

REPUBLIC OF SOUTH AFRICA

DEBT COLLECTORS AMENDMENT BILL, 2016

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of)
(The English text is the official text of the Bill)*

(DRAFT)

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B - 2016]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments

_____ Words underlined with a solid line indicate insertions in existing enactments

BILL

To amend the Debt Collectors Act, 1998, so as to amend and insert certain definitions; to make the Act applicable to attorneys; to make provision for the registration and regulation of debt collectors interns; to provide that the list of registered debt collectors may be submitted to Parliament electronically; to further regulate the processes dealing with improper conduct of debt collectors; to provide for the payment of admission of guilt fines by debt collectors in respect of certain cases of improper conduct; to provide for the appointment of inspectors to assist the Council for Debt Collectors with investigations of complaints against debt collectors; to empower the Council for Debt Collectors to tax or assess any account or statement of costs; to further regulate the administration of trust accounts of debt collectors; to extend the matters in respect of which regulations may be made; to empower the Council for Debt Collectors to delegate certain of its powers and functions; to empower the Council for Debt Collectors to exempt debt collectors from certain requirements of the Act; to require the Rules Board for Courts of Law and the Council for Debt Collectors to make recommendations to the Minister on fees and expenses payable in respect of debt collection; and to provide for matters connected therewith.

PREAMBLE

SINCE the Constitution of the Republic of South Africa, 1996, commits the Republic of South Africa and its peoples to establish a society that is based

on democratic values of social justice, human dignity, equality and the advancement of human rights and freedoms;

AND SINCE —

- * recent court cases and media reports have highlighted the flagrant abuses prevalent in the collection of debts;
- * the victims of these abuses in the collection of debts are mostly the poorest and most vulnerable members of society;
- * the existing legislative framework would seem to be inadequate in ensuring that debts are recovered in a fair and efficient manner where there is proper control and oversight; and
- * there is a disparity in the tariffs charged by debt collectors and attorneys doing debt collection;

AND BEARING IN MIND THAT the Constitution requires of the state to respect, protect, promote and fulfil all the rights enshrined in the Bill of Rights, which is the cornerstone of democracy in South Africa;

PARLIAMENT of the Republic of South Africa therefore enacts as follows:—

Amendment of section 1 of Act 114 of 1998, as amended by section 10 of Act 22 of 2005

1. Section 1 of the Debt Collectors Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by—

(a) the insertion of the following definitions before the definition of "**Council**":

"attorney" means a legal practitioner who is—

(a) admitted by the court and enrolled as such in accordance with the law; and

(b) on the roll of practising attorneys and is in possession of a valid fidelity fund certificate;

'Attorneys Act' means the Attorneys Act, 1979 (Act No. 53 of 1979);";

- (b) the substitution for the definition of "**debt collector**" of the following definition:

"**debt collector**" means—

- (a) [a] any person, [**other than**] including an attorney or his or her employee or agent contemplated in section 8A, or a party to a factoring arrangement, who for reward collects debts owed to another on the latter's behalf;
- (b) [**a**] any person who, other than a party to a factoring arrangement, in the course of his or her regular business, for reward takes over debts referred to in paragraph (a) in order to collect them for his or her own benefit;
- (c) [**a**] any person who, as an agent or employee of a person referred to in paragraph (a) or (b) [**or as an agent of an attorney**], collects the debts on behalf of such person [**or attorney**], excluding an employee whose duties are purely administrative, clerical or otherwise subservient to the actual occupation of debt collector;"
- (c) the substitution for the definition of "**Director-General**" of the following definition:
- "**Director-General**" means the Director-General of the Department of Justice and Constitutional Development;"
- (d) the insertion after the definition of "**debt collector**" of the following definition:
- "debt collector intern" means a person contemplated in section 9A;"
- (e) the insertion after the definition of "**factoring arrangement**" of the following definition:
- "law society" means a law society referred to in section 56 of the Attorneys Act, 1979 (Act No. 53 of 1979), having jurisdiction;" and
- (f) the substitution for the definition of "**Minister**" of the following definition:
- "**Minister**" means the [**Minister of Justice**] Cabinet member responsible for the administration of justice;".

