



Alternative Measures for the Discharge of Debts for Over-Indebted Persons under the Magistrates' Courts Act 32 of 1944

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Abstract: Notably, over-indebted natural person debtors may utilise administration orders in terms of the Magistrates' Courts Act 32 of 1944 (Magistrates' Courts Act) to circumvent their over-indebtedness and get debt relief in South Africa. However, over-indebtedness is still very problematic in South Africa due to, *inter alia*, the lack of robust and comprehensive debt discharge measures for over-indebted persons. For instance, administration orders and debt review measures do not provide for the discharge of debts since they merely provide for debt-restructuring to enable the affected debtors to have some time to satisfy their creditors' claims. This article provides an overview analysis of the administration order under the Magistrates' Courts Act in order to explore its requirements, possible advantages and disadvantages as a debt relief measure in South Africa. The article also discusses the accessibility and viability of the administration order to low-income earners in South Africa. This is done to unpack the gaps and flaws of the administration order under the Magistrates' Courts Act in order to recommend possible measures that could be adopted by the policy makers to enable the over-indebted persons to easily access and+ utilise it for debt relief in South Africa.

Keywords: over-indebted; debt discharge; creditors; administration order; natural person debtors

1. Introduction

A natural person debtor is deemed to be over-indebted when he or she is unable to satisfy all his or her creditors' claims in time when they are due. This is normally

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determined by assessing the financial means, obligations and debt repayment history of the affected debtor. There are four statutory debt relief measures that are available to over-indebted persons in South Africa, namely, the sequestration proceedings in terms of the Insolvency Act 24 of 1936 amended (“Insolvency Act”, 3-12; also see Sharrock, Van der Linde & Smith, 2012, pp. 30-145), the administration order under the Magistrates’ Courts Act 32 of 1944 as amended (Magistrates Courts Act), the debt review and debt intervention that are contained in the National Credit Act 34 of 2005 (NCA) as recently amended by the National Credit Amendment Act 7 of 2019 (Credit Amendment Act). It must be noted that debt intervention was introduced by the Credit Amendment Act and is yet to be successfully utilised in South Africa (Chitimira and Magau, 2020, pp. 210-211). Moreover, all the aforementioned debt relief measures are not robust enough to provide effective debt discharge to over-indebted persons in South Africa.

Notably, over-indebted natural person debtors may utilise administration orders in terms of the Magistrates’ Courts Act 32 of 1944 (Magistrates’ Courts Act) to circumvent their over-indebtedness and get debt relief in South Africa (Mabe, 2019, pp. 1-8). However, over-indebtedness is still very problematic in South Africa due to, *inter alia*, the lack of robust statutory debt discharge measures for over-indebted persons (Boraine & Roestoff, 2002, pp. 1-2). For instance, administration orders and debt review measures do not provide for the discharge of debts since they merely provide for debt-restructuring to enable the affected debtors to have some time to satisfy their creditors’ claims (Boraine, 2003, pp. 218-241). This article provides an overview analysis of the administration order under the Magistrates’ Courts Act in order to explore its requirements, possible advantages and disadvantages as a debt relief measure in South Africa. The article also discusses the accessibility and viability of the administration order to low-income earners in South Africa. This is done to unpack the gaps and flaws of the administration order under the Magistrates’ Courts Act in order to recommend possible measures that could be adopted by the policy makers to enable the over-indebted persons to easily access and utilise it for debt relief in South Africa (Boraine, 2003, pp. 218-241). It is hoped that this approach will empower policy makers to carefully streamline the rigid statutory requirements for debt relief and discharge under the relevant legislation to enable all over-indebted persons to easily access and utilise debt discharge measures in South Africa.

2. The Administration Order in Terms of Section 74 of the Magistrates' Courts Act

The Magistrates' Courts Act provides an administration order that can be utilised by over-indebted persons to restructure the repayment of their debts in South Africa (s 74 of the Magistrates' Courts Act; Coetzee, 2015, p. 172; Magau, 2019, p. 39). An administration order is available to debtors that are financially distressed and it allows them to reschedule their debts through a court order (Boraine, 2003, pp. 217-218). An administration order is intended to deal with smaller estates where the costs of sequestration proceedings would exhaust the debtor's estate (*Fortuin v Various Creditors* 2004 (2) SA 570 (C) 573; *Ex parte August* 2004 (3) SA 268 (W) 271). Moreover, an administration order constitutes a cheaper form of debt relief which can be used as an alternative to sequestration proceedings by over-indebted natural persons in South Africa (Coetzee, 2015, pp. 172; *African Bank Ltd v Weiner* 2005 (4) SA 363 (SCA) 366). Therefore, an administration order allows the debtor to apply for debt restructuring and debt rearrangement through the Magistrates' Courts (*Madari v Cassim* 1950 (2) SA 35; *Weiner v Broekhuysen* 2003 4 SA 301 (SCA) 305 E-F). An administration order empowers the court to appoint an administrator to take over the debtor's estate and coordinate the repayment of creditors' claims (Boraine, Van Heerden & Roestoff, 2012, p. 84).

