



## **THE NATIONAL CREDIT ACT, 2005**

**'All you need to know about the National Credit Act as a consumer'**

**Volume 1: 2007**







## Foreword

This booklet serves as a guide to the National Credit Act 34/2005 (NCA) also referred to as 'The Act'. It is for persons who take up credit in the form of a loan, lease, instalment sale, credit card or obtaining goods or services on credit, etc from a credit provider. It is also for the use of persons or organizations acting as consumer credit intermediaries such as advice centres, trade union officials and provincial consumer directories. It is an attempt to simplify the provisions of The Act as they pertain to the consumer. This booklet is not legally binding. Should there be any doubt about the meaning or application of any of the provisions of The Act, the relevant sections of the legislation as well as the regulations should be consulted.

When using the booklet, please note that at the end of each chapter there is a glossary simplifying terms for the benefit of the consumer who may have limited knowledge of credit terms.

Where possible, the relevant sections of The Act have also been indicated should the reader need further clarification on the topic discussed.

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## Chapter 1

### Background to the National Credit Act

The aim of this chapter is to give the consumer a general overview of The ACT, by answering the following questions about The Act:-

- Why was the Act introduced?
- What is the purpose of the Act?
- Which credit providers does the Act regulate?
- Which credit agreements does the Act regulate?

#### The National Credit Act was introduced to:

- Promote the economic and social welfare of all South Africans
- Promote a fair and transparent credit market
- Protect consumers and their rights in the credit market
- Regulate all **credit providers, Debt Counsellors and credit bureaux**
- Limit the cost of credit
- Level the playing fields between credit providers by standardizing the way in which credit is granted by credit providers, so that consumers can compare what is being offered.

## The purpose of the National Credit Act is to:

- **Simplify and standardize the manner in which information is disclosed in credit agreements.** The Act specifies the manner in which credit providers have to provide information on credit agreements. The Act also requires that credit providers provide this information in simple language that the consumer can understand. The reason for this is that consumers should be able to read and understand the information so that they can compare the information on credit agreements from different credit providers in order to make informed choices.
- **Regulate credit burueax and the information they keep on record about consumers.** Act stipulates the type of information that credit burueax can keep on consumers, how the information is obtained, used, and for how long that information may be kept on their records. More importantly, The Act aims to ensure that credit bureaux keep accurate records on consumers.
- **Ensure that all credit products are handled in the same way by different credit providers.** A credit product refers to the manner in which a credit provider gives credit to a consumer. Examples of credit products include overdrafts, credit cards, personal loans, clothing or furniture accounts. The aim is to ensure that the consumer knows that all credit providers will treat the same products in the same way.

- **Assist over-indebted consumers to restructure their debt.**  
The Act provides for consumers, who are unable to service their monthly repayments on their credit agreements, to be assisted by Debt Counsellors to rearrange their monthly repayments with their credit providers. The Act also aims to prevent over-indebtedness of consumers and to encourage responsible lending by credit providers.
  
- **Have one regulator to regulate the entire credit market – the National Credit Regulator (NCR).** The Act establishes the NCR, which is responsible for ensuring compliance with The Act. Credit providers are required to register with this body in order for them to operate legally. Consumers can lodge complaints regarding credit providers and credit bureaux with the NCR if they have been unable to resolve their disputes directly with the credit provider or the credit bureaux.
  
- **Establishing the National Consumer Tribunal to adjudicate matters relating to The Act.** The Act further creates the National Consumer Tribunal which is an independent consumer court tasked with hearing cases and making orders relating to consumer complaints and disputes with credit providers, contraventions of The Act and decisions of the Regulator.

**The National Credit Act regulates the following credit providers:**

- Banks
- Micro lenders
- Retailers such as clothing and furniture stores
- All businesses, companies, close corporations and individuals who do business on credit, provide loans, or charge interest on overdue accounts.
- In addition, it regulates credit bureaux and Debt Counsellors.

**The Act regulates the following credit agreements:**

- Mortgage bonds
- Credit facilities like store cards, bank overdrafts, credit cards, garage cards, personal loans, instalment sales, leases, pawn and discount transactions.
- **Developmental credit**
- **Incidental credit**
- Credit guarantees.





## Glossary

- **Credit provider** – a party who lends money or provides credit to another under a credit agreement.
  
- **Debt Counsellors** individuals registered with the NCR, who assist over-indebted consumers to restructure their debt, either by way of negotiating with the credit providers including obtaining a court order on behalf of consumers.
  
- **Credit bureaux** - entities that:
  - ↳ retain and disclose for payment, personal (credit) information and receive reports or investigate credit applications, credit agreements, payment history or patterns;
  - ↳ compile and maintain data from reports containing the above;
  - ↳ issue reports based on the abovementioned data.

**Credit agreement** – an agreement in terms of which a credit provider sells goods or lends money to a consumer. The consumer is expected to agree to the terms and sign the agreement. The agreement will contain information about the credit product that the consumer has applied for and been granted. This information should include questions such as the repayment period, insurance, interest and other fees charged and what will happen if the consumer fails to pay his/her instalments.

# Glossary

**Developmental credit** – a special type of credit that is created and defined in the National Credit Act. In terms of The Act, there are three types of developmental credit i.e. loans for educational purposes, loans to build, expand or improve low-cost housing and loans to set up small- and medium-sized businesses.

**Incidental credit** When the original agreement for the sale of goods and services is entered into, between any supplier and consumer the intention is not to extend credit to the consumer. In other words it is not a credit agreement, but due to the consumers failure to pay for the goods or services on or before a determined date, a fee, charge or interest is added to the amount due. The agreement is now referred to as an incidental credit agreement. An example of incidental credit would be an overdue municipal account or an overdue doctor's account.

(Sections 5, 8, 10, 12, and 26)

## OTHER RELATED TOPICS:

**Consumer rights (chapter 2)**  
**Credit agreements (chapter 3)**  
**Credit burueax (chapter 9)**  
**Disputes and complaints (chapter 10)**  
**Enforcement of the ACT (chapter 11)**



## Chapter 2

### Consumer credit rights

**The National Credit Act guarantees consumers the following rights, which will be covered in this chapter:**

- The right to apply for credit
- The right not to be discriminated against when applying for credit
- The right to be given reasons for credit being declined
- The right to be given documents in an official language that the consumer understands
- The right to be given documents in a clearly understandable language
- The right to be given written documentation relating to the credit transaction
- The right to confidentiality of personal information
- The right to access and challenge information held by a credit bureau
- The right to receive periodic statements.

