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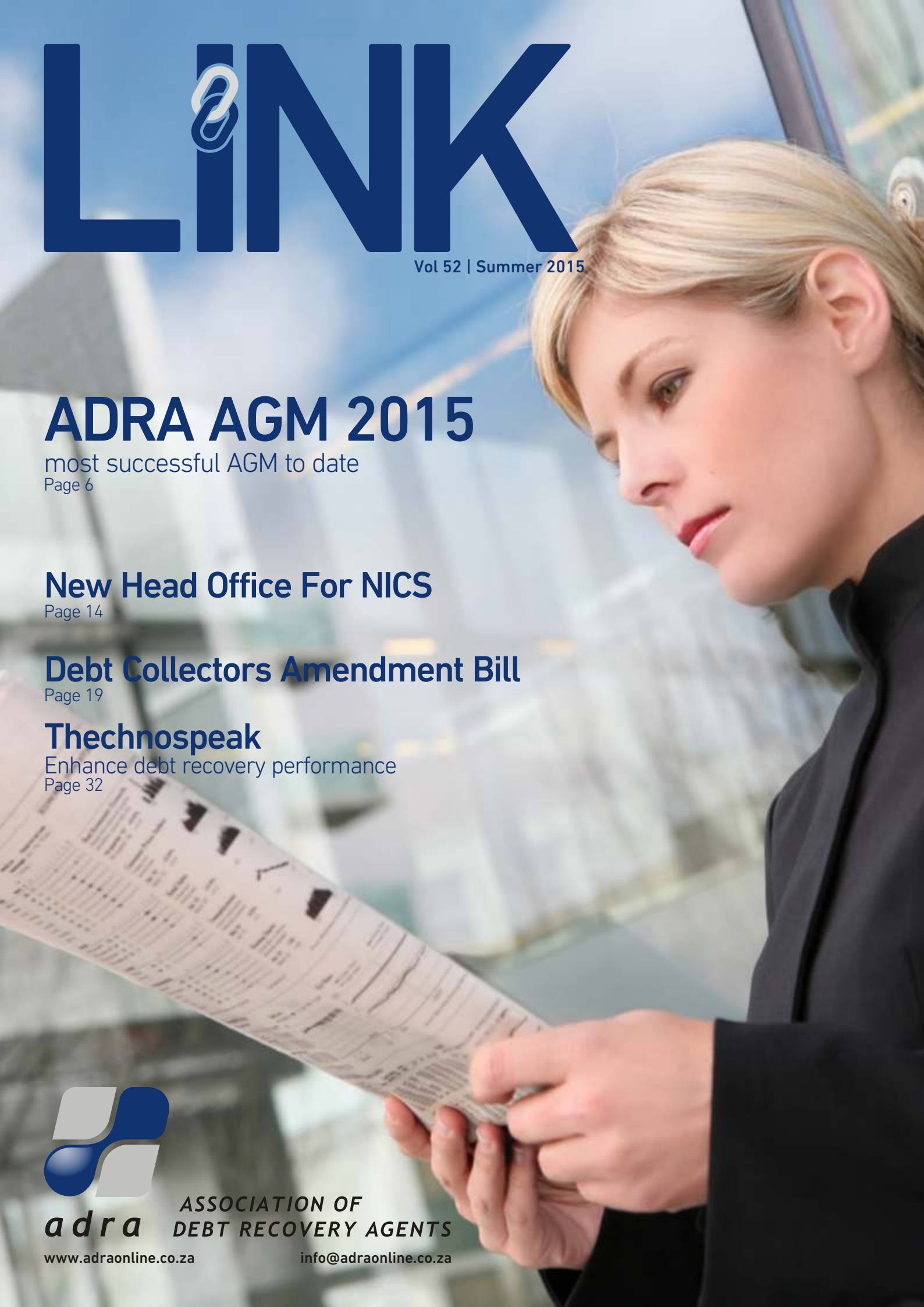
Vol 52 | Summer 2015



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most successful AGM to date

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Enhance debt recovery performance

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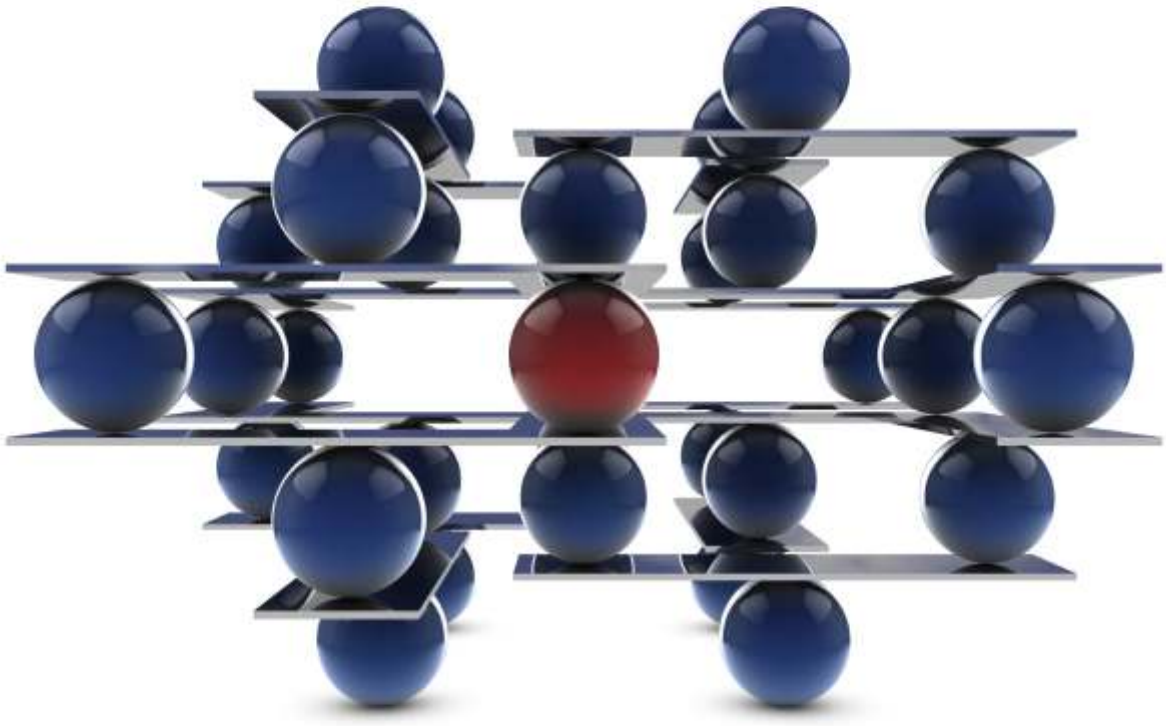

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ADRA IN MOTION

It is that time of year again when everyone is winding down and looking forward to a break and some family time. It is also that time when we start reflecting on the past year. 2015 was indeed a challenging year in which the debt collection landscape has changed significantly.
The Stellenbosch matter and the judicial attack on the existence of viable emoluments attachment orders supported by a persistent and often misleading media campaign was and still remains the most topical issue in our industry. ADRA has lodged a constitutional court appeal against the Desai J judgement which appeal will be heard on 3 March 2015.

Just when we thought that matters are settling down, the Department of Justice and Constitutional Development published the Debt Collectors Act Amendment Bill for comment. The Bill has already been referred to the National Assembly wherefore the only formal avenue for influencing the Bill is via submissions to the parliamentary portfolio committee. As this Bill is at an advanced stage of the legislative process it is hardly conceivable that there will be any significant amendments to the final product. The most controversial aspect of the Bill is the inclusion of attorneys as debt collectors under the Bill. This provision is met with applause by some whereas others, especially attorneys, are horror-struck by the Bill. Another controversial provision is the creation of a third in duplum rule binding only on debt collectors. This rule comes at the inopportune time when the interpretation and application of the existing in duplum rule contained in the National Credit Act is the source of wide-spread industry confusion. Following several attempts to obtain clarity on the interpretation of section 103(5) the section was referred to the Credit Industry Forum for deliberation and hopefully a universally accepted interpretation. No consensus could be reached and was the matter referred back to the National Credit Regulator. The Debt Collectors Act Amendment Bill, which attempts to include debt collector s fees and expenses in the interpretation of in duplum and make the rule applicable to all debt, including debt previously governed by the common law in duplum rule, will surely add to the current confusion and complexity of the matter.

The Bill does contain some good news for the industry, which was lobbied for by ADRA. The Bill finally makes provision for a "debt collector intern", the opportunity to submit to a nominal admission of guilt fine without having to attend a disciplinary enquiry for minor offences at great cost to the debt collector, the possibility of being exempted from provisions of the act such as the obligation to manage a trust account (where no trust funds are received) and an alternative to a very expensive trust audit for smaller members. The Council for Debt Collectors is also granted search and seizure powers which will no doubt cause a clamp down on unregistered debt collectors to the benefit of registered debt collectors and the industry in general. The Bill further provides for a process through which wide-spread amendments can be made to all relevant legislation and ADRA sees this as an opportunity to pro-actively participate in securing a balanced and viable debt collection industry which provides legal certainty and industry stability. This statutory investigation and negotiation process will no doubt be a priority for ADRA.

