

South Africa

Debt Collectors Act, 1998

Act 114 of 1998

Legislation as at 17 February 2009

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South Africa
Debt Collectors Act, 1998
Act 114 of 1998

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There are multiple commencements

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Section 3(4)(a), 3(4)(b), 3(4)(c), 3(4)(d), 3(4)(e)	commenced on 17 February 2009.

[This is the version of this document as it was from 17 February 2009 to 30 November 2009.]

[Amended by [Judicial Matters Amendment Act, 2005 \(Act 22 of 2005\)](#) on 2 November 2007]

[Amended by [Judicial Matters Amendment Act, 2008 \(Act 66 of 2008\)](#) on 17 February 2009]

(English text signed by the President.)

ACT

To provide for the establishment of a council, known as the Council for Debt Collectors; to provide for the exercise of control over the occupation of debt collector; to amend the Magistrates' Courts Act, 1944, so as to legalise the recovery of fees or remuneration by registered debt collectors; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

1. Definitions

In this Act, unless the context otherwise indicates—

“**Council**” means the Council for Debt Collectors established by section 2;

“**debt collector**” means—

- (a) a person, other than an attorney or his or her employee or a party to a factoring arrangement, who for reward collects debts owed to another on the latter's behalf;

- (b) a 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 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;

[paragraph (c) substituted by section 10 of [Act 22 of 2005](#)]

“**Director-General**” means the Director-General of the Department of Justice;

“**factoring arrangement**” means an arrangement between a creditor and a financier in terms of which the creditor, in exchange for funding, either sells or offers as security, claims against his or her debtors: Provided that such claims are not bad or doubtful at the time they are so sold or offered as security: Provided further that no overdue debt or a claim for which a demand has been made, is part of such a factoring arrangement;

“**Minister**” means the Minister of Justice;

“**person**” includes a juristic person;

“**prescribe**” means to prescribe by regulation;

“**this Act**” includes any regulation or notice made or issued under this Act.

2. Establishment and objects of Council for Debt Collectors

- (1) There is hereby established a juristic person to be known as the Council for Debt Collectors.
- (2) The objects of the Council are to exercise control over the occupation of debt collector.

3. Composition of Council

- (1) The Council shall consist of not more than 10 members appointed by the Minister.
- (2) The Minister shall appoint as members of the Council—
 - (a) as chairperson, any fit and proper person with a suitable degree of skill and experience in the administration of civil law matters;
 - (b) as members—
 - (i) a magistrate;
 - (ii) an attorney nominated by a representative body or bodies;
 - (iii) at least two but not more than four debt collectors, two of whom shall be appointed after consultation with organisations representing debt collectors, who are natural persons and who have exercised the occupation of debt collector for at least three years;
 - (iv) two persons who, in the Minister's opinion, are fit and proper persons to serve on the Council; and
 - (v) one person from nominations submitted by institutions representing consumer interests and who, in the opinion of the Minister, is a fit and proper person to serve on the Council.
- (3) The Council shall from time to time elect from among its members a vice-chairperson, who shall in the absence of the chairperson have all the powers and duties of the chairperson, and if neither the

chairperson nor the vice-chairperson is present at a meeting of the Council, the members present shall elect a person from their own ranks to preside at that meeting.