### **The right to apply for credit**

The National Credit Act provides every person, whether an individual, a group of people or a company, has the right to apply for credit from any credit provider. This right, however, does not prevent the credit provider from refusing to grant the credit, provided the reason for refusing to grant the credit is based on business grounds that are in line with their normal **credit risk evaluation processes**. (Section 60)

### **The right not to be discriminated against when applying for credit**

Consumers who are applying for credit are further protected against unfair discrimination by a credit provider. The Act forbids credit providers from discriminating against consumers on the basis of colour, race, age, political affiliation, sexual orientation, religious belief, or affiliation to any particular trade union. A consumer who is of the opinion that he/she has been discriminated against for these reasons may act against the credit provider through the Equality Court, or may complain to the National Credit Regulator which will refer the matter to the Equality Court. (Section 61)

### **The right to be given reasons for credit being declined**

The National Credit Act gives a consumer, whose credit application has been declined by a credit provider, the right to request written reasons explaining why his/her application for credit has been declined. If the decision to decline the consumer's request is based on an unfavourable report received from a credit bureau, the Act stipulates that the credit provider must supply the consumer in writing with the name, address and other contact details of the credit bureau from which the credit provider received the information. (Section 62)

### **The right to be given documents in an official language that the consumer understands**

A consumer has the right to receive documents from a credit provider in an official language that he/she understands. Documents that a credit provider must give to a consumer include the credit agreement, quotations and statements. This requirement is, however, subject to reasonability and factors such as usage, practicality, expenses, region and the needs of the consumers served by the credit provider. The credit provider must make a proposal to the NCR on the languages in which it intends making its documents available and the NCR will approve these proposals.

**(Section 63)**

### **The right to be given documents in plain and understandable language**

A consumer has the right to receive information and documents in plain language. This means that the contents, meaning and importance of the document must be easy to understand. In this regard the National Credit Regulator may issue guidelines to indicate what would be regarded as “plain language”.

**(Section 64)**

### **The right to be given documents related to the credit transaction**

The Act gives the consumer the right to receive documents relating to the credit agreement in a manner that the consumer chooses. A consumer may choose to receive documents either in person at the credit provider's place of business, or by fax, email, or by a printable web page.

A consumer has the right to receive one replacement copy of documents from the credit provider, free of charge, but only if the consumer requests the replacement copy within a year of the delivery of the original documents. For any additional replacement documents, the consumer will be expected to pay the credit provider. **(Section 65)**

### **The right to confidential treatment**

The consumer's right to **confidentiality** is protected by the provision that any person or organisation that receives or compiles confidential information on a consumer must use the information for the sole purpose for which the consumer has given his/her consent, unless the usage or release of such information is a requirement in terms of The Act. The Act further stipulates that the person or organisation holding the consumer's confidential information may only release it as specifically instructed by the consumer or by a court of law. **(Section 68)**

### **The right to access and challenge information held by a credit bureau**

The Act gives the consumer the right to:

- Access information that a credit bureau has in relation to him/her. The information must be given to the consumer free of charge every twelve months or for a fee if the consumer requests the information more than once within twelve months. Such a fee may not exceed R20.00.
- Challenge and request proof of the accuracy of information held by a credit bureau. Should a credit bureau fail to provide the consumer with proof of accuracy of information that the consumer disputes, it is compelled to remove the disputed information from its records,

- Be advised by a credit provider before certain adverse information about that consumer is passed on to a credit bureau. The consumer is also entitled to receive a copy of that information on request.

(Section 72)

### **The right to receive periodic statements**

The Act stipulates that a credit provider must provide a consumer with a statement once a month or once every two months if the agreement is an **instalment sale agreement, lease** or secured loan. A long interval may be allowed with the consent of the consumer. This interval may, however, not exceed 3 months.

With regards to a **mortgage agreement** the consumer is entitled to receive a statement every six months.



## Glossary

- **Credit risk evaluation processes** – an assessment done by a credit provider to determine whether or not credit will be granted to a consumer, what level of bad debt can be expected, and what level of risk will be acceptable to justify the profit made.
- **Confidentiality** – ensuring that information held on a person is not released without the consent of the consumer or as required by law.
- **Instalment sale agreement** - sale of movable property where the payment is made by way of periodic payments, interest, fees or charges are payable to the credit provider by the consumer who possesses or uses the property. Ownership of the property passes on to the consumer at the end of the credit agreement period.
- **Lease** - temporary possession of movable property and payments are made for its usage. Interest, fees and charges are payable and the consumer has the option of having the ownership transferred at the end of the agreement.
- **Mortgage agreement** - an agreement in terms of which credit is secured by way of security in the form of a pledge of immovable property, such as a home loan secured by way of a bond over the property.

### OTHER RELATED TOPICS:

**Credit agreements (Chapter 3)**  
**Defaulting and debt enforcement (Chapter 7)**  
**Credit bureaux and credit information (Chapter 9)**  
**Disputes and complaints (Chapter 10)**





## Chapter 3

### Credit agreements

**In this chapter the following topics will be covered:**

- What is a credit agreement?
- Agreements which are not covered by the Act
- Pre-agreement statements and quotes
- Unlawful agreements
- Implications of unlawful agreements
- Unlawful provisions in credit agreements
- Implications of unlawful provisions
- Changes to credit agreements and increases/decreases in credit facility limits.

### What is a credit agreement?

A credit agreement can be defined as an agreement between a credit provider and a consumer in which:

- The credit provider supplies goods or services or lends money to the consumer.
  - ↳ The consumer pays for the goods or services or repays the money so borrowed in instalments over a period of time or
  - ↳ Where the consumer is to make a single payment, this payment is made on a future date agreed upon by the consumer and the credit provider and
  - ↳ The consumer has to pay interest, fees or charges on the outstanding balance of the money borrowed or the amount owing on the goods and services supplied by the credit provider.
  
- The consumer and the credit provider enter into a **pawn transaction**, discount transaction instalment sale agreement, mortgage agreement or lease agreement.
  
- The credit provider enters into a credit guarantee agreement with one person where this person promises to pay a debt incurred by another consumer upon receiving a demand from the credit provider. **(Section 8)**

## Agreements which are not covered by the Act

- Agreements where the credit provider and the consumer are related, for example where a husband lends money to his wife;
- Agreements where a member of a stokvel borrows money from the stokvel;
- Agreements where the director of a company lends money to his company;
- Agreements where a government institution lends or borrows money from any source. For example if a bank borrows money from the South African Reserve Bank, this transaction is not covered by the Act.

## Pre-agreement statements and quotes

The Act requires that a consumer must be given a **pre-agreement statement** and a quotation before entering into a credit agreement with a credit provider. A pre-agreement statement is a document which details the terms and conditions of the credit agreement that the credit provider intends entering into with the consumer. In addition, the consumer must be given a quotation disclosing the costs of the credit required. This quotation must include the **principal debt**, the interest rate, the total amount payable under the agreement, the instalments and all fees, charges and interest. The pre-agreement statement and the quotation can either be written in one document or in separate documents. The quotation that the consumer receives is valid for five business days. If the credit provider enters into the credit agreement with the consumer within these five days, he/she is obliged to do so at the same rate or costs as noted in the quotation. **(Sections 92 and 93)**  
**(Regulations 28 -31)**

## Unlawful Agreements

The Act declares the following credit agreements as unlawful:-

- Agreements where the consumer is a **minor** and was not assisted by a guardian at the time the agreement was signed by the consumer. If the consumer misleads the credit provider into believing that he/she is no longer a minor then the agreement will be enforceable.
- Agreements entered into with a consumer who has been declared mentally unfit;
- Agreements entered into with a consumer who is subject to an **administration order** where the administrator did not consent to the agreement being entered into;
- Agreements which are a result of **negative option marketing**. “Negative option marketing” refers to a situation where a credit provider offers a consumer credit which automatically becomes a credit agreement unless the consumer rejects the offer.
- Agreements where the credit provider is not registered with the NCR, despite being legally required to do so. A registered credit provider is required to display a registration certificate as well as a decal issued by the NCR.

