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**MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION
CONCERNING ITS RELEASE OF DISCUSSION PAPER 151 ON PROJECT 127: REVIEW OF
ADMINISTRATION ORDERS**

The South African Law Reform Commission (Commission) hereby releases Discussion Paper 151 for general information and comment. The purpose of the paper is to initiate and stimulate debate on the Commission's preliminary findings and recommendations for law reform. The discussion paper provides different options for dealing with the problems in the administration order regime. These options are reflected in the proposed Debt Rearrangement Bill, the Magistrates' Courts Amendment Bill (option 1) and the Magistrates' Courts Amendment Bill (option 2).

The Commission are of the view that having multiple procedures to deal with over-indebtedness is counterproductive. The proposed Debt Rearrangement Bill, therefore, merges the administration order and debt review processes. As a result, the Commission recommends that the provisions governing administration orders in the Magistrates' Courts Act 32 of 1944 (MCA) and the provisions governing debt review in the National Credit Act 34 of 2005 (NCA) be repealed. Both these Acts deal with debt rearrangement. The NCA applies to debt that emanates from credit agreements whilst the MCA applies to other debts such as judgment debts and credit agreements where legal proceedings have been taken to enforce such agreements. Thus, consumers often find themselves in a situation where they have to apply for both debt review and an administration order because certain debts are excluded from either of these debt rearrangement measures. This defeats the purpose of providing relieve to over-indebted consumers as an already financially strained person would have to pay the cost for two separate applications.

The proposed Magistrates' Courts Amendment Bills (MCA Bills) provide several solutions to the problems in the administration order regime. These include, among other things, the following:

- The Commission recommend that the threshold of R50 000 for administration order applications be increased to R300 000. Increasing the limit to an amount of R300 000 would widen the scope of administration orders as a debt relief measure to include those who qualify neither for sequestration nor for debt review.
- The Commission recommend that an administrator should determine whether any of the debtor's credit agreements appear to be reckless. Consequently, an administration order may include a declaration of reckless credit by the court that considered the application for an administration order. Furthermore, the MCA Bills entitle an administrator to an amount for the determination of reckless credit.
- The Commission are of the view that it is not cost-effective to establish a new regulatory body for a relatively small number of full-time administrators in South Africa. Therefore, the MCA Bills provide for a process in terms of which complaints against an administrator may be referred to the professional body of which the administrator is a member.
- The Magistrates' Courts Amendment Bill (option 1) removes the function of collecting and distributing payments from the administrator. However, this function remains with the administrator in terms of the Magistrates' Courts Amendment Bill (option 2).

The Commission recommend the proposed amendments to the Magistrates' Courts Act as an immediate solution to the problems in the administration order regime, and the proposed Debt Rearrangement Bill as a long-term solution to the problems that plague the administration order and debt review processes.

The Commission invite comment on the discussion paper and the draft Bills which accompany it. Respondents are requested to submit written comments to the Commission by **31 December 2020**. Comments may be sent by email, fax or post. However, comments by email are preferred. Comments should be sent to the following addresses:

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Discussion Paper 151 is available on the Internet at <http://www.justice.gov.za/salrc/index.htm>
Hard copies of the paper may be obtained, free of charge, from the Commission on request (contact Mr Jacob Kabini at 012 622 6346).

In an effort to consult all interested parties, the Commission will host a series of workshops in January/February 2021. Please contact the Commission at the email address below should you wish to attend any of these workshops.

Contact person for enquiries in respect of the media statement is Ms Lowesa Roberts:
tel: (012) 622 6321, email: loroberts@justice.gov.za

ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION

DATE: 2 November 2020