The Legal Aspects and Processes of Collecting Debt

1 Day | R3, 450 (ex VAT) | (Public price per delegate. Significant onsite discounts apply).

Why you should attend this course?
The legal framework that today’s credit departments have to work under has made collecting money more difficult for companies. The introduction of new legislation has meant that both creditors and debtors have had to adjust to new ways of operating – with more pressure than ever before on creditors to collect monies responsibly. Unfortunately, many corporates are using these changes to avoid or delay their financial payment obligations.

This course will cover the key legal aspects and processes of collecting debt, from the wording of a sound credit application to preparing for debt enforcement and possible litigation. Areas such as fees, interest and other charges, debt enforcement in courts, dealing with liquidators or outsourcing difficult collections will be addressed. Issues arising from the New Companies Act, National Credit Act, Consumer Protection Act and the Protection of Private Information Act (POPI) will also be covered comprehensively.

Who should attend this course?
This course will give more experienced credit controllers the information they need to refine and further improve their practical collection skills.
Previous delegates include: Debt and Credit Managers, Financial Managers and Directors, Credit Controllers, Accounts Officers, Bookkeepers, Accountants, Admin Assistants, Credit Supervisors, Debtors and Creditors Clerks, Internal Auditors, Accounts Support Staff and Small Business Owners.

What can you expect to learn?
- Introducing the SA legal debt system.
- Looking into terms and conditions of trading, forms of security and legal aspects of credit applications.
- Uncovering passing of ownership and risk laws in relation to securing debt.
- Discovering legal options available to assist in recovering debt.
- Knowing when to negotiate, arbitrate or litigate and prepare for court cases.
- Looking at how to recover legal costs and interest options.
- Evaluating credit bureaus for civil debt collection.
- The effect on collections of Business Rescue (Chapter 6 of the New Companies Act) and other Acts.
Training Outcomes / Comprehensive Programme

The Dangers of Supplying without a Credit Application Form
- The use of the credit application as a contract of sale
- Prevention of counter claims
- Formalisation of limits and terms
- Reservation of ownership
- Cession of rights

Introduction to the South African Legal System
- An overview of the workings of the legal system
- The current law relating to Debt: Introducing the National Credit Act, New Companies Act, Usury Act, Insolvency Act and others
- Recent Legislative changes that affect you with regards to the legal process of collecting debt
- An update on the latest debt rulings coming from SA courts

Understanding the Profile of your Debtor
- The legal standing of:
  - Sole Proprietorships
  - Partnerships
  - Companies
  - Closed Corporations
  - Trusts

The Legal Aspects of the Credit Application
- Why a well prepared credit application is so important
- The legality of a credit application form
- A discussion on the application for credit facilities
- The terms and conditions that should appear on the reverse of the credit application form
- Verifying the information and assessing risk

Understanding Trading Terms and Conditions
- Understanding the nature of the sale
- What is the form of contract entered into
- Standard clauses and conditions to cover your company
- Ensuring your rights to withdraw credit
- Specifying actions in case of breach and detailing who will pay costs

Investigating Forms of Contract Security
- Suretyships, Liens and Pledges
- Notarial Bonds
- Cession of Books debts
- Bonds over Immovable Property
- Post Dated Cheques
- Acknowledgement of Debt
- Letters of Credit
- Landlords Hypothec

The Laws Regarding Passing of Ownership and Risk
- The law regarding ownership
- Preventing ownership passing until the full purchase price has been paid

When is Payment said to be Legally Completed
- Conditions of Sale and when is payment said to be due
- The various methods of legal payment

Payment in Full and Final Settlement
- Prescription: the relevant time frames and methods to prevent your debts from prescribing

Remedies Available to a Creditor to Recover Debt
- Steps to be taken to collect the debt
- The formalities to follow when payment is withheld
- Means of applying pressure for payment
- Dealing with the Unscrupulous Debtor
- Insolvencies and Liquidations

When to Negotiate, Arbitrate or Litigate
- How to go about negotiating payment
- The application of Arbitration to the collection process
- The Golden Rules to follow before litigation

Preparing to take the Case to Court
- Deciding when you should sue
- Understanding the legal process
- Effectively briefing the attorney
- Time and estimated legal cost structure to recover debt

Debt Litigation - The Magistrates Court
- How to get a summons issued
- Obtaining a Default Judgement
- Procedures open to an attorney after summons
- Defended and Undefended Actions
- A flow chart of the litigation process
- Recession of Judgment

Recovering Legal Costs and Interest
- Understanding the legal charges of an action
- Procedures to obtain a legal cost ruling
- Obtaining common-law interest
- Requesting Agreed Interest and Penalty Interest

The Value of a Credit Bureau when Collecting Civil Debt
- How and when to utilise the services of a Credit Bureau
- Why Credit Bureaus can be a cheaper option to litigation
- The limits to a Credit Bureau’s services

Business Rescue in Terms of Chapter 6 of the New Companies Act
- Initiation of Business Rescue
- Commencement of the Process
- Meeting with Creditors
- The Business Rescue Plan
- Effect of the Plan on Creditors
- Effect of the Business Rescue Plan on:
  - Legal Proceedings
  - Property Dealings
  - Company Contracts