



NOTEBOOK ON THE NATIONAL CREDIT ACT, 2005

(Act No. 34 of 2005)



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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA



Overview

The National Credit Act, 2005 (Act No. 34 of 2005) is part of a comprehensive legislation overhaul designed to protect the consumer in the credit market and make credit and banking services more accessible. The Act was introduced to: promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information; promote black economic empowerment and ownership within the consumer credit industry; prohibit certain unfair credit and credit-marketing practices; promote responsible credit granting and use and for that purpose to prohibit reckless credit granting; provide for debt reorganisation in cases of over-indebtedness; regulate credit information; provide for registration of credit bureaus, credit providers and debt-counselling services; establish national norms and standards relating to consumer credit; promote a consistent enforcement framework relating to consumer credit; and establish the National Credit Regulator and the National Consumer Tribunal.

Purpose

The purposes of the National Credit Act are to promote and advance the social and economic welfare of South Africans; promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry; and protect consumers, by:

- Promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions.
- Ensuring the consistent treatment of different credit products and different credit providers.
- Promoting responsibility in the credit market by
 - encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and
 - discouraging reckless credit granting by credit providers and contractual default by consumers.
- Promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers.
- Addressing and correcting imbalances in negotiating power between consumers and credit providers by
 - providing consumers with education about credit and consumer rights;
 - providing consumers with adequate disclosure of standardised information in order to make informed choices; and
 - providing consumers with protection from deception, and from unfair or fraudulent

conduct by credit providers and credit bureaus.

- Improving consumer credit information and reporting and regulation of credit bureaus.
- Addressing and preventing the over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligation.
- Providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements.
- 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.

Consumer rights

Protection of consumer credit rights

- A credit provider must not, in response to a consumer exercising, asserting or seeking to uphold any right set out in the National Credit Act or in a credit agreement:
 - discriminate directly or indirectly against the consumer, compared to the credit provider's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right
 1. penalise the consumer;
 2. alter, or propose to alter, the terms or conditions of a credit agreement with the consumer, to the detriment of the consumer; or
 3. take any action to accelerate, enforce, suspend or terminate a credit agreement with the consumer.
- If a credit agreement, or any provision of such an agreement is, in terms of the National Credit Act, declared to be unlawful or severed from the agreement, the credit provider who is a party to that agreement must not, in response to that decision:
 - directly or indirectly penalise another party to that agreement when taking any action contemplated in Section 61(1);
 - alter the terms or conditions of any other credit agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
 - take any action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

Protection against discrimination in respect of credit

- Relative to the treatment of any other consumer or prospective consumer, a credit provider must not unfairly discriminate directly or indirectly against any natural person, juristic person or association of persons on one or more grounds set out in Section 9(3) of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), when:
 - assessing the ability of the person to meet the obligations of a proposed credit agreement;
 - deciding whether to refuse an application to enter into a credit agreement, or to offer or enter into a credit agreement;
 - determining any aspect of the cost of a credit agreement to the consumer;
 - proposing or agreeing the terms and conditions of a credit agreement;
 - assessing or requiring compliance by the person with the terms of a credit agreement;
 - exercising any right of the credit provider under a credit agreement, the National Credit Act or applicable provincial legislation;
 - determining whether to continue, enforce, seek judgment in respect of, or terminate a credit agreement; or
 - determining whether to report, or reporting, any credit information or record.
- Subsection (1), read with the changes required by the context, applies equally to:
 - a credit bureau when offering its services to the public, and when accepting, compiling, analysing, modifying or reporting any credit information or record;

- the ombud with jurisdiction or alternative dispute resolution agent, when offering or holding out the ability to resolve a dispute or assist in the resolution of a dispute between a credit provider and a consumer in terms of the National Credit Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to credit providers and consumers;
 - a debt counsellor when offering or holding out the ability to serve as a debt counsellor in terms of the National Credit Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to consumers; and
 - any employer or trade union, when acting in terms of Section 75(3) or Section 75(4).
- Subsection (1) and subsection (2) apply in respect of a consumer or prospective consumer that is an association or juristic person to prohibit unfair discrimination against that association or juristic person to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.
- It is not discrimination on the basis of age to:
 - refuse to receive or consider an application for credit from an unemancipated minor; or
 - refuse to offer an unlawful credit agreement to, or enter into an unlawful credit agreement with, an unemancipated minor.
- A credit provider may determine for itself any scoring or other evaluate mechanism or model to be used in managing, underwriting and pricing credit risk, provided that any such mechanism or model is not founded or structured upon a statistical or other analysis in which the basis of

risk categorisation, differentiation or assessment is a ground of unfair discrimination prohibited in Section 9(3) of the Constitution.