Amendment of section 8 of Act 114 of 1998

2. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[As from a date fixed by the Minister in the Gazette, no] No person, [excluding an attorney or an employee of an attorney,]** shall act as a debt collector unless he or she is registered as a debt collector in terms of this Act and, in the case of a company or close corporation carrying on business as a debt collector, unless, in addition to the company or close corporation itself, every director of the company and member of the close corporation and every officer of such company or close corporation, not being himself or herself a director or member but who is concerned with debt collecting, as the case may be, is registered as a debt collector."

Insertion of section 8A in Act 114 of 1998

3. The following section is hereby inserted in the principal Act, after section 8:

"Registration of attorneys as debt collectors

8A. (1) Subject to subsection (2), as from a date fixed by the Minister by notice in the Gazette, published at least 180 days before the date referred to therein, no attorney, employee of an attorney, or agent of an attorney, shall act as a debt collector unless he or she is registered as a debt collector in terms of this Act.

(2) The provisions of this Act shall, in addition to the provisions of the Attorneys Act, where applicable, apply to an attorney, employee of an attorney, or agent of an attorney contemplated in subsection (1)."

Insertion of section 9A in Act 114 of 1998

4. The following section is hereby inserted in the principal Act, after section 9:

"Debt collector interns

9A. (1) A person interested in the occupation of debt collector, wishing to gain experience in the occupation of debt collector, before registering as a debt collector in terms of section 9, may enter into a written contract of service for a period not exceeding three months as an intern (hereafter referred to a "debt collector intern") with a registered debt collector (hereafter referred to as the "employer"): Provided that a debt collector intern may not enter into more than one contract of service with the same employer and may not be registered as a debt collector intern in terms of this section more than two times.

(2) An employer may—

- (a) in the case of a natural person, only have one debt collector intern under his or her direct supervision; or
- (b) in the case of a juristic person, have as many debt collector interns as there are registered debt collectors in the employ of that juristic person.

(3) The Council may, on the prescribed conditions, exempt an employer from the provisions of subsection (2), upon the application of an employer in the prescribed manner.

(4) An employer who employs a debt collector intern shall—

- (a) in the prescribed manner, apply to the Council, or a person designated by the Council, for the registration of that person as a debt collector intern;
- (b) pay the prescribed application fee to the Council; and
- (c) furnish any additional particulars in respect of the application as may be determined by the Council, or a person designated by the Council.

(5) The Council, or a person designated by the Council, may, subject to the provisions of section 10, grant the application and register the person as a debt collector intern, whereafter the provisions of sections 14(3), 15, 16, 17, 19 and 25 of

this Act, with the changes required by the context, are applicable to that debt collector intern.

(6) On registering a person as a debt collector intern, the Council, or a person designated by the Council, shall issue to that debt collector intern a certificate of registration in the prescribed format, which shall be valid for a period of three months from the date of registration.

(7) (a) The Council shall keep a register of the names and prescribed particulars of every debt collector intern to whom a certificate of registration in terms of subsection (6), has been issued.

(b) Section 12(2)(a) and (b) and (4) applies with the changes required by the context to the register referred to in paragraph (a).

(8) A debt collector intern shall, during his or her term of service, serve in the office of his or her employer under the employer's direct personal supervision or under the supervision of a registered debt collector who is in the employ of the employer.

(9) If a debt collector intern is liable in terms of this Act for anything done or omitted in the course of his or her employment or activities on behalf of his or her employer, the employer is jointly and severally liable with that debt collector intern.

(10) If an employer—

(a) dies;

(b) has his or her registration withdrawn or suspended;

(c) is declared by a competent court to be incapable of managing his or her own affairs; or

(d) abandons his or her practice or ceases to practise,

any other debt collector may, upon the written application of a debt collector intern, take cession of the contract of service of a debt collector intern, upon the written notification thereof to the Council and the Council's written approval thereof.

