

# WEBINAR HANDOUT



Webinar: **HOW ARE MAINTENANCE DEFAULTERS BLACKLISTED?**  
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**During this lunch hour we discuss topics which include:**

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## **1. Circumstances under which defaulters are blacklisted**

It becomes possible for defaulters to become blacklisted within only a few months. In terms of South African law if a debtor defaults on at least three payments, the creditor is entitled to report negative information to the credit bureau. This in effect leads to the defaulter becoming blacklisted on the credit bureau.

The Maintenance Amendment Act 9 of 2015 was signed into law in 2018, which allowed the department to further regulate, investigate and punish maintenance defaulters. One of the key penalties that could be imposed on these individuals was to have them blacklisted by credit bureaus.

The Maintenance Amendment Act 9 of 2015 provides for blacklisting of maintenance defaulters in section 26 and 31. The aforementioned provisions read as follow: "On the granting of an application contemplated in subsection (2) by a maintenance court, the maintenance officer or clerk of the court at the request of the maintenance officer, shall, notwithstanding anything to the contrary contained in any law, in the prescribed manner, furnish the particulars of the person against whom a maintenance order has been made and a certified copy of the order of the court contemplated in subsection (2)(a)(i), (ii) or (iii), to any business which has as its object the granting of credit or is involved in the credit rating of persons."

## **2. Discussion of the controversy of blacklisting**

### **2.1 What is blacklisting and how does it work?**

Through the process of "blacklisting," people or organizations are marked as high-risk or unreliable based on their previous activities or conduct. It entails gathering and disseminating data about people or organizations that may affect their ability to take access of particular advantages or opportunities. Blacklisting can take many different forms in South Africa, including credit blacklisting, supplier blacklisting, and employment blacklisting.

The most well-known type of blacklisting will likely be credit blacklisting. It happens when people or companies have a bad credit history, such as missing payments on loans or credit cards. Credit providers, such banks and financial organizations, use credit bureaus to evaluate a person's or a company's creditworthiness. A person is likely to be placed on a blacklist if they have a history of defaults or late payments, which will make it more challenging for them to get credit or loans in the future.

## 2.2 Different forms of blacklisting

In South Africa, **credit blacklisting** is a prevalent type of blacklisting. When people or companies have a bad credit history, credit providers may put them on a blacklist, making it difficult for them to get credit or loans in the years to come. Their ability to make large purchases or investments as well as their financial security may be significantly impacted by this.

**Employment blacklisting** happens when people are rejected from job opportunities because of previous conduct or behaviors. For example, they might have been fired for misconduct, have a criminal record, or have other characteristics that might make them unsuitable for a given position or industry. Blacklisting for work has the potential to significantly reduce a person's professional options and make it difficult for them to find suitable employment.

Businesses employ **supplier blacklisting** as a method of protection against doing business with unethical or dishonest suppliers. A supplier could be placed on a "blacklist" if they fail to deliver on time, offer poor quality goods or services, or commit fraud. Then, in order to prevent others from forming alliances or contracts with problematic suppliers, this information is disseminated across enterprises.

In South Africa, **media blacklisting** receives less attention than other types of blacklisting. It happens when people or groups are denied access to media platforms or are not included in media coverage as a result of their critiques or opinions. Media blacklisting can significantly hinder a person's or group's ability to express their opinions or connect with more people.

### **3. Discussion on the National Credit Act that deals with blacklisting of maintenance orders**

In terms of the Maintenance Act 1998, both parents have a duty to support their minor children. This is confirmed in section 15 of the Maintenance Act, and section 18(2) of the Children's Act 38 of 2005.

Section 24(1) of the Maintenance Act reads as follow: "Save as is otherwise provided in this Act, any order or direction made by a maintenance court under this Act shall have the effect of an order or direction of the said court made in a civil action." This means that the maintenance order has the same effect as civil judgment.

Section 24(2) of the Maintenance Act reads as follow: “Any order made under section 16(1)(a)(ii), 20 or 21(4) shall have the effect of a civil judgment of the maintenance court concerned and shall be executed as provided in Chapter 5.”

According to regulations under the newly announced National Credit Act Amendment , judgments against maintenance defaulters who don't pay child maintenance to their ex-partners may be listed on their credit profiles in the future. A maintenance judgment will reduce the defaulter's credit score and make it harder for them to take out credit, which will in turn negatively affect their creditworthiness. Thus, they may be charged higher interest rates from credit providers, especially on secured credit. Moreover, once the defaulter has a judgment against their name, this adverse information will be listed on their credit profile for 5 years, or until they settle their debts.