- In respect of an alleged contravention of this section, any person contemplated in Section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act may either:
 - institute proceedings before an equality court, in terms of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act; or
 - Make a complaint to the National Credit Regulator in terms of Section 136, which must refer the complaint to the equality court, if the complaint appears to be valid.
- A court may draw an inference that a credit provider has discriminated unfairly against a consumer or prospective consumer if that credit provider:
 - knew or reasonably could have known that the consumer or prospective consumer, or a natural person contemplated in subsection (3), was a historically disadvantaged person;
 - has made a decision contemplated in Section 62(1)(a) through Section 62(1)(d), with respect to that consumer or prospective consumer; and
 - has refused, or failed without reasonable cause, to respond to a request made in terms of Section 62 in respect of that decision.

Right to apply for credit

- Every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.
- Subject to Section 61 and Section 66, a credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.
- Subject to Section 61 and Section 92(3), nothing in the National Credit Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person.

Right to reasons for credit being refused

- On request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for:
 - refusing to enter into a credit agreement with that consumer;
 - offering that consumer a lower credit limit under a credit facility than applied for by the consumer, or reducing the credit limit under an existing credit facility;
 - refusing a request from the consumer to increase a credit limit under an existing credit facility; or
 - refusing to renew an expiring credit card or similar renewable credit facility with that consumer.
- When responding to a request in terms of subsection (1), a credit provider who has based its decision on an adverse credit report received from a credit bureau must advise the consumer in writing of the name, address and other contact particulars of that credit bureau.
- On application by a credit provider, the National Consumer Tribunal may make an order limiting

the credit provider's obligation in terms of this section if the tribunal is satisfied that the consumer's requests for information are frivolous or vexatious.

Right to information in official language

- A consumer has the right to receive any document that is required in terms of the National Credit Act in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document.
- If the producer of a document that is required to be delivered to a consumer in terms of the National Credit Act is, or is required to be, a registrant, that person must:
 - make a submission to the National Credit Regulator proposing to make such documents available in at least two official languages; and
 - offer each consumer an opportunity to choose an official language in which to receive any document, from among at least two official languages as determined in accordance with a proposal that has been approved by the National Credit Regulator.
- A proposal in terms of subsection (2) may propose:
 - the same official languages for use throughout South Africa; or
 - different official languages for use in different parts of South Africa.
- The National Credit Regulator must:
 - consider each proposal in terms of subsection (2) having regard to usage, practicality, expense, regional

circumstances and the balance of the needs and preferences of the population ordinarily served by the person making the proposal; and

- either
 1. approve the proposal; or
 2. require the person making the proposal to submit a fresh proposal, if the National Credit Regulator concludes that the proposal does not adequately provide for the maximum practicable enjoyment of the right set out in subsection (1).
- The person who made a proposal that is the subject of a decision of the National Credit Regulator in terms of subsection (4)(b)(ii) may apply to the National Consumer Tribunal to review that decision, and the tribunal may make an order confirming or setting aside the decision.
- If the producer of a document that is required to be delivered to a consumer in terms of the National Credit Act is not a registrant, and not required to register, that person must offer the consumer an opportunity to choose an official language in which to receive that document from among at least two official languages selected by the producer of the document, having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by that person.
- The producer of a document that is required to be delivered to a consumer in terms of the National Credit Act must provide each such document to the consumer in the official language chosen by the consumer in terms of this section.
- The Minister of Trade and Industry may prescribe at least two official languages to be used by the National Credit Regulator in any documents it is

required to deliver in terms of the National Credit Act, for all or particular parts of South Africa, so as to give maximum effect to the right set out in subsection (1).