- (4) (a) A member of the Council, subject to paragraphs (b), (c), (d) and (e), holds office for a term, not exceeding three years, determined by the Minister at the time of the member's appointment.
- (b) The Minister may, on good cause shown, withdraw an appointment of a member at any time.
- (c) A member of the Council may be re-appointed at the expiry of his or her term of office.
- (d) A member of the Council appointed in terms of this section who is a member of a committee referred to in section 15(2), must, notwithstanding his or her subsequent vacation of office as a member of the Council, dispose of the matters he or she is seized with and, for that purpose only, is deemed to hold office as a member of the Council in respect of any period during which he or she is necessarily engaged in connection with the disposal of the matters which were not disposed of when he or she vacated office as a member of the Council.
- (e) A member of the Council referred to in paragraph (d) who, in the opinion of the Council, is—
- (i) unfit to dispose of the matters in question; or
 - (ii) incapacitated and is not able to dispose of the matters in question due to that incapacity,
- may be exempted by the Council from the provisions of paragraph (d).
- [subsection (4) substituted by section 23 of Act 66 of 2008]*
- (5) No person shall be appointed as a member of the Council if he or she—
- (a) is an unrehabilitated insolvent;
 - (b) fails to comply or is not capable of fully complying with a judgment or order, including an order for costs, given against him or her by a court of law in a civil case;
 - (c) in the preceding 10 years has been convicted of an offence of which violence, dishonesty, extortion or intimidation is an element; or
 - (d) does not permanently reside in the Republic.
- (6) A member of the Council shall vacate his or her office if he or she—
- (a) becomes subject to a disqualification contemplated in subsection (5);
 - (b) becomes of unsound mind;
 - (c) in the case of a member appointed in terms of subsection (2)(b)(iii), ceases to be a debt collector;
 - (d) is absent without the leave of the chairperson for more than two consecutive meetings of the Council; or
 - (e) in the case of a member who is a debt collector, has been found guilty in terms of section 15 of improper conduct.

4. Meetings of Council

- (1) The Council shall meet for the first time at the time and place determined by the chairperson and thereafter at least three times in every financial year at the times and places determined by the chairperson or, in his or her absence, the vice-chairperson.
- (2) The quorum for a meeting of the Council shall be a majority of its members.

- (3) The decision of a majority of the members of the Council present at a meeting of the Council shall, subject to subsection (2) and section 16(3), be a decision of the Council and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to his or her deliberative vote.

5. Executive committee

- (1) The Council may appoint not less than three and not more than five of its members as an executive committee of the Council which shall, subject to the provisions of subsection (2) and the directions of the Council, be competent during the periods between meetings of the Council to perform or exercise all the powers and functions of the Council: Provided that the majority of the members of the executive committee shall be members of the Council other than those appointed in terms of section 3(2)(b)(iii).

[subection (1) substituted by section 24 of Act 66 of 2008]

- (2) The executive committee shall not be competent—
- (a) except in so far as the Council may otherwise direct, to set aside or vary a decision of the Council; or
 - (b) to exercise the power referred to in section 15(3)(a).
- (3) Any act performed or decision taken by the executive committee shall be valid in so far as it is not varied or set aside by the Council.

6. Remuneration and allowances of members of Council

Out of the funds of the Council—

- (a) such remuneration shall be paid to a member of the Council who is not in the full-time employ of the State; and
- (b) such allowances for travelling and subsistence expenses incurred by a member of the Council, shall be paid to him or her in the performance of his or her functions as such a member,

as may be determined by the Minister from time to time generally or in any particular case.

7. Appointment of personnel

The Council may appoint such personnel as it may deem necessary for the efficient performance of its functions and management of its administration and may determine the remuneration and conditions of service of such personnel.

8. Persons prohibited from performance of certain acts

- (1) As from a date fixed by the Minister in the *Gazette*, 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.
- (2) A notice under subsection (1) shall be published at least 180 days before the date referred to therein.
- (3) Any agreement concluded between a debt collector and his or her client or between a debt collector and his or her employee either before or after the date referred to in subsection (1) which is

incompatible with the prohibition contained in that subsection shall be invalid to the extent of such incompatibility.

9. Application for registration as debt collector

- (1) An application for registration as a debt collector shall be lodged with the Council on the prescribed form and shall be accompanied by the prescribed application fee.
- (2) A person who applies for registration as a debt collector in terms of subsection (1), shall furnish such additional particulars in respect of his or her application as may be determined by the Council.
- (3) If the Council is of the opinion that the provisions of this Act have been complied with in respect of an application referred to in subsection (1), it shall, subject to the provisions of section 10, grant the application and register the applicant as a debt collector.