#### **4. Form W that needs to be completed and forwarded to credit bureaus**

#### **5. Guidelines and procedure for the furnishing of maintenance defaulter's details to credit bureaus**

##### 5.1 General point of departure

A person is considered to be in arrears with maintenance when they have failed to pay the full amount of maintenance that was due at the time it was due. This means that if a person is required to pay maintenance on a monthly basis, and they fail to make a payment when it is due, they are in arrears. The Maintenance Act sets out the legal obligations and requirements for the payment of maintenance, including the frequency and amount of payments. If a person fails to pay maintenance as required by the Act, they are considered to be in breach of their legal obligations, and the other party may take legal action to enforce payment of the arrears.

Someone will be labelled as a maintenance defaulter the moment they stop making maintenance payments in accordance with an existing maintenance court order. In other words, and if a magistrate has issued an enforcement order against that person, he/she is considered a maintenance defaulter. If the respondent is in arrears with the maintenance payments there are a number of remedies available to the applicant to enforce payment:

- **Garnishee order / emoluments attachment order:** This is a court order that allows for the attachment of the respondent's salary, wages or pay to pay off the arrears.(Section 28).
- **Warrant of execution against property:** This is a court order that allows the applicant to seize the respondent's movable property (such as a car or furniture) and sell it to pay off the arrears (Section 27).
- **Attachment of debt:** An order by court so that any debt owed to the respondent could be attached by the sheriff so that it could be paid to the complainant. The debt must be owed by a third party to the defaulting party, or to be owed in the future or accruing. The court can grant an order that such debt is attached to pay the arrear maintenance (section 30).
- **Contempt of court (criminal proceedings):** If the respondent fails to comply with a court order to pay maintenance, they can be held in contempt of court and face fines or imprisonment (Section 31).

## 5.2 How to furnish the details?

In light of the above, **after a person has been found guilty of not paying the maintenance** amount in terms of a previously issued court order, after an emolument attachment order or a warrant of attachment against property and/or an order for the attachment of a debt has been authorised against a person by a Magistrate:

- (1) The Maintenance Court Clerk must record the above order as well as the details of the Defaulter in the NOCIMT Defaulter's Register.
- (2) The NOCIMT Defaulter's Register is an electronic Register that has been developed for purposes of capturing Maintenance Defaulters and which must be updated each time that a person has been found guilty of not paying the maintenance amount as per the maintenance order or against a person whom an enforcement order has been issued in terms of section 27, 28 and 30 of the Maintenance Act (as amended).
- (3) After the Clerk of the Court has recorded the order as well as the details of the Defaulter in the NOCIMT Defaulter's Register, the Maintenance Court Clerk must refer the case file to the Maintenance Officer / Prosecutor.

- (4) On receipt of the Case file, the Maintenance Officer / Prosecutor must immediately prepare, complete and sign FORM W: Particulars of the person against whom an order has been made in terms of section 26(2)/who has been convicted in terms of section 31 of the Maintenance Act, 1998 (as amended). The Maintenance Officer / Prosecutor must also make copies of the signed FORM W and forward them to all registered Credit Bureau.
- (5) The Maintenance Officer / Prosecutor must record copies of FORM W in a Movement Register for purposes of tracking and tracing of the forms.
- (6) Copies of FORM W shall be hand delivered to the registered Credit Bureau within 5 days of being issued. Delivery in this regard shall mean hand delivered by a court official or collected by an official from the Credit bureau who must forthwith sign for such collection or delivery in the Movement Register.
- (7) Each court shall keep a Movement Register which must be signed by the person collecting and delivering copies of FORM W to the registered Credit bureau.
- (8) After copies of FORM W have been sent to the registered Credit bureau, the Maintenance Officer / Prosecutor shall return the case file back to the Maintenance Clerk who shall update the NOCIMT Defaulter's Register by inserting the date on which copies of FORM W were sent to the registered Credit bureau.

#### **6. When can the defaulter's name be removed from the credit bureau?**

Section 27(3) of the Maintenance Act (as amended) provides "A maintenance court may, on application in the prescribed manner by a person against whom a warrant of execution has been issued under this section, set aside the warrant of execution if the maintenance court is satisfied that he or she has complied with the maintenance or other order in question".

Sections 28(2) (b) and 30(2) (b) of the Maintenance Act (as amended) provides "Any person who wishes to make an application for the suspension, amendment or rescission of an order under this section shall give notice in the prescribed manner of his or her intention to make the application to the person in whose favour that order was made, which notice shall be served at least 14 days before the day on which the application is to be heard".

In light of the above mentioned, a Maintenance Defaulter who wishes to have his records removed from the Credit Bureau must approach the court and complete either an Application for setting

aside of a warrant of execution, an Application for suspension, amendment or rescission of an order for the attachment of emoluments, and/or an Application for suspension, amendment or rescission of an order for attachment of debts.

If the order is granted, the Maintenance Officer / Prosecutor shall submit certified copies of the order to the registered Credit Bureau and update the NOCIMT Register for Defaulters by inserting the date when the arrears were paid in full.