The Department of Justice and Constitutional Development will in all likelihood have published the 3rd draft amendment bill to the Magistrate Courts Act by the time of publication of this issue of the ADRA Link. This draft attempts inter alia to further regulate the process of obtaining consent judgements, instalment orders and emoluments attachment orders and ADRA will also actively participate in this legislative process. These two Bills cannot be considered in isolation from one another and the latter should possibly be postponed pending the outcome of the Stellenbosch appeal and the statutory transition process provided for in the Debt Collectors Amendment Bill.

Section 126B of the National Credit Act came into effect which placed an outright prohibition on the sale of prescribed debt. The final effect on the industry will in all likelihood be that less debt is sold but that the debt which

is sold will be more collectable. Credit providers are compelled to either sell or hand over debt at an earlier stage so as to prevent prescription. There is yet no binding authority on what the effect of this section is on the collection of prescribed debt and the industry and the National Credit Regulator appears to have opposing views on its interpretation and application.

One of the biggest challenges facing the industry will be its ability to adapt to the changes in the payment streaming environment. Authenticated Collections (AC) is to replace Non Authenticated Debit Orders (NAEDO). The process will be implemented from 30 September 2016 and no new NAEDO instructions will be accepted into the early payment window period. Paying banks, who are to attend to the authentication of AC instructions have not put forward any viable authentication mechanism in the non-face-to-face environment, which is the space in which our industry exists. It is estimated that ADRA members jointly process approximately 1.4m NAEDO instructions per month with an annual receipt value of approximately R5.6bn. If NAEDO is to be a prominent future collection tool in your business you must pay serious attention to developments in this regard and anticipate the changes which are to come. The SARB has made it clear that no extension of the implementation date will be considered and members are urged to timeously align themselves with the changes which are to come.

The changing industry legislative landscape has no doubt had a profound effect on the industry. ADRA had a substantial growth in membership, which growth comes predominantly from new start-up entrants to the industry whilst many smaller ADRA members closed their doors during 2014/2015. The number of registered debt collector (individuals and employers) on the register of the Council for Debt Collectors also shows an overall increase but with the same trend of closures of smaller entities. In an attempt to curb this trend, ADRA has taken the policy decision to be of more assistance to smaller entities and especially new members by providing them with necessary information and support, not only relevant to debt collection itself as has been the case in the past, but also necessary business management tools. ADRA is also in communication with the Council for Debt Collectors in exploring avenues through which these companies can be assisted, such as through industry training etc.

The 2015 AGM was a huge success with a record number of companies attending. A new look board of directors were elected which will be headed by Marius Smith from the Nimble Group. Marius and his board will no doubt have their work cut-out with what promises to be an extremely challenging and watershed 2016.

The Clive Morkel trophy was awarded to our outgoing president, Charl van der Walt for his excellent service to the industry over an extended period of time.

Thanks to the sponsorship of Intecon and Ver-tex, former Springbok lock and 1995 World Cup winner Kobus Wiese inspired all at the AGM. Just as we thought our industry and mounting challenges were unique and overbearing, Kobus very aptly demonstrated how universal challenges are and that with commitment, discipline, perseverance and creativity we can adapt, overcome and be world champions.

2016 promises to be a challenging year but with challenge comes opportunity. ADRA is upbeat about the prospects for 2016. Notwithstanding the turmoil of 2015 many members have reported record highs and a bright forecast for 2016. This demonstrates that with the necessary commitment, discipline, perseverance and creativity we all can achieve our goals and prosper. ADRA wishes all its members a much deserved Xmas holiday season. Return refreshed for 2016 and make the most of the opportunities the future holds.

Carpe diem.

ADRA **AGM 2015**

Proudly Sponsored by
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On 5 November ADRA hosted what was probably its most successful AGM to date. The AGM was attended by a record number of members and service providers.

The debt collection industry s reputation surely came under fire during 2015 with widespread allegations of illegal and/or abusive practises. Due largely to the heightened standards of ethics ADRA sets for its members ADRA (not the industry at large) has come through this attack unscathed. Incidents and even unfounded allegations of such conduct are however the motivation and driving force behind irrational and often ambiguous changes in the rules governing our industry to the detriment of all industry participants. Creating industry stability has become a focal point of ADRA and this led ADRA members to unanimously adopt a motion allowing the National Board to issue practise directives on a 75% majority vote, thereby identifying risk and dissuading members from such conduct. As the legislative and regulatory environment changes at the drop of a hat, such directives cannot stand over to the next AGM and this motion grants ADRA the power to act pro-actively, protect the best interest of its members and truly drive ADRA home as an association of ethical and professional debt collectors. Prior to issuing any practise directive the board is compelled to communicate its intention to members and obtain submissions from members. Obviously practise directives will only be issued where absolutely necessary and following thorough consideration, consultation and deliberation.

Kobus Wiese with Riaan de Swart and Jurgens Wessels

Congratulations to Carl De Villiers (MBD) and Jurgens Wessels (Ver-Tex) as first time appointments to the National Board of Directors. Carl was also elected as treasurer and we trust that his knowledge and experience as a CA will be of great value to ADRA.

Arnold Olivier, one of the longest serving directors and former vice-president and president called it a day and did not make himself available for re-election. Arnold still serves as ADRA nominated director to the Council for Debt Collectors and as such will still be involved in our industry in a leading role. Thank you Arnold for your many years of service to and support of ADRA. Under your leadership ADRA has made significant strides and your efforts directly benefitted each and every member. The industry is truly indebted to you. We trust you will enjoy your "semi-retirement".

Kobus Wiese Delivering His Address

In what was arguably the most contested election to date, the following individuals were elected to the board of directors. Following the AGM and in compliance with the ADRA Constitution, the newly elected board of directors elected an executive committee.

The designation of the directors elected to the Exco appear next to their names.
Marius Smith (President)
Oscar Koster (Vice President)
Stephen Lindsay (Legal Officer)
Carl de Villiers (Treasurer)
Charl van der Walt
Baker Maseko
Marina Short
Saskia Hill
Thinus Nortje
Jurgens Wessels

Congratulations to Marius Smith for his election as National President and the new look Exco. The immediate future appears to be challenging and we thank the Exco and other board members for unselfishly making their time and resources available to the ADRA membership.

2014/2015 started with a bang with the Stellenbosch application landing on our desks and various pieces of legislation being deliberated and signed into law. It was also the first financial year in which ADRA moved to increase its presence and industry impact by appointing a full-time chief executive officer. During this challenging year many members made sacrifices beyond the call of duty having a very positive impact on our industry and it was ADRA s pleasure to recognise these individuals. Awards for outstanding service to the industry were awarded to:
Mari Sassenberg - Executive PA at Consumer Profile Bureau
Marina Short – Consumer Profile Bureau.
Marius Smith – Nimble Group
Jurgens Wessels – Ver-tex
Stephen Lindsay – Real People and DMC.

Charl van der Walt, formerly from MBD joined JD Group Financial Services as CEO during 2015. Charl stood down as National President as he felt it to be inappropriate for him to complete his 2nd term as elected president as he no longer represents a debt collector. His integrity herein is to be commended. During his 3 years as National President Charl directed ADRA down a more professional path greatly enhancing our industry presence and reputation. If ADRA was not previously on the industry map Charl has surely achieved this. The most prestigious award ADRA can bestow on an individual, the Clive Morkel Trophy, awarded for excellent service to the industry over an extended period of time was awarded to Charl. ADRA s thanks Charl for the extremely positive impact he has had on ADRA and the industry upon which we are all dependent. The JD Group is a member of ADRA and we look forward to Charl s continued leadership on the board of directors. It is refreshing to have a credit provider on board.

The New Board

Thanks to an extremely generous sponsorship by Intecon and Ver-tex we were able to secure the larger than life presence of former Springbok rugby player and 1995 IRB World Cup Winner, Kobus Wiese as keynote speaker. Besides his involvement as SuperSport commentator and sport talk show host, Kobus is a very astute businessman and shared with the ADRA membership his secrets to success as learnt during his legendary rugby career, especially under tutelage of the Springbok rugby coach with the best track record in the history of the game, the late Mr. Kitch Christie.

Kobus Wiese Being Introduced By Riaan de Swart

His "formal" presentation was extremely insightful, inspirational and humorous.

Kobus is very close to the current Springbok team and attended the 2015 IRB World Cup in England as sport commentator where he rubbed shoulders with rugby administrators, ex- Springboks and their counterparts from around the world. He shared his experience of the just completed world cup and in particular his frank views on the performance, or lack thereof, of the Springbok team and the reasons for resistance to Heyneke Meyer as head coach. Luckily Oom Victor Matfield was not in attendance.

Kobus is very approachable and spent the morning and lunch with the ADRA membership and his presence and participation was extremely well received. Many delegates had the opportunity to be photographed with the towering Kobus Wiese. Those brave enough to attempt a selfie had to zoom their cell phone cameras to the maximum to fit him in.

Besides our anchor sponsors, Intecon and Ver-tex, we thank the following service providers to our industry, without whose support it would not have been possible to host this event on the scale we did.

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Direct Benefits
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Imfobib
Strike Media
XDS

Your support of ADRA is truly appreciated and do we look forward to your continued support during 2016.

Charl van der Walt receiving the Clive Morkell Award

Stephen Lindsay Receiving His Award

Marius Smith Receiving His Award

Jurgens Wessels Receiving His Award

Mari Sassenberg receiving her award

Marina Short Receiving her Award

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B-BBEE (Broad-Based Black Economic Empowerment) – The New codes: Having a Big impact on qualifying small enterprises (QSE's).