2.1. The Requirements for the Administration Order

Certain requirements must be complied with before one can rely on an administration order for debt relief (Magau, 2019, pp. 40; Boraine, Van Heerden & Roestoff, 2012, pp. 80-103). Firstly, an administration order can be obtained by debtors who cannot afford to pay the amount of any judgement debt that was obtained against them in a court of law; or debtors who cannot satisfy their financial obligations because they do not have sufficient funds and/or assets, even where no court judgement was issued in respect thereof (s 74 (1)(a) of the Magistrates' Courts Act; Leathern, 2018, pp. 22; Boraine, Van Heerden & Roestoff, 2012, pp. 80-103). A judgement debt is any sum of money that a court of law orders the debtor to pay to the creditors (s 74 (1)(a) of the Magistrates' Courts Act). Secondly, an administration order may only be granted in respect of a debtor whose debts do not exceed R50 000 (s 74(1)(b) of the Magistrates' Courts Act; Asheela, 2012, p. 40; Boraine, Van Heerden & Roestoff, 2012, pp. 80-103). A

section 65 *in camera* inquiry into the affected debtor's debt repayment history could also trigger the granting of an administration order by the relevant courts (s 65I read with s 74(1) of the Magistrates' Courts Act; Boraine, Van Heerden & Roestoff, 2012, p. 84). These requirements are further discussed under the advantages and disadvantages of the administration order below.

2.2. The Procedure for Obtaining the Administration Order

The affected debtor may obtain an administration order after his or her application on a prescribed form to the Magistrates' Court is granted (s 74A(1)-(3) of the Magistrates' Courts Act). The affected debtor must lodge the statement of affairs with the clerk of court to identify and affirm the correctness of the names of the creditors and the amounts owed to them on oath (s 74A(1)-(3) read with ss 74(1); 74A(5) of the Magistrates' Courts Act; Mabe, 2019, pp. 1-8). The application must be lodged with the clerk of the Magistrates' Court where the debtor resides or carries on business or is employed (s 74(1)(b) of the Magistrates' Courts Act). Furthermore, the application must be delivered directly or by registered post to all the creditors at least three days prior to the hearing (s 74A(5) of the Magistrates' Courts Act; Boraine, Van Heerden & Roestoff, 2012, p. 85; Boraine and Roestoff, 2002, pp. 1-2; Mabe, 2019, pp. 1-8). It is submitted that the clerk of the court or an attorney should help an illiterate debtor to prepare and lodge his or her application (s 74A(4) of the Magistrates' Courts Act; Van Heerden & Roestoff, 2012, pp. 85-86). It is also not required that there should be an advantage to creditors before an application for the administration order is granted (s 74 of the Magistrates' Courts Act; *Fortuin v Various Creditors* 573; *Ex parte August* 271; Van Heerden & Roestoff, 2012, pp. 85-86). It is further important to note that the period within which any debt should be paid to the creditors is not clearly provided under the Magistrates' Courts Act (s 74; *Fortuin v Various Creditors* 573; *Ex parte August* 271; Van Heerden & Roestoff, 2012, pp. 85-86).

