

CHARTERED ACCOUNTANTS

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MoneyTalk

The National Credit Act - How does it affect You?

The National Credit Act ("the Act") became fully operative on 1 June 2007. The aim of the Act is to "promote and advance the social and economic welfare of South Africans, promote a fair, transparent..... accessible credit market and industry and to protect consumers..." The most important feature of the Act is that it is designed to protect you, the consumer, against unlawful credit provision.

The Act has created a National Credit Regulator (NCR) which has also become fully operational since June 2007. The NCR is responsible for the registration of industry participants and will carry out research and educate the public. In addition it is tasked with the investigation of complaints and to ensure enforcement of the Act.

We have all heard about the Act by now - this article will highlight only certain key features of both the NCA and NCR, specifically in terms of how they may affect you.

WHO DOES THE ACT APPLY TO?

The Act generally applies to every credit agreement between parties dealing at arms length and made in, or having effect in, South Africa.

The following agreements are EXCLUDED from the operation of the Act:

A credit agreement in terms of which the consumer is:

a juristic person* whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds **R1 million**;

the State, or an organ of State;

a large agreement (as defined in the NCA**) in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below R1 million;

* a juristic person is related to another juristic person if one of them has direct or indirect control over the whole or part of the business of the other or if a person has direct or indirect control over both of them.

** The NCA differentiates between small, intermediate and large agreements depending on monetary thresholds stipulated in the National Credit Regulations:

a small agreement is an agreement of which the credit limit is R15 000 or less;

an intermediate agreement is a credit facility (as defined) of which the credit limit falls above R15 000 or a credit transaction (as defined) of which the credit limit falls above R15 000 but is less than R250 000; and

a large agreement is a mortgage agreement or a credit transaction (both as defined) of which the principal debt exceeds R250 000

Thus, for example, stokvels, family loans, shareholder loans, a company financing an equity buy in - (in terms of Section 38 of the Companies Act), incidental credit agreements, and where the consumer is a legal entity whose annual turnover or asset value exceeds R1 million - will **not** fall within the ambit of the Act.

Note: Staff Loans are deemed to be at arms length. The NCR have held that these WILL fall within the definition of credit agreements and thus within the ambit of the Act. Thus if the employer qualifies as a credit provider (see below), then it will have to be registered as such with the NCR.

REGISTRATION OF INDUSTRY PARTICIPANTS

All industry participants (credit providers, credit bureaux and debt counsellors) must have registered with the NCR within 40 business days after 1 June 2006. If they have not registered as such, they CANNOT extend credit or trade as a credit provider.

The reasons for this requirement of registration is so that a national database of credit agreements and loans will be registered and listed with the NCR - so that prospective credit providers can check this database to assess if you can afford to take on more debt before giving you a loan or extending credit to you - as part of an "affordability assessment".

The following industry participants are REQUIRED to register with the NCR:

a) Credit providers

Who have entered into at least 100 agreements or have a total outstanding book of credit of more than R500 000;

Are juristic persons and individuals;



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Have a commitment to combating over-indebtedness

Thus, those that have fewer than 100 agreements, or a total outstanding book of credit equal to or less than R500 000 or provide incidental credit* as a result of outstanding transactions will not fall within the definition of a credit provider.

* **Incidental credit agreements** - are agreements whereby no formal agreement of credit is signed and concluded, and is defined in the Act as an agreement in terms of which an account is tendered for goods or services that have been or will be provided to the consumer where:

A fee, charge or interest becomes payable when payment of an amount charged in terms of that account is not made on or before a determined period or date or;

Two prices are quoted for settlement of the account (early settlement discount)

The Act does not require providers of incidental credit agreements to register- however certain sections of the Act still apply to these transactions - such as providing a multi-lingual contract, conducting an affordability assessment & quotation - otherwise the loan or credit agreement may be deemed to be reckless credit (see below).

b) Credit Bureaux

All Credit Bureaux must register. An entity qualifies as a Credit Bureaux if it is engaged in the business of receiving reports or investigating credit applications, credit agreements, payment history or patterns or consumer credit information regarding consumers or prospective consumers.

c) Debt Counsellors

Debt Counsellors may be registered as such if they have complied with the Act and satisfied the training requirements of the NCR. They will conduct independent enquires into consumers financial circumstances and make recommendations to the Courts regarding debt restructuring and the suspension of reckless credit agreements.

WHAT IS RECKLESS CREDIT?

The Act aims to stamp out reckless credit by introducing measures such as the requirement for Quotations (see below) and affordability assessments. Reckless credit is when a credit provider gives you a loan or other credit without assessing whether you can repay the loan or even if you do not understand or appreciate the risks, costs or obligations under the credit agreement or if granting the credit leads you to becoming over indebted.

QUOTATIONS

The Act ensures that you are provided with all the relevant information to make an informed decision before entering into a

credit agreement. A credit provider must provide you with a QUOTATION (in prescribed format) showing all the relevant costs, repayment values, before you sign. The quotation is valid for 5 days, during which time you are free to look at other options.

The Act creates a responsibility on credit providers to refuse to give you credit if you cannot afford it.

INTEREST RATES

The Regulations of the NCA specify the maximum interest rates and transaction fees that can be charged on credit agreements or loans.

BANNING OF NEGATIVE-OPTION MARKETING

The Act bans this type of marketing - whereby you have to provide a "NO" response to offers of credit to stop future offers automatically coming through to you.

COMPLAINTS

You can take your disputes with credit providers to a National Consumer Tribunal - which will mete out penalties and issue declaratory orders on your behalf.

RIGHT TO CHECK AND/OR CHALLENGE INFORMATION AT CREDIT BUREAUX

The Act gives consumers the right to check their records at the Credit Bureaux once a year (at no charge). You also have the right to challenge any information held at the Credit Bureaux or NCR, which bodies are then required to investigate the challenge (also at no charge).

FURTHER CONSUMER RIGHTS

The Act provides you, the consumer with the following important rights:

The right to apply for credit;

To be protected against discrimination in the granting of credit;

To be informed of the reason why the application for credit was refused, if you ask for the reason;

To receive a credit agreement in plain and understandable language and

To receive a copy of your credit agreement and a replacement copy when you request one.

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