

What does the National Credit Act stipulate?

You have probably by now realized that the consequences and the impact of the new National Credit Act are quite severe. We would like to give you a short summary and framework of precautionary steps that should be taken to ensure that you do not fall into the pitfalls created by this new legislation.

For practical reasons, it might be better to start with the end in mind. A National Credit Tribunal was established in terms of the National Credit Act. Should credit providers not comply with one of the multiple provisions stipulated in the Act as well as the regulations of the new Credit Act, this tribunal may declare a contract unlawful and therefore in effect null and void. The effect of this will be that all payments made by the consumer or credit receiver will have to be refunded together with the prescribed interest, which is currently the Repo Rate + 3.5% per annum. Credit providers will not have any claim for damages arising from the depreciation of goods sold to the consumer.

Should a credit provider decide to take action on the grounds of enrichment against the consumer, that enrichment, if the credit provider is successful, will fall into the state's pocket.

The second concept that should be very clear to credit providers, is the powers that have been given to debt counsellors. Should credit providers not comply with specific provisions contained in the National Credit Act, together with its regulations, a consumer has the right to approach these debt counsellors to establish whether he is over indebted. Should this debt counsellor indeed find that the consumer is over indebted and that he cannot comply with his obligations under credit agreements, he will have the power to advise a court of law to postpone all obligations under these agreements, or even to restructure the consumer's liabilities.

The new National Credit Act is without any doubt, the lengthiest act that South Africa has seen in the last ten years, especially if all published regulations are taken into account. For obvious reasons we shall not even try to attempt to deal with all the relevant provisions and clauses.

In an attempt to give a brief background of all the obligations and precautionary steps that should be taken by credit providers, we shall list compulsory steps in chronicle order:

All credit providers should have registered by 28 July 2006. All agreements entered into after this date without proper registration with the National Credit Regulator, will be declared unlawful agreements, should the consumer approach the tribunal or a debt counselor, after 1 September 2007.

Credit providers are obliged to provide all consumers or credit receivers with whom they have existing credit agreements, with a confirmatory letter. This letter should make reference to the current interest rate as charged, outstanding balance, initial capital, administration fees charged, service fees charged and the date on which the agreement will expire.

All credit contracts must be in a language and form which are easily understandable and should be in at least two languages. Please note that this order is taller than it seems to be bearing in mind that 80 % of South African consumers are illiterate.

The Act therefore provides that all credit providers are obliged to do an analysis of the consumer's profile, to ensure that the provider can afford the credit applied for.

All credit providers, including banks, must ensure that their credit applications comply with the requirements set out in the Act. Although all South African banks already have mechanisms in place in terms of which a client is rated, such analysis, should be stored in case the consumer refers this matter to the tribunal in future. There is also an onus on the provider to explain the terms of the contract to the consumer in easy understandable terms and in a language which the consumer understands. Remember that the Act prohibits any provider to obtain any credit information or credit portfolio of the consumer without his written consent thereto. The reason being that the Act provides that the credit bureau can be held liable for incorrect information.

One of the main purposes of the Act is to prevent discrimination in the credit market and to ensure that credit is available to all South African citizens. The Act gives a consumer, whose application for credit was refused, the right to written reasons for the decision. Proper rating mechanisms will obviously assist credit providers herein.

A cooling off period will be compulsory for all credit agreements.

Consumers under credit agreements have the right to return the purchased goods, at any given time during the contract, to the provider to be resold. There is a long list of rules that regulate these actions by consumers.

Negative marketing options are prohibited and constitute a criminal offence (remember that only a consumer may request for his credit limit to be raised which request must be in writing).

Door to door marketing and informal launches of credit contracts are prohibited and also constitute criminal offences.

Make sure that you comply with the maximum interest rate prescribed by the National Credit Act. Different rates apply to different types of contracts. There is also a limit on service fees and administration fees on all credit agreements. These fees differ for the various types of contracts.

The Act requires a letter of demand to be sent to consumers informing him of any default and of his right to approach a debt counsellor. These letters of demand may only be sent to consumers after they have been in default for at least ten days. A further twenty days after the prescribed letter of demand was sent, has to lapse before any further actions may be taken. If the consumer has already approached a debt counsellor, all further actions will be suspended.

The Act also amends the In Duplum Rule by providing that the sum of the interest and legal costs in respect of the outstanding debt may not exceed the initial capital amount of the contract.

It is impossible to deal with all the relevant clauses and provisions in the National Credit Act in this article. Remember that all advertising and marketing strategies are also now being regulated by this Act. Failure to comply with the relevant sections will render the agreement concluded invalid.

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