The new B-BBEE codes were introduced on 11 October 2013 with an effective date of 30 April 2015, although the DTi announced that entities can still apply the old B-BBEE codes for all verifications performed on information linked to financial years ending on/ before 30 April 2015.
Major changes in the new codes:

a) The 7 elements were reduced to 5 elements by combining some of the elements. Management Control & Employment Equity were combined into 1 element and Enterprise Development & Preferential Procurement were combined into 1 element:

Old Elements
1. Ownership
2. Management Control
3. Employment Equity
4. Skills Development
5. Preferential Procurement
6. Enterprise Development
7. Socio-Economic Development

New Elements
1. Ownership
2. Management Control
3. Skills Development
4. Supplier and Enterprise Development
5. Socio-Economic Development

b) Sub-minimum requirements for priority elements were introduced for the following elements: Ownership, Skills Development and Supplier & Enterprise Development. If the sub-minimum requirements are not met the entity will be discounted with 1 level.

c) QSE entities must comply with all 5 elements and can't choose which elements they want to be verified on anymore. In the old codes QSE's could choose 4 out of the 7 elements to be verified on.

d) The Points table to determine an entities recognition level were revised.
For the Generic entities these changes will probably not have a material effect on their B-BBEE status in general.

The question is if QSE entities will be able to comply with all the elements of the new B-BBEE codes and what the effect on the QSE entities will be regarding their B-BBEE status.
Especially because the weighting of Ownership and Management control is so substantial that if a QSE do not score points on either of these 2 elements they will be a level 8 B-BBEE contributor at best, even if they score full points for all the other elements.

Big challenges lie ahead for the small and medium enterprises in South Africa to comply with B-BBEE legislation.
Was it the right time to include QSE's in the full spectrum of B-BBEE? Only time will tell...

LJ van Heerden
Registered B-BBEE Auditor

Consumers in the dark about **credit insurance**

The recent news reports about household names in the credit industry being taken to task by the Regulator for "incorrectly selling credit insurance products" was maybe the first time you heard about credit life insurance, but if you have ever purchased anything on credit, chances are, you have also bought credit life insurance.

Credit life insurance is the insurance cover a consumer takes out in the event of their death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer s ability to earn an income or pay their monthly instalments under a credit agreement.

In recent months, several big name credit providers have come under fire for the incorrect sale of credit insurance to consumers. Investigations into consumer credit insurance have found that there are a number of issues that require intervention, e.g. the cost of credit is not properly disclosed and that consumer credit insurance cover does not meet the needs of the target market. For example, selling retrenchment and disability cover benefits to pensioners and self-employed consumers - cover that these individuals do not need nor can they claim for.

Another problem appears to be the fact that in some instances, consumers were unaware that they were paying for credit life insurance and therefore aren t aware that in the event of their death, disability or retrenchment their credit life insurance cover will take effect. As a result, many families of consumers take on the burden of paying off these debts, or consumers simply default and then they are locked into a debt collection cycle and they never claim against the insurance cover taken out at the time of entering into the credit agreement.

"Claims on credit insurance policies are significantly low, which suggests that few people are mindful that they have credit life insurance or how to claim" says Nicky Lala Mohan, the Credit Ombud.

The Credit Ombud recently dealt with *Mr. Nkosi who approached our offices for assistance in understanding the balance outstanding on his statement of account as he felt that despite making payment every month the balance was not decreasing. Whilst investigating the complaint we noticed that consumer made a payment arrangement to decrease his monthly payments a few years ago. This arrangement was not sufficient to cover the interest which accrued on the account. Mr. Nkosi disclosed that he made a payment arrangement due to him suffering an illness which resulted in him becoming disabled. He was unaware that he had credit life cover.

We assisted him by submitting the necessary documentation for a claim and it was paid out and his account settled in full.

The selling of products such as retrenchment and disability benefits for individuals that are self-employed or pensioners have come under scrutiny as the consumers are unable to claim these benefits, but they were required to take out the cover as a condition of the credit agreement. Credit providers that are found to be guilty of this could be ordered to refund the consumers affected as well as pay a fine.

Lala Mohan advises "where, for example, the policy attached to your credit agreement states that the credit life insurance excludes self-employed individuals or pensioners, and if you are self-employed or a pensioner, the policy would not benefit you. You should write to the credit provider and ask it to cancel the credit life insurance and refund any premiums paid, because the policy is inappropriate for you".

Another example dealt with by the Credit Ombud s Office recently related to a complaint regarding retrenchment insurance. They were approached by *Mr Sithole for assistance in respect of a claim submitted in terms of an Account Protection Insurance on a retail clothing account. The claim related to retrenchment cover on the account. Mr Sithole advised that his claim was rejected due to the late submission of his Letter of Retrenchment. He explained that his employer had neglected to furnish him with the requisite letter confirming his retrenchment within the stipulated period of 180 days. We intervened and the credit provider agreed that the consumer may submit the claim documents afresh to the insurance company and in turn, the credit provider re-submitted the claim to the insurance company. The claim was approved on the basis that the policy had been active for over 14 years. Mr. Sithole s outstanding balance was settled.

"Our office has seen many complaints from consumers relating to similar credit insurance matters and more often than not, the consumers are not aware of the correct process to follow to submit a claim, or sometimes they are not even aware of the existence of the cover despite paying the premiums for years. In the case of retrenchment, consumers must always ensure that they obtain a "Retrenchment Letter" from the employer before they leave the organisation, and to then submit that to all their credit providers without delay." says Lala Mohan.
The Credit Ombud, offers consumers the following advice regarding credit insurance:

- Do not purchase any insurance product that you do not fully understand.
- In terms of legislation, the salesperson is obliged to tell you that it is not obligatory to take out credit insurance sold by the credit provider and you can shop around for your own credit life insurance.
- It may be that you already have sufficient insurance to cover the debt in the event of your death, disability or retrenchment, but you will have to provide the necessary proof of same at the time of entering into the contract.
- If you buy credit life insurance when you sign a credit agreement, the salesperson must disclose all commissions and fees to you upfront.
- **A copy of the policy document or schedule, which sets out the benefits offered, should always** be given to you. You can request a copy of the insurance schedule before you decide whether or not to take up the insurance offer.
- Always read the fine print of any loan agreement to determine whether credit life insurance is required/included and what exactly it covers.
- It is important to note that the credit insurance cover, for death, disability or retrenchment etc., will no longer be in force if the account is in default.
- Ensure that your family are aware of your accounts as well as the credit life insurance that you pay for, as this will ensure that in the event of your death or disability, a claim can be submitted timeously.

Consumers are welcome to contact our offices with any of their consumer credit insurance queries. Consumers can also contact our office for free assistance on matters relating to listings on the credit bureau and all non-bank credit transactions, such as clothing store accounts, being handed over for debt collection or being garnisheed. We can be contacted on 0861 66 28 37, or via sms on 44786 or email ombud@creditombud.org.za , or visit www.creditombud.org.za

* Names have been changed to protect the privacy of individuals.

News from the Council

Hard to believe that we have reached the end of the year. The Council has been extremely busy in attempting to speed up the proposed amendments to the Annexure B fees that was proposed earlier in the year. The proposed increase in fees has been submitted to DTI for comment, we are waiting for DTI to finalise the matter so that it can be presented to the Minister for approval.
From legislative proposals in seems as if 2016 will be a very busy year for the Council and for the industry.

- The changes to the EAO system will probably come into effect creating some growing pains for the industry. On the positive side the changes will give clarity to the Courts on how EAO orders should be approached and granted, ultimately I am of the opinion that this will result in a improved and standardised approach by all the Courts when it comes to the issuing of EAO orders.

- The coming changes to the current debit order system is something that the Council has noted with concern. As the debit order system is used extensively by the industry the proposed authentication is problematic. From recent discussions it appears as if the issue of non face to face authentication is receiving attention and we will have to wait and see how the process develops.
- The fast tracking of the amendment Act will have some positive implications for the industry. Once approved by Parliament the industry will at long last be able to employ interns to counter the high turnover rate of debt collectors. Once approved the Regulations to provide for the practical implementation of the changes will have to be finalised and published.

  The proposed inclusion of attorneys under the Act and the review of current legislation regarding their fees will no doubt result in huge changes for the debt collection industry. I am however of the opinion that the changes will be to the benefit of consumers and nothing in the current proposals should affect the industry in a negative manner.

  The proposed inclusion of attorneys will of course necessitate the restructuring of the Council to make provision for the increase in workload and to enable the Council to effectively deal with the influx of attorneys and the additional strain that influx will have on the Councils resources.

On behalf of myself, the staff of the Council and the Council itself I would furthermore like whish all ADRA members a Merry Christmas and a prosperous new year.

A CORNELIUS
CHIEF EXECUTIVE OFFICER
COUNCIL FOR DEBT COLLECTORS

Baker - New Head Office For **NICS**

The Man behind the NICS brand.