10. Disqualifications

- (1) No person shall be competent to be registered as a debt collector—
 - (a) in the case of a natural person, if—
 - (i) subject to subsection (2), in the preceding 10 years he or she has been convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
 - (ii) he or she has been found guilty in terms of section 15 of improper conduct;
[subparagraph (ii) substituted by section 11 of Act 22 of 2005]
 - (iii) he or she is of unsound mind and has been so declared or certified by a competent authority;
 - (iv) he or she is under the age of 18 years; or
 - (v) he or she is an unrehabilitated insolvent; or
 - (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.
- (2)
 - (a) Any person who is not competent to be registered as a debt collector on account of having been convicted of an offence referred to in subsection (1)(a)(i), may in the prescribed manner apply to the Minister to be exempted from the disqualification contemplated in that subsection on the grounds that the circumstances relating to the commission of that offence were of such a nature that the relevant conviction should not disqualify the applicant from exercising the occupation of debt collector.
 - (b) Upon receipt of an application referred to in paragraph (a), the Minister shall cause—
 - (i) such application to be published in the *Gazette*; and
 - (ii) such investigation to be conducted into the matter as he or she deems appropriate.
 - (c) If the Minister is satisfied that the circumstances relating to the relevant offence is of such a nature that it is not likely to affect the suitability of the applicant to exercise the occupation of debt collector, the Minister may, after consultation with the Council, direct that the applicant shall not on account of the relevant conviction be disqualified from registering as a debt collector.

11. Certificate of registration

The Council shall issue to every person registered as a debt collector, a certificate of registration on the prescribed form.

12. Registers

- (1) The Council shall keep—
 - (a) a register of the names and prescribed particulars of every debt collector whose application for registration under section ~~9(3)~~ has been approved, who is in possession of a valid certificate of registration contemplated in section ~~11~~; and
 - (b) a register of the names and prescribed particulars of every debt collector whose registration has been cancelled at the debt collector's request or whose registration has been withdrawn or disapproved by the Council, and the reasons therefor.
- (2) The register contemplated in subsection ~~(1)(a)~~ shall—
 - (a) be published on the website of the Council;
 - (b) be updated every month by the Council; and
 - (c) *[paragraph (c) omitted by section 12 of Act 22 of 2005]*
 - (d) be submitted to Parliament within 14 days after the end of each financial year.
- (3) The register contemplated in subsection ~~(1)(b)~~ shall be updated every month by the Council.
- (4) The register contemplated in subsection ~~(1)(a)~~ and ~~(b)~~ shall be available for inspection by the public at the prescribed places and times.
- (5) The Council shall, when it submits the register to Parliament as contemplated in subsection ~~(2)(d)~~, publish a notice in the *Gazette* and in a national newspaper, setting out the prescribed places and particulars where the register is available for inspection by the public.

[section 12 substituted by section 12 of Act 22 of 2005]

13. Payment of subscription fees

- (1) Every person registered as a debt collector shall pay to the Council the prescribed fees.
- (2) If a debt collector fails to comply with the provisions of subsection ~~(1)~~, the Council may suspend his or her registration as a debt collector until the amount owed by him or her is received by the Council: Provided that if the relevant amount is not paid within three months of the date of suspension of the registration of the debt collector concerned, the Council may withdraw the registration.
- (3) Section ~~16(2)~~ and ~~(3)~~ shall, with the necessary changes, apply to the withdrawal of the registration of a debt collector under subsection ~~(2)~~.

14. Code of conduct

- (1)
 - (a) The Council shall, subject to the approval of the Minister, adopt a code of conduct for debt collectors and shall publish such code in the *Gazette*.
 - (b) The code of conduct, and any amendment thereof, shall be submitted to Parliament within 14 days after publication thereof in the *Gazette*.
- (2) The Council may, subject to the approval of the Minister, amend or repeal the code of conduct adopted by it: Provided that such code shall not be wholly repealed by it, unless it is simultaneously replaced by a new code of conduct for debt collectors so adopted and approved by the Minister and, provided further, that the Council shall publish any such amendment, repeal or replacement in the *Gazette*.
- (3) The code of conduct drawn up or adopted by the Council and published in the *Gazette* shall be binding on all debt collectors.

