



# Updates from the credit industry forum

## Circular 02 of 2019

The objective of this Circular is to provide the industry with the latest update regarding the projects undertaken by the Credit Industry Forum.

In February 2019 the CIF held its 25th CIF meeting and the 26th CIF meeting is scheduled to take place on 5 April 2019.

Herewith an update on the outcome or current progress of sub-committees that were established to address identified operational difficulties that come with the implementation of the National Credit Act as amended ("the Act").

## MATTERS RESOLVED:

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
<p><b>Joint Bonds</b></p>	<p>The sub-committee was established to address operational difficulties that come with joint bonds in debt review applications.</p> <p>Various factual scenarios regarding the treatment of joint mortgage agreements in the debt review process were considered and consensus were reached as per Annexure "A" hereto.</p> <p>Although consensus could not have been reached on whether a party to a joint mortgage agreement, who did not apply for debt review, has to be cited and served as an interested party to the debt review court / tribunal application, the NCR's non-binding recommendations is that a non-debt review consumer should be cited and served as an interested party in a debt review Court/ Tribunal application.</p>
<p><b>Protection of Personal Information Act</b></p>	<p>This sub-committee was established to identify and clarify the implementation of the Protection of Personal Information Act 2013 and Regulations on the Debt Review Process and to agree on standard practical rules and/or processes to ensure compliance with the Act. The sub-committee completed its mandate and documentation was drafted to provide non-binding recommendations to the industry to assist in the implementation of the POPI Act during the debt review process.</p>

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
	<p>The above documentation is collectively attached hereto as Annexure "B1" to Annexure "B5", which consist of:</p> <ul style="list-style-type: none"> <li>i. Understanding the Protection of Personal Information Act within the debt review industry;</li> <li>ii. Guideline in respect of a Debt Review Privacy Notice</li> <li>iii. Example of a Mandate for Debt Counsellors</li> <li>iv. Example of a Consent Document for the PDA</li> <li>v. Proposed terms and conditions to be incorporated into an operator agreement.</li> </ul> <p>The contents of the above documentation are intended to convey general information only and not to provide legal advice or opinions. It should not be relied upon for legal advice in any circumstance or factual situation.</p>
<b>End Balance Differences</b>	<p>This sub-committee was established to identify weaknesses in the existing processes and to find practical solutions to deal with the end balance discrepancies.</p> <p>The sub-committee was dissolved as it was concluded that systematic solutions are in place to overcome end-balance discrepancies.</p>
<b>Pension Backed Lending</b>	<p>This sub-committee was established to consider and propose remedies to eliminate a list of difficulties experienced when processing a form 17.2 and any other issues related to the application of section 71 on pension backed lending as a long term debt.</p> <p>It was confirmed that a Pension Backed Lending agreement constitutes a credit agreement as contemplated in the National Credit Act 34 of 2005. It was agreed that for operational and contractual reasons the existing process of salary deduction would remain undisturbed. However, where the terms by way of interest rate and term were amended by agreement, the repayment amount would be restructured.</p> <p>This sub-committee has completed its mandate.</p>
<b>Review of the Withdrawal Guidelines</b>	<p>Since 2015 legal clarity has been obtained in several judgments which necessitated a review of the NCR withdrawal guidelines 002/2015. This sub-committee was revived to review the said guidelines to bring it in line with the current legal framework. The sub-committee completed its mandate and presented proposed reviewed withdrawal guidelines for consideration and approval by the NCR. The NCR will be communicating with the industry in due course.</p>

**MATTERS PENDING:**

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
<b>Reckless Lending</b>	<p>The sub-committee was established to clarify and review the process followed by debt counsellors when lodging complaints with the NCR against credit providers for not providing information and / or documents needed for reckless lending investigations.</p>

