

REGULATIONS RELATING TO DEBT COLLECTORS, 2003

PROMULGATED IN TERMS OF SECTION 23 OF THE DEBT COLLECTORS ACT, 1998
(ACT 114 OF 1998)

(CONSOLIDATED AND ANNOTATED) 6 December 2007

GOVERNMENT NOTICE

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
No. R. 185 7 February 2003**

As amended by Government Notice R 1623 of 7 November 2003

As amended by Government Notice R 741 of 29 July 2005

As amended by Government Notice R 1044 of 2 November 2007

As amended by Correction Notice R 1093 of 23 November 2007

DEBT COLLECTORS ACT, 1998 (ACT NO. 114 OF 1998)

REGULATIONS

The Minister of Justice and Constitutional Development has, under section 23 of the Debt Collectors Act, 1998 (Act No. 114 of 1998), and after consultation with the Council for Debt Collectors, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates -

"day" means any day of the week other than a Saturday, Sunday or public holiday;

"the Act" means the Debt Collectors Act, 1998 (Act No. 114 of 1998); and

"sheriff" means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act 90 of 1986), and also a person appointed in terms of sections 5 and 6 of that Act as an acting sheriff and a deputy sheriff, respectively.

Application for registration as debt collector

2.(1) An application for registration as a debt collector, as contemplated in section 9(1) of the Act, shall correspond substantially with –

(a) Form 1A of Annexure A in the case of an officer in the employ of a juristic person, a director of a company or a member of a close corporation;

(b) Form 1B of Annexure A in the case of a juristic person, company or close corporation; and

(c) Form 1C of Annexure A in the case of a person other than an officer in the employ of a juristic person, a director of a company or a member of a close corporation.

[Subregulation 1 substituted by GN R 741 of 29 July 2005]

- (2)(a) An application lodged in terms of subregulation (1) shall be accompanied by an application fee, or proof of payment thereof -
- (i) in the case of a juristic person, company or close corporation carrying on business as a debt collector, in the amount of-
 - (aa) R 1 500 in respect of a juristic person, company or close corporation;
 - (bb) R 600 in respect of each director or member of the juristic person, company or close corporation; and
 - (cc) R 400 in respect of every officer of the juristic person, company or close corporation who is involved in debt collecting; or
 - (ii) in the case of a natural person, in the amount of R 400.
- (b) The fees referred to in paragraph (a) may be paid to the Council by means of a bank cheque, or may directly be paid into the bank account of the Council.
- (c) An application fee shall not be refundable even if the application concerned is not granted.

[Subregulation (2) substituted by GN R 1623 of 7 November 2003 and paragraph (a)(i) substituted by GN R 741 of 29 July 2005]

- (3) The Council shall notify the applicant if his or her application is not granted and furnish reasons for such decision.

Notice of change of particulars

- 2A.**(1) The holder of a certificate of registration shall -
- (a) within 14 days of any change in the information furnished in his or her application for registration contemplated in regulation 2, inform the Council thereof; and
 - (b) if the information on the certificate of registration is no longer correct, follow the procedure prescribed in regulation 4(3) and forward the certificate of registration to the Council for amendment.
- (2) A debt collector, contemplated in paragraph (a) or (b) of section 1 of the Act, shall, if a certificate of registration was issued to an agent or employee of the debt collector and the agent or employee ceases to be associated with, or in the employ of the debt collector, inform the Council accordingly within 14 days thereof and furnish the Council with all available information concerning the agent or employee.
- (3) If the holder of a certificate of registration, or a debt collector contemplated in subregulation (2), fails to comply with the provisions of subregulation (1) or (2), the holder of a certificate of registration, or a debt collector may be found guilty of improper conduct.

[Regulation 2A inserted by GN R 1623 of 7 November 2003]

Exemption from disqualifications

- 3.** An application for exemption by a person as contemplated in section 10(2)(a) of the Act, shall correspond substantially with Form 2 of Annexure A.

