



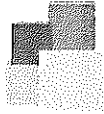
- The Banking Association South Africa (BASA) is the industry representative body for commercial banks and consists of 32 local and international member banks.
- BASA promotes and contributes to the enablement of a conducive, competitive and sustainable banking sector.
- BASA understands and supports Government's initiatives as well as the Department's intended reforms as contained in the Courts of Law Amendment Bill.
- BASA is generally comfortable with the proposed amendments, except as discussed in this presentation and our submission, and we trust that our comments may add value to the Committee's processes in respect of this Bill.

16 08 31 PC Justice

The Banking Association South Africa appreciates the opportunity to address the Portfolio Committee on a few specific concerns and recommendations we have in respect of the Courts of Law Amendment Bill.

CLAUSE 8 OF THE BILL

- i. We support the proposed amendments, but wish to request that the following suggestions and concerns be considered:
 - i. An EAO must be granted as a last resort remedy, meaning the plaintiff/judgment creditor should have exhausted all other remedies available to recover the debt/ judgment debt or
 - ii. the debtor/judgment debtor should be in arrears regarding debt for a period of at least 9 months.
 - iii. before the court grants an EAO, the court should consider the quantum of the debt/ judgment debt to ensure that Common Law In Duplum or Statutory In Duplum (section 103(5) of the National Credit Act 34 of 2005) has not been breached;
 - iv. the judgment creditor should be obliged to inform all registered credit bureaux of the granted EAO.



CLAUSE 8 OF THE BILL ctd

2. Section 65J(1A) of the Magistrates' Courts Act

- i. To ensure that the combined value of EAOs does not exceed 25% of the employee's salary, system changes must be effected which will require an **implementation period of between 6 and 12 months.**

The following provisions are unclear:

- ii. Whether the garnishee (employer) is required to desist from complying with the next EAO, should compliance therewith result in the combined EAOs exceeding 25% of the employee's salary or whether the garnishee (employer) in the event of non-compliance will be seen to be in contempt of a court order.
- iii. How the judgment creditor must verify the information provided to him/her by the employer.

CLAUSE 8 OF THE BILL ctd

2. Section 65J(1A) of the Magistrates' Courts Act ctd.

The following provisions are unclear ctd:

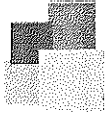
- iv. Is the garnishee (employer) required to exercise a preference regarding a specific judgment creditor?

Example - if the garnishee (employer) is required to process an EAO in favour of each of the following judgment creditors:

- an unsecured creditor;
- a secured creditor; and
- the South African Revenue Services;

and the processing of one of these EAOs constitutes 25% of the employee's salary, which EOA must the garnishee (employer) process?

- v. How should we deal with a situation where a single employee may have a number of different employers and what may constitute 25% of his/her salary insofar as one of these employers are concerned, may constitute only 10% of the employee's combined salary?
- vi. Is the reference to 'salary' intended to mean 'net salary' or 'gross salary'?



CLAUSE 8 OF THE BILL ctd

3. Section 65J(6)(a) of the Magistrates' Courts Act

- i. It is unclear what 'means test' or method of measure the garnishee (employer) must apply to determine whether the judgment debtor has sufficient means and whether the judgment debtor's expenses are necessary/unnecessary.

Example - an employee earning R500 000 per year with R420 000 obligatory expenses could/could not be considered as someone with insufficient means depending on the employee's specific personal circumstances which is private information that is not available to employers.

- ii. A garnishee (employer) ordinarily acts upon an EAO on the face of it and will therefore not be able to inform the judgment creditor if it believes that the amounts claimed are erroneous or not in accordance with the law.

The garnishee (employer) will not be privy to such information unless the employee brings it to the attention of the employer. The word 'believes' suggests a judgment call but no guidance is given as to how the garnishee (employer) is expected to exercise same.