15. Improper conduct by debt collectors

- (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 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;
 - (f) contravenes or fails to comply with a provision of the code of conduct contemplated in section 14;
 - (g) contravenes or fails to comply with any provision of this Act; or
 - (h) behaves or acts in any manner amounting to conduct, other than that mentioned in paragraphs (a), (b), (c), (d), (e), (f) or (g), which is improper in terms of a regulation.
- (2) The Council may in the prescribed manner investigate an allegation of improper conduct by a debt collector submitted to it 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.
- (3) If the Council finds a debt collector guilty of improper conduct, the Council may—
 - (a) withdraw his or her registration as a debt collector;
 - (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 costs incurred by the Council in connection with the investigation;
 - (f) order him or her to reimburse any person who the Council 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) Any penalty imposed on a debt collector in terms of subsection (3)(a), (b), (c) or (g) may be suspended, either wholly or partially, by the Council 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.

16. Withdrawal of registration by Council

- (1) The Council may withdraw the registration of a debt collector—
- (a) if it appears that in his or her application for registration the applicant has given information that is false in a material respect;
 - (b) if at any time after his or her registration—
 - (i) he or she is convicted of an offence of which violence, dishonesty, extortion or intimidation is an element;
 - (ii) he or she is found guilty in terms of section 15 of improper conduct;
 - (iii) he or she becomes of unsound mind and is so declared or certified by a competent authority; or
 - (iv) he or she becomes insolvent; or
 - (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).
- (2) The Council shall not withdraw the registration of a debt collector unless he or she, either in person or through a legal representative, has been given the opportunity to be heard.
- (3) The Council shall give written notice to a debt collector of the withdrawal of his or her registration.

16A. Cancellation of registration as debt collector

The Council shall—

- (a) in the prescribed manner cancel the registration of a debt collector upon the written request of the debt collector; and
- (b) record the name of such debt collector in the register contemplated in section 12(1)(b).

[section 16A inserted by section 13 of Act 22 of 2005]

17. Withdrawal of registration by court

- (1) If there are grounds other than those mentioned in section 13(2) or 16 justifying the withdrawal of the registration concerned, the Council or any person with a material interest in the matter may by way of application on notice of motion apply to a court for an order withdrawing the registration of a debt collector.
- (2) Any High Court within whose area of jurisdiction the debt collector concerned is resident, employed or carrying on business, shall have jurisdiction in respect of an application in terms of subsection (1).

18. Return of certificates of registration on withdrawal of registration

Whenever the registration of a debt collector is withdrawn under section 13(2), 16 or 17, the debt collector shall forthwith return to the Council the certificate of registration issued to him or her under section 11.

19. Recovery of money

- (1) A debt collector shall not recover from a debtor any amount other than—
 - (a) the capital amount of a debt due and interest legally due and payable thereon for the period during which the capital amount remains unpaid; and
 - (b) necessary expenses and fees prescribed by the Minister in the *Gazette* after consultation with the Council.
- (2) Upon request by a debtor and against payment of any prescribed fee, 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.
- (3) The provisions of subsection (2) shall not be construed as preventing the taxation or assessment of any further account or statement of costs reflecting further amounts which become payable by the debtor to the debt collector or his or her client and which arise from the same cause of debt as that from which amounts reflected in an already taxed or assessed account or statement of costs arose.
- (4) A debt collector shall deliver to a debtor, upon request and against payment of a prescribed fee, a settlement account containing a complete exposition of all debits and credits in connection with a specific collection: Provided that a debtor shall be entitled to request a settlement account free of charge once in every six months.

20. Trust accounts

- (1) Every debt collector who practises for his or her or its 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 is possible after receipt thereof the money received or held by him or her on behalf of any person.
- (2) The money deposited in terms of subsection (1) shall be paid within a reasonable or agreed time to the person on whose behalf the money is received or held: Provided that a settlement account, containing a complete exposition of all credits and debits reflected in the said account shall be delivered to that person at least once a month.

[subsection (2) substituted by section 14(a) of [Act 22 of 2005](#)]
- (3) All interest, if any, on money deposited in terms of subsection (1) shall be paid, at the prescribed time and in the prescribed manner, to the Council.