**N.B. Certain credit providers do not have to register with the NCR but their agreements are still subject to the provisions of the Act.**

(Section 89)  
(Regulation 32)

### **Consequences of unlawful agreements**

If a credit agreement is declared unlawful by a court, the credit provider cannot sue the consumer for any monies owing under that agreement. The Act provides that the credit provider must refund the consumer any monies paid, together with interest at the rate quoted in the agreement. Where it is found that the consumer will be unfairly enriched if all the monies paid to the credit provider are refunded to him/her, such monies will be forfeited by the credit provider to the State. **(Section 89)**

### **Unlawful provisions / clauses in credit agreements**

The Act does not allow certain provisions/clauses to be included in credit agreements. The prohibition of these terms and conditions serves to protect the consumer against certain practices by credit providers. Among the provisions/clauses that are prohibited are:-

- Provisions/clauses which mislead the consumer or subject the consumer to potential fraud;
- Provisions/clauses which determine that the consumer has waived certain of his/her rights that may apply to credit agreements. The rights that cannot be waived include a consumer's right to have their debt restructured, the right to have **repossessed** goods sold at a fair, market-related price, and the right to dispute any debits that pass through a consumer's account;
- Provisions/clauses which require the consumer to acknowledge that he/she has received goods or any information from the credit provider, before the goods or information have actually been received by the consumer;

- Provisions/clauses which require the consumer to agree to forfeit monies paid to the credit provider in the event of the consumer terminating the agreement;
- Provisions/clauses which require the consumer to leave items such as identity document, bank cards or PIN numbers of bank cards with the credit provider;
- Provisions/clauses that authorize the credit provider to set-off a consumer's debt against an asset or account of the consumer held by the credit provider, except where the consumer has given the credit provider specific instructions specifying which assets may be set-off against which credit agreement.

The following common law rights or remedies that are available to the consumer may not be waived in a credit agreement.

- **Exceptio errore calculi** refers to a defence based on an error in calculation
- **Exceptio non numerate pecuniae** refers to a defence by a party who was sued on a promise to repay money that was never received.
- **Exceptio non causa debiti** refers to a defence that the debt claimed has no basis or ground.

The exceptions referred to above has the effect that the credit provider need not prove the substance of the relevant exceptions in detail when a credit agreement is being enforced.

**Do not sign a blank document. The credit provider may include additional terms after you have signed the contract, which you have not agreed to.**

(Section 90 & 121) (Regulation 32)

### **Consequences of unlawful provisions of credit agreements**

A consumer cannot be sued or forced to comply with a provision in a credit agreement which is found to be unlawful. Unlawful provisions affect credit agreements in two ways:

1. An unlawful provision may cause the entire credit agreement to be unlawful and the consumer cannot be forced to pay the credit provider under that agreement, or
2. An unlawful provision can be amended by the court or deleted to ensure the agreement remains lawful in which case the consumer will still be bound by the credit agreement and the amended provision.

**(Section 90)**

### **Changes to credit agreements and increases/decreases of credit limits**

The Act states that any change that is made to a credit agreement, which a consumer has already signed will have no effect, unless

- the change reduces the consumer's debt under the agreement, or
- the consumer signs his/her initials in the margins next to the change made, or
- the change is recorded in writing and signed by both the consumer and the credit provider, or
- if the change is agreed upon orally it must be recorded and thereafter reduced to writing.

In terms of The Act, a consumer is entitled to instruct a credit provider, in writing, to reduce his/her credit limit under a credit facility. The credit provider must confirm with the consumer that the limit was reduced in accordance with the consumer's request and must indicate the date when the reduced limit becomes effective.

A consumer is allowed to request a credit provider to increase his/her credit limit under a credit facility either temporarily or permanently. A consumer has to agree, in writing, to an automatic limit increase to his/her credit facility, but even where the credit provider obtains such agreement from the consumer, the limit may only increase once a year. However, a consumer may at anytime request an increase of the credit limit.

**(Sections 116 -119)**





## Glossary

- **Pawn transaction** – an agreement in terms of which credit is extended to a consumer, who in turn would pledge a movable asset as security for the credit extended;
- **Minor** – a person under the age of 18 who has not been declared by a court to have majority status;
- **Administration order** – an order issued by a Magistrates' Court in terms of which a consumer's debt, which may not exceed R50 000, is restructured and administrated by a court appointed administrator;
- **Repossession** – where a consumer has defaulted under an installment sale agreement, and a credit provider has obtained a court order, the credit provider may repossess the items sold under the installment sale agreement.
- **Pre-agreement statement** – a statement that a credit provider gives to a consumer before entering into a credit agreement with the consumer. The statement contains the terms and conditions of the intended credit agreement.

# Glossary

- **Negative option marketing** –where the credit provider offers a consumer credit which he/she did not apply for. The consumer must physically refuse the offer failing which it will automatically become a credit agreement (see chapter four for more information).

## OTHER RELATED TOPICS:

Consumer rights (chapter 2)

Marketing practices (Chapter 4)

Costs (Chapter 5)

Surrender, termination and early settlement (Chapter 6)



## Chapter 4

### Marketing practices

**This chapter deals with the marketing and sales practices that credit providers are permitted to carry out. It also covers practices that are not permitted under the NCA. The following topics will be covered:**

- Negative option marketing
- Prohibition of marketing and sales of credit at the consumer's home and workplace
- Instances where it is permissible to market and sell credit at the consumer's home and workplace.

### **Negative option marketing**

Negative option marketing occurs when a credit provider offers a consumer credit, for which the consumer did not apply, and the offer states that the agreement will automatically come into existence unless the consumer rejects the offer. The Act prohibits this type of marketing. Any credit agreement that a consumer enters into on this basis is unlawful and will be dealt with as discussed in Chapter 3.

The Act further requires that at the time of signing a credit agreement the consumer must be given an opportunity to decide on the following:

- to have the consumer's credit limit under a credit facility automatically increased every twelve months
- to receive any marketing communication or to be included in any customer or marketing list of the credit provider that is to be sold or distributed.

**(Section 74)**

### **Prohibition of marketing and sales of credit at home and at work**

The Act states that a credit provider may not harass a prospective consumer with the aim of entering into a credit agreement with the consumer. To ensure that consumers are not pestered into entering into credit agreements, the Act prohibits the marketing and sale of credit at a consumer's home or place of employment. There are, however, certain instances/exceptions, where credit can be legally marketed or sold at a consumer's home or work place. These are discussed below.

**(Section 75)**

### **Instances where it is permissible to market and sell credit at the consumer's home**

The NCA allows credit to be marketed or sold to a consumer at his/her home under the following conditions:

- If the credit provider is invited by the consumer to market or sell the credit at the consumer's home,
- If the credit provider visits the consumer to sell goods or services, and in the process incidentally offers to give or arrange credit to finance the goods or services that the credit provider is selling,
- If the credit provider sells developmental credit he can do so at the consumer's home or place of work without having been invited there by the consumer.

