors and the fees they can recover in terms of Annexure B. The Council has already discussed some of these aspects with the relevant authorities.

An English Poet once said:

“ I walked a mile with pleasure; she chattered all the way,

but left me none the wiser for all she had to say ...

I walked a mile with sorrow, and ne'er a word said she,

But o, the things I learned from her, when sorrow walked with me!”