(11) The proviso in subsection (1) and the provisions of subsection (2) are not applicable to a debt collector who takes cession of a contract of service of a debt collector intern under subsection (10).

(12) Upon the expiry of the contract of service, the employer shall issue the debt collector intern with a certificate of service in the prescribed format.”.

Amendment of section 10 of Act 114 of 1998 as amended by section 11 of Act 22 of 2005

5. Section 10 of the principal Act is hereby amended by—

(a) the substitution of paragraph (b) of the following paragraph:

"(b) in the case of a company or close corporation, if a director of the company or a member of the close corporation is in terms of paragraph (a) not competent to be registered as a debt collector~~[.]~~; or; and

(b) the addition in subsection (1) of the following paragraph after paragraph (b):

“(c) in the case of an attorney if he or she has been found guilty of unprofessional or dishonourable or unworthy conduct in terms of section 72 of the Attorneys Act.”.

Amendment of section 12 of Act 114 of 1998 as amended by section 12 of Act 22 of 2005

6. Section 12 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

"(d) be submitted to Parliament within 14 days after the end of each financial year and may be submitted electronically.".

Substitution of section 15 of Act 114 of 1998

7. Section 15 of the principal Act is hereby substituted for the following section:

"Improper conduct by debt collectors

15. (1) A debt collector may be found guilty **[by the Council]** of improper conduct if he or she, or a person for whom he or she is vicariously liable—

- (a) uses force or threatens to use force, unfair tactics or any other similar conduct against a debtor or any other person with whom the debtor has family ties or a familial or personal relationship;
- (b) acts towards a debtor or any other person with whom the debtor has family ties or a familial or personal relationship, in an excessive or intimidating manner;
- (c) makes use of fraudulent or misleading representations, including—
 - (i) the simulation of legal procedures;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer, sheriff, officer of court or any similar person; or
 - (iv) the making of unjustified threats to enforce rights;
- (d) is convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
- (e) spreads or threatens to spread false information concerning the creditworthiness of a debtor, or contravenes section 68 of the National Credit Act, 2005 (Act No. 34 of 2005);
- (f) contravenes or fails to comply with a provision of the code of conduct contemplated in section 14;
- (g) charges collection costs, an initiation fee, service fees, default administration charges or other charges which exceed the unpaid balance of the principal debt at the time of default;
- (h) contravenes the provisions of section 126B of the National Credit Act, 2005;
- ~~(g)~~(i) contravenes or fails to comply with any provision of this Act; or

~~[(h)](i)~~ behaves or acts in any manner amounting to conduct, other than that mentioned in paragraphs (a), (b), (c), (d), (e), (f), **[or]** (g), (h), or (i) which is improper in terms of a regulation.

(2) (a) The Council **[may]** shall in the prescribed manner appoint a committee or a person or persons to investigate an allegation of improper conduct by a debt collector submitted to [it] the Council in the prescribed manner **[or have it investigated in the prescribed manner by a committee of members of the Council or by a person or persons nominated by it: Provided that a debt collector whose conduct is being investigated shall be afforded the opportunity, either in person or through a legal representative, of refuting any allegations made against him or her.]**

(b) The committee or a person or persons contemplated in paragraph (a) shall, upon completion of the investigation, compile a report to the Council, containing its substantiated findings and a recommendation whether a charge of improper conduct should be brought against the debt collector concerned or not.

(c) The Council may, after consideration of the report contemplated in paragraph (b), charge the debt collector with improper conduct in the prescribed manner, or dismiss the allegation.

(d) If the Council is of the opinion that the debt collector in question should be charged with improper conduct, the Council shall—

- (i) appoint a person to lead evidence at a disciplinary inquiry; and
- (ii) appoint a committee, or a person or persons to preside at the disciplinary inquiry.

(e) A disciplinary inquiry shall be conducted in the prescribed manner: Provided that the debt collector concerned shall be afforded the opportunity, either in person or through a legal representative, of refuting any allegations made against him or her.