### **The Act allows credit to be marketed or sold at a consumer's place of work under the following conditions:**

- If the prospective consumer is an employer,
- If the consumer has arranged with the credit provider to be visited at work for the purpose of marketing or selling credit,
- If the credit provider arranges with the employer as well as a representative of a trade union and/or employee for the credit provider to market or sell credit at work,
- If the credit provider sells developmental credit. **(Section 75)**

#### **OTHER RELATED TOPICS:**

**Consumer rights (Chapter 2)**  
**Credit agreements (Chapter 3)**



## Chapter 5

### Costs

**This chapter deals with the fees that credit providers are allowed to charge consumers when they enter into credit agreements with them. It covers the following topics:**

- Interest rates and initiation fees
- Service fees
- Credit insurance
- Other costs.

### **Interest rates and initiation fees**

Interest is the amount that a credit provider charges a consumer on the outstanding balance of a credit agreement. This amount is calculated by the credit provider using a percentage, which is called the interest rate. This interest rate must be reflected on the credit agreement that the consumer signs at the time of entering into a credit agreement. The Act regulates interest rates by specifying maximum interest rates that credit providers may charge consumers for various credit agreements. Refer to the table below for the maximum interest rates that the Act has specified.

The initiation fee is a fee that a credit provider charges a consumer for entering into a credit agreement with that consumer. The consumer is only liable to pay this fee if he/she enters into the agreement. The credit provider must give the consumer the option of paying this fee separately upfront and in doing so, no interest may be charged on the fee. The Act also regulates initiation fees by specifying the maximum initiation fee that consumers may be charged. See the table below for more information. An initiation fee may never exceed 15% of the loan amount that a consumer has applied for.

**(Section 101)**

**(Regulations 36, 39, 40, 41, 42, 45)**

Type of credit agreement	Maximum interest rate	Maximum initiation fee
Mortgages/Bonds agreements	$(\text{REPO rate} \times 2.2) + 5\%$	R1 000 + 10% of any amount greater than R10 000 (Maximum fee R5 000)
Credit Facilities (e.g. Credit cards, Store cards etc)	$(\text{REPO rate} \times 2.2) + 10\%$	R150 + 10% of any amount greater than R1 000 (Maximum fee R1 000)
Unsecured Credit Facilities (e.g. Personal loans)	$(\text{REPO rate} \times 2.2) + 20\%$	R150 + 10% of any amount greater than R1 000 (Maximum fee R1 000)
Incidental Credit agreements (e.g. overdue bills from doctors, Eskom, Municipalities etc)	2% per month	N/A
Developmental Credit Agreements:		
• Small & Medium Business Loans	$(\text{REPO rate} \times 2.2) + 20\%$	R250 + 10% of any amount greater than R1 000 (Maximum fee R2 500)
• Low income housing loans	$(\text{REPO rate} \times 2.2) + 20\%$	R500 + 10% of any amount greater than R1 000 (Maximum fee R2 500)
Short Term Loans (i.e. Loans of up to 6 months of no more than R8 000)	5% per month	R150 + 10% of any amount greater than R1 000 (Maximum fee R1 000)
Any other types of loans not covered above	$(\text{REPO rate} \times 2.2) + 10\%$	R150 + 10% of any amount greater than R1 000 (Maximum fee R1 000)



## **Service Fees**

A service fee is a fee that a credit provider charges a consumer for servicing a credit agreement between them. The fee is for administering or maintaining the credit agreement. The credit provider can charge this fee on a monthly or annual basis. It can also be charged per transaction. The Act regulates service fees in a number of ways including by specifying the maximum fees that credit providers are allowed to charge and how often the fees can be recovered. The current maximum service fee that a credit provider can charge a consumer is R50-00 a month. If the consumer pays an annual service fee, the maximum that the consumer can be charged is R600-00 per year. If the credit agreement is settled sooner than originally agreed by the consumer and within the year to which the annual service fee relates, the credit provider must refund the unused portion of the service fee to the consumer.

**(Section 101)**

**(Regulation 44)**

## **Credit insurance**

The Act also regulates credit insurance. This is insurance which can be required by a credit provider when a consumer takes up a specific product such as a home loan or credit card. The insurance would then cover the debt due to the credit provider in certain cases such as the death of the consumer.

The Act stipulates that the insurance cover taken by the consumer may not exceed the outstanding obligation to the credit provider and the cover must reduce as the outstanding balance due the credit provider reduces. In the case of a home loan, the insurance may not exceed the value of the property.

In certain instances a consumer may be offered “optional” insurance which will be to the benefit of the consumer. For example in the case of vehicle financing, it might be in the consumer's best interest to ensure that the full market value of the vehicle is covered and not only the balance due to the credit provider, failing which in the case of the vehicle being written off, only the outstanding balance to the credit provider will be covered and the consumer will receive nothing for the value of the vehicle.

The Act provides that the consumer may not be forced to take the insurance offered by the credit provider and can in fact select to replace the insurance offered by the credit provider with a policy of the consumer's choice. When the consumer chooses to use his / her own insurance, the credit provider can request that the premiums are paid by the credit provider to the insurance company and that the consumer is billed monthly.

All insurance premiums payable to the credit provider must be by way of monthly premiums except in the case of a large agreement where an annual premium may be recovered. The annual premium has to be recovered at the beginning of the twelve month period that the agreement will be in place. In the event that the large agreement is settled early, the consumer must be refunded premiums equal to the number of the remaining months.

**Please refer to a licensed financial advisor before committing to an insurance product.**

**(Sections 101 & 106)**

## Other costs

The Act, in addition to the other charges discussed in this chapter, also allows credit providers to charge consumers the following:

- **Default administration charges.** This is a charge that a credit provider may charge a consumer who is in arrears with repayments on his/her credit agreement. These charges relate to costs that the credit provider has incurred in attempting to advise the consumer that he/she is in arrears with his/her account. These costs are limited to a letter sent by the credit provider to the consumer, informing him/her that he/she is in default in terms of the agreement. These default administration charges do not include any telephone calls made to the consumer. The Act specifies that a credit provider may not charge a consumer more than the cost actually incurred by the credit provider. The Act specifies that the charge for the letter must be equal to the tariff allowed by the court, plus the actual costs incurred for sending the registered letter.
- **Collection costs.** Collection costs are costs that the credit provider incurs when attempting to collect an outstanding, overdue debt from the consumer. The Act specifies that a credit provider is not allowed to charge a consumer collection costs, which are more than the court tariff allows.

The **in duplum rule** states once a consumer is in default, arrears interest may never exceed the outstanding capital balance owed at the time of default. **(Section 101) (Regulations 46 –48)**



## Glossary

**RR= REPO Rate** – the official interest rate at which banks borrow money from the South African Reserve Bank (This is not the same thing as the prime rate). The REPO Rate can be found in the financial section of newspapers or you can contact your nearest bank.