Certificate of registration

- 4.**(1) The Council shall issue a certificate of registration which corresponds substantially with Form 3 of Annexure A to every person registered as a debt collector.
- (2) A person registered as a debt collector shall-

- (a) prominently display his or her certificate of registration in his or her office;
- (b) indicate the number of his or her certificate of registration on all correspondence; and
- (c) produce proof of registration on request of any person approached by him or her in the performance of his or her functions as a debt collector.

(3) The Council may, under the circumstances it deems fit and upon receipt of-

- (a) a written request of a registered debt collector; and
 - (b) payment of a fee of R 100,
- issue a duplicate certificate of registration to the debt collector.

[Subregulation (3) substituted by GN R 1623 of 7 November 2003]

(4) A certificate of registration issued in terms of this regulation remains the property of the Council.

[Subregulation (4) inserted by GN R 1623 of 7 November 2003]

Register of applications and keeping of records

5.(1) The register contemplated in section 12(1)(a) of the Act shall contain the following particulars:

- (a) The date on which the application was received.
- (b) An indication as to whether the applicant applied in terms of section 10(2) of the Act for exemption and the date on which the exemption was granted.
- (c) In the case of a juristic person, company or close corporation—
 - (i) the full registered and trading name, registration number and business and registered address;
 - (ii) the full names and identity numbers of the directors or members; and
 - (iii) the full names and identity numbers of the officers who are involved in debt collecting.
- (d) In all cases other than those referred to in paragraph (c), the full names, identity number and business address of the applicant.
- (e) The financial year end of the applicant.
- (f) The date on which the application was approved.

(2) The register contemplated in section 12(1)(b) of the Act shall contain the following particulars:

- (a) The date on which the application was received.
- (b) An indication as to whether the applicant applied for exemption in terms of section 10(2) of the Act and the date on which the application was disapproved.
- (c) In the case of a juristic person, company or close corporation, the full registered and trading name, registration number and business and registered address.
- (d) In all cases other than those referred to in paragraph (c), the full names, identity number and business address of the debt collector.
- (e) The date on which the registration was cancelled or withdrawn, or the application disapproved, as the case may be.
- (f) The reasons for the cancellation or withdrawal of the registration or the disapproval of the application, as the case may be.

(3) The registers contemplated in section 12(1) of the Act shall be available for inspection—

- (a) from Monday to Friday, excluding public holidays, from 7h30 to 16h00 at the registered office of the Council: West Wing, Ground Floor, Rentmeesterpark, 74 Watermeyer Street, Val de Grace, Pretoria; and
- (b) electronically at the following address: www.debtcol-council.co.za
- [Subregulation (5) substituted by GN R 1044 of 2 November 2007]*

Payment of subscription fees

- 6.** (1) Every person registered as a debt collector shall, in terms of section 13(1) of the Act, pay an annual subscription fee to the Council-
- (a) in the case of a juristic person, company or close corporation carrying on business as a debt collector, in the amount of -
- (i) R 1 500 in respect of a juristic person, a company or close corporation;
- (ii) R 600 in respect of each director or member of the juristic person, company or close corporation; and
- (iii) R 400 in respect of every officer of the juristic person, company or close corporation who is involved in debt collecting; or
- (b) in the case of a natural person, in the amount of R 400.
- (2) The fees referred to in subregulation (1) may be paid to the council by means of a bank cheque or may directly be paid into the bank account of the Council.
- (3) Proof of payment made shall be submitted to the Council.
- [Regulation 6 substituted by GN R 1623 of 7 November 2003 and subregulation (1)(a) substituted by GN R 741 of 29 July 2005]*