(3) If the **[Council]** committee or a person or persons contemplated in subsection (2)(d) finds a debt collector guilty of improper conduct, or if the debt collector has admitted his or her guilt

as contemplated in section 15A(1) and has failed or refused to pay the fine contemplated in section 15A(2), the [Council] committee or such person or persons may—

- (a) **[withdraw his or her registration as a debt collector;]** recommend to the Council that the registration of the debt collector concerned be withdrawn;
- (b) suspend his or her registration for a specified period or pending the fulfilment of a condition or conditions;
- (c) impose on him or her a fine not exceeding the prescribed amount, which fine shall be payable to the Council;
- (d) reprimand him or her;
- (e) recover from him or her **[the]** any costs incurred **[by the Council]** in connection with the investigation and disciplinary inquiry;
- (f) order him or her to reimburse any person who the **[Council] committee or a person or persons** is satisfied has been prejudiced by the conduct of such debt collector and to furnish the Council within a specified period with proof of such reimbursement; or
- (g) combine any of the penalties under this subsection.

(4) (a) If a recommendation is made in terms of subsection (3)(a), the Council may withdraw the registration of the debt collector concerned, or impose another sanction as contemplated in subsection (3).

(b) Any penalty imposed on a debt collector in terms of subsection (3) **[(a), (b), (c), (d), (e), (f) or (g)]** may, in the prescribed manner, be reviewed by the Council and may be [suspended, either wholly or partially by the Council] dismissed, upheld or changed on such conditions as the Council deems appropriate.

[(5) The Council may in its discretion assign any of the powers conferred on it under this section, except a power referred to in subsection (3) (a), to a committee nominated by it in

terms of subsection (2), and may rescind or vary a decision of such a committee.]

(5) If an attorney contemplated in section 8A, is found guilty of improper conduct, the Council shall, within five working days of the finding, in writing, inform the law society having jurisdiction of such finding and penalty.

(6) The law society must cause further steps to be taken to determine whether the attorney is still a fit and proper person to continue practising as such."

Insertion of sections 15A and 15B in Act 114 of 1998

8. The following sections are hereby inserted in the principal Act, after section 15:

"Admission of guilt fine

15A. (1) Where improper conduct referred to in section 15(1) is investigated and the debt collector under investigation is charged with improper conduct, the debt collector may, before appearing at a disciplinary inquiry, in writing to the Council, admit his or her guilt in respect of the improper conduct.

(2) The Council may, upon receipt of the written admission of guilt referred to in subsection (1) and if it believes that—

(a) the debt collector under investigation would have been found guilty of improper conduct; and

(b) a fine referred to in section 15(3)(c) would have been imposed upon him or her,

afford the debt collector an opportunity to pay the fine in the amount determined by the Council on or before a date specified by the Council.

(3) The debt collector may pay the fine on or before the date specified by the Council, to the Council.

(4) The debt collector who, admits his or her guilt in terms of subsection (1), is deemed to have been found guilty of the improper conduct in respect of which he or she was charged.

(5) If the debt collector fails to pay the fine on or before the specified date, or chooses not to pay the specified fine, he or she shall appear at a disciplinary inquiry as contemplated in section 15(2)(e).

(6) If an attorney contemplated in section 8A pays an admission of guilt fine, the Council shall, within five working days of the admission of guilt, in writing, inform the law society having jurisdiction of such admission of guilt and penalty imposed.

(7) The law society must cause further steps to be taken to determine whether the attorney is still a fit and proper person to continue practising as such.”.

Inspectors

15B. (1) The Council may appoint any suitably qualified or experienced person as an inspector to investigate the activities of a debt collector against whom a complaint has been lodged in respect of an alleged contravention of any provision of this Act, or whom the Council reasonably suspects is contravening any provision of this Act.

(2) The Council shall provide each inspector appointed in terms of subsection (1) with a certificate signed on behalf of the Council and stating that the inspector has been appointed under this Act.