**OTHER RELATED TOPICS:**

**Consumer rights (chapter 2)**  
**Credit agreements (chapter 3)**  
**Surrender, termination and early settlement (chapter 6)**  
**Defaulting and debt enforcement (chapter 7)**



## Chapter 6

### Termination, surrender and early settlement of credit agreements

**This chapter will cover termination and cancellation of credit agreements. When and how can agreements be terminated and how will it affect the consumer. The following topics will be covered:**

- Termination of a credit agreement by the consumer or the credit provider;
- Early payments and crediting of payments;
- Consumers' right to settle credit agreements early;
- Lease or installment sale agreements signed by a consumer at a place which is not the credit provider's registered business address, and
- How the surrender or return of goods affects the consumer.

### **Termination of credit agreements by the consumer or the credit provider**

The Act specifies that a consumer can at any time terminate a credit agreement by paying the settlement amount. A settlement amount is the amount that is arrived at by adding the following amounts:-

- The outstanding principal debt as at the date of termination;
- The outstanding interest on the principal debt as at the date of termination;
- Any outstanding fees and charges as at the date of termination;
- An early termination charge in the case of large agreements as explained below.

No penalty fee is payable for the early settlement of a **small or intermediate agreement**. If the consumer wants to terminate a **large credit agreement** i.e. a credit agreement which is greater than R250 000 (two hundred and fifty thousand rand) or a mortgage agreement, the settlement amount may include an early settlement charge which is not allowed to be more than three months interest, and less if the consumer provides notice of his / her intention to settle early. In the case of a notice given by the consumer it will reduce the three month interest early settlement charge by the notice period.

The Act allows the credit provider to terminate a credit agreement early if the consumer is in default.

**(Section 125)**

### **Early payments and crediting of payments**

The Act specifies that a consumer can pay an instalment owing under a credit agreement in advance. The credit provider may not refuse to accept an advance payment from a consumer or penalise the consumer for paying in advance.

When a consumer makes payments, that are not yet due to the credit provider, the Act stipulates that the credit provider has to distribute the payments in the following sequence:-

- Firstly, to pay the interest due in terms of the credit agreement;
- Secondly, to pay any fees and charges that are due;
- Thirdly, to reduce the principal debt.

**(Section 126)**

### **The consumer's right to settle the agreement early**

The Act gives the consumer the right to settle an agreement at any time before the date specified in the agreement. The consumer is not obligated to give the credit provider notice that he/she intends to settle the credit agreement early.

In the case of a large agreement, when a consumer exercises this right, he/ she will be charged an early settlement amount, as noted above. This right is also available to a guarantor. A guarantor is a person who agrees to pay a debt, which is due to a credit provider by another consumer should the consumer fail to pay the credit provider.

**(Section 125)**

**Lease or instalment sale agreements signed by a consumer at a place which is not the credit provider's registered business address**

If a consumer signs a lease or instalment sale agreement at a place which is not the credit provider's business address, the consumer can terminate the agreement within 5 business days of entering into the agreement. The consumer can terminate the agreement by returning the goods or paying for any services that the consumer has already received from the credit provider. The Act further requires that the credit provider refunds the consumer any money that the consumer has paid to the credit provider, except for the costs the credit provider may have to incur to fix any damages caused by the consumer as well as a reasonable rental that the consumer would have had to pay for the use of the goods.

**(Section 121)**

**Surrender or return of goods by the consumer and how it affects the consumer**

The Act specifies that a consumer can withdraw from an instalment sale, secured loan or lease agreement at any time by returning the goods to the credit provider. When the consumer returns the goods to the credit provider, the credit provider is expected to sell them and credit the consumer's account with the proceeds of the sale. If the proceeds from the sale are more than the consumer's debt, the credit provider must refund any surplus to the consumer. If the proceeds are less than the consumer's debt, the consumer is obliged to pay the outstanding amount the credit provider within 10 days.

**(Section 127)**





## Glossary

- **Small agreement** – a credit agreement of up to R15 000.00.
- **Intermediate agreement** – a credit agreement of between R15 001 and R250 000.00.
- **Large credit agreement** - a credit agreement which is greater than R250 000.

**OTHER RELATED TOPICS:**

**Consumer rights (Chapter 2)**  
**Defaulting and debt enforcement (Chapter 7)**  
**Enforcement of the NCA (Chapter11)**



## Chapter 7

### Defaulting and debt enforcement

**This chapter focuses on steps that should be followed in the event of a consumer being unable to repay a credit provider in terms of a signed credit agreement. The following topics are discussed:-**

- Prohibited collection and debt enforcement practices;
- Procedures to be followed by a credit provider before debt enforcement;
- Debt procedures in court.

### **Prohibited collection and debt enforcement practices**

When a consumer is unable to pay, the credit provider will take steps to collect monies that are due to him/her. This is called debt enforcement. The Act prohibits certain practices that credit providers may use to collect overdue monies from consumers. A credit provider is not allowed to retain the following documents for purposes of collection and debt enforcement:-

- An identity document
- A debit or credit card
- An ATM card
- A PIN number.

**(Sections 90 & 133)**

### **Procedures to be followed by a credit provider before debt enforcement**

When a consumer has defaulted, the credit provider must first notify the consumer in writing of the status of the account. The consumer is in default if his account is 20 business days in arrears. In the notice the credit provider must propose that the consumer refer the credit agreement to a debt counsellor or a consumer court or an **Ombudsman** with the authority to handle any possible disputes. The purpose of such a referral is to enable the consumer and the credit provider to resolve the matter or agree to a plan to bring the repayments up to date. A credit provider cannot take legal action against a consumer before first notifying the consumer of the default and to draw his/her attention to his/her rights in this regard. Should the consumer fail to approach the credit provider or an Ombudsman within 10 days to resolve the matter, the credit provider can take further steps to enforce the debt.

**(Section 129)**

## Debt procedures in Court

A credit provider can approach the Magistrates' Court to enforce a credit agreement, which is in arrears when the following has happened:-

- The consumer did not respond to the written notice from the credit provider to bring repayments under a credit agreement up to date,
- The consumer refused to agree to a proposal made by the credit provider in the written notice, suggesting ways in which to resolve any dispute or to bring repayments up to date or,
- The consumer did not approach a debt counsellor within the allowed 10 business days.

A consumer can terminate a credit agreement by returning the goods to the credit provider. The credit provider will have to sell the goods. The consumer will have to pay for any shortfall should the goods be sold at a price less than the outstanding balance. The Act specifies that the credit provider may approach the court to recover the shortfall if not paid within 10 business days.

The court will only consider the credit provider's request for a judgment if the credit agreement is not subject to **debt review**. Where a consumer and a credit provider have agreed on a plan to bring repayments up to date on an agreement that is in arrears, and the consumer has adhered to this arrangement the credit provider cannot approach the court for a judgement on this agreement.



## Glossary

- **Ombudsman** – an independent body created for the purpose of dispute resolution.
- **Debt review** – it is a process whereby a consumer's credit agreements are combined in order to assess and establish whether the consumer can afford the monthly repayments.

**OTHER RELATED TOPICS:**

**Consumer rights (Chapter 2)**  
**Surrender termination and early settlement (Chapter 6)**  
**Debt counselling (Chapter 8)**  
**Disputes and complaints (Chapter 10)**



## Chapter 8

### Debt counselling

**This Chapter focuses on debt counselling. It will cover the following:**

- How a consumer can access the debt counselling service i.e. voluntarily, referred by credit provider, referred by the court,
- What is over- indebtedness?
- What is reckless credit?
- What is debt restructuring?
- The effect of debt restructuring
- What is a clearance certificate?

