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| **From:** FirstRand Bank Limited (FRB)  **To:** The Select Committee on Security and Justice (The Select Committee)  **For attention:** Mr G Dixon  **Via email:** [gdixon@parliament.gov.za](mailto:gdixon@parliament.gov.za)  Dear Sir,  **RE: The Courts of Law Amendment Bill [B 8B – 2016]**  1. Introduction:  FRB would like to take this opportunity to thank the Select Committee for the opportunity to provide comments regarding the Courts of Law Amendment Bill [B 8B – 2016] (the Bill). We have previously submitted comments regarding the Bill via the Banking Association South Africa and we are grateful that these comments were considered and where appropriate incorporated into the most recent version of the Bill.  We welcome the purposes and the objectives the Bill proposes to achieve and we are in agreement with the majority of the proposed amendments.  We herewith provide some proposals for consideration by the Select Committee regarding the most recent version of the Bill.  2. Ad Seriatim Submission:   |  |  |  | | --- | --- | --- | | **Clause** | **FRB Comments** | **Proposal for Consideration** | | 4: Proposed Insertion of Section 55A | FRB welcomes the insertion of section 55A. We are however concerned that some of the factors the court will have to consider may not be known by the plaintiff or the judgment creditor or may not be before the court; as the defendant or the judgment debtor may not be before the court (for example in a default judgment application scenario). | We would propose that section 55A should read as follows:  *“For purposes of Chapters VIII and IX of this Act, the factors a court* ***may*** *take into account when considering whether an order is just and equitable, include, but are not limited to –“*  This proposed change would still meet the objective of providing guidance to Magistrates, but would ensure that the Magistrates have discretion to consider various factors and also the facts of a specific matter.  The Magistrates would not be prevented from granting an order merely because one of the factors listed in the proposed section 55A was not before the court. | | 9: Substitution of Section 65J | Proposed Section 65J (2C)(c)(i):  We are concerned that the employer of a judgment debtor will not be able to provide the certificate proposed, as the employer would not have knowledge of:   All the existing court orders against the judgment debtor (the employer would only be aware of emolument attachment orders being directly deducted from the judgment debtor’s salary);   All the judgment debtor’s agreements with creditors for the payment of debt (unless the deduction for the agreement occurs directly from the judgment debtor’s salary);   The judgment debtor’s necessary expenses and those of his or her dependents; or   The judgment debtor’s other commitments.  Proposed Section 65J(10)(b):  We are of the view that this provision is onerous with regard to the garnishee / employer.  Upon the receipt of an emolument attachment order the garnishee / employer will first have to consider the validity of same before implementation, which may delay the deduction from the judgment debtor’s salary and payment to the judgment creditor. We would assume that this delay would be considered reasonable.  In the event that the garnishee / employer does not receive the quarterly statements from the judgment creditor or does not receive the exact total of the costs from the judgment creditor; the garnishee / employer may continue with deductions even though the costs may have been repaid in full. We would assume that this would be considered reasonable behavior by the garnishee / employer. | Proposal for Section 65J (2C)(c)(i):  We would propose that the information should rather be obtained from the judgment debtor and that the judgment debtor could substantiate same with reasonable proof – for example a credit bureau report containing the judgment debtor’s debt commitments.  Proposal for Section 65J(10)(b):  We would propose that the garnishee / employer should have the right to claim any amounts paid above the judgment debt and costs from the judgment creditor. |   3. Conclusion:  Kindly contact writer hereof should any clarification be required.  Yours faithfully, |  |
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