(3) An inspector conducting an investigation in terms of this section shall—

(a) show his or her certificate of appointment and identification to any affected debt collector or other person who demands to see it; and

(b) hand a written document, stating the nature and purpose of the investigation to the affected debt collector or person.

(4) (a) If an inspector, in the course of his or her investigation, has reason to suspect that the debt collector concerned has contravened or is contravening any other provision of this Act, not specifically mentioned in the written document referred to in subsection (3)(b), he or she shall—

- (i) without delay inform the Council thereof; and
- (ii) request the Council to amend the written document contemplated in subsection (3)(b) to enable him or her to investigate this alleged contravention as well.

(b) The Council may—

- (i) amend the written document contemplated in subsection (3)(b), authorising the further investigation; or
- (ii) refuse to amend the written document contemplated in subsection (3)(b).

(5) An inspector may, for the purposes of an investigation referred to in subsection (1), during office hours and without prior notice—

(a) enter any business premises of the debt collector concerned or company or close corporation carrying on business as a debt collector without a search warrant, if—

- (i) the owner or occupier of the premises concerned consents to such entry and search; or
- (ii) the inspector, on reasonable grounds, believes that a warrant would be issued to him or her if he or she were to apply for that warrant and the delay in obtaining that warrant would defeat the purpose of the entry; and

(b) enter any other premises of the debt collector concerned, on the authority of a search warrant.

(6) A warrant contemplated in subsection (5)(b) may be issued by a judge or a magistrate who has jurisdiction—

(a) in relation to premises on or from which there is reason to believe that a contravention of this Act has been or is being committed; and

(b) if it appears from information on oath or affirmation that there are reasonable grounds to believe that there is evidence available in or upon such premises of a contravention of this Act.

(7) An inspector may require from any person found on the premises referred to in subsection (5)—

(a) the particulars and information pertaining to the investigation;

(b) to have access to the books, documents or objects relevant to his or her investigation, in the possession or custody or under the control of the—

(i) debt collector concerned or a person in his or her employ;

or

(ii) company or close corporation in whose employ the debt collector concerned is; and

(c) copies of the books, documents or objects relevant to his or her investigation in the possession or custody or under the control of the—

(i) debt collector concerned or a person in his or her employ;

or

(ii) company or close corporation carrying on business as a debt collector in whose employ the debt collector concerned is.

(8) A debt collector who, or company or close corporation carrying on business as a debt collector which does not comply with any directive by, or request of an inspector, relevant to his or her investigation as referred to in subsections (5) and (6), may be found guilty of improper conduct.

(9) An inspector appointed under subsection (1) must perform his or her functions in terms of this section, subject to the directions and control of the Council."

Amendment of section 16 of Act 114 of 1998

9. Section 16 of the principal Act is hereby amended by—

(a) the substitution for paragraph (c) of the following paragraph:

- "(c) in the case of a debt collector who is a company or close corporation, if the registration of a director of the company or a member of the close corporation or an officer of the company or close corporation, not being himself or herself a director or member, as the case may be, is withdrawn in terms of paragraph (b)[.]; or
- (b) the addition in subsection (1) of the following paragraph after paragraph (c):
- "(d) in the case of an attorney if he or she has been found guilty of unprofessional or dishonourable or unworthy conduct in terms of section 72 of the Attorneys Act, 1979."

Amendment of section 19 of Act 114 of 1998

10. Section 19 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Upon request by a debtor and against payment of any prescribed fee, the Council or the clerk of a magistrate's court [**or a costs committee of a provincial law society**] may tax or assess any account or statement of costs, interest and payments claimed to be owed by a debtor to a debt collector or his or her client."

Amendment of section 20 of Act 114 of 1998, as amended by section 14 of Act 22 of 2005 and section 25 of Act 66 of 2008

11. Section 20 of the principal Act, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

"(1) Every debt collector who practises for his or her own account, shall open and maintain a separate trust account at a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), and shall deposit therein as soon as possible after receipt thereof the money received or held by him or her on behalf of any person: Provided that this section shall not be applicable to an attorney referred to in section

8A, who is required to open and keep a trust account in accordance with the provisions of section 78 of the Attorneys Act, 1979.”