## **Debt Counselling**

**Debt counselling** is a process that is intended to help restructure the debt obligations of consumers who cannot pay their debts. A consumer will have to involve a debt counsellor who will negotiate the restructuring of a consumer's debt obligations with his/her credit providers. The purpose of debt counselling is to assist consumers in meeting their debt commitments. **(Section 86) (Regulations 24, 26)**

## **How a consumer can access debt counselling services**

There are three ways in which a consumer can access debt counselling services.

### **1. Voluntarily**

A consumer may approach a **Debt Counsellor** voluntarily if he/she feels that he/she can no longer afford to pay his/her debts. The Debt Counsellor will conduct an assessment to determine whether the consumer is over-indebted. The debt restructuring process is dealt with below.

### **2. Referred by a credit provider**

The Act requires a credit provider to take certain steps prior to taking legal action against a consumer who has failed to pay his/her debt. One of these steps includes giving a consumer written notice to the consumer to inform him/her that he/she is in default. The notice must also inform the consumer that he/she has the right to approach a Debt Counsellor to ask for assistance.

**(Section 129)**

### 3. Referred by the court

If a court finds that a consumer appearing before the court could possibly be over-indebted, it may refer the consumer to a Debt Counsellor.

(Section 85) (Regulation 26)

#### What is over-indebtedness?

A consumer is over-indebted when he/she does not have the means to meet all his/her debt payments at the end of a month. The Act also states that if the Debt Counsellor has completed an assessment and has reached a conclusion that a consumer will not be able to meet his/her debt commitments at the end of a month, that consumer is over-indebted.

(Section 79)

Debt Counsellors also assist consumers with basic financial planning skills, such as drawing up a budget.

Although a consumer has the right to apply for debt restructuring, this does not mean that he /she will automatically qualify for the service.

After assessing the consumer's financial status, a Debt Counsellor may conclude that the consumer is not over-indebted. The Debt Counsellor must then issue the consumer with a letter of rejection.

A consumer who has received such a letter of rejection may, within 20 **business days**, approach the court and request it to declare him/her over-indebted. In addition the consumer may request the court to have his / her agreements declared reckless (see discussion below) and order a debt restructuring.

(Section 86) (Regulation 25)



### **What is a reckless credit agreement?**

The Act requires a credit provider to ensure that a consumer can afford the credit he/she applies for before granting him/her the loan or selling the goods on credit. If the credit provider fails to ensure this then the agreement can be regarded as reckless.

An agreement is reckless if:

- The credit provider does not carry out a proper credit risk assessment to ensure that the consumer can afford the loan,
- The credit provider proceeds to grant the consumer the loan despite the consumer not being able to afford the loan based on the assessment conducted
- The consumer does not understand his/her rights and obligations in an agreement as well as the costs involved in taking the loan.

**(Section 80)**

### **Only a court can declare an agreement reckless on the request of either the Debt Counsellor or the consumer.**

The court can suspend an agreement that has been declared reckless. It can also change the terms and conditions of the agreement, i.e. how the monies must be repaid by the consumer to the credit provider. The credit provider cannot charge the consumer any interest or fees on an agreement that has been suspended.

**(Section 84)**

**(Regulation 23)**

### **What is debt restructuring?**

Debt restructuring is a process where a Debt Counsellor reviews a consumer's credit agreement and reschedules the payment.

The Debt Counsellor will first attempt to restructure a consumer's debt by making a proposal to all credit providers and by attempting to get all the parties involved to agree on the proposal. If an agreement is reached, the Debt Counsellor can request the Tribunal or a court to issue a consent.

If an agreement is not reached, the Debt Counsellor may refer the matter to the Magistrate court. The Magistrate Court must conduct a hearing and then make an appropriate order.

**(Section 86)**

**(Regulation 24)**

### **The effects of debt restructuring**

Once a consumer is placed under debt review, credit providers may not take any legal action against the consumer. Furthermore, a consumer whose debt is in the process of being restructured is not allowed to apply for or receive more credit. The only credit that a consumer under debt review can apply for is a **consolidation loan**.

A consumer who fails to pay in terms of a restructuring agreement will immediately be removed from the debt review process and the credit providers may immediately take legal action against the consumer.

### **What is a “Clearance Certificate”?**

A consumer who has settled all his/her debt in terms of a debt restructuring must receive a “Clearance Certificate” from the Debt Counsellor. This certificate will allow the consumer to have his/her credit record that is held by a credit bureau, cleared. All the listings associated with the paid off debt must be cleared. Should a Debt Counsellor refuse to give the consumer the certificate he/she can approach the Tribunal to review the decision of the Debt Counsellor.

**(Section 71)**

**(Regulation 27)**

#### **OTHER RELATED TOPICS:**

**Defaulting and debt enforcement (Chapter 7)**



## Glossary

- **Business days:** All days excluding Saturdays, Sundays and Public Holidays;
- **Debt Counselling:** The process of assessing over-indebtedness and restructuring debt ;
- **Debt Counsellor:** A person registered with the NCR as a Debt Counsellor and assisting consumers with debt restructuring;
- **Consolidation loan:** A loan taken by a consumer for the purpose of bringing all his/her debt together as a single loan with a view to settling it.

### OTHER RELATED TOPICS:

Consumer rights (chapter 2)  
Marketing practices (Chapter 4)  
Costs (Chapter 5)  
Surrender, termination and early settlement (Chapter 6)



## Chapter 9

### Credit bureaux and credit information

**This Chapter will cover the following topics:**

- Consumer credit information
- What information may be retained?
- What information may not be retained?
- Sources of information
- Retention periods
- Removal of information and disputing incorrect information
- The process before listing adverse information
- Uses of credit information.

The Act requires the National Credit Regulator to register and **regulate** credit bureaux. The Act also states what information may be kept by the credit bureau, who may send information to the bureau, who may get the information from the bureau and for how long the bureau may keep the information. A consumer's information may be personal information or credit information. **(Sections 43 & 70) (Regulation 17)**

### **Consumer credit Information**

The Act regulates the usage of a consumer's **credit information**. However, the definition of "consumer credit information" is very wide and includes almost all the consumer's information such as:

- A person's credit history
  - ↳ Credit agreements signed;
  - ↳ Repayment history
  - ↳ If the consumer is/was under debt review;
  
- A person's financial history
  - ↳ Past and current income;
  - ↳ Assets and liabilities;
  
- Other personal information such as:
  - ↳ Education, employment and career history;
  - ↳ ID number;
  - ↳ Name;
  - ↳ Date of birth;
  - ↳ Physical address;
  - ↳ Marital status;
  - ↳ Contact details

**(Section 70) (Regulation 18)**

### **What information may be retained?**

All the consumer's "credit information" as listed above may be kept by a credit bureau, as well as the following information:

- Payment information regarding continuous services;
- Any information that is needed to identify credit fraud;
- Information on payments made by a consumer where the debt was ceded;
- Any other information, provided the consumer has given his permission for this information to be sent to the credit bureau, and provided the credit provider has informed the consumer what the information will be used for.

