



PAYMENT OF DEBT COUNSELLOR FEES

CIRCULAR No. 6 of 2016 – PAYMENT OF DEBT COUNSELLOR FEES

The purpose of this circular is to inform all debt counsellors and credit providers of the position of the National Credit Regulator (“the NCR”) regarding the payment of the debt counsellor’s fees in the first month of distribution, so as to clarify the consequences of the *FirstRand Bank and Nedbank v Coetzee* case.

In the case of *FirstRand Bank and Nedbank v Coetzee*, the Court reasoned that the fees payable to a debt counsellor may not be preferred to those of the consumer’s credit providers, and that a debt counsellor may make provision for his or her own fees and expenses in specified amounts to be paid by instalments, ranking equally with the consumer’s other creditors.

The Court reasoned that a debt counsellor “may make provision” for the payment of the debt counselling fees in instalments, thereby not creating a peremptory requirement in this regard. Furthermore, the consequence of the judgment – which the NCR believes to be unintended in nature – is that the industry-agreed process, which culminated in the issuing of the Fee Guidelines by the NCR in 2011, has been subverted. As a final consideration, in the event that a High Court in a different division disagrees with the North Gauteng High Court’s reasoning in the *FirstRand Bank and Nedbank v Coetzee* case, a further unintended consequence would be that the debt counsellors who refer their applications to the Magistrates Courts falling within the jurisdiction of that High Court would be subject to a different fee payment process. The NCR is of the view that it could not have been the intention of the North Gauteng High Court to create such inconsistency.

It is therefore the considered view of the NCR, as the custodian of the credit industry, that all debt counsellors are required to comply with the Fee Guidelines for Debt Counsellors, which were issued by the NCR in 2011 so as to ensure that the industry-agreed payment process is implemented uniformly throughout the debt counselling industry.

FOR MORE INFORMATION

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