- (b) the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) cause his or her accounting records to be audited annually by a **[public accountant or]** registered auditor contemplated in the **[Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991)]** Auditing Profession Act, 2005 (Act No. 26 of 2005);” and

- (c) the substitution for subsections (8) and (9) of the following subsections, respectively:

“(8) If any debt collector who is not exempted, in terms of section 26(2)(a), from opening and maintaining a trust account referred to in subsection (1) —

- (a) dies;
- (b) becomes insolvent as contemplated in the Insolvency Act, 1936 (Act No. 24 of 1936);
- (c) in the case of a company or close corporation, **[is liquidated or placed under judicial management, whether provisionally or finally]** becomes financially distressed as contemplated in Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008) and Part IX of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (d) has his or her registration withdrawn **[or is on reasonable grounds likely to have his or her registration withdrawn]** or suspended;
- (e) is declared by a competent court to be incapable of managing his or her own affairs; or
- (f) abandons his or her practice or ceases to practise,

the Council~~—~~

- (i) must, without delay, take control over~~],~~ **administer and finalise that]** the trust account of that debt collector: Provided that the Council may designate any person, body or institution, in writing, on the conditions the

Council deems fit, to take control over the trust account of that debt collector: Provided further that if a person, body or institution is designated, such person, body or institution may not take control of the trust account of the debt collector unless security to the satisfaction of the Council, is lodged with the Council.]; or

- (ii) **may, in the circumstances the Council deems fit, make an application to the Master of the High Court having jurisdiction to appoint a *curator bonis* with the rights, duties and powers as prescribed to control, administer and finalise that account.]**

[(9) The Master of the High Court—

- (a) **may, before an appointment of a *curator bonis* is made as provided for in subsection (8), require from the person who is to be appointed as *curator bonis*, security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his or her functions;**
- (b) **shall have the powers and duties as prescribed; and**
- (c) **is entitled to the fees as provided for in Schedule 2 of the regulations made in terms of section 103 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).]**

(9) After the Council, or any person, body or institution contemplated in subsection (8), has taken control over the trust account of a debt collector—

- (a) the Council, or the person, body or institution in question may—
- (i) control and administer the trust account of the debt collector, on behalf of that debt collector; or
- (ii) control, administer and finalise the trust account of the debt collector,

in the manner the Council deems fit: Provided that if the person, body or institution does not perform his or her or its duties satisfactorily, the Council may remove that person, body or

institution and designate another person, body or institution in terms of subsection (8): Provided further that any loss in the trust account caused by the person, body or institution will be covered by the security contemplated in subsection (8); or

(b) the Council may make an application to any court having jurisdiction to appoint a provisional *curator bonis*, to control and administer the trust account of the debt collector on behalf of that debt collector, or a *curator bonis* to control, administer and finalise the trust account of the debt collector."; and

(d) the addition after subsection (9) of the following subsections:

"(10) A provisional *curator bonis* or a *curator bonis* may, be appointed by a court having jurisdiction, on the conditions and with such rights, duties and powers in relation thereto as the court may deem fit.

(11) (a) A provisional *curator bonis*, may be appointed to control and administer the trust account on behalf of a debt collector—

(i) who becomes insolvent and a trustee has not yet been appointed in terms of the Insolvency Act, 1936 (Act No 24 of 1936);

(ii) who in the case of a company or close corporation, becomes financially distressed and a business rescue practitioner has not yet been appointed in terms of Chapter 6 of the Companies Act, 2008 or Part IX of the Close Corporations Act, 1984; or

(iii) whose registration is suspended.