An appointed administrator must take control of the debtor's estate until all the listed creditors and administration costs are paid in full (s 74C(1)(a) and 74E of the Magistrates' Courts Act; Mabe, 2019, pp. 8). Thus, the administrator must collect the relevant assets in terms of the administration order and distribute them pro rata amongst the relevant creditors of the debtor (s 74J of the Magistrates' Courts Act; Boraine, Van Heerden & Roestoff, 2012, pp. 84-90; Manyuni, 2015, p. 20). Once all the payments are made, the administrator lodges a certificate with the clerk of the court and eventually the administration order lapses (s 74U of the Magistrates

Courts Act; Boraine, Van Heerden & Roestoff, 2012, pp. 84-90; Manyuni, 2015 p. 20). In *Bafana Finance Mabopane v Makwakwa* 2006 (4) SA 581 (SCA) 583 (*Bafana* case), the Supreme Court of Appeal held that the main objective of an administration order is to, *inter alia*, protect the poor and low-income earners who are illiterate and uninformed about the relevant law. The debtor must compile a list of creditors and lodge it with the clerk of court, who will then share it with the administrator and it remains open for inspection by creditors during office working hours (R 48(2); 74G(1) & (10) of the Magistrates' Courts Act). Any objections by creditors must be lodged with the clerk of court within 15 days of having received a copy of the administration order (R 48(2); 74G(1) & (10) of the Magistrates' Courts Act). If a debtor rejects a creditor's claim, he or she must notify the clerk of court who will then notify the relevant creditor in writing (Boraine, Van Heerden & Roestoff, 2012, p. 90). If a person became a creditor after the administration order was granted, or if he or she sold and delivered goods to the debtor under a credit agreement in terms of the NCA after the administration order was granted, he or she is entitled to lodge a claim against the debtor's estate with the administrator (ss 74G(7)–(9); 74H(1) & (4) of the Magistrates' Courts Act; Boraine, Van Heerden & Roestoff, 2012, p. 90).

After the application process, a hearing must be conducted before a magistrate and the affected debtor is required to appear in person or to be represented by his or her attorney (s 74B(1)(a) of the Magistrates' Courts Act). The creditors may also attend the hearing of the debtor's application for an administration order (s 74A(5) of the Magistrates' Courts Act). During this hearing, the court may enquire about the debtor's financial position and any other matter which the court deems necessary (s 74B(1)(e) of the Magistrates' Courts Act; *Els v Els* 1967 (3) SA 207 (T)). Both the hearing and the enquiry are conducted to investigate the circumstances that might have any bearing on the granting of the administration order. The hearing and the enquiry are further conducted to establish the amount of money which the debtor will be able to pay his or her creditors if the administration order is subsequently granted.

After the hearing, the Magistrates' Courts may grant an administration order if all the relevant procedures and requirements are met (s 74C(1)(a) of the Magistrates' Courts Act). The administration order must outline that the debtor's estate is placed under administration. Moreover, the administration order must specify the administration fee and the name of the administrator who is appointed to manage the debtor's estate (s 74C(1)(a); 74E(1) of the Magistrates' Courts Act; Boraine,

2003, p. 217). The administration order must indicate the amount of money which must be paid to the administrator by the affected debtor so that it may be distributed to the creditors (s 74C(1)(a) of the Magistrates' Courts Act; Theophilopoulos, Van Heerden & Boraine, 2015, p. 396). If the debtor fails to make the relevant payments, the court will launch an investigation into the debtor's failure to pay and the debtor will be summoned to a hearing on his or her financial position (s 65 of the Magistrates' Courts Act).

3. Advantages of the Administration Order

3.1. An Administration Order is simple and Cheap

An administration order is a relatively simple and cheap statutory debt relief measure that is available to debtors in South Africa (Magau, 2019, p. 42; *Ex parte August 272*; *Fortuin v Various Creditors 574*). Its simplicity and affordability makes it more accessible to over-indebted persons, especially, the poor and low-income earners who cannot cope with their financial burdens (*Weiner v Broekhuysen 2003 4 SA 301 (SCA) at 305E-F*; *Madari v Cassim 38*). For instance, the fact that the basis for granting an administration order is the debtor's mere inability to pay his or her debts is proof of its simplicity. Accordingly, debtors, are placed in an advantageous position because they do not have to prove any advantage to creditors. This follows the fact that the advantage to creditors requirement is very difficult to prove in sequestration proceedings for debtors, especially, the poor and low-income earners because they might not have assets at all or they might have insufficient assets to comply with this requirement (Boraine & Heerden, 2010, pp. 84-88).

3.2. Only the Debtor Can Invoke the Application for an Administration Order

One of the primary purposes of an administration order is to protect natural person debtors, particularly the poor, illiterate and low-income earners who have smaller estates (*Bafana case 583*). Accordingly, the application process for an administration order can only be invoked by the affected debtor and not the creditors (*Bafana case 583*). This could suggest that there is some form of voluntariness and freedom that is afforded to the debtor through the administration order. Nevertheless, creditors still have some involvement in the administration order proceedings in that although they may not initiate the application process,

they may still appoint an independent administrator and interrogate the debtor on his or her financial position (*Madari v Cassim* 38). According to the World Bank, this creditor involvement falls short of the international standards for consumer insolvency (World Bank, 2013, para. 421).

