

## **FOR IMMEDIATE RELEASE**

### **MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS REVIEW OF ADMINISTRATION ORDERS (PROJECT 127): QUESTIONNAIRE ON ABOLITION OF ADMINISTRATION ORDERS**

#### **1. THE SYSTEM OF ADMINISTRATION ORDERS**

Sections 74 and 74A to 74W of the Magistrates' Courts Act 32 of 1944 provide for administration orders. A debtor whose total debts do not exceed R50, 000 and who is unable to pay the debts may apply to a magistrate's court on a prescribed form for an administration order. The order makes provision for the payment of debts in instalments or otherwise and the administration of the debtor's estate.

#### **2. REVIEW OF ADMINISTRATION ORDERS BY THE SOUTH AFRICAN LAW REFORM COMMISSION**

##### **2.1. ABUSES AND PRACTICAL PROBLEMS**

The following are some of the allegations of abuses of administration orders and problems with administration orders:

2.1.1. Administrators overcharge for remuneration and expenses.

2.1.2. Unsuitable persons are appointed as administrators (for instance persons themselves under administration or people who have been struck off the role of attorneys).

2.1.3. Administrators do not distribute funds regularly and do not account to creditors properly.

2.1.4. Administration orders are not regulated properly.

2.1.5. The fact that section 74 does not contain a discharge or time period for repayment is tantamount to keeping debtors in bondage for life.

##### **2.2. NATIONAL CREDIT ACT**

2.2.1. Before the Commission could publish a discussion paper or other documents, the Project Committee was briefed on the National Credit Bill which later became the National Credit Act 34 of 2005.

2.2.2. The following are some of the provisions in the National Credit Act which have a significant effect on administration orders (exceptions to the provisions are not set out here):

2.2.2.1. If it is alleged during proceedings that a consumer is over-indebted the court may refer the matter to a debt counsellor (section 85) or a debtor may apply to a debt counsellor to be declared over-indebted (section 86). If the consumer is not

over-indebted, but is likely to experience difficulty to pay debts in a timely manner, the counsellor may recommend that the consumer and credit providers agree on a voluntary plan of debt re-arrangement (section 86(7)(b)). If the consumer is over-indebted the counsellor may propose either or both of the following (section 86(7)(c)):

2.2.2.1.1. That the magistrate's court make an order that some agreements be declared reckless (see 2.2.2.1 above);

2.2.2.1.2. That the court re-arrange obligations by extending the period and reducing payment amounts.

2.2.2.2. A credit provider may not commence legal proceedings to enforce a credit agreement before proposing to the consumer that the credit agreement be referred to a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction with the intent that the parties resolve any dispute or develop and agree on a plan to bring the payments up to date (section 129(1)). In proceedings under the Magistrates' Courts Act in respect of a credit agreement the court may determine the matter only if the court is satisfied that the procedures required by section 129 and other procedures have been complied with (section 130(3)). The court may adjourn the matter if the agreement is subject to a pending debt review in terms of Part D - sections 78 to 88 (section 130(4)(c)).

### **2.3. COMMENTS ARE INVITED ON THE FOLLOWING RECOMMENDATIONS:**

#### **2.3.1. ABOLITION OF ADMINISTRATION ORDERS**

Administration orders should be abolished if the following changes were made to the National Credit Act:

##### **2.3.1.1. Over-indebtedness because of delictual claims**

The National Credit Act addresses the serious problem of over-indebtedness. According to section 79 over-indebtedness occurs if available information indicates that a consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party. It is clear from section 8 that delictual claims do not qualify as obligations under credit agreements. The result is that a consumer who becomes over-indebted as a result of a delictual claim will not enjoy all the protection against over-indebtedness provided for in the Act. This could be harsh towards a debtor and consideration should be given to afford protection to such debtors as well.

##### **2.3.1.2. Failure by a debtor whose debts have been rescheduled to comply with the debtor's obligations according to the rescheduling**

**2.3.1.2.1.** One of the important measures contained in the Act to counter over-indebtedness is re-arrangement of obligations with or without a plan

to bring the payments under a credit agreement up to date (section 86(5)(b)).

**2.3.1.2.2.** The importance of a re-arrangement is illustrated by the fact that a creditor cannot approach a court to enforce a credit agreement unless a proposal has been made to refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction with the intent that the parties resolve any dispute or develop and agree on a plan to bring the payments under the agreement up to date (section 130 read with section 129). There is no express provision for the effect of failure to comply with rescheduled obligations and this may enable consumers to abuse the legislation to delay enforcement unduly.

#### **2.3.2. SUNSET CLAUSE**

In the course of the review of administration orders it became clear that many people are caught up in administrations indefinitely because payments do not cover costs and interest on claims. If section 74 of the Magistrates' Courts Act and other provisions dealing with administration orders were repealed the plight of persons caught up in administrations would not be alleviated. A provision is proposed that administration orders should not lapse only when the costs and creditors have been paid in full, but should lapse also a specified number of years after the granting of the administration order or the coming into operation of amendments to provide for a discharge, whichever date was the later.

#### **CLOSING DATE FOR COMPLETION OF QUESTIONNAIRE: 25 APRIL 2008**

The Questionnaire will be made available on the Internet at the following site: <http://www.doj.gov.za/salrc/index.htm>. Hard copies of the Questionnaire are available on request from Mr Jacob Kabini, telephone (012) 392 9580.

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**ISSUED BY THE SECRETARY  
SOUTH AFRICAN LAW REFORM COMMISSION  
PRETORIA  
DATE: 7 MARCH 2008**