Right to information in plain and understandable language

- The producer of a document that is required to be delivered to a consumer in terms of this Act must provide that document:
 - in the prescribed form, if any, for that document; or
 - in plain language, if no form has been prescribed for that document.
- For the purposes of the National Credit Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to:
 - the context, comprehensiveness and consistency of the document;
 - the organisation, form and style of the document;
 - the vocabulary, usage and sentence structure of the text; and
 - the use of any illustrations, examples, headings, or other aids to reading and understanding.
- The National Credit Regulator may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).
- This section does not apply to a developmental credit agreement if:
 - the National Credit Regulator has pre-

- approved the form of all documents to be used by the credit provider for such credit agreements in terms of the National Credit Act; and
- the credit provider has used only those pre-approved forms in dealing with the particular consumer.
- When pre-approving any form of documents as contemplated in subsection (4), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of subsection (1)(b).

Right to receive documents

- Every document that is required to be delivered to a consumer in terms of the National Credit Act must be delivered in the prescribed manner, if any.
- If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must:
 - make the document available to the consumer through one or more of the following mechanisms
 1. in person at the business premises of the credit provider, or at any other location designated by the consumer but at the consumer's expense, or by ordinary mail;
 2. by fax;
 3. by e-mail; or
 4. by printable web page
 - deliver it to the consumer in the manner chosen by the consumer from the options made available in terms of paragraph (a).
- A credit provider must not charge a fee for the original copy of any document required to be delivered to a consumer in terms of the National Credit Act.

- On written request from the consumer the credit provider must provide the consumer with:
 - a single replacement copy of a document required in terms of the National Credit Act, without charge to the consumer, at any time within a year after the date for original delivery of that document; and
 - any other replacement copy, subject to any search and production fees permitted by regulation.
- On application by a credit provider, the National Consumer Tribunal may make an order limiting the credit provider's obligation in terms of subsection (4) if the tribunal is satisfied that the consumer's requests for information are frivolous or vexatious.
- Subsection (3), subsection (4) and subsection (5) do not apply to a developmental credit agreement if:
 - the National Credit Regulator has pre-approved procedures to be followed by the credit provider in the delivery of documents with respect to such credit agreements in terms of the National Credit Act; and
 - the credit provider has complied with those pre-approved procedures in dealing with the particular consumer.
- When pre-approving any procedure as contemplated in subsection (6), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of subsection (1) to subsection (5).

Right to confidential treatment

- Any person who, in terms of the National Credit Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information, and in particular, must:
 - use that information only for a purpose permitted or required in terms of the National Credit Act, other national legislation or applicable provincial legislation; and
 - report or release that information only to the consumer or prospective consumer, or to another person
 1. to the extent permitted or required by the National Credit Act, other national legislation or applicable provincial legislation; or
 2. as directed by:
 3. the instructions of the consumer or prospective consumer; or
 4. an order of the court or the National Consumer Tribunal.

Right to access and challenge credit records and information

- When a consumer requests a credit report, the report must disclose the same information that will be displayed to other parties when such report is provided.
- If the accuracy of the consumer credit information has been challenged by a consumer in terms of Section 72(3)(a) and Section 72(3)(b) of the National Credit Act, the person to whom the challenge has been made must take the steps set out in Section 72(3) within 20 business days after the filing of the challenge.
- If the information is removed in terms of Section 72(3)(b), the credit bureau must inform

the consumer and all parties to whom the information has been reported in the previous 20 business days as well as all other registered credit bureaus.

- Every person has a right to:
 - be advised by a credit provider within the prescribed time before any prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request;
 - inspect any credit bureau, or national credit register, file or information concerning that person
 1. without charge
 2. as of right once within any period of twelve months;
 3. if so ordered by a court or the National Consumer Tribunal; and
 4. once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and
 - at any other time, upon payment of the inspection fee of the credit bureau or natural credit register, if any;
- challenge the accuracy of any information concerning that person:
 - that is the subject of a proposed report contemplated in paragraph (a); or
 - that is held by the credit bureau or national credit register, as the case may be, and require the credit bureau or the National Credit Regulator, as the case may be, to investigate the accuracy of any challenged information, without charge to the consumer; and
 - be compensated by any person who

reported incorrect information to a registered credit bureau or to the National Credit Regulator for the cost of correcting that information.