3.3. The Debtor Gets More Time and is Not Completely Removed from His or Her Estate

Unlike sequestration proceedings, an administration order enables the debtor to have more time to settle the debt with his or her creditors without being completely removed from his or her estate. This is something which is certainly not available under sequestration proceedings in South Africa (*Hobson NO v Abib* 1981 (1) SA 556 (N) 559-60). For instance, the full control of a debtor's estate under sequestration proceedings vests with the Master until the appointment of a trustee. Thereafter, the trustee takes full control of the debtor's estate until creditors are paid. A debtor who is facing sequestration proceedings has certain restrictions on his or her status and capacity to enter into contracts as well as the capacity to buy or sell assets from his or her estate (s 20 of the Insolvency Act). A debtor facing sequestration proceedings is also prohibited from holding certain offices and conducting certain businesses without the trustee's consent (ss 23; 58-59 of the Insolvency Act; see further s 69 of the Companies Act). However, under the administration order, the debtor's status and capacity are not restricted *per se* unlike the position under sequestration proceedings (s 20(1) of the Insolvency Act; see *Hobson NO v Abib* 1981 (1) SA 556 (N) 559-60; see also *Mahomed v Lockhat Brothers & Co Ltd* 1944 AD 230 para 241). This gives the debtor under the administration order some flexibility in the control of his or her estate as opposed to the debtor who is under a sequestration order. Be that as it may, the debtor under an administration order is obliged not to incur further debts and not to hide the fact that he or she is under administration (s 74S(1) of the Magistrates' Courts Act).

4. Disadvantages of the Administration Order

4.1. The Monetary Limit of R50 000 Curtails Access for Other Consumers

Access to debt relief in the form of an administration order is only available to debtors whose debts do not exceed R50 000 (s 74(1) of the Magistrates' Courts Act; Mabe, 2019, p. 7). Consequently, debtors whose debts are more than the R50

000 are excluded from utilising the administration order for debt relief. Thus, the poor, low-income earners and other over-indebted persons who cannot prove the advantage to creditors as required for sequestration proceedings are also excluded from utilising the administration order if their debts are more than R50 000 (Asheela, 2012, p. 40; Magau, 2019, p. 45). Although an administration order is meant to assist the poor and low-income earners with smaller estates, it is not an ideal debt relief and debt discharge measure because the R50 000 cap gives it a limited scope of application (*Madari v Cassim* 1950 (2) SA 35 (D) para 38; Van Loggerenberg, Buckle & Erasmus, 1997, pp. 489-490; Boraine, 2003, p. 218; Malange, 2013, pp. 624-630). Furthermore, debts that are payable by means of future instalments in terms of an enforceable and existing contract for example, a mortgage agreement, are excluded from the administration order (Mabe, 2019, p. 8). Moreover, future debts are also not included in the administration order (Boraine and Roestoff, 2002 p. 2; *Cape Town Municipality v Dunne* 1964 1 SA 741 (C) 746) (*Dunne* case). Debtors may be required to make other arrangements for such repayments. In practice, most administration orders are unsuccessful because debtors do not keep up with the regular payments (Mabe, 2019, p. 8; Boraine & Roestoff, 2002, p. 2). In *Dunne case 746*, the court held that the word “debts” in the provisions of the Magistrates’ Courts Act means debts which are due and payable but does not include an obligation to pay future debts (*Dunne case 746*; s 74(1) of the Magistrates’ Courts Act; *Dunne case 746*). This means that the debtor must make alternative arrangements to satisfy debts that are payable in the future (*Dunne case para 746*; Ssebagala, 2017, pp. 235-236; Archuleta, Dale & Spann, 2013, p. 52; Chitimira & Magau; 2020; p. 211).