It was 15 years ago that Baker Maseko roped in Nana Magomola, his late namesake, Baker Mogale and lawyer – cum - entrepreneur Tiego Moseneke, and together they formed what is one of the most influential companies on the South African economic landscape today. Now the name is so established, it is hard to imagine the debt collections industry without mention of New Integrated Credit Solutions (NICS). From that early onset, NICS was positioned as a national provider of revenue management and debt recovery solutions to both the public sector (primarily) and private sector (secondary).
It was conceived out of a marriage between Thuthukani Integrated Credit Solutions (Snyman & Venote, now Credit Worx) and New Credit Managers. Prior to setting up NICS, Maseko met several times with Chris Hattingh, then marketing manager of Thuthukani Integrated Solutions (Snyman & Venote, now Credit Worx) with a view to working together. Maseko was at the time appointed by the Master of the High Court as a liquidator and trustee and Thuthukani was interested in purchasing a debtors book of a liquidated retail chain of stores. As is always the case in such potential ventures, there were opposing views and expectations from both parties. Hattingh wanted to bring Maseko on board with the sole purpose of setting up a separate company in which public sector contracts could be procured at the back of a BEE-compliant status. Maseko on the other hand wanted to buy a controlling stake in the Snyman & Venote Group, which would effectively endorse the BEE status of that company.

It took some skilful and protracted negotiations as well as compromises for Maseko and his team and the Snyman & Venotte team (led by the debt collection industry pioneer Eugene Joubert) to conclude an agreement. They agreed that a company called NICS should be formed with Maseko and his team controlling 51 percent and Snyman & Venotte 49 percent. The company s sole mandate was to procure business from the public sector market. Predictably at the time, this arrangement didn t land well with an otherwise conservative industry, and this resulted in a slower uptake than had been anticipated.
Crucially at this time, as if by some divine intervention, Saambou Bank (the holding company of Thuthukani) was liquidated between late 2002 and 2003 and its curators decided to disinvest Thuthukani s holdings in NICS. All this resulted in the independence of NICS as a wholly black-owned company.
It was now incumbent upon this fast growing entity to pull together seasoned business practitioners as both directors and some shareholders in the form of Corne Richards (Managing Director), the late Tlholo Aphane (Human Resources Director) now replaced by Mpho Kekana and Tiaan Jonk (Finance Director). Caleb Makakaba (Operations Director) has developed through the ranks.

Raphael Martin, a finance arranger who introduced the concept of securitisation and purchasing of municipal debtors books to NICS, took a keen interest in NICS and subsequently procured the Phasha Family shares (minority) and the Tiego Moseneke shares in NICS to become a significant shareholder. Moseneke subsequently took an avid interest in mining opportunities, ending his involvement in NICS amicably and leaving a legacy.

Today Maseko has not only managed to bring together seasoned business practitioners but has also built a debt book of close to R10-billion under management.
NICS will be celebrating 15 years in business in January 2016 and having been able to provide exceptional services and value to clients such as the SABC, Telkom, Eskom, SARS, The Workmen s Compensation Fund, City of Johannesburg, Ekurhuleni, Mangaung, Matlosana and Matjhabeng Municipalities, University of South Africa and the University of Limpopo.
It was its rigorous marketing and business procurement strategy that landed them the books of Department of Water Affairs, Department of Transport, Polokwane, Msunduzi, Newcastle, Govan Mbeki, Mogale City and Maluti-A-Phofung Municipalities.

New Head Office

NICS has since launched their new Head Office and 400 seater call centre in Hatfield, Pretoria. This heralded a significant milestone in our development as a majority black owned and controlled company, a milestone that very few companies our profile dream of.
We boast a further 10 satellite offices in different municipalities we service.

Our Vision

To be a leading provider of top-drawer, efficient and cost-effective integrated revenue management and debt recovery solutions.

Key or important innovations we have in mind or plan for the future.

Richard Branson says, screw it – let s do it. We subscribe to that. Very little stops us when we have a vision, and we have a vision to make a difference in the cash-flow positions of non-performing accounts in South Africa. By the way there are more than 62 million non-performing accounts in South Africa excluding utilities accounts. Consumer debt has risen from R280-billion in 2002 to more than R780-billion now and 15 000 administration orders are issued for civil debt.

The debt collectors industry currently collects approximately R8 Billion per year with 16 979 registered debt collectors as at November 2015. At this trend it will take more than 100 years to collect all consumer debts in South Africa.

The above does not take into consideration the R104 billion Municipal debt, close to R30 billion accrued Government Department debt, R70 billion Government Revenue Services Agencies debt and almost R20 billion owed to State Owned Entities. There is more than sufficient pool of work to keep all registered collections agencies and lawyers busy for the rest of their lives. Not even generic outsourced collection services will resolve these debt problems. But innovative ideas that could ease these problems are critical. NICS have developed such innovative solutions and will unveil them to the market in due course.

Further innovations needed to make a difference in this massive pool of outstanding accounts are still and will still have to be developed as we go forward - but trust NICS to come up with more innovations than needed. Don t forget NICS is aptly named the NEW Integrated Credit Solutions.

Differentiating our current position in the market.

We were first in the NEW sandbox we created in the collections space, and we will always hold that position. For as long as we write the rules of the sandbox we should stay ahead of the pack. The innovation strategy one needs to adopt to stay ahead is one of being in charge of your vision. Once you fall behind, you are not leading the pack and you have to spend money and energy to follow the leaders in your industry- if you pave the way, others have to follow.

The Industry s view of NICS.

NICS is a victim of unfortunate stigmatization by its industry peers on two fronts. Firstly, NICS is Maseko and

Maseko is NICS. Secondly, NICS are the pioneers of public sector market debt collection. The former suggesting that there cannot be NICS without Maseko and the latter suggesting that NICS expertise is only limited to municipalities debt collection. Isn t the industry s target market "debt" and not "people"?
This is how the industry views us. Before this, the industry did not have black leaders in the collections space.

Our core strategies for success.

Core to NICS is to be the leader in the collections arena and treat consumers with dignity, but never neglect its duty to collect the outstanding dues. We re-invest large sums of the shareholder returns back into the business to be at the leading edge of technology and legal compliance -both are critical in the collections space where you work with large volumes of accounts and client s money.

Fostering talent.

We have an Internal Personal and Stakeholder Upliftment Programme. It transfers the skills we have built up to our clients. Debt has grown to gigantic numbers and everybody, including NICS and its clients, must up-skill to cope with the number of collection files and outstanding accounts.

Our vision for 2015 and beyond.

Staying abreast of credit law reform is the biggest challenge for any debt collection company. The National Credit Act is currently under scrutiny, the Consumer Protection Act is but a few months old, the Protection of Personal Information Bill is on the verge of being promulgated, the Draft Collections Amendment Bill is currently tabled for comment and several case law judgements against the widespread abuse of EOA s by some attorneys. All these challenges must be addressed. Looking at the phenomenal strides NICS had made in times that investors doubted anyone could make a difference in the collections space - but NICS did - and investor confidence is extremely high.

Our view of social networking.

Social networks in debt collection are a total taboo because the protection of personal information laws in South Africa makes consumers the best protected species found in the world. Nobody would like their personal debt problems to be splashed all over the social networks. If forced to use social networks, they could be used to enlighten consumers on how to handle debt not to use as a tool to do collections with or to trace people.

Innovation.

We always think about new ways to do things and new ways to improve things. NICS has never been more of the same - we have ventured into spaces and solutions that angels fear to tread. Trying to name one such an innovative thought is impossible. You need to string in the new things as the business and consumer debt arena is volatile. We have to think as we run and shoot from the hip. This characteristic has always been our salvation and then we transfer that innovation to our team to run with it.

Fassett Keeps you in the picture

HL: Fasset s National Student Financial Aid Scheme Loan Repayment Grant changes lives

Fasset has always had its finger on the pulse of employers and learners needs within its sector. The Seta is very cognisant of the fact that learners on learnerships often face financial hardships, especially those who are currently paying tuition fees, and also, repaying their student loans. Fasset recognises that there is a real risk that these learners may be tempted to abandon their learnership if offered a higher salary.

Fasset is also very cognisant of the fact that employers invest a great deal of personal time and energy supporting learners on learnerships. In order to build a robust skills pipeline within the finance and accounting services sector, learners need to complete their learnership.

Fasset has created a win-win solution for both learners and employers through Fasset s National Student Financial Aid Scheme Loan Repayment Grant. The Seta is offering to repay up to R60 000 of learners NSFAS loans, provided they are employed by a Fasset employer and are registered on a learnership. The learnership does not have to be registered with Fasset; the learnership may be registered with any of the other Setas.

Learners, who are claiming this grant for the first time, will be eligible to apply for all previous years of the learnership already completed. Repayments are made directly to NSFAS and are based on the duration of the learnership. Fasset s NLRG is also creating a win-win situation for NSFAS: by repaying outstanding NSFAS loans much sooner than would otherwise be the case, Fasset is enabling NSFAS to fund more learners.

The NLRG is available to:

- African learners and learners with disabilities, who are South African citizens with a valid South African identity document;
- Hold a three-year qualification in a scarce skills area within the Fasset sector;
- Are in full-time employment and on a learnership programme with an employer registered with Fasset.

Despite the fact that Fasset s NLRG has been well publicised, the NLRG is undersubscribed. Fasset would like to urge employers in the debt collection industry to alert learners to this golden opportunity, and to also, assist eligible learners to apply for the grant. Relieved of much of the financial burden of repaying their NSFAS grants, learners will be able to focus on completing their learnerships.

Letters from recipients of the grant confirm that the NLRG is life-changing:

Hi Subashni
I would like to extend my thanks to you, Khensani and the rest of the Talent & Transformation team for informing us of this wonderful grant offered by Fasset. The burden that Fasset has lifted off my shoulders is indescribable, thank you to Fasset and I hope many more people will benefit from this grant because it would be a shame for people to not grow further in their studies /careers due to lack of finances.