- A credit provider must not require or induce a prospective consumer to obtain or request a report from a credit bureau in connection with an application for credit or an assessment under Section 18.
- If a person has challenged the accuracy of information proposed to be reported to a credit bureau or to the national credit register, or held by a credit bureau or the national credit register, the credit provider, credit bureau or national credit register, as the case may be, must take reasonable steps to seek evidence in support of the challenged information, and within the prescribed time after the filing of the challenge must:
 - provide a copy of any such credible evidence to the person who filed the challenge, or
 - remove the information, and all record of it, from its files, if it is unable to find credible evidence in support of the information, subject to subsection (6).
- Within 20 business days after receiving a copy of evidence in terms of subsection (3)(a), the person who challenged the information held by a credit provider, credit bureau or national credit register may apply in the prescribed manner and form to the National Credit Regulator to investigate the disputed information as a complaint under Section 136.
- A credit bureau or the National Credit Regulator may not report information that is challenged until the challenge has been resolved in terms of subsection (3)(a) or subsection (3)(b).
- On application by a credit provider, credit bureau

or the National Credit Regulator, as the case may be, the National Consumer Tribunal may make an order limiting the application's obligations to a consumer in terms of this section if the tribunal is satisfied that the consumer's:

- particular request or requirement is frivolous, unfounded or wholly unreasonable; or
 - history and pattern of such requests or requirements are frivolous or vexatious.
- Failure by a credit bureau to comply with a notice issued in terms of Section 55, in relation to this section, is an offence.

The consumer's right to rescind a credit agreement

- A notice by the consumer to the credit provider to terminate a credit agreement in terms of Section 121(2) of the National Credit Act must be given in writing and delivered by hand, fax, e-mail or registered mail to an address specified in the agreement, alternatively the credit provider's registered address.
- This section applies only in respect of a lease or an instalment agreement entered into at any location other than the registered business premises of the credit provider.
- A consumer may terminate a credit agreement within five business days after the date on which the agreement was signed by the consumer, by:
 - delivering a notice in the prescribed manner to the credit provider; and
 - tendering the return of any money or goods, or paying in full for any services, received by the consumer in respect of the agreement.
- When a credit agreement is terminated in terms of this section, the credit provider:
 - must refund any money the consumer has

- paid under the agreement within seven business days after the delivery of the notice to terminate; and
- may require payment from the consumer for
 1. the reasonable cost of having any goods returned to the credit provider and restored to saleable condition; and
 2. a reasonable rent for the use of those goods for the time that the goods were in the consumer’s possession, unless those goods are in their original packaging and it is apparent that they have remained unused.
 - A credit provider to whom property has been returned in terms of this section, and who has unsuccessfully attempted to resolve any disputes over depreciation of that property directly with the consumer and through alternative dispute resolution under Part A of Chapter 7, may apply to a court for an order in terms of subsection (5).
 - If, on an application in terms of subsection (4), a court concludes that the actual fair market value of the goods depreciated during the time that they were in the consumer’s possession, a court may order the consumer to pay to the credit provider a further amount not greater than the difference between:
 - the depreciation in actual fair market value, as determined by the court; and
 - the amount that the credit provider is entitled to charge the consumer in terms of subsection (3)(b).

The consumer or guarantor's right to settle agreement

- A consumer or guarantor is entitled to settle the credit agreement at any time, with or without advance notice to the credit provider.
- The amount required to settle a credit agreement is the total of the following amounts:
 - the unpaid balance of the principal debt at that time;
 - the unpaid interest charges and all other fees and charges payable by the consumer to the credit provider up to the settlement date; and
 - in the case of a large agreement:
 1. at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with subparagraph (ii); or
 2. other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between
 3. three months; and
 4. the period of notice of settlement if any, given by the consumer.

Right to participate in hearing

- The following persons may participate in a hearing contemplated in this part, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:
 - the National Credit Regulator;
 - the applicant or complainant, and in the case of a complaint concerning an alleged contravention of Section 61, the consumer or prospective consumer, if that person is not the complainant;
 - the respondent; and
 - any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the National Consumer Tribunal, that interest is adequately represented by another participant.
- Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, which had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of the National Credit Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of the National Credit Act

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