

**January 2017**

**The National Credit Regulator applies for a declaratory order in the North Gauteng High Court**

The National Credit Regulator (NCR) has applied for a declaratory order in the North Gauteng High Court to obtain legal clarity on the effect of section 124 of the National Credit Act 34 of 2005 on the common law set-off. The application has been brought against Standard Bank.

The NCR is seeking an order from the High Court that the common law set-off has been superseded by section 124 of the NCA. The common law set-off is applied when two persons owe each other and the debts are extinguished by setting them off against each other.

“The typical application of the common law set-off is found in the banking industry where a bank would transfer funds from a consumer’s savings account to settle an outstanding balance on the credit account without the consumer’s authorisation. The consumer’s savings account is debited in order to settle a debt owed under a credit account”, says Nthupang Magolego, Senior Legal Advisor at the NCR.

“This practice can put a consumer in financial difficulties since the consumer can be left with little or no money to pay other creditors or meet their living obligations. The position of the NCR is that a bank must obtain the consumer’s authorisation to transfer funds from the consumer’s savings account to settle the debt owed to the bank under a credit agreement”, Magolego added.

**Ends**

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