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	<p>Currently the sub-committee seeks to reach consensus on:</p> <ul style="list-style-type: none"> <li>a) the type of documentation and information requested by a debt counsellor to assess reckless lending;</li> <li>b) the time period within which documentation and/or information is to be provided by the credit provider;</li> <li>c) a preliminary assessment to be conducted and depending on the outcome thereof, a full reckless lending investigation to be conducted;</li> <li>d) whether a basis for reckless lending allegations should be disclosed.</li> </ul>
<p><b>National Credit Amendment Act</b></p>	<p>The sub-committee was established to address operational difficulties that come with the following:</p> <ul style="list-style-type: none"> <li>a) Section 71 (i.e. when a debt counsellor may issue a clearance certificate, end balance disputes, classifications of long-term agreements, whether court orders must be rescinded or not and others)</li> <li>b) Section 86(10) (i.e. what should happen if the matter is in court or before the NCT and the consumer is not making payments)</li> <li>c) Section 126B (i.e. process on how to indicate whether the credit agreement has prescribed or not.)</li> <li>d) Section 58 and 58A (i.e. the processes to be followed regarding the voluntary withdrawal of registration by a registrant)</li> </ul> <p>This sub-committee is still pending.</p>
<p><b>DCRS (Debt Restructuring Rules System)</b></p>	<p>Future potential DCRS System enhancements are tabled and discussed at the sub-committee. The sub-committee is provided with feedback on the agreed developments on the system. To date of the 8 DCRS agreed changes, one has been implemented and two changes are currently in testing stage. The committee is currently considering 1) how compliancy with DCRS can be managed / monitored and improved upon and 2) how the low level of DCRS utilisation can be increased at industry level.</p>
<p><b>Annual Review in Debt Review</b></p>	<p>In order to facilitate the achievement of the stated objectives of the National Credit Act 34 of 2005 (NCA) as articulated in section 3, more particularly:</p> <ul style="list-style-type: none"> <li>i. addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations; and</li> <li>ii. providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements,</li> </ul>

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	<p>it is considered imperative that ongoing reviews, at least on an annual basis of the consumer’s progress within the debt review process should be undertaken.</p> <p>Even though such annual reviews are referred to, inter alia, in the Task Team Agreement (which was reaffirmed by member associations in 2015) and the Debt Counselling fee guidelines, it is evident that many Debt Counsellors do not undertake these reviews.</p> <p>This sub-committee is accordingly tasked to consider the problem and the reasons for non-adherence and to consider guidelines on how the issue can be addressed from a procedural perspective.</p>
<b>STANDARDISED COURT ORDER</b>	<p>This sub-committee was established to develop a standardised debt re-arrangement court order framework or template to ensure consistencies and alignment across all Magistrates Courts who adjudicate on Debt Review matters and without interfering with the discretion of any presiding officer.</p> <p>Currently the following issues are being deliberated: The Committee compiled a guideline document together with a template court order to be utilized as a best practice. The outstanding issues which the committee face:</p> <ul style="list-style-type: none"> <li>• Time period within which a DC should supply CP’s the court order.</li> <li>• Documents to be attached/annexed to the court order</li> </ul>

Just a kind reminder of the purpose of the CIF being as follows:

- 1.1 identify and address operational difficulties that come with implementation of the National Credit Act as amended (“the Act”);
- 1.2 Facilitate and negotiate industry agreement and co-operation on related credit industry aspects;
- 1.3 Make advisory recommendations to the NCR which, upon acceptance, will be issued as guidelines to the industry;
- 1.4 Engage on strategic industry issues; and
- 1.5 Promote the spirit and purpose of the Act when carrying out the delegated mandate.

All registrants are kindly invited to submit any proposals or topics for discussion to [cif@ncr.org.za](mailto:cif@ncr.org.za) and are requested to propose any agenda items to be considered by the CIF and insofar as it relates to operational difficulties that come with the implementation of the National Credit Act 34 of 2005.

**FURTHER INFORMATION**

Please contact Isabella Klynsmith on **011 554 2819** or Morris Maluleke on **011 554 2789** or Timmy Van Der Grijp on **011 554 2802** should you have any queries. Written enquiries may be directed to [cif@ncr.org.za](mailto:cif@ncr.org.za).



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