**(Regulation 18)**

### **What information may not be retained?**

The Act states that the following personal information may not be kept by a credit bureau:

- Race;
- Political connection;
- Medical status / history
- Religion or thought, belief or opinions;
- Sexual orientation;
- Membership of a trade union.

**(Regulation 18)**

### **Sources of credit bureau information**

The Act only allows the following people / entities to send information:

- Credit providers;
- Consumers correcting wrong information;
- The government, a court or an employee of the court;
- A provider of continuous services;
- Insurance companies;
- Entities involved in investigating fraud;
- Educational institutions such as universities;
- Debt collectors;
- Other credit bureaus.

**(Section 70)**  
**(Regulation 18)**

### **Retention periods.**

The Act stipulates how long certain information may be kept by the bureau. In the past the bureaux decided for themselves how long the information would be kept.

The retention periods are listed over:



	Category	Description	Time kept
1	Disputes lodged	A consumer has a right to dispute incorrect information. This would be details of disputes that were lodged and rejected after an investigation	18 months
2	Inquiries	Details of the person requesting a consumer's credit information	2 years
3	Payment profile	Details of the payments made by a consumer on his/her agreements	5 years
4	Adverse information	Information relating to a consumer's payment behaviour such as slow payer, defaulted, absconded	1 year
5	Adverse Information	Information relating to the action taken a credit provider against a consumer to enforce a debt such as handed over, legal action, write off etc	2 years
6	Debt restructuring	Details of a consumer under debt review	Until a clearance certificate is given
7	Civil court judgments	Judgments given by a court	5 years or until the court removes it
8	Administration orders	Orders to put a consumer under administration	10 years or until the court removes it
9	<b>Sequestrations</b>	Order given by a court where a consumer is <b>insolvent</b>	10 years or until the court removes it
10	<b>Liquidations</b>	Order given by a court where a company is insolvent	Unlimited
11	<b>Rehabilitation</b>	A court order removing a liquidated or sequestrated after all the debt was paid	5 years
12	Other information	Any information that is not covered above	2 years

(Section 73) (Regulation 17)

### **Removal of Information and disputing incorrect information**

A consumer has the right to challenge wrong information that is kept by the credit bureau. The consumer must inform the credit bureau that the information is wrong. On receipt of such notice from the consumer, the bureau must immediately “cover”/“hide” the information so that nobody can see it. The bureau then has 20 business days to obtain proof that the information is correct. If it cannot do so, then it must remove the information from their records.

If the bureau does obtain proof of the information, but the consumer still does not agree with it, the consumer may, within 20 business days, request the National Credit Regulator to investigate the matter.

**Section 73 of the Act has a “clean-up” provision which requires bureaux to remove certain information from their records. New regulations have since been published requiring credit bureaux to remove certain records as a 'once off clean up'.**

**For more information on this, refer to the regulations on Gazette no. 28864**

**(Sections 72 & 73)  
(Regulation 20)**

### **The Process before listing information**

Any person / entity allowed to submit information to a credit bureau must take all reasonable steps to make sure that the information submitted is correct. If a debt has **prescribed**, the credit provider is not allowed to send the information to the bureau. Before a credit provider sends any **adverse information** to a credit bureau he/she must first give the consumer 20 business days notification of the fact that the information will be listed. The consumer must also be informed of the information that will be listed to enable him/her to challenge the information if he/she believes it is wrong.

(Regulations 18, 19)

### **Uses of credit information**

The Act states what the consumer's credit information can be used for. It also states when a consumer's consent is required for the use of his/her credit information.

Only the following uses are allowed:

### **Where a consumer's consent is not required**

- Any purpose as required in the Act, such as affordability assessments;
- Fraud or corruption investigations by SAPS;
- Fraud or corruption prevention services;
- Assessment of a debtors book where a consumer's debt is **ceded** to a third party;
- Obtaining consumer's details to pay out unclaimed pension funds or insurance claims;
- Tracing a consumer to collect debt due in respect of a credit agreement;
- Developing a scoring system (score cards).

### **Where a consumer's consent is required**

- Setting limits for the supply of goods or **continuous services**;
- Assessing an application for insurance;
- Verifying educational qualifications;
- Considering a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances.

**It is illegal to conduct a credit bureau check on a prospective employee if the position does not require trust and honesty and does not involve the handling of cash and finances.**

**(Section 70)  
(Regulation 18)**



## Glossary

- **Regulates:** Making sure that credit providers, debt counsellors and credit bureaus conduct business within the law;
- **Continuous Services:** Goods and services provided on an ongoing basis, which is paid for regularly, such as water and electricity;
- **Debt ceded:** Where a consumer's debt is sold to another party by the credit provider and the other party then collects the debt from the consumer;
- **Sequestration:** An order by a court declaring that a person is insolvent;
- **Insolvent:** When a consumer's debt exceeds his assets and he is unable to pay anything;
- **Liquidation:** An order by a court that a company or close corporation is insolvent;
- **Rehabilitation:** If a consumer who has been sequestrated or liquidated pays off all his/her debt, the court can remove the sequestration or liquidation order;

# Glossary

- **Prescribed:** A debt is prescribed if a credit provider has not taken any action against the consumer to recover the debt within a set period. A credit provider cannot enforce a prescribed debt through the Court;
- **Adverse information:** Information such as slow payer, defaulted, absconded or handed over, legal action or write-off.

**OTHER RELATED TOPICS:**

**Consumer rights (Chapter 2)**



## Chapter 10

### Disputes and complaints

**This Chapter covers the following:**

- When can a consumer lodge a complaint?
- Who can a consumer lodge a complaint with?
- The process to follow when lodging a complaint with the National Credit Regulator.

#### **When can a consumer lodge a complaint?**

A consumer can complain at any time if he/she is not satisfied with the services received from a credit provider, Debt Counsellor or credit bureau. For example a consumer must receive notice when he/she is in default under a credit agreement, prior to the credit provider taking any legal action. This notice must also inform the consumer that he / she may lodge a dispute with an ombudsman with jurisdiction, an alternative dispute resolution agent, or a consumer court.

**(Sections 129, 134 & 136)**

### **Where can a consumer lodge a complaint?**

The National Credit Regulator is responsible for the receipt and investigation of complaints that relate to credit and other matters dealt with by the Act. If, however, the Regulator is of the opinion that the complaint relates to a matter that should be dealt with by another established entity, it will refer the matter to the appropriate entity. In Chapter 12, there are details of other entities which handle complaints and disputes for matters other than credit.

The Act allows the consumer to lodge a complaint with either one of the following:

1. The National Credit Regulator
- 2. Ombudsman with jurisdiction**
3. The National Consumer Tribunal or
4. Alternative Dispute Resolution Agent (ADR)

#### **1. National Credit Regulator**

A consumer may lodge a complaint with the National Credit Regulator if the complaint relates to a credit agreement. The process followed by the Regulator when it receives a complaint is dealt with later on in this Chapter. **(Section 15)**

#### **2. Ombudsman with Jurisdiction**

Industries such as the insurance industry, the financial services industry and the banking industry etc, have an Ombudsman. An Ombudsman is an entity that is established to receive and resolve complaints and disputes in each industry. For example, complaints that relate to a bank may be lodged with the Ombudsman for Banking Services and a complaint that relates to a credit bureau may be lodged with the Credit Information Ombudsman.