(b) The provisional *curator bonis* shall control and administer the trust account of a debt collector until—

(i) it becomes clear that the debt collector in question is not insolvent;

(ii) it becomes clear that in the case of a company or close corporation, such company or close corporation is not financially distressed;

- (iii) the registration is no longer suspended, or
- (iv) a *curator bonis*, trustee or business rescue practitioner is appointed:

(c) A *curator bonis* may be appointed to control, administer and finalise the trust account where a debt collector has—

- (i) died, whether or not an executor has been appointed in terms of the Administration of Estates Act, 1966 (Act No. 65 of 1966);
- (ii) been sequestrated and a trustee has not yet been appointed in terms of the Insolvency Act, 1936;
- (iii) in the case of a company or close corporation, been declared financially distressed and a business rescue practitioner has not yet been appointed in terms of the Companies Act, 2008 or the Close Corporation Act, 1984;
- (iv) had his or her registration withdrawn;
- (v) been declared by a competent court to be incapable of managing his or her own affairs; or
- (vi) abandoned his or her practice or ceased to practise as a debt collector.

(12) (a) The Council shall, after a court having jurisdiction, has appointed a provisional *curator bonis*, *curator bonis*, trustee or business rescue practitioner, hand over its control over the trust account of the debt collector to the appointed provisional *curator bonis*, trustee or business rescue practitioner for administration or to the *curator bonis*, trustee or business rescue practitioner for administration and finalisation.

(b) A provisional *curator bonis* shall hand over his or her control over the trust account of the debt collector to any appointed *curator bonis*, trustee or business rescue practitioner for administration or for administration and finalisation.”

Amendment of section 23 of Act 114 of 1998, as amended by section 26 of Act 66 of 2008

12. Section 23 of the principal Act, is hereby amended by—

(a) the substitution in subsection (2) for paragraph (e) of the following paragraph:

"(e) **[regarding the remuneration, rights, duties and powers of a curator bonis appointed under section 20 (8); and] prescribing the—**

- (i) manner in which an employer may apply for exemption from the provisions of section 9A(2);
- (ii) conditions on which an employer may be exempted from the provisions of section 9A(2);
- (iii) manner in which an employer applies in terms of section 9A(4)(a) for the registration of a debt collector intern;
- (iv) application fees payable to the Council in terms of section 9A(4)(b);
- (v) format of a certificate of registration as a debt collector intern contemplated in section 9A(6);
- (vi) particulars to be entered in a register kept in terms of section 9A(7)(a); and
- (vii) format of a certificate of service contemplated in section 9A(12)."; and

(b) the deletion of the following paragraph:

"[(f) regarding the powers and duties of the Master of the High Court when appointing a curator bonis in terms of section 20 (8).]".

Insertion of section 24A in Act 114 of 1998

13. The following section is hereby inserted in the principal Act, after section 24:

"Delegation of Council's powers and functions

24A. (1) The Council may, on the conditions it deems fit, delegate any of the powers conferred upon, or functions assigned to it by this Act, except the powers and functions referred to in section 15(4), to—

- (a) a member of the Council;
- (b) the executive committee of the Council;
- (c) a member of the executive committee; or
- (d) a member of the personnel appointed by the Council.

(2) The Council—

- (a) may vary, confirm or revoke any decision taken in consequence of a delegation under subsection (1);
- (b) may at any time vary or revoke any delegation under subsection (1); and
- (c) shall not be divested of the responsibility for the exercise of any power or the performance of any function delegated under subsection (1)."

Substitution of section 26 of Act 114 of 1998

14. The following section is hereby substituted for section 26 of the principal Act:

"Exemption from provisions of Act

26. (1) The Minister may, on the conditions that he or she deems fit, after consultation with the Minister of Trade and Industry and the Council, exempt any person or category of persons from any or all of the provisions of this Act.

