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**CHAIRPERSON: PORTFOLIO COMMITTEE ON JUSTICE AND
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National Assembly
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14 August 2006

The National Director for Public Prosecutions
Advocate Vusi Pikoli

Fax: 012-804-7300

Dear Sir,

Re: Report by the Council for Debt Collectors

I enclose herewith for your attention a copy of the Debt Collectors Act No. 114 of 1998 (the Act) as well as a report received from the Council for Debt Collectors (the council) outlining the difficulties experienced by them in enforcing the provisions of the Act criminalizing the activities of unregistered debt collectors.

Paragraph 1.4 of the report suggests that prosecutors tend to not proceed with prosecutions when faced with a charge in terms of section 25 of the Act. One of the objectives of the legislation is to ensure that the debt collecting industry is regulated inter-alia by a code of conduct with a view to protecting members of the public from illicit and harmful practices employed by illegal debt collectors.

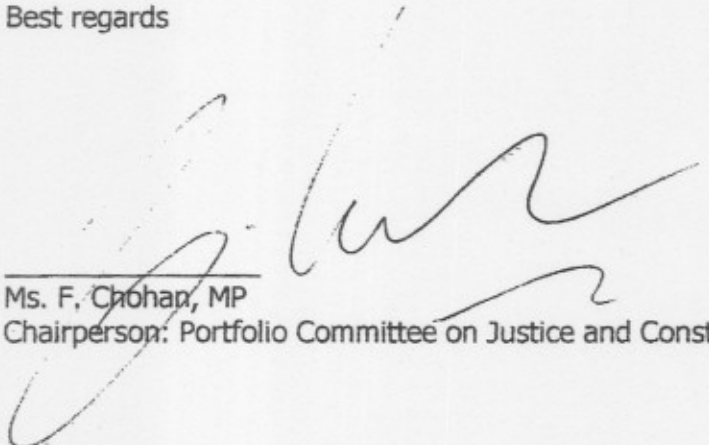
The Portfolio Committee on Justice and Constitutional Development has been particularly pleased with the implementation of the legislation we passed in 1998. However I am sure you would agree that unregistered debt collectors who continue to operate in defiance of the law, pose a potential threat to the significant achievements of the Council, and our mutual quest for a law abiding society. There are often also the unscrupulous "debt collectors" who target the poor and the vulnerable with forceful and threatening tactics. As they are not registered, the Council cannot deal with them. That is why they have been especially reserved for severe action by the criminal courts. It is also unfair that registered debt collectors who are regulated should compete with people who act with impunity outside of the law.

The fact that members of the public have attempted to charge non-compliant operators, indicates the seriousness of the problem created by illegal debt collectors.

It would be appreciated if you could inquire into the specific cases raised in the report, relating to your institution, and advise on steps taken to assist in ensuring that illegal debt-collectors are charged and prosecuted in compliance with the provisions of the Act.

Thanking you for kind attention.

Best regards



Ms. F. Chohan, MP
Chairperson: Portfolio Committee on Justice and Constitutional Development

Copies to:

- 1) The Speaker of the National Assembly
The Honourable Ms B. Mbete
- 2) The Minister for Justice and Constitutional Development
The Honourable Ms. B. Mabandla
- 3) The Director for Justice and Constitutional Development
Advocate Menzi Simelane
- 4) The National Commissioner – South African Police Service
Mr. J. S. Selebi
- 5) The House Chairperson
The Honourable Mr. GQM Doidge
- 6) The Parliamentary Counsellor to the President
The Honourable J. Jeffrey
- 7) The Parliamentary Counsellor to the Deputy President
The Honourable. Ms. D. Motubatse
- 8) The Chairperson – Council for Debt Collectors
Advocate Noethe

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**Council For Debt
Collectors**



IN RE: PROBLEMS WITH SAP INVESTIGATIONS

Right from the start the Council for Debt Collectors has experienced problems when attempting to report unregistered debt collectors to the SAPS.

Each matter needs an affidavit from the Council confirming that the defendant is not a registered debt collector. From the amount of affidavits provided and the lack of any convictions it has become clear that there is a breakdown of the judicial process along the line.

1.1 The following examples can be noted:

- 1.1.1 When attempting to report Me A. van der Walt of Altfuturo Debt Collectors at the Silverton Branch of the SAPS, a staff member of the Council was informed that this is a civil matter. Upon explanation of the Act to all the detectives present at the station it transpired that this contravention has not been imported into the SAPS computer system as an offence.

For that reason they were unable to open a criminal docket.

- 1.1.2 This same problem surfaced when a member of the public Me Probert attempted to open a docket at firstly the commercial branch of the SAPS in Durban and later at a local Police station in Durban.

A staff member of the Council personally spoke to the charge office of the Durban Central Police station and was informed by the officer in

charge that no docket will be opened due to the fact that this is not a criminal offence logged on the SAP computer system.

1.1.3 The Council personally discussed numerous matters with the Commercial Branch of the SAPS in Germiston during 2004. One of those matters was a complaint against an unregistered collector called "Scorpion Investigations". To date there has been no progress on any of these matters, and Scorpion Investigations are apparently still operating.

1.2 It appears that at some smaller SAP offices, which are not computer driven the SAP are willing to open a docket, unfortunately very little appears to happen to those investigations afterwards.

1.3 The Council has furnished affidavits regarding the status of unregistered debt collectors, but to date no prosecutions have taken place.

One or two examples are :

1.3.1. Under MAS 04/03/2006 opened at the Mafikeng Commercial Branch a docket was opened against Global Risk Management. To date there has been no progress.

1.3.2 A case against Natal Debt Corporation was opened at the commercial branch in Pietermaritzburg during 2005 but to date there has been no prosecution.

1.3.3. The Council has to date furnished approximately 50 affidavits to various parties and police stations around South Africa in most of the cases no dockets were opened by the police, or in the instances where dockets were opened the matters did not proceed any further.

1.3.4 Numerous members of the public have brought it to the attention of the Council that they were unable to lay criminal charges against unregistered debt collectors, in that the SAPS refused to open a criminal case.

1.4 It appears that even in those cases where dockets were opened the prosecutors are not very interested in the matters:

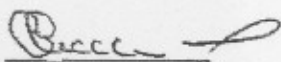
- 1.4.1 A docket was opened and investigated against Trafalgar in Port Elizabeth. After completion of the investigation the prosecutor decided not to proceed with the matter. This matter has subsequently been taken up with the relevant authority.
- 1.5 A further problem that the Council experience is when confronted with involved and lengthy investigations in respect of complaints received, the Council does not have the expertise to undertake forensic investigations. In these instances the Council needs the assistance of the Police and the prosecuting authorities.

Summary:

It is clear from the examples set out above that the SAP are not aware in most instances that it is a criminal offence to do debt collection without being registered as a debt collector. The deficiencies on their computer system is probably the main reason for this deficiency.

This problem should be corrected and the various Police stations around the country and prosecuting offices should be informed of the Act and the enforcement thereof.

Kind Regards



O.A. de Meyer
Chief Executive Officer
2006-04-25