



Council For Debt Collectors



NEWSLETTER 7

Retirement of the Chief Executive Officer

Mr Oelof de Meyer will be leaving the Council on 31 December 2007 after assuming duty on 1 November 2002. During this period he has rendered sterling services to the Council. He has undertaken the daunting task of setting up an appropriate infra structure for the Council after its establishment and of managing the initial registration process of debt collectors. He played an indispensable role in staff management and ensuring that developments keep in pace with the increasing needs of a newly established statutory body. There is no doubt that Mr de Meyer can look back on his achievements with satisfaction. It is with gratitude that the Council acknowledges his contribution to the establishment, development and the management of the affairs of the Council.

The Council and its staff bid farewell to a remarkable man and a dedicated lawyer who has, over the years, become a trusted colleague and friend to many. The Council's best wishes accompany Mr de Meyer and his family.

Mr de Meyer will be succeeded by Mr Willie Henegan former Chief Director: Law Reform of the South African Law Reform Commission. He has assumed duty on 1 October 2007.

Amendments to the Act and regulations

The Debt Collectors Act, 1998 (Act 114 of 1998) and the regulations promulgated in terms of section 23 of the Act has been amended with effect from 2 November 2007. The amendments will be placed on the Council's website in due course. The amendments dealt with below are amendments with a direct impact on debt collectors and are circulated to bring these amendments to the notice of debt collectors as soon as possible.

Amendments to the Act

Paragraph (c) of the definition of "debt collector" contained in section 1 of the Act has been amended to make it clear that an agent of an attorney falls within the ambit of the definition of debt collector.

Section 12 of the Act has been amended to provide for two registers in stead of the one register containing the names and particulars of debt collectors that has previously been prescribed. Section 12(1)(a) of the amended section now provides for a register

containing the names and particulars of debt collectors who are in possession of a valid certificate of registration while section 12(1)(b) of the amended section now provides for a register containing the names and particulars of every debt collector whose registration has been cancelled at his or her request or whose registration has been withdrawn or disapproved by the Council. Provision has now been made for the register referred to in section 12(1)(a) to be published on the Council's website and to be updated monthly in stead of annual publication in the *Government Gazette*

A number of amendments have been effected to section 20 of the Act. Section 20(3) has been amended to provide that interest on money deposited in the trust account of a debt collector must now be paid to the Council. Consequently section 20(2) has been amended and no longer provides that the interest on the trust account be paid over to the person on whose behalf the money is held. A new subsection 20(3A) has been inserted which provides that the Council may, in accordance with a tariff and procedure determined by the Council, reimburse a debt collector for any bank charges or portion thereof incurred by the debt collector in connection with the keeping of his or her trust account. Council has decided that any accumulated bank charges may be set off against the accrued interest against proof and that the balance be paid over to the Council. Since this provision is not retrospective it will only apply to interest accrued from 2 November 2007. Since this date falls in the financial year special provision will have to be made in the transition period until accounting could take place for a full financial year in order to identify interest that has accrued from this date and against which bank costs can be set off. Debt collectors are requested to arrange with their accountants or auditors to reflect the relevant information in the newly prescribed Form 5 dealt with below from 2 November 2007 until the end of the financial year. A new section 20(7) has been inserted in the Act which provides that no amount standing to the credit of a debt collector's trust account will form part of the assets of a debt collector and may not be attached on behalf of any creditor of a debt collector.

Amendments to the regulations

Regulation 5 has been amended to give effect to the amendments of section 12 and provides for the new registers and the information contained in the registers.

Regulation 9 has been amended and now provides that the debt collector must, whenever a payment is made in terms of section 20(3) of the Act, make such payment within 30 days after a public accountant's or auditor's report is issued and give an exposition of the money deposited and interest accrued on such money to the Council.

Important amendments have also been effected to regulation 10 dealing with trust accounts. The amended regulation 10 now provides that the trust account must be audited annually by a public accountant or auditor within four months following the last day of the financial year of the debt collector. Upon completion of the audit, the public accountant or auditor must issue and submit a report, which corresponds substantially to the newly prescribed Form 5, to the debt collector who must submit a copy to the Council. Any contravention of this regulation by a debt collector will constitute improper conduct. A copy of Form 5 is attached.