(2) Notwithstanding the provisions of subsection (1), the Council may, on the conditions it deems fit, exempt a debt collector, from the—

- (a) requirement to open or maintain a trust account as contemplated in section 20(1), if the debt collector can prove that he or she does not receive money on behalf of other persons;
- (b) requirement to have his or her accounting records audited annually by a registered auditor contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), as contemplated in section 20(6), if the debt collector can prove that he or she will not be able to afford the services of a registered auditor: Provided that upon exemption the debt collector shall submit his or her accounting records annually to the Council; and
- (c) disqualification to register as a debt collector on account of failure to pay the yearly subscription fee contemplated in section 13 or having been found guilty of improper conduct in terms of section 15, as contemplated in section 10(1)(a)(ii) for which the following penalties were imposed:
 - (i) the suspension of his or her registration contemplated in section 15(3)(b);
 - (ii) a fine contemplated in section 15(3)(c);
 - (iii) a reprimand as contemplated in section 15(3)(d);
 - (iv) an order to reimburse any person as contemplated in section 15(3)(f); or
 - (v) a combination of penalties under this subparagraph."

Amendment of laws

15. The laws mentioned in the first column of the Schedule are hereby amended to the extent indicated in the third column thereof.

Transitional provisions

16. (1) The Rules Board for Courts of Law Council established by section 2 of the Rules Board for Courts of Law Act, 1985, (Act No. 107 of 1985) (hereinafter referred to as the Rules Board), in conjunction with the Council for Debt Collectors (hereinafter referred to as the Council), must,

within 12 months after the commencement of this Act, cause an investigation to be undertaken and make recommendations to the Minister, on the matters referred to in subsection (2), with the view to—

- (a) the Rules Board amending the Rules Regulating the Conduct of the Proceedings of the Magistrates' Courts of South Africa (hereinafter referred to as the Rules);
- (b) the Council amending the regulations under section 23(1), read with section 19 of the Debt Collectors Act, 1998 (Act No. 114 of 1998) (hereinafter referred to as the Act),

in order to address the circumstances giving rise to abuses in the collection of debts and review the charges recovered by debt collectors and attorneys from debtors.

(2) The Rules Board and the Council must, in conjunction with each other, consider and address the following matters as contemplated in subsection (1):

- (a) The alignment of the tariffs made by the Rules Board with those made under section 23 of the Act, relating to the collection of debts;
- (b) (i) the deletion or amendment of those tariffs in the Rules which have a bearing on the collection of debts and which relate to the payment of expenses and fees in respect of non-litigious matters, which can ordinarily be undertaken by a debt collector as contemplated in the Act; and
 - (ii) the incorporation of the tariffs contemplated in subparagraph (i) in the regulations made under section 23(1) of the the Act; and
- (c) the review of those tariffs in the Rules which have a bearing on the collection of debts and which relate to the payment of expenses and fees in respect of litigious matters, in order to ensure that they are reasonable, fair and equitable.

(3) The Council must, within 12 months after the commencement of this Act, make recommendations to the Minister relating to the amendment the code of conduct referred to in section 14 of the Act, in order to provide for and regulate attorneys contemplated in section 8A of the Act.

Short title and commencement

17. (1) This Act is called the Debt Collectors Amendment Act, 2016, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.

SCHEDULE
LAWS AMENDED BY SECTION 15

Number and year of law	Short title	Extent of amendment
Act No. 32 of 1944	Magistrates' Courts Act, 1944	<p>1. The substitution for section 56 of the following section: "If any person (in this section called the debtor) pays any debt due by him to any other person (in this section called the creditor) after the creditor has caused a registered letter of demand to be sent to the debtor through an <u>attorney or a debt collector as defined in section 1 of the Debt Collectors Act, 1998 (Act No.. 114 of 1998)</u>, demanding payment of the debt, the creditor shall be entitled to recover from the debtor the fees and costs prescribed in the rules <u>or the Debt Collectors Act, 1998, as the case may be</u>, for a registered letter of demand: Provided that the amount of such fees and costs was stated in the letter of demand."</p> <p>2. The substitution for subsection (1) of section 60 of the following subsection: "(1) Unless expressly otherwise provided in this Act or the rules and the National Credit Act, 2005 (Act 34 of 2005), and subject to the provisions of section 19 of the Debt Collectors Act, 1998, no person other than <u>a debt collector</u>, an attorney, an agent referred to in section 22 or a person authorised by or under the provisions of the National Credit Act, 2005 (Act 34 of 2005), to do so shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt."</p>