Blessing Ntiwane
Trainee Accountant | FIST Audit
Deloitte & Touche

Greetings
I hope you are well.
I have just received notification that Fasset will be settling R40 000 of my study loan. I just want to express my sincerest gratitude. This really means a lot to me and I am beyond grateful.

Thank you very, very much. Words are not enough.

Kind Regards
Malwande Sondaba
Senior | Audit – Port Elizabeth
Deloitte & Touche

Letter to the **Editor**

Hi Colin
I would like to make a few comments following the ADRA, AGM that I recently attended.

I run a credit consulting company with collections being a very small part of my business. Despite this, I am very glad to be a Member of ADRA.

I am also a member of The Institute of Chartered secretaries, The Institute of Credit Managers and The Council for Debt Collectors.

With all the aforementioned, ADRA gives me the best value for money. The AGM and all the other functions that I have attended have all been professionally and exceptionally well run and very informative.
The people that I have met are friendly, helpful and one gets a sense of being part of an organisation that takes pride in what it does and goes the extra mile to be of value to all its Members.

I would like to congratulate you and your team for ADRA and look forward to remaining a Member of this organisation.

Regards

Colin Brull
Managing Director – Company World Credit

Debt Collectors **Ammendment Bill**

Debt Collectors Amendment Bill, 2016 has an effect on the In Duplum Rule

"What one does is what counts.
Not what one had the intention of doing."
- Pablo Picasso

On 14 October 2015 the Department of Justice & Constitutional Development published a general notice in the Government Gazette, inviting interested parties to comment on the proposed Debt Collection Amendment Bill. Comments are due before 30 November 2015.

The Bill is deemed controversial as it seeks, amongst others, to make the Act, once promulgated, applicable to Attorneys.
Without diminishing the ambit of the amendments, the Bill further expands on the codes of conduct and creates the capacity for an inspectorate.

One specific amendment (contained in Section 15 of the Bill) deals with improper conduct by debt collectors (and attorneys); and sub-section (1)(g) is the subject of this specific article, which reads as follows:

Section 15(1). "A debt collector may be found guilty of improper conduct if he ...
(g) charges collection costs, and initiation fee, service fees, default administration charges or other charges which exceed the unpaid balance of the principle debt at the time of default"

Many aspects of the Bill, and Section 15(1)(g) specifically, remind me of many one-page contracts that I have seen as a lawyer, that were completely inadequate as far as stipulating rights and obligations of the contracting parties goes.
How many times have we seen that a poorly drafted contract that contains far too little information creates a problem later on, when parties disagree on the aspects which were not included on paper?
This Bill is, in my mind, exactly the same ...
The laymen reading Section 15(1)(g) may not identify the massive problem created by it, as the essence of the section creates the impression that it is consumer-orientated and therefore to be deemed a good thing.

While I agree fully with the intention of protecting consumers against abusive debt recovery practices, I am acutely aware of the impact that poorly drafted legislation has on credit providers and consumers alike.

We need to step back in time for a second in order to see what chaos will ensue if the Bill, in its current form, is promulgated.

Common Law In Duplum Rule

Many, many years ago the common law In Duplum Rule had become entrenched in our law. The intention of the rule was to prevent interest from accruing to unpaid debt without limit. The essence of the rule was good, but had its shortcomings.
Summarised in laymen s terms, the rule provided that interest on a debt will cease to run when the total amount of arrear interest has accrued to the point that it was equal to the outstanding principal debt, i.e. the amount that was originally owed.

An example would explain it better ...
Joe Soap lends R100 000 from his bank. The bank is entitled to calculate interest on the outstanding amount and to add it thereto. Joe Soap makes payments towards the loan and, over time, pays back more that the initial R100 000 lent, as he is expected to repay interest as well.
According to the common law In Duplum rule, the arrears interest (i.e. the portion of interest that has not yet been paid) cannot exceed R100 000. Many people mistakenly believe that the total debt repaid over time may therefore not be more than R200 000.

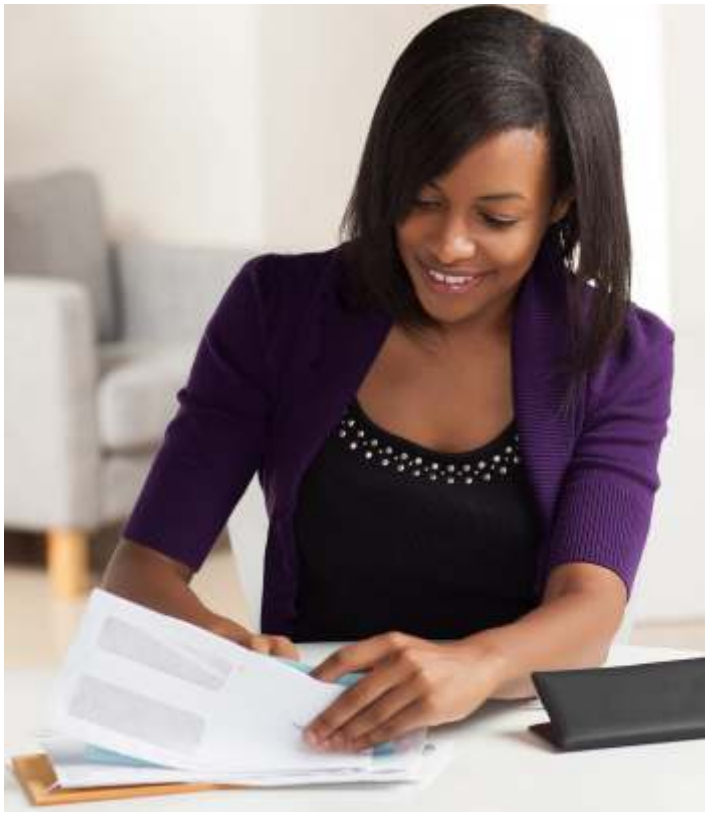
The fact is that Joe Soap could repay much more that R200 000 if the loan repayment period is long enough and the interest rate is high enough and there is nothing wrong with this. The secret lies in the use of the term unpaid interest . As Joe makes payments towards the debt, a portion of each payment is allocated to the outstanding interest. The portions allocated towards interest reduce the unpaid interest and therefore the total interest accrued to the account over time, may be more that the initial debt.
The effect is that, if interest reaches its maximum and is capped; and a payment is received (... and a portion thereof is

allocated towards the arrears interest); interest may accrue once again until it reaches the maximum. This continues to happen as long as Joe makes payments towards his account.

The National Credit Act

Section 103(5) of the National Credit Act 34 of 2005 brought about a number of changes to the common law In Duplum Rule. It provides as follows:

Section 103(5): "Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs"



Section 101(1)(b) to (g) loosely include initiation fees, service fees, interest, cost of any credit insurance, default administration charges and collection costs.
This is a departure from the common law In Duplum Rule as it contains the following three changes:
Firstly, it no longer only includes interest in the calculation. It includes additional charges of which some typically accrue to the credit provider (like administration charges).

Secondly, it provides that, if the sum of these charges (which include interest) reach their maximum after the debtor defaults and are subsequently capped, those charges may never again start accruing on the account.
And thirdly, Section 103 provides that one uses the amount outstanding at the moment of default together with the actual date of default as the two anchors for calculating the maximum.
An example, once again ...
Joe Soap lends R100 000 from the bank and agrees to repay the loan off over 20 years. He also agrees to pay interest at the rate of 10% per year. The bank is allowed to charge an administrative fee of R50 plus Vat per month.
After ten years of faithfully repaying the loan Joe misses a payment and the account goes into a state of default. At that moment, the outstanding balance is approximately R73 000.
According to Section 103, the amounts accruing to the account from that point onwards, may not exceed R73 000.
The two examples above clearly indicate the different results achieved by the common law In Duplum rule and Section 103 of the National Credit Act.

There is one complication, however, which relates to the fact that the National Credit Act only applies to certain types of debt. Therefore, it is very possible that one of Joe Soap s outstanding debts are subject to the workings of the National Credit Act while another is subject to the common law In Duplum rule.
This happens in practice, on a daily basis.
So much for the history lesson ... what about the future?

Debt Collectors Amendment Bill, 2016

If we assume that the Debt Collection Amendment Bill is enacted in its current form, the mechanisms of Section 15(1)(g) will effectively create a third way of capping additional charges.
On a close inspection of the section, one will note that the word interest has been omitted from the text.
In other words, where the common law In Duplum rule uses only interest; and Section 103 of the National Credit Act uses interest combined with other charges; Section 15(1)(g) of the Debt Collection Amendment Bill ignores interest.
In addition, the Debt Collection Amendment Bill will be applicable to all debt recovery agents and attorneys who collect unpaid debt on behalf of their clients.
In a strange twist of events, this completely nullifies the application of the common law In Duplum rule ... even in as far as it is currently applied to debts which are not subject to the National Credit Act.

The Bill, in its current form, will create confusion. If experts at the law, such as attorneys and debt recovery specialists, are unable to apply these rules correctly; how much more will the consumer lacking the legal skills to apply the various rules struggle to apply the correct formulae?
Pablo Picasso s comment at the start of this article comes to mind. The intention of the Bill may be good, but the actual provisions contained in the words thereof will have the opposite effect.

Clearly, the confusion should be obviated by aligning the Debt Collection Amendment Bill with all other credit-related legislation and more specifically the National Credit Act, before promulgating it.
This can be achieved by the removal of Section 15(1)(g) from the Debt Collection Amendment Bill or by referencing Section 103 of the National Credit Act.
In the latter instance, it will still signal the death of the common law In Duplum rule.