An amended Annexure B provides for an increase in expenses and fees. A copy of Annexure B containing the new expenses and fees is attached. The amount of R 500

has inadvertently been amended in regulation 11 (English text) to an amount of R 650 in stead of R 630. A rectification notice will be published in due course.

Upgrading of the information technology system

An integration of the Council's accounting system into the software system used for the registration of debt collectors to facilitate the workflow will commence shortly. At the same time adjustments to the software currently in use will be made. Some of these adjustments are necessitated by the recent amendments to the Act. Tenders were invited and the successful tenderer will commence work shortly. A delay in processing new applications in the transition may occur but the Council's staff is committed to avoid this. Management and staff will endeavour to minimize the inconvenience caused but would appreciate your understanding and support.

Information sessions

To assess the need for continued information sessions close to 12 000 questionnaires were distributed. It was with a measure of disappointment that Council received only 53 responses and this notwithstanding the fact debt collectors when charged often pleads ignorance of the law and the regulations.

Problem areas

To facilitate the work flow, to eliminate delays and to promote cost-effectiveness Council would like to bring the following problems areas to your attention once again and would appreciate your assistance:

- Debt collectors should inform Council when they leave the occupation or where there is a change of employer.
- The consideration of applications is delayed because applications forms are not properly completed.
- Annual subscription fees are in many instances not paid on time.
- Deposits for registration fees and annual subscription fees are made without information to enable identification. Your participation in assisting with the identification of unidentified money in the Council's suspense account would be sincerely appreciated.

In and around the office

Mr Gildenhuys was appointed as legal officer with effect from 10 August 2007. He will assist with the investigation of complaints. A word of welcome is extended to him and Council trusts he will find his new environment challenging and fulfilling.

Ms S Beukes has returned to work on 5 November 2007 after maternity leave. Her son was born on 26 July 2007. Council wishes Suzette and Jamien well for the future.

Conclusion

The Council and staff would like to express their appreciation to the large number of debt

collectors for their co-operation. They not only facilitated the task of the staff but also assisted the Council in managing its affairs more cost effectively. Council would also like to express its appreciation for the commitment and dedication displayed by the staff in the execution of their duties.

We also take this opportunity to wish all debt collectors a very happy and prosperous 2008.

Good breeding consists in concealing how much we think of ourselves and how little we think of the other person

Mark Twain

ANNEXURE B
Expenses and fees

(Effective from 2 November 2007)

[Regulation 11]

Note: The total amount to be recovered from the debtor in respect of items 1 to 7 of the Annexure shall not exceed the capital amount of the debt or R630, whichever is the lesser.

Item	Description	Amount
1.(a)	Necessary ordinary letter, registered letter, facsimile or e-mail:	R12.60 (and in the case of a registered letter, the costs of the registration fee to be added)
1.(b)	Registered letter (Sec 57 of the Magistrates' Courts Act, 1944 (Act 32 of 1944)):	The amount as from time to time prescribed in item 8 of Annexure 2 Table A, Part II of the Rules of Court of the Magistrates Courts Act 32 of 1944
2.	Necessary phone calls, which is not a consultation (per call):	R12.60
3.	Other necessary expenses not specifically provided for: a total amount of:	R12.60
4.	Acknowledgement of debt and undertaking to pay debt in terms of section 57 or section 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) (including the necessary consultation with debtor):	The amount as prescribed from time to time in items 9 and 10 of Annexure 2, Table A, Part II of Rules of Court of the Magistrates Courts Act 32 of 1944
5.	On request of the debtor, the drawing up and furnishing of a settlement account, other than the six monthly settlement account:	R25.20
6.	Correspondence received and attended to:	R6.30
7.	Necessary consultation with debtor:	R31.50
8.	Attending taxation:	R50.40
9.	On receipt of an installation in redemption of the debt:	A fee of 10% of the instalment received subject to a maximum amount of R315.00. No additional fee shall be charged for any attendance in connection with the receipt or payment of any instalment.

Form 5
REGULATIONS RELATING TO DEBT COLLECTORS, 2003
PUBLIC ACCOUNTANTS'/AUDITORS' INDEPENDENT REPORT
 [Regulation 10]

We have audited the trust accounts of.....(*insert the name of the company/close corporation/juristic person/person*) to determine whether those accounts were maintained in compliance with section 20 of the Debt Collectors Act, 1998 (Act 114 of 1998), and regulation 10 of the Regulations relating to Debt Collectors, 2003 for the period from(*insert date*) to(*insert date*).

