

# DISPUTE RESOLUTION ALERT

## IN THIS ISSUE

### AN UPDATE: YOUR DEBTS...WRITTEN OFF?

Our [previous article](#) on the draft National Credit Amendment Bill, 2018 was published shortly before the scheduled public hearings before the Portfolio Committee on Trade and Industry. The public hearings took place during the week of 30 January to 2 February 2018. The hearings attracted many industry role players and stakeholders: the Consumer Goods Council of South Africa, Large non-Bank Lender Association, the Black Sash, Cosatu, some individual banks, the Banking Association South Africa, National Clothing Retail Association of South Africa and Summit Finance, to name but a few.

# AN UPDATE: YOUR DEBTS....WRITTEN OFF?

*National Treasury sought the opinion of counsel on whether or not the Bill would withstand a constitutional challenge. The opinion provided to National Treasury is that the debt relief mechanism is a deprivation of property.*

*The process that this Bill has been subjected to has been lengthy and robust, and it is not over yet.*



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As was expected, some of the participants were in favour of and supported the Bill while others raised some serious concerns. Some of the more pertinent concerns raised centred around whether the Bill would withstand a constitutional challenge. A number of role players expressed the view that the Bill, if enacted in its present form, would amount to arbitrary deprivation of property - an act not permitted in terms of s25 of the Constitution.

The Portfolio Committee also co-ordinated discussions with National Treasury, the Department of Trade and Industry, the National Credit Regulator and the National Credit Tribunal. As was anticipated after the public hearings, National Treasury sought the opinion of counsel on whether or not the Bill would withstand a constitutional challenge. The opinion provided to National Treasury is that the debt relief mechanism is a deprivation of property. The crux of the issue then is whether such deprivation is arbitrary.

The process that this Bill has been subjected to has been lengthy and robust, and it is not over yet. The Portfolio Committee has been advised to, at the very least, seriously consider the existing debt relief mechanisms as provided for in the National Credit Act, and if need be, adapt the existing mechanisms.

Probably the biggest stumbling block for the Portfolio Committee is the advice that any debt relief mechanism contemplated in the Bill should not be retrospective. Retrospective deprivation of property is more difficult to justify and to substantiate as non-arbitrary. This Bill provides for debt relief to people earning less than R7,500, and who have less than R50,000 unsecured debt as at 24 November 2017. The advice that National Treasury has received is to make the Bill applicable to unsecured debts that arise after the Bill has been enacted. This advice is a fundamental shift from the ambit of the Bill which currently seeks to assist already over-indebted consumers as at November 2017.



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# AN UPDATE: YOUR DEBTS....WRITTEN OFF?

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*The Bill, in its present form, has been widely published and it presents a beacon of hope for those over-indebted consumers that qualify based on the current criteria.*

The Bill, in its present form, has been widely published and it presents a beacon of hope for those over-indebted consumers that qualify based on the current criteria (an income of less than R 7,500 and unsecured debt of less than R50,000 as at 24 November 2017). Only time will tell if that beacon of hope was erected too soon.

The Bill also provides for debt intervention measures to be prescribed by the Minister of Trade and Industry in specific circumstances. This intervention measure will not see the light of day when this Bill is enacted.

.....  
*Eugene Bester*



Richard Marcus was named the exclusive South African winner of the **ILO Client Choice Awards 2018** in the Insolvency & Restructuring category.



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- CHAMBERS GLOBAL 2018 ranked our Dispute Resolution practice in Band 2: Media & Broadcasting.
- CHAMBERS GLOBAL 2017 - 2018 ranked our Dispute Resolution practice in Band 2: Restructuring/Insolvency.
- Janet MacKenzie ranked by CHAMBERS GLOBAL 2018 in Band 3: Media & Broadcasting.
- Julian Jones ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Restructuring/Insolvency.
- Tim Fletcher ranked by CHAMBERS GLOBAL 2018 in Band 4: Dispute Resolution.
- Pieter Conradie ranked by CHAMBERS GLOBAL 2012 - 2018 in Band 1: Dispute Resolution.
- Jonathan Witts-Hewinson ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 2: Dispute Resolution.
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Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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