Peter Rafferty
Chief Executive Officer
FutureSoft
www.futuresoft.co.za

WHAT A GAME CHANGER: THE DRAFT DEBT COLLECTORS AMMENDMENT BILL

As the year is winding down and we all thought the year could not deliver more challenges, the Department of Justice and Constitutional Development ("Justice") published the Debt Collectors Amendment Bill (the "Bill") for comment. The publication of the Bill for comment was not such a surprise as the Bill has been on the parliamentary agenda for the past 3 years. The surprise came in the content of the Bill. Prior to the Bill first being presented to parliament, ADRA negotiated the content of the Bill with the Council for Debt Collectors ("the Council") and Justice and initiated the inclusion of provisions such as the introduction of a debt collector "intern" and provisions allowing for debt collectors who do not receive funds from consumers on behalf of their client/s to be exempted from having to open and manage a trust account and for smaller members whose turnover in their trust account does not justify the cost of an annual audit by a chartered accountant for a more cost effective alternative. ADRA also initiated and negotiated provisions allowing for an admission of guilt fine to be paid where a member is charged with a minor transgression and wishes to avoid the exorbitant cost of having to travel to Pretoria for a disciplinary hearing and the Council s cost of conducting the hearing, which cost in many instances is completely disproportionate to the sanction imposed.

Although there were murmurs of the inclusion of attorneys as debt collectors under the Debt Collectors Act (the "Act") and subjecting them to the jurisdiction of the Council, ADRA and indeed the Council itself was unaware that Justice was amending the Bill to provide for such inclusion. There was no consultation process preceding the inclusion of this provision. It is abundantly clear from the preamble to the Bill that the inclusion of attorneys was motivated by the exposure of abuse by some attorney s, as exposed during the Stellenbosch case (which is pending appeal in the Constitutional Court). Justice s urgency and resolve to curb such abuse (or alleged abuse) is further demonstrated by the fact that the Bill was already forwarded to parliament and as such the only public input will be by way of written submissions to and public hearings conducted by the parliamentary portfolio committee and not Justice itself. The closing date for receipt of such submissions is 31 January 2016. There is a limited opportunity to influence the Bill but we suspect that the Bill will be adopted without significant change.

ADRA is already in discussion with Justice on some concerns we have with the Bill, but the principles reflected in the Bill and its objectives are in general supported.

So what does the Bill say? How will it affect the way debt collection is conducted in future and how will it affect your business, whether you are a debt collector, attorney or credit provider?

Inclusion of attorneys

As stated, the biggest surprise was the inclusion of attorneys in the definition of "debt collector".

Traditional debt collectors have for many years argued that the playing field between debt collectors and attorneys should be levelled. Truly levelling the playing field is hardly possible due to the fundamental difference between the debt collection occupation and legal profession. Many attorneys do however perform functions of traditional debt collectors. The Bill however goes much further than including attorneys only in so far as they perform traditional debt collection functions as contemplated in the current Act.

ADRA s concern is that there appears to be no limitation to the inclusion of attorneys and are attorneys included in so far as they pursue any claiming sounding in money. Should the current provision remain unchanged, it will result in the vast majority of law firms, attorneys, professional assistants and their staff having to register as debt collectors. Without limiting the inclusion of attorneys, attorneys will have to register with the Council prior to, for example, pursuing damages claims resulting from motor vehicle accidents, third party claims against the Road Accident Fund for personal injury and medical expenses, , defamation of character and the like. Even a conveyancer will have to register prior to being able to phone a purchaser of immoveable property who is late in making payment of occupational rent prior to taking transfer. It is difficult to imagine that an attorney, irrespective of the nature of his/her practise will not at some stage or another pursue a claim sounding in money. We very much doubt that it is practical for the Council to take over the functions of the Law Society by regulating the entire legal profession. Should this happen, the debt collector will be absorbed into a regulatory environment in which he is a very small and insignificant minority and where his/her interest will no longer be a priority.

Attorneys are up in arms about this provision in the Bill and will no doubt oppose their inclusion in the Act. The principal objections to such inclusion includes an undue infringement upon the credit provider s right of access to court and equal treatment before court as a result of a potential dramatic reduction in legal costs (which limitation is not imposed on the debtor) and dual regulation of attorneys by both the Law Society and now also the Council etc.

ADRA itself is also concerned about the unlimited inclusion of attorneys as, should court enforced collections fail in a society with a track record of a culture of non-payment, soft collections will surely also fail. Why would a consumer voluntarily cooperate in a soft collection process if he is well aware that payment cannot be unilaterally enforced without his/her cooperation?

After thorough consideration ADRA is of the view that the inclusion of attorneys should be limited to liquidated, contractual claims pursued either via a soft collection process or via unopposed or consensual legal action. In amending the definition of "debt collector" or introducing a definition for "debt collection" or "debt" in-line with ADRA s submission, attorneys will be included only in so far as they pursue payment of the same type of arrear accounts traditional debt collectors pursue. It is in any event the alleged abuse in pursuing this type of indebtedness which Justice and other government departments are attempting to curb.

Debt Collector Intern

The cost of registering newly employed "debt collectors"

is high, especially if considering the high staff turn-over rate in our industry. For a variety of reasons debt collectors often resign from their employment within a couple of months or even days from date of commencement of duty or they do at an early stage of employment demonstrate not to have the aptitude for the position and their employment is terminated by the employer. For this reason ADRA lobbied for the creation of a so-called "debt collection intern" to be registered as such with the Council for a three month period at a greatly reduced cost.

Section 9A of the Bill which provides for the registration of an employee by a registered debt collector (employer) for three month internship, which registration can upon successful completion of the internship be converted to full registration as "debt collector".

Certain requirements are set for registration as intern.

- The employment agreement with the intern must be in writing.
- An intern is registered by the Council upon application by the employer in the prescribed manner and upon payment of the prescribed fees. The fee must still be determined but are we in agreement with the Council that the fee should be nominal and deducted from ultimate registration fee as "debt collector" upon completing of the internship.
- The intern must, as is the case with a debt collector, not be a person disqualified from practising as debt collector.
- The intern may not reregister with the same employer for a second term of internship.
- The intern may not be registered on more than two occasions with different employers as intern.
- An employer who is a natural person (sole proprietor) may not have more than 1 intern registered at a time. A juristic person may register as many interns as it has registered debt collectors in its employ. Employers may, on the "prescribed conditions" apply to the Council for an exemption of this limitations.
- An intern shall during his term of service serve in the office of the employer and under the direct supervision of the employer or a registered debt collector in the employ of the employer.
- It would appear that the intern cannot be charged with a transgression of the Act but his/her employer remains vicariously liable for the conduct of the intern.
- Where the employer dies or its registration is withdrawn or is declared incompetent to manage its own affairs or abandons its practise, the contract of internship may be ceded to another debt collector. The cession must be on application by the intern and acceptance by the Council. A cession is not considered to be a

subsequent engagement as internship.

- Upon completion of the term of internship the employer shall issue the intern with a certificate of service.

Code of Conduct -Section 15

Section 15(1)(a) is extended to include "...unfair tactics or any similar conduct" as improper conduct exposing the debt collector to disciplinary action. The term is extremely vague and entirely subjective. Such provisions creates industry uncertainty and the potential for subjective persecution. Should the wording remain unchanged, members are advised that, should their business model include anything which they suspect might be construed as "...unfair tactics or any similar conduct" to direct an enquiry to the Council requesting its view of whether the contemplated action is considered to be an unfair tactic or similar conduct.

A transgression of sections 68 and 126B of the National Credit Act is elevated to improper conduct under the Act. Indirectly debt collectors were in any event subject to the provisions contained in these two sections. Section 68 relates to the confidential treatment of consumer personal information and section 126B to the prohibition of the purchase and collection of prescribed debt. Detailed legal opinion on the interpretation and application of section 126B is available in the Members Area of the ADRA website.

The practical effect of the elevation of a transgression of these two provisions to improper conduct in terms of the Act is that, currently a debt collector who transgressed these provisions exposed its credit provider/client, who is vicariously liable for the conduct of its agent (i.e. its appointed debt collector) to disciplinary action by the National Credit Regulator in terms of the National Credit Act. Should this addition in the Bill be retained, as is expected, the debt collector will be exposed to disciplinary action by the Council in terms of the Act in addition to the disciplinary exposure of the credit provider.

Yet another in duplum rule

Section 15(1)(g) introduces a statutory in duplum rule without any limitation on the cause of action. To date members had to deal with the very vague and contentious section 103(5) of the National Credit Act in causes of action arising from credit agreements governed by the National Credit Act. Section 15(1)(g) creates an additional in duplum rule without limitation as to the cause of action. Should this provision be retained, which we hope not, the newly created in duplum rule will have to be applied to all accounts, not only accounts governed by the National Credit Act.

The wording of the two provisions however differ materially and will add to the already exiting uncertainty.

Section 103(5) of the National Credit Act itself is a highly contentious provision. Eight years following its enactment there is no clarity on its interpretation and implementation. It has been the subject of a limited declaratory order and various attempts by industry and the National Credit Regulator to obtain legal certainty of its interpretation. Most recently the National Credit Regulator published its interpretation of section 103(5) for industry comment.