Improper conduct

- 7.**(1) The Council may-
- (a) establish a committee or committees, consisting of at least three members of the Council, one of whom must be suitably qualified in law, and designate one of those members as chairperson of the committee; or
- (b) nominate a person or persons, as and when necessary, to investigate an allegation of improper conduct as provided for in this regulation.
- (2) Any allegation of improper conduct against a debt collector shall be in the form of a written affidavit, stating the date, time and particulars of the incident, the name of the debt collector and the names of any witnesses to the incident, and shall be submitted to the Council as soon as practical after the incident, together with any corroborative documents, if any.
- (3) The Council shall keep record of each allegation lodged with it in terms of subregulation (1), and the outcome thereof.
- (4) The Council shall within 14 days after receipt of the allegation referred to in subregulation (1) bring the allegation to the attention of the debt collector concerned.
- (5) On receipt of the allegations, the debt collector may, within five days, respond in writing to the allegations in the manner the Council requests.
- (6) The Council may require the particulars it deems necessary regarding any aspect of the allegations from any person in the manner determined by the Council.
- (7) The Council shall consider the allegations and deal with it in the manner it deems fit.

(8) If the Council decides to charge a debt collector of improper conduct, the Council shall -

(a) charge the debt collector concerned by notice in writing, stating all the charges against the debt collector; and

(b) appoint a person to lead evidence in the investigation.

(9) The debt collector must furnish the Council with a written admission or denial of the charge within 14 days of the service of the written notice referred to in subregulation (8).

(10)(a) The written notice referred to in subregulation (8) shall be served personally on a debt collector by a person designated by the Council or a sheriff.

(b) Such person or sheriff shall, within seven days after receipt by such person or sheriff of the written notice report in writing to the Council regarding the service.

(c) If the debt collector avoids personal service of the written notice, the Council may forward the notice by registered post to the last known address of the office of the debt collector and such service shall be deemed to be sufficient notice.

(d) The fees payable to a sheriff to serve any document in terms of these regulations, are the fees prescribed for sheriffs in the Magistrates' Courts Rules.

(11) If the debt collector charged admits that he or she is guilty of the charge the Council shall deal with the matter as contemplated in section 15(3) of the Act.

(12) The Council shall investigate the charge of improper conduct at such time and place as the Council may determine and shall give the debt collector concerned at least 14 days' notice in writing of the time and place so determined.

(13) The provisions of subregulation (10) shall apply, with the necessary changes, in respect of the written notice referred to in subregulation (12).

(14)(a) The Council may authorize a person who has an interest in the investigation, to -

(i) attend the investigation instituted in terms of subregulation (12);

(ii) adduce evidence and arguments in support of the charge; and

(iii) cross-examine any person who has given evidence in rebuttal of the charge.

(b) At the investigation the debt collector concerned shall have the right to be present, to be represented by a legal practitioner, to give evidence and, either personally or through the legal representative -

(i) to be heard;

(ii) to call witnesses;

(iii) to cross-examine any person called as a witness in support of the charge; and

(iv) to have access to documents produced in evidence.

(c) The failure of the debt collector, on whom the notice referred to in subregulation (12) was served, to attend the investigation shall not invalidate the proceedings.

(15)(a) For the purposes of an investigation in terms of subregulation (12), the Council may-

(i) summon any person who may be able to give material information concerning the conduct in question, or who is believed to have in his or her possession or custody or under his or her control any book, document or object which has any bearing on that conduct, to appear before the Council;

