

# FACTS SHEET ..... NATIONAL CREDIT ACT



## FACT 1: Scope of the Act

The Act applies to all credit agreements made within (or having effect within) South Africa, except the following:

- Credit agreements between parties not dealing at arm's length. In terms of the Act, parties are not dealing at arm's length in the following arrangements:
  - A shareholder loan or other credit agreement between a juristic person, as consumer, and a person who has a controlling interest in that juristic person, as credit provider.
  - A loan to a shareholder or other credit agreement between a juristic person, as credit provider, and a person who has a controlling interest in that juristic person, as consumer.
  - A credit agreement between family members who are co-dependent on each other or where one is dependent on the other.
  - Arrangements in which the parties are not independent of each other and do not necessarily strive to obtain the utmost possible advantage out of the transaction. (Loans between partners and friends on an informal basis will not be regulated.)
  - Arrangements held in law to be between parties who are not dealing at arm's length
- Credit agreements in terms of which the consumer is the state or an organ of the state.
- Credit agreements in terms of which the credit provider is the Reserve Bank of South Africa.
- Credit agreements in respect of which the credit provider is located outside the South Africa. (The consumer must apply to the Minister of Finance for this approval in the prescribed manner and form.)
- Credit agreements in terms of which the consumer is a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all

related juristic persons, at the time that the agreement is concluded equals or exceeds R1 million or if the agreement is a large agreement for a value above R250 000 and the consumer is a juristic person whose asset value or annual turnover does not, at the time the agreement is concluded, exceed R1 million. (The asset value or annual turnover of a juristic person at the time a credit agreement is made is the value stated as such by that juristic person at the time it enters into that agreement.)

- A juristic person is related to another juristic person if one of them has direct or indirect control over the whole or part of the business of the other or a person has direct or indirect control over both of them.

## FACT 2: What is a credit agreement?

In terms of the Act, a credit agreement is defined as:

- credit facility;
- credit transaction;
- credit guarantee; or
- any combination of the three.

The following however, are specifically excluded from the definition of a credit agreement:

- a policy of insurance;
- a lease of immovable property; and
- a transaction between a stokvel and a member of that stokvel in terms of the rules of the stokvel.

## FACT 3: Be aware of the special considerations

Incidental credit agreements:

An incidental credit agreement is any agreement in terms of which a charge is levied for payment of an invoice after a specific date, or where two prices are quoted to the consumer, the lesser

applying if payment is made on or before a certain date, and the higher for payments thereafter. Providers of incidental credit agreements are not required to register in terms of the Act.

Certain sections of the Act apply to these agreements from 20 business days after they become overdue and late payment fees or interest is levied.

Developmental credit agreements:

Developmental credit agreements include loans from credit unions, education loans, loans to develop small businesses, loans to build, acquire or rehabilitate low income housing or loans used to finance another purpose as prescribed.

Developmental credit providers are subject to a higher degree of oversight. In return these credit agreements are subject to less stringent disclosure requirements.

Public interest credit agreements:

Public interest credit agreements, as defined in the Act, are designed to meet the urgent need for available credit and are exempt from the reckless credit provisions of the Act.

#### **FACT 4: Who must register?**

All credit providers if:

- they have concluded at least 100 credit agreements to which the Act applies (other than incidental credit agreements); or
- the total principal debt of all outstanding credit agreements concluded by the credit provider to which the Act applies (other than incidental credit agreements) exceeds R500 000.

All credit bureaus and debt counselors.

#### **FACT 5: When will you be a “credit provider”?**

The Act defines a credit provider as:

- (a) the party who supplies goods or services under a discount transaction, incidental credit agreement or installment agreement;
- (b) the party who advances money or credit under a pawn transaction;
- (c) the party who extends credit under a credit facility;
- (d) the mortgagee under a mortgage agreement;

(e) the lender under a secured loan;

(f) the lessor under a lease;

(g) the party to whom an assurance or promise is made under a credit guarantee;

(h) the party who advances money or credit to another under any other credit agreement; or

(i) any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into.

#### **FACT 6: How is a consumer defined?**

Consumer:

(a) the party to whom goods or services are sold under a discount transaction, incidental credit agreement or installment agreement; agreement, but does not include a default administration charge; co-operative principles;

(b) the party to whom money is paid, or credit granted, under a pawn transaction;

(c) the party to whom credit is granted under a credit facility;

(d) the mortgagor under a mortgage agreement;

(e) the borrower under a secured loan;

(f) the lessee under a lease;

(g) the guarantor under a credit guarantee; or

(h) the party to whom or at whose direction money is advanced or credit granted under any other credit agreement.