ADRA submitted an extensive submission objecting to the National Credit Regulator s interpretation by demonstrating the various errors in applying the trite rules of interpretation of statutes and the absolute bizarre effect their interpretation will have in practise. ADRA also had sight of submissions presented by representatives of interest groups with opposing interests. The various interest groups submissions differ materially on most material aspects. Following this process which clearly demonstrated legal uncertainty from all quarters the National Credit Regular referred section 103(5) to the Credit Industry Forum for deliberation and hopefully a universally accepted industry interpretation. Following several months of

deliberation the Credit Industry Forum could not reach consensus and the matter was referred back to the National Credit Regulator.
Section 15(1)(g), if retained in the Bill will add significant confusion as the wording differs materially from section 103(5) read with section 101 (b)-(g). Further adding to the confusion, the wording of section 15(1)(g) in itself is very vague and ambiguous.

We further deem it inappropriate to deal with in duplum in the Act as it is only enforceable against "debt collectors" (including qualifying attorneys). In practice it will result in the untenable situation that where the common law creditor or National Credit Act credit provider recovers a debt internally, the creditor/credit provider will not be bound by the Act and will either have to apply in duplum as contemplated in section 103(5) of the National Credit Act or the common law in duplum rule. As such, the common law creditor and credit provider in terms of the National Credit Act will on the same account legally be compelled to recover a different amount to the amount a "debt collector" will legally be compelled to recover in terms of the Act.

Section 15(1)(g) further creates the untenable situation that the costs charged by traditional debt collectors, which vest in the debt collector (as opposed to the creditor/credit provider), are fused with the creditor/credit provider s claim against the same consumer but resulting from a different cause of action.

The notion of including debt collection and/or legal costs (and debt counselling fees as per the interpretation of the National Credit Regulator) has a severely negative impact on contractual rights of parties and other fundamental human rights as entrenched in the Bill of Rights, including the right to equal treatment in having disputes adjudicated by courts of law and parties right to access to court etc.
ADRA respectfully submits that it would be more prudent for the subject matter of a universal statutory in duplum rule to be dealt with by the Department of Trade and Industry following a

thorough consultation process and then to be implemented via legislation which is binding on creditors/credit providers, their agents (debt collectors and attorneys) and consumers alike and enforced by a regulator/ombud who has jurisdiction over all such parties.

Section 15(2) – Disciplinary Enquiries

The Council shall appoint a committee or person or persons to investigate allegations of improper conduct who shall, following their investigation, compile a report of its findings and recommendations regarding charges to be brought against the debt collector. The Council then has the discretion to, based on the report, charge the debt collector.

Should the Council elect to charge the debt collector, the Council shall appoint a person to lead the evidence and a committee or person to preside over the disciplinary enquiry.

Upon conviction of an attorney, the Council shall refer any decision of the committee to the Law Society who shall, in addition to the penalty imposed by the disciplinary committee of the Council, consider whether the attorney is still a fit and proper person to hold office as an attorney.
The only practical effect of this provision is the extended authority granted by the Council to contract non-Council employees to participate in the investigation, prosecution and adjudication of disciplinary action and a more objective review/appeal process to a Council which did not directly participate in the preceding disciplinary process.

Admission of Guilt – Section 15A

The formal introduction of a statutory procedure through

which a debt collector can admit his/her/its liability and pay a nominal fine was dealt with in the introduction to this article and is to be welcomed.

In terms of this section, the Council may, if

- it believes the debt collector would have been found guilty of improper conduct, and
- a fine would have been imposed,impose such a fine to be paid within a specific period where after the debt collector is then deemed to have been found guilty of improper conduct. If the debt collector fails or chooses not to pay the fine the debt collector will appear before a disciplinary enquiry.

Appointment of Inspectors and Search and Seizure - Section 15B

The Council may appoint an inspector to investigate any complaint of improper conduct or where the Council upon reasonable grounds suspects a debt collector of having committed or being in the process of committing an act of improper conduct. The inspector has the authority upon compliance with certain minimal requirements, to enter onto the debt collector s premises, interview staff and search for and seize articles for purpose of furthering his/her investigation.

Upon investigation, the inspector shall:

- Show his/her certificate of appointment as inspector and identification, and
- A written document stating the nature and purpose of the investigation.

The investigation is limited to the scope as reflected in the aforesaid mandate. However, if in the course of his/her investigation the inspector has reasonable cause to believe that the debt collector has or is contravening any other provision of the Act, the inspector shall report same to the Council where after the Council may amend the nature and purpose of the investigation.

The investigation may be conducted without prior notice to the debt collector but must be conducted during office hours.

In addition to the powers described above, the inspector may enter the premises of the debt collector, if:

- The debt collector consents thereto, or
- The inspector on reasonable grounds believes that a search warrant would have been issued had he/she applied for a warrant and the delay in applying for such warrant would defeat the purpose of such entry.
- The inspector may enter if a warrant was duly issued by a magistrate or judge for purposes of accumulating evidence present on the premises to be entered and searched.

The investigator may, in line with the purpose of the investigation question any person found on the premises and may make and retain copies of any book, document or objects.

Non-compliance by a debt collector is a contravention of the act.

This provision, which will in all likelihood be retained, could have a profound impact on individual debt collectors and the industry. The search and seizure powers are an infringement of the individual s rights to privacy as entrenched in section 14 of the Constitution and will therefore have to be exercised by the Council only in so far as it is absolutely necessary and justified.

We foresee that these powers will be exercised especially in investigating unregistered debt collectors and instances where systemic abuse is perpetrated but the Council was previously in practical terms limited to investigating only individual complaints received. It is important to note that the investigation can be extended should the investigator, during his/her authorised investigation stumble on evidence of a transgression

which he/she is not authorised in terms of the original mandate to investigate. This will for example be the case where the investigator visits the debt collector s premises in investigating the over-charging of fees of a debt collector with 5 registered debt collectors but upon arrival notice that the entity has a 20 seater call-centre and potentially a number of unregistered debt collectors. Where a debt collector is charged with not registering an employee as a debt collector, the Council will in all likelihood have reason grounds to believe that there is more than one unregistered debt collector in the entity s employ and investigate such reasonable suspicion.

Taxation - Section 19

In terms of the Bill, the Council or the Clerk of the Court may at the request of the consumer or debt collector tax the debt collector s bill of cost. Prior to the Bill, only the consumer may have requested such taxation and then the taxation was to be conducted by the Clerk of the Court only.

Trust Accounts

The Act current states that all debt collectors shall open and manage a trust account. As stated in the introduction, the Bill allows for a debt collector to be exempted from opening a trust account and also, upon good cause shown, that a trust account need not be audited by a chartered accountant. Attorneys trust accounts shall remain under the jurisdiction of the Law Society and are not affected by the Bill.

The Act further provides the Council with the power to seize a trust account which is mismanaged or of a debt collector which became dormant and appoint persons with the necessary expertise to manage and/or wind up such a trust account.

Section 16 – Transition Provisions

The Bill provides for a 12 month period from the Bill being Gazetted during which the Council in conjunction with the Rules Board for Courts of Law Council are to investigate the industry and recommend to the minster amendments to current legislation, regulations, codes of conduct and tariffs in order to accommodate the inclusion of attorneys and curb industry abuses. ADRA is already in discussion with the Council and will no doubt play an integral part in this process in ensuring a balanced and sustainable industry.

The Bill also provides for the minster to announce a date by when all qualifying attorneys are to be registered as debt collectors with the Council. It is envisaged that this announcement will only follow once the necessary amendments to other legislation and especially tariffs applicable to attorneys are made.

Conclusion

The Bill is viewed as a priority project by Justice and the Bill will be passed (with necessary amendments) through the legislative process sooner rather than later. The amendments will have a profound effect on the debt collection industry, especially attorneys practising in the field of debt collection. There is still an opportunity to influence the final wording of the Bill but we do not foresee any major changes in the final product. ADRA will make submissions on the Bill, which submissions once completed will be published on the ADRA website.

Seen at the AGM

Intecon Authenticated Collection

Are you ready for 1 October 2016?
Due to the number of high disputes and the perceived abuse in the various payment streams in the National Payments System; the South African Reserve Bank (SARB) conducted a formal collections review in 2013 and based on the SARB Terms of Reference (TOR) which set out the requirements for an enhanced collections system – the Authenticated Collections project was established.

In future, authenticated collections will be given preference in terms of processing. From the dates set out below; NAEDO will not be processed in the early morning processing window.

An authenticated collection essentially means that the Payer (Debtor) has authorised (authenticated) that a deduction can take place against their nominated bank account before the actual presentment of the payment instruction for processing.

From the inception of AC:

- The authenticated payment instruction request will be created with the required parameters by the Debt Recovery Agent;

- This instruction will then be sent to the Debt Recovery Agents sponsoring bank either directly or through a System Operator (SO) or Third Party Payment Provider (TPPP).

- For call centres used by Debt Recovery Agents, and depending on whether the authenticated request is requested in batch or real time; the paying bank will deploy a mechanism* in order to authenticate the transaction with their client (payer). The mechanism between the paying bank and their client (payer) may not necessarily be in real-time.

- Once the authenticated request has been confirmed by the payer, the call centre will be notified that the authentication request was successfully completed.

- Should the payer not have reacted within a defined time period, the call centre will be notified that the authentication request has failed.

- In AC, the existing AEDO mechanism will be replaced with TT3 suitable for use during face-to-face interaction with payers using their card and PIN on a dedicated point of sale device. This is the only solution supported where no further dependency exist on the paying bank to contact the payer.