- (ii) call upon and administer an oath to, or accept an affirmation from any person present at the investigation who was or could have been summoned under subparagraph (i); and
- (iii) interrogate or require any person who was called under subparagraph (ii) to produce a book, document or object referred to in subparagraph (i) for the duration of the investigation;
- (b) A summons for the appearance of any person before the Council shall correspond substantially with Form 4 of Annexure A.
- (c) The law relating to privilege in civil cases is applicable in respect of the interrogation of, or the production of a book, document or object by any person referred to in paragraph (a)(iii).
- (16)(a) The original summons referred to in subregulation (15)(b) and one copy thereof shall be forwarded by the Council to a person designated in writing by the Council for that purpose, or to a sheriff, for service on the person who is summoned.
- (b) The copy of the summons shall be served by such person or sheriff on the person concerned personally or by delivering it to his or her place of residence, business, or employment, to any other person who apparently is not less than 16 years of age and who apparently resides or is employed there.
- (c) If a person on whom a summons is to be served, keeps his or her residence or place of business closed and so prevents the service of the summons on him or her or otherwise makes service impossible, the summons shall be served by affixing a copy of the summons to the outer or principal door of such residence or place of business.
- (d) The person or sheriff serving a summons shall, if the person on whom it is being served so demands, exhibit the original summons to him or her.
- (e) The person or sheriff serving a summons shall make a return of service by entering the mode of service on the original summons or on a document attached thereto.
- (f) The person or sheriff serving a summons shall immediately after the summons was served, forward to the Council the return of service.
- (17) The Council may reimburse any person summoned in terms of subregulation (15)(a)(i) for expenses incurred in respect of the attendance of the investigation as the Council may deem fit.

Maximum amount of fine

8. The Council may, for the purposes of section 15(3)(c) of the Act, impose a fine not exceeding an amount of R100 000.

Payment of interest

9. The debt collector shall, whenever a payment is made in terms of section 20(3) of the Act—

- (a) make such payment within 30 days after a public accountant's or auditor's report is issued; and
- (b) give an exposition of the money deposited and interest accrued on such money to the Council.

[Subregulation 9 substituted by GN R 1044 of 2 November 2007]

Trust accounts

10.(1) The trust account contemplated in section 20(1) of the Act, shall be

audited annually by a public accountant or auditor within four months following the last day of the financial year of the debt collector.

(2) Upon completion of the audit contemplated in subregulation (1), the public accountant or auditor shall forthwith issue and submit a report, which corresponds substantially with Form 5 of Annexure A, to the debt collector who shall submit a copy thereof to the Council.

(3) Any contravention of this regulation by a debt collector shall constitute improper conduct.

[Subregulation 10 substituted by GN R 1044 of 2 November 2007]

Expenses and fees

11. The expenses and fees which a debt collector may recover from a debtor, as contemplated in section 19(l)(b) of the Act, are contained in Annexure B: Provided that 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 R 630, whichever is the lesser.

[Regulation 11 amended by GN R 1044 of 2 November 2007 and amended by Correction Notice R 1093 of 23 November 2007]

Fees for taxation and documents of Council

12.(1) The debtor shall give at least 10 day's written notice before the date of taxation or assessment as contemplated in section 19 of the Act, to the debt collector in any manner he or she deems fit, and keep proper record of the manner in which the notice was given.

(2) The fee for taxation or assessment of 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, contemplated in section 19(2) of the Act, is R20.

(3) The fee for taxation or assessment referred to in subregulation (2), in the case of taxation or assessment by the clerk of the magistrate's court, is payable by means of revenue stamps.

(4) A person may obtain a copy of a document in the possession or under the control of the Council at the payment with the Council of an amount of R1.10 for every A4-size paper or part thereof.

Offences

13. Any-

(a) person who willfully furnishes information which he or she knows to be false or does not know or believe to be true, in an application -

(i) for registration as a debt collector contemplated in section 9(1) of the Act; or

(ii) for exemption from the disqualifications contemplated in section 10 of the Act; or

(b) debt collector -

(i) who recovers any money from any debtor in addition to the amounts prescribed in regulation 11; and

(ii) who fails to appear at the time and place as notified by the Council in terms of regulation 7(12); or

(c) person who fails to -

(i) appear before the Council as summoned by the Council in terms of regulation 7(15)(a);

(ii) take the oath or affirmation; and

(iii) produce a book or documentation,
shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three months.

Value Added Tax

14.(1) No value added tax is included in any expenses and fees prescribed in these regulations.

(2) Value added tax may be added to all expenses and fees in respect of which value added tax is chargeable.

[Regulation 14 substituted by GN R 1623 of 7 November 2003]

Short title

15. These regulations shall be called the Regulations relating to Debt Collectors, 2003.