[subsection (3) substituted by section 14(a) of [Act 22 of 2005](#)]
- (3A) The Council may, in accordance with a tariff and procedure determined by the Council, reimburse the debt collector concerned for any bank charges or any portion thereof incurred by the debt collector in connection with the keeping of his or her trust account.

[subsection (3A) inserted by section 14(b) of [Act 22 of 2005](#)]
- (4) A debt collector shall keep proper accounting records in respect of all money received, held or paid by him or her on behalf of or to any other person.
- (5) The Council may itself or through its nominee at its own cost examine the accounting records of a debt collector in order to satisfy itself that subsections (1), (2), (3) and (4) are complied with and, if during such an examination it is found that the debt collector has not complied with those provisions, the Council may update the accounting records of such debt collector and may recover the costs of the examination and, where applicable, such updating from that debt collector.
- (6) A debt collector must, in the prescribed manner and period—
 - (a) cause his or her accounting records to be audited annually by a public accountant or auditor contemplated in the Public Accountants' and Auditors' Act, 1991 ([Act No. 80 of 1991](#)); and

(b) report to the Council thereon.

[subsection (6) added by section 14(c) of [Act 22 of 2005](#)]

(7) No amount standing to the credit of a trust account contemplated in subsection (1) shall form part of the assets of a debt collector or may be attached on behalf of any creditor of such debt collector.

[subsection (7) added by section 14(c) of [Act 22 of 2005](#)]

(8) If any debt collector—

- (a) dies;
- (b) becomes insolvent;
- (c) in the case of a company or close corporation, is liquidated or placed under judicial management, whether provisionally or finally;
- (d) has his or her registration withdrawn;
- (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 cease to practise,

the Council must, where necessary, control and administer his or her trust account until the Master of the High Court having jurisdiction has, on application made by the Council or by a person having an interest in the trust account of that debt collector, appointed a *curator bonis* with such rights, duties and powers as the Master may deem fit to control and administer such account.

[subsection (8) added by section 14(c) of [Act 22 of 2005](#)]

21. Auditing

- (1) The accounting records and annual financial statements of the Council shall be audited annually by a person appointed by the Council for such purpose.
- (2) No person shall be appointed under subsection (1) unless he or she is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 ([Act No. 51 of 1951](#)), and is engaged in public practice.

22. Financial year

The financial year of the Council shall be a year terminating on the last day of February.

23. Regulations

- (1) The Minister may, after consultation with the Council, make regulations—
 - (a) regarding any matter required or permitted to be prescribed in terms of this Act;
 - (b) regarding generally, all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.
- (2) Without prejudice to the generality of the provisions of subsection (1), the Minister may, after consultation with the Council, make regulations—
 - (a) prescribing the fees payable by a debt collector to the Council in terms of section [13\(1\)](#), and the periods within which such fees are payable;
 - (b) prescribing the circumstances under which a debt collector shall not be bound to pay an amount referred to in section [13\(1\)](#); and
 - (c) regarding the training of debt collectors.

- (3) Any regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three months.

24. Delegation of Minister's powers

- (1) The Minister may on the conditions that he or she deems fit, delegate any or all of the powers conferred upon him or her by this Act, save a power to make regulations, to the Director-General or an officer of the Department of Justice designated by the Director-General.
- (2) No delegation of any power shall prevent the exercise of such power by the Minister.

25. Offences and penalties

Any person who—

- (a) contravenes a provision of section 8(1); or
- (b) fails to return a certificate of registration in terms of section 18,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years.

26. Exemption from provisions of Act

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 the provisions of this Act.

27. Amendment of section 60 of [Act 32 of 1944](#), as substituted by section 1 of [Act 63 of 1976](#) and amended by section 2 of [Act 4 of 1991](#)

Section 60 of the Magistrates' Courts Act, 1944 ([Act No. 32 of 1944](#)), is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Unless expressly otherwise provided in this Act or the rules and subject to the provisions of section 19 of the Debt Collectors Act, 1998, no person other than an attorney or an agent referred to in section 22 shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt.”

28. Short title and commencement

This Act shall be called the Debt Collectors Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.