*Banks will have different mechanisms in place in order to authenticate transactions. Unstructured Supplementary Service Data (USSD) is currently being investigated as a potential solution.

AC Mandate Types

Three types of mandates can be obtained from Debtors:

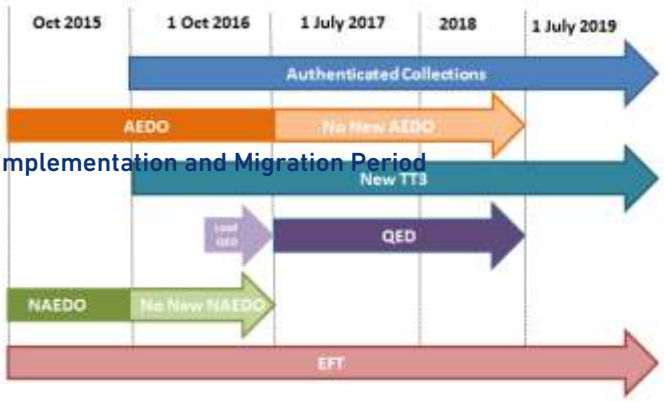
Fixed: will be used where up-front calculated instalment amounts forms the basis for repayment.

Variable: The up-front calculated instalment amounts may be adjusted by the User without re-authentication for example where the product is linked to the Repo rate or annual premium increases for insurance products.

Usage Based: A maximum value is authenticated as a threshold value but where the monthly requested value may vary. Examples include cellular agreements where airtime usage varies or municipality utility bills.

AC Implementation date: 1 October 2016

It is important that ADRA members who currently submit NAEDO transactions for processing in the early morning processing windows consider the following timelines and migration periods in order to best prepare themselves for the changes that will become a reality with the implementation of AC.



Implementation and Migration Period

NAEDO agreements already concluded as on 30 September 2016

In order to ensure that there is sufficient time in order to "phase out" existing NAEDO contracts; a migration period of 9 months (from 1 October 2016 to 30 June 2017) will be allowed. NAEDO contracts concluded on or before the 30th September 2016 and with a termination date before the 30th June 2017; will continue to be processed as NAEDO contracts in the early morning window.

NAEDO agreements already concluded as on 30 September 2016: Qualified Early Debits (QED)

NAEDO contracts concluded on or before 30 September 2016 and with a termination date after 30 June 2017, must be uploaded into the Mandate Register at the relevant Paying Bank by May 2017. These NAEDO contracts (once uploaded) will be re-categorised as QED contracts.
These QED contracts will qualify for continued early processing until 30 June 2019, provided that they are not disqualified at any stage during the defined time period.

Disqualifying criteria for QED are:

- Seven consecutive unsuccessful payments.
- Any dispute on a QED payment.
- Any stop payment.

At the end of June 2019, all QED mandates should have been converted to either AC mandates or normal EFT Debit Order mandates. No QED mandates will be allowed for processing from 1 July 2019.

Disqualified QED

These agreements must obtain new authenticated mandates in order to remain in the early morning processing window. If no new authenticated mandates are obtained; these agreements may only be processed as EFT Debit Orders.

New agreements concluded from 1 October 2016

Mandates for new debt repayment agreements concluded as from the 1st October 2016, may no longer be obtained through the use of NAEDO mandates (voice recorded or paper) for processing in the NAEDO payment stream. All mandates for new debt repayment agreements concluded must be obtained through the use of authenticated mandates or normal EFT Debit Order mandates.

1 July 2017

From the 1st July 2017, using the enhanced functionalities of TT3, traditional AEDO contracts will no longer be created as AEDO, but will be created as TT3 contracts.

1 July 2019

Only authenticated agreements may be processed in the early morning processing slot. If not authenticated; processing must occur in the EFT Debit Order processing slot.

Conclusion

Among all the changes that AC will introduce, the authorisation aspects and the conditions under which collections may be disputed will hold the key to improved collection rates for Users of this new collection stream. It is therefore important that all businesses that make use of payment systems in South Africa are aware of the changes happening in the payments landscape as these changes will have a direct impact on their businesses and ultimately their bottom-line. These are relatively daunting changes that are taking place.
The information and dates are correct as on date of publication.

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Thechnospeak Enhance debt recovery performance with dialling capacity

Enhance debt recovery performance with dialling capacity

"The truth, the whole truth, and nothing but the truth". These are the words used in South Africa as a sworn testimony of evidence given. It is an indication by the teller of his commitment to tell the truth.
Many people like to tell white lies, exaggerate the truth, or enhance reality ever so slightly. Some people tend to deviate from the truth, but convince themselves that the deviation is justified and not a false testimony.
Take for example a dialler company that will, during a sales pitch, tell you that their dialler will enable you to make 550 phone calls per person per day.

"These numbers sound extraordinary, but are quite obviously hog-wash. "

Let me do the calculation: Let us assume that a debt recovery agent works 8 hours a day non-stop ... without a bathroom break and with no lunch break (This is, in itself, a crazy assumption ... but let s roll with this scenario).
Such a debt collection agent will then work a total of 480 minutes in a single day. If such a collection agent makes 550 phone calls per day, it means each phone call duration was a mere 52 seconds on average. Herein lies the dilemma ...

There is no part in any universe where it will be deemed productive for a debt recovery agent to make calls at an average duration of 52 seconds per call.
If a dialler sales person were to change the story and told you that his dialler software was able to launch ... initiate ... or activate phone calls to debtors at the rate of 550 per person per day, such a statement could be deemed correct, but totally irrelevant. It helps no one if a debt recovery agent can initiate 550 phone calls in a day, but cannot speak to the debtor.

Statements like being able to make 550 phone calls per person per day is therefore irrelevant but often still enjoys attention from the listener.
If we unpack the ability of the technology a little further, one would find that smart diallers would be able to initiate numerous calls at the same time, targeting a predefined list of debtors on a predefined list of phone numbers. Such smart diallers are then able to determine whether the initiated phone calls are answered, and which of those are not (either by reaching a voicemail or by simply being terminated).

A smart dialler will then route the connected calls through to a debt recovery agent and allow the agent to enter into discussion with the debtor (or the person answering the phone call if it is not the debtor).
A smart dialler therefore strips out the unproductive phone calls and patches only the phone calls that may result in a positive outcome through to the agent.
This is of great value to any debt recovery company. However, the truth is that the real statistics of agents speaking to debtors would be much lower than and often-stated 550 calls per person per day.

I believe that no phone call with a debtor is a productive phone call if the agent didn t take the time to update all the relevant demographic information of the debtor. This takes time and therefore I cannot see that a good phone call with a debtor can be anything less than two minutes to start off with.

In addition, our industry is no doubt heading towards a situation where detailed affordability checks will have to be done during a phone call with a debtor (I am not referring to the examples of the affordability checks that were exposed in the recent the University of Stellenbosch-case, which clearly illustrates that no attempt was really made to do this properly). Such a discussion can by no means be rambled off in less than a further two minutes. When and if this becomes compulsory, phone calls will take longer to complete. Good collection companies already take the time to check on affordability, even though it is not compulsory at this stage.

Lastly, if one makes use of a debit order or Naedo process, one is required to obtain a comprehensive verbal mandate from the debtor to strike his or her account. These mandates need to be logged as voice files and must be available for inspection when required.

Such a mandate requires the verbal presentation of a predefined script of text to the debtor, without which the banks may question the validity of the mandate. I believe it is impossible to do this (and confirm bank details) correctly in less than one minute.

The above three components of a phone call indicate that a productive phone call with a debtor, concluding a fixed arrangement for repayment of a debt, cannot and should not be less than five minutes. It is my strong belief that a phone call concluding a repayment arrangement in less than five minutes, indicates laziness on the part of the collector and a lack of management from business owners. This can never be praiseworthy. Let s continue with the calculation ... (For purposes of this article, I will refer to a five minute phone call as a good call)
If we accept that a good phone call takes 5 minutes, it means that an agent working tirelessly without a break will be able to make 12 good phone calls in an hour.

This means that, if the same highly active agent works eight hours non-stop every day, he or she will be able to make 96 good phone calls per day. This, in my mind, is an illustration of a highly productive debt recovery agent. Anything more than that, is an illustration that one is taking short cuts that will later return to bite.

If the straight forward number of phone calls made per person day is therefore irrelevant, let s explore which statistics are relevant.
Statistic #1: On all the calls made by the dialler, how many resulted in a contact established with a speaker on the other side?

Statistic #2: How many of the calls in #1 above resulted in a right party contact? (i.e. the call connected to the debtor personally)

Statistic #3: How many of the calls in #2 above resulted in a fixed arrangement to repay the debt? (This statistic can be broken down further into smaller chunks by recording the age of the debtor, the time that the debtor was contacted, the day of the week on which the debtor was contacted, the number on which the debtor was contacted, the size of the debt, the type of debt book involved, the age of the debt and the repayment amount).

Statistic #4: How many of the fixed arrangements made in #3 above were actually honoured and paid up without requiring further intervention?
I must confirm a caveat to my 5-minute call rule ... I am assuming that the calls in this scenario deal with new debts initiating discussions with debtors. I am excluding mere reminder phone calls as they have a much shorter duration.
If you are using a smart dialler or if you are in the market of obtaining a smart dialler, do not pay too much attention to the number of calls that can be initiated by the dialler automatically.

The science of using a smart dialler goes much deeper than that ...

Peter Rafferty
FutureSoft
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