CLAUSE 8 OF THE BILL ctd

4. Section 65J(10)(b) of the Magistrates' Courts Act

i. We are concerned with the sanction placed on the garnishee (employer) in the event that

- the garnishee (employer) does not deduct the EAO amount from the salary in time; or
- does not stop the deduction of the EAO amount from the salary when the judgment debt and costs have already been repaid

as the proposed amendment will place an administrative burden on the garnishee (employer) who is not a party to the proceedings or dispute and is merely adhering with a court order granted and the liability placed on the garnishee (employer) is placed without due notice (in the event the garnishee order is not delivered to the garnishee (employer)).

ii. The proposed amendment will also lead to the garnishee (employer) suffering damages in the form of additional judgment creditor costs and interest which is unjust.

iii. Payroll systems of garnishees (employers), especially corporates, are complex which, due to the complexity thereof, may lead to an occasional delay.

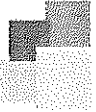


CLAUSE 8 OF THE BILL ctd

4. Section 65J(10)(b) of the Magistrates' Courts Act ctd.

Recommendation

- iv. We suggest that the obligation should remain with the employee (judgment debtor) or judgment creditor to provide the garnishee (employer) with sufficient notice:
 - to start and continue with the deductions; and
 - to cease the deductions in the event the judgment debt and costs have been paid in full.
- v. The garnishee (employer) must acknowledge/confirm receipt of the EAO order.



CLAUSES 2 AND 13 OF THE BILL

Clauses 2(b) and 13

- i. The phrase 'judgment debt', may be interpreted to exclude interest on the judgment capital and permitted costs.

Recommendations

- ii. We recommend that the phrase 'judgment debt' be appropriately defined to include the required settlement of the interest on the judgment capital and permitted costs.
- iii. We suggest that the court should only be permitted to grant the relevant rescission of the judgment if:
 - the judgment is not subject to review or appeal proceedings; and
 - reasonable authentic proof of the settlement of the judgment debt is attached to the rescission application, for example a certificate obtained from the judgment creditor.
- iv. The judgment creditor must preferably be served with the rescission application and not only notified of the intended application to ensure that the judgment creditor is aware of the application.



CLAUSES 2 AND 13 OF THE BILL ctd.

Clauses 2(b) and 13 ctd.

Recommendations

- v. We propose the notice and set down periods to be 10 days. This would permit the judgment creditor to consider the application and verify the statements made.
- vi. Proof of service should be attached to the rescission application to court and the judgment creditor must have the right to oppose the rescission application where appropriate.


The recommendations may serve to prevent frivolous, vexatious and fraudulent applications and would ensure adherence to the *audi et alteram partem* rule.

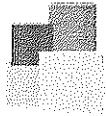
CLAUSES 4, 5 AND 6 OF THE BILL

i. Clause 4

- i. We are of the view that the court's investigation into reckless lending and affordability assessments should be limited to the credit agreement in terms of which judgment or an EAO is requested. Other credit providers must not be drawn into the proceedings before the court as this will unnecessarily delay the process and lead to the incurring of additional costs.
- ii. The clause in its current format creates legal uncertainty, as it is unclear what the effect will be on the offer made by the judgment debtor if there is no documentary evidence available and whether such a situation will preclude the judgment creditor from accepting an offer.

Recommendation

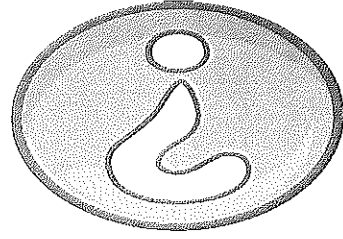
- iii. We recommend that the clause be amended to clearly illustrate whether the judgment creditor can proceed to accept the offer made by the judgment debtor if no documentary evidence is available.
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CLAUSES 4, 5 AND 6 OF THE BILL

2. Clauses 5 and 6

- i. Our view as mentioned under clause 4 applies to clauses 5 and 6 as well.
- ii. Other credit providers must not be drawn into the proceedings before the court as this:
 - could place the other credit providers in a compromised position of defending a reckless lending enquiry even though they are not party to the proceedings and
 - would unnecessarily delay the process and lead to the incurring of additional costs.



Questions

Thank you!