The directors/members/partners/proprietor of(*insert the name of the company/close corporation/juristic person/person*) is/are responsible for ensuring that the trust accounts are maintained in compliance with the provisions of the Debt Collectors Act, 1998. The directors/members/partners/proprietor is/are also responsible for the implementation of accounting and internal control systems. Our responsibility is to express an opinion on whether the trust accounts were maintained in compliance with section 20 of the Debt Collectors Act, 1998, and regulation 10 of the Regulations relating to Debt Collectors, 2003, for the period.....(*insert date*) to.....(*insert date*) based on our audit.

This report covers the accounting records relating to the debt collector's trust accounts and does not extend to the financial statements of the business of(*insert the name of the company/close corporation/juristic person/person*) taken as a whole.

Our audit was conducted in accordance with International Standards on Auditing applicable to special purpose audit engagements. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the trust accounts are free of any material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the trust accounts, and assessing the accounting principles used by management.

We believe our audit provides a reasonable basis for our opinion.

Qualification

The report is subject to the following qualifications (if none, state NIL).....

(Any contravention of section 20 of the Debt Collectors Act, 1998, and regulation 10 of the Regulations relating to Debt Collectors, 2003, relating to trust accounts is regarded as material and should be reported. If the report is qualified then the next heading is to be changed to "Qualified opinion" and the wording is to change to "In our opinion, except as noted above, the ...)

Opinion

In our opinion, the debt collector's trust accounts of..... (*insert the name of the company/close corporation/juristic person/person*) for the period from.....(*insert date*) to..... (*insert date*) were maintained in compliance with section 20 of the Debt Collectors Act, 1998, and regulation 10 of the Regulations relating to Debt Collectors, 2003.

Supplementary information

Our audit procedures indicated the following:

1. The debt collector's trust account for the period reported on has been updated.....(*indicate how regular*).
2. The debt collector's trust account for the period subsequent to the period being audited, was last inspected by us on..... (*insert date of last inspection*), has been written up to(*insert date*) and the trial balance was last balanced at(*insert date*).
3. The debt collector provided us with the following changes in the composition of the business which occurred during the period from..... (*insert date*) to..... (*insert date*) –
.....(*insert changes*)
4. The debt collector's principal place of business is at.....
(*insert full physical address*).

The following information was extracted from the audited trust account:

1. Reconciliation of interest earned on the debt collector's trust account from the beginning of the period..... (*insert date*) to the end of the period..... (*insert date*):

Amount brought forward from the previous financial year in respect of interest earned on monies deposited in terms of section 20 of the Debt Collectors Act, 1998, is	
Amount earned during the current period on monies deposited in trust banking accounts in terms of section 20 of the Debt Collectors Act, 1998 is	
Amount incurred during the current period in respect of bank charges (excluding VAT) is	
Amount already paid over to the Council for Debt Collectors during the period under review in terms of section 20 of the Debt Collectors Act, 1998, is	
Amount carried over to the next financial year in respect of interest earned on monies deposited in terms of section 20 of the Debt Collectors Act, 1998, is	

2. The ratio as a percentage of total bank charges (excluding VAT) incurred during the current period to the total of interest earned during the year was.....
3. Trust liabilities/creditors and trust funds available at the year end(*insert date*) and on one other date(*insert date*), were as follows:

	At year end	Other date selected
Trust liabilities/creditors		
Trust funds available in terms of:		
Section 20 trust money		
Trust surplus/ (deficit)		

Use of the report

This report is intended solely for the use of the debt collector and the Council for Debt Collectors.

Name

Registered Accountants and Auditors

Chartered Accountants (SA)

Address

Date

Notes

1. The public accountant/auditor must be registered in terms of the Public Accountants' and Auditors' Act, 1991 (Act 80 of 1991).
2. If the public accountant/auditor is unable to furnish an unqualified report the fact thereof and the reasons therefor shall be set out fully in the report transmitted by him/her which shall otherwise be as far as possible in the above form.
3. All alterations must be signed by the public accountant/auditor."