Given the excessive reliance on the use of credit by consumers in South Africa, the possibility of over-indebted persons accumulating debts exceeding R50 000 cannot be ruled out. Accordingly, it is highly probable that the poor and low-income earners might accumulate debts that exceed R50 000 and fail to rely on the administration order (Chitimira & Magau; 2020; p. 211; Magau, 2019, p. 46). This shows that the administration order does not adequately provide debt relief and debt discharge to debtors, especially, those that are poor and low-income earners. To this end, authors submit that there should be no monetary limit in relation to debts for the purposes of the administration order under the Magistrates’ Courts Act to enable all over-indebted persons to get access to debt relief and debt discharge measures in South Africa (Coetzee, 2015, pp. 178; Mabe, 2017, p. 695). Alternatively, the legislature should consider amending the Magistrates’ Courts Act to empower the courts to have some discretion when the over-indebted persons’

debts exceed R50 000 to enable more debtors to have access to debt relief and debt discharge measures in South Africa (Chitimira & Magau, 2021, p. 296).

4.2. There is No Debt Discharge under the Administration Order

No provision is made for a statutory discharge of debts under the administration order because this order only lapses when all the listed creditors and the administration costs are fully paid (s 74U of the Magistrates' Courts Act; Mabe, 2019, p. 9). An administration order is merely a repayment plan, thus unlike a sequestration order, it does not provide a debtor with a possibility of a debt discharge (Boraine, 2003, p. 218). This poses a challenge to debtors who are required to make regular payments to the administrator for the administration order to remain effective. Therefore, it follows that an administration order requires a debtor to have a steady income to be able to make regular payments to the administrator for distribution to the creditors (*Fortuin v Various Creditors* 575). As such, an administration order is not an ideal measure for debt relief and debt discharge for the poor and low-income earners in South Africa (Asheela, 2012, p. 40; Chitimira & Magau, 2021, pp. 287-288). It is also important to note that future debts which are payable in instalments such as mortgage bonds are expressly excluded from an administration order. This has the potential negative effect on the success of the administration order because the debtor will be required to service future debts and make regular payments to the administrator. Therefore, policy makers should consider amending the Magistrates' Courts Act to enact provisions for debt discharge under administration orders (Chitimira & Magau, 2021, pp. 287-288).

Notably, the corona virus (covid-19) pandemic has resulted in many socio-economic challenges including heightened unemployment and substantial revenue losses for most consumers in South Africa (National Treasury, 2020d, p. 1; Hamadziripi & Chitimira, 2021, pp. 28-31). In addition to this, the National Treasury has indicated that a debt default is likely to ensue on the part of many consumers owing to the covid-19 pandemic induced loss of economic activity (National Treasury, 2020c, p. 1). In this regard, effective debt discharge for over-indebted persons, especially the poor and low-income earners, has become more urgent now owing to the contemporary challenges posed by the covid-19 pandemic in South Africa. Therefore, policy makers should consider introducing other alternatives to debt discharge measures to enable over-indebted persons, especially

the poor and low-income earners to easily access such measures and other debt relief measures in South Africa.

4.3. There is No Time Limit for the Repayment of Debts

The Magistrates' Courts Act does not specifically provide a specific period for the repayment of debts. As a result, many debtors could remain trapped in their debts for longer periods (Nel, 2006, p. 2). The absence of a specific time frame for which an administration order may be in force could weaken its effectiveness in providing debt relief to over-indebted persons in South Africa (Mabe, 2019, pp. 8-9). Currently, it appears that an administration order only terminates upon the full settlement of administration costs and creditors' claims (s 74U of the Magistrates' Courts Act; Kelly-Louw, 2008, pp. 200-222). Put differently, an administration order only lapses after the repayment of the incurred debts and a certificate to that effect is lodged with the clerk of court and distributed to all the creditors by the administrator (s 74U of the Magistrates' Courts Act). The absence of a specific time frame within which debtors should be subjected to an administration order has the potential of negatively affecting their financial position since they will be expected to service the debt and related costs for as long as they are still subjected to that order. Policy makers should consider enacting provisions that enable the affected debtors to qualify for a debt discharge if it is evident that after a certain period of time, their debt and financial position does not improve. This could enable debtors to save their disposable income by not having to service an indefinite debt which also attracts indefinite administration costs (s 74(1)(b) of the Magistrates' Courts Act). Accordingly, over-indebted persons should be afforded some flexibility as well as an opportunity to save costs and utilise debt relief and debt discharge measures timeously (see Coetzee, 2018, pp. 609; World Bank, 2013, paras 162-163; Mabe, 2019, pp. 2-28).