### **3. National Consumer Tribunal**

A consumer may lodge a complaint or dispute directly with the Tribunal; however, instances where a consumer can do this are limited to the following instances:

- Where the National Credit Regulator has rejected the complaint (see the discussion in clause 4 below);
- If the consumer could not resolve the complaint through an Ombudsman, an ADR, or the Regulator;

**(Section 137 & 141)**  
**(Regulations 49, 51)**

### **4. Alternative Dispute Resolution agent (ADR)**

An ADR is an entity which attempts to resolve disputes by way of conciliation, mediation or arbitration.

If the consumer referred a dispute to an ADR and the ADR finds that one of the parties does not co-operate or that the dispute cannot be resolved, the ADR must issue a certificate stating that the dispute resolution process has failed. The matter may then be referred to the Tribunal to resolve it.

**(Section 134)**  
**(Regulation 51)**

### **Steps to follow when lodging a complaint with the National Credit Regulator**

A consumer may contact the National Credit Regulator telephonically or may complete a complaint form, which can be obtained from the Regulator. The consumer must give the following information when lodging a complaint:

- Full name, surname and ID number;
- Contact details;
- Short description of complaint

The complaint may only be lodged with the Regulator if the consumer has already attempted to resolve the matter with the credit provider and the attempt has failed.

The Regulator will:

- issue a notice of non-referral if it has found that the matter is outside the jurisdiction of the Act;
- formally investigate the complaint; or
- refer the matter to an ombudsman with jurisdiction or an ADR or a consumer court.

If the complaint is referred for investigation, the NCR will consider the investigator's report and

- issue a notice of non-referral; or
- refer the matter to the Tribunal to be decided.

If the complaint relates to **an offence** in terms of the Act, then the Regulator will refer the matter to the National Prosecuting Authorities for criminal charges to be brought against the person that has been complained about.

If a dispute is resolved, the outcome may be submitted to the Tribunal to be made a consent order.

**(Sections 136, 138, 139 & 140)  
(Regulation 50)**



## Glossary

- **Ombudsman with jurisdiction:** An office or entity within an industry that is established either by way of legislation or by voluntary association, to assist in resolving disputes between consumers and entities within the industry. Usually the matters that can be dealt with by the Ombudsman are specifically set out and this is referred to as its “jurisdiction”.
- **An offence:** The Act determines that if certain provisions in the Act are breached, this is an offence and criminal charges can be brought against the person who committed the breach.

### OTHER RELATED TOPICS:

Consumer rights (Chapter 2)  
Defaulting and debt enforcement (Chapter 7)  
Credit bureaux and credit information (Chapter 9)  
Enforcement of the NCA (Chapter 11)  
Useful contacts (Chapter 12)



## Chapter 11

### Enforcement of the National Credit Act

**This Chapter deals with how the National Credit Act is enforced. It will cover the following topics:**

- The National Credit Regulator
- The National Consumer Tribunal.

#### **The National Credit Regulator**

The Act establishes the National Credit Regulator (NCR). The NCR regulates the credit market and enforces the Act.

- Duties:  
The Regulator:
  - ↳ is responsible for registering credit providers, credit bureaux and Debt Counsellors;
  - ↳ has to monitor and investigate complaints;
  - ↳ is responsible for reporting to Parliament on availability of credit, market practices, access to credit and level of consumer over-indebtedness;
  - ↳ is responsible for the enforcement of the Act.

➤ Powers:

The Regulator:

- ↳ investigates non-compliance by any registrant;
- ↳ issues non-compliance notices;
- ↳ prosecutes non-compliance before the Tribunal;
- ↳ refers complaints to the Tribunal;
- ↳ requests the Tribunal to deregister a registrant;
- ↳ imposes conditions on the registration of registrants.

### **The National Consumer Tribunal**

The Act also establishes the National Consumer Tribunal. The Tribunal was established to give a ruling on credit issues that are in dispute i.e. that could not be resolved through the NCR. It can give order and penalties which are listed below:

➤ Orders:

- ↳ The Tribunal, sitting as a single member or a full bench of three members, may decide on the following matters:
  - De-registration of registrants;
  - Matters referred by the Regulator;
  - The imposition of penalties where non-compliance is found;
  - The making of cost orders in matters that it decides upon;
  - The issuing of consent orders where parties have agreed on dispute settlement;
  - The issuing of consent orders where parties agree to debt restructuring;
  - Declaring a registrant's conduct prohibited in terms of the Act;
  - Ordering that a registrant stops certain practices.

➤ Penalties:

- ↳ The Tribunal may issue an administrative penalty;
- ↳ The penalty may not exceed more than R1 million or 10% of the **registrant's** annual turnover; whichever is higher.

**(Sections 150 & 151)**

**OTHER RELATED TOPICS:**

**Disputes and complaints (Chapter 10)**



## Glossary

- **Registrant** – Includes credit providers, debt counsellors and credit bureaus registered with the Regulator.

**OTHER RELATED TOPICS:**

**Consumer rights (chapter 2)**

**Marketing practices (Chapter 4)**

**Costs (Chapter 5)**

**Surrender, termination and early settlement (Chapter 6)**



## Chapter 12

### Other useful contacts

In this chapter you will find contact details of entities where you can lodge complaints relating to various matters.

**1. The National Credit Regulator**

- resolves complaints relating to credit agreements, credit bureaus and Debt Counsellors

Toll share: 0860 627 627

**2. Financial Services Board**

- resolves complaints relating to non-banking financial services e.g. investment schemes, insurers' retirement funds and friendly societies.

Toll free: 0800 110 443 or 0800 202 087

Fax: (012) 347 0221

**3. Credit Information Ombudsman**

- resolves individual complaints relating to credit information

Call Centre: 0861 662 837 or 0860 OMBUDS



**4. Ombudsman for Banking Services**

- resolves individual complaints about banking services and products

Tel: 0860 800 900 or 0860 OMBUDS

Fax: (011) 838 0043

**5. Debt Collectors Council**

- resolves complaints relating to debt collection

Tel: (012) 804 9808

Fax: (012) 841 6238

**6. Department of Trade and Industry**

Tel: (012) 349 9500

Call Centre: 0861 843 384

Fax: 0861 843 888

**7. Provincial Consumer Affairs Directorates**

- resolves complaints whereby the consumer feels that his/her rights were violated

**Eastern Cape**

Tel: (040) 609 3663

Fax: (040) 609 3201

**Gauteng**

Tel: (011)355 8008/6

Fax: (011) 355 8019

**Free State**

Tel: (051) 400 4852

Fax: (051) 400 9609/10

**Kwa-Zulu Natal**

Tel: (031) 310 5300

Fax: (031) 310 5416

**Limpopo**

Tel: (015) 291 2863/4/2

Fax: (015) 291 2898

**Northern Cape**

Tel: (053) 830 4800

Fax: (053) 832 4830

**Mpumalanga**

Tel: (013) 752 3761

Fax: (013) 752 3729

**Western Cape**

Tel: 0800 007 081

Fax: (021) 483 5872

**North West**

Tel: (018) 387 7700

Fax: (018) 392 5660