4.4. Lack of Robust Out-of-Court Debt Discharge Measures

The administration order may only be effected through the Magistrates' Courts (s 74(1)(b) of the Magistrates' Courts Act; Mabe, 2019, pp. 8-9). However, this rigid court-based approach curtails access to the administration order for the poor and low-income earners who do not have sufficient disposable income to pay litigation costs and related administration costs (s 74(1)(b) of the Magistrates' Courts Act). Accordingly, policy makers should consider introducing out of court debt relief and

debt discharge mechanisms that are easily accessible to the poor and low-income earners. In this regard, it is submitted that the Magistrates' Courts Act should be amended to introduce other alternative debt discharge measures and expressly provide for the use of an administration order as an out of court debt relief and debt discharge measure in South Africa (see Coetzee, 2018, pp. 609; World Bank, 2013, paras 162-163; Mabe, 2019, pp. 2-28). Moreover, this approach could ameliorate the challenges posed by the covid-19 pandemic which, *inter alia*, restricted the access to courts for many over-indebted persons, especially, during the national lockdown in South Africa (Chitimira & Magau, 2021, pp. 295-296).

4.5. Administration Costs Imposes a Burden on the Affected Debtors' Income

The remuneration expenses deductible by the administrator under the administration order do not usually exceed 12.5 per cent of the amount received from the debtor (s 74L(2) of the Magistrates' Courts Act; *African Bank Ltd v Weiner* 2005 4 SA 363 (SCA) 373 (*African Bank Ltd case*). These administration costs place an additional burden on the affected debtor's income, leaving less money available for the administrator to distribute to the creditors (*African Bank Ltd case* para 373). In *Weiner NO v Broekhuysen* 2002 4 All SA 96 SCA para 26 (*Weiner case*), the court held that remuneration expenses are subject to a maximum of 12.5 per cent of the total money collected by the administrator of the administration order (s 74L(2) of the Magistrates' Courts Act). Section 74J(1) of the Magistrates' Courts Act requires the relevant courts to compel an administrator to collect payments and effect distributions to creditors at least once in every three months (s 74J(1) read with s 74L(2) of the Magistrates' Courts Act; *Weiner case* para 26). This requirement may only be changed where there is an agreement by the creditors or where the court orders otherwise (*Weiner case* para 26).

5. Concluding Remarks

As indicated above, the article provides an overview analysis of the administration order under the Magistrates' Courts Act in order to, *inter alia*, examine its enforcement to protect over-indebted persons who are poor, illiterate and low-income earners in South Africa (*Bafana case* 583; *Coetzee v Government of the Republic of South Africa*; *Matiso v Commanding Officer, Port Elizabeth Prison* 1995 (4) SA 631 (CC) 641). In this regard, the requirements, procedures, possible advantages and disadvantages of the administration order as a debt relief measure

in South Africa were explored. The article also discussed the accessibility and viability of the administration order to the poor and low-income earners in South Africa and it isolated various gaps and flaws affecting the effectiveness of the administration order as a debt relief measure under the Magistrates' Courts Act (Boraine, 2003, pp. 218-241). In light of this, it is submitted that policy makers should carefully consider to streamline the rigid statutory requirements for debt relief and debt discharge under the relevant legislation to enable all over-indebted persons to easily access and utilise debt discharge measures in South Africa.

It is further submitted that the monetary limit in relation to debts for the purposes of the administration order under the Magistrates' Courts Act should be removed to enable all over-indebted persons to get access to debt relief and debt discharge measures in South Africa. The other option is for the policy makers to amend the Magistrates' Courts Act to empower the courts to have some discretion when the over-indebted persons' debts exceed R50 000 to enable more debtors to have access to debt relief and debt discharge measures in South Africa (Chitimira & Magau, 2021, p. 296).

Policy makers should also consider introducing other alternatives to debt discharge measures to enable over-indebted persons, especially the poor and low-income earners to easily access such measures and other debt relief measures in South Africa. Consequently, alternative debt discharge measures such as no asset procedures, summary instalment orders and individual voluntary arrangements should be statutorily introduced to enable all over-indebted persons to easily access and utilise them to get debt discharge in South Africa. Policy makers should further consider amending section 74 of the Magistrates' Courts Act to enact provisions that enable the affected debtors to qualify for a debt discharge if it is evident that after a certain period of time, their debt and financial position does not improve. This could enable debtors to save their disposable income by not having to service an indefinite debt which also attracts indefinite administration costs (s 74(1)(b) of the Magistrates' Courts Act). Lastly, the Magistrates' Courts Act should be amended to expressly provide for the use of an administration order as an out of court debt relief and debt discharge measure in South Africa.

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