

CONSUMERS' CREDIT AMNESTY: NOT AN AMNESTY ON THE DEBT YOU OWE

The latest amendments to the National Credit Act have caused great confusion, with some consumers believing that the introduction of what has been termed a "credit amnesty" means they do not have to repay existing debts. Credit providers, on the other hand, are becoming increasingly concerned that they will have less information to assess their risks in providing credit.

The Credit Amnesty is not an amnesty as the term is commonly understood, but rather a "credit information amnesty". This is reflected in the official title of the relevant regulations which will come into effect on 1 April 2014, being "The removal of adverse consumer credit information and information relating to paid up judgments regulations". It entails changes to the type of debtor information that credit bureaus keep and shifts the onus onto the credit bureaus to clean up the records of those consumers who have settled previously unpaid debts.

Object of the regulations

The regulations were not introduced to write off existing, outstanding debts, but instead to give a clean slate to certain previously blacklisted consumers who have, in the meantime, settled their outstanding debts. The legislature considered that this would facilitate such debtors' access to housing and jobs.

The need for the regulations arose as a result of the fact that presently many people are prohibited from entering into contracts or credit agreements due to the adverse information kept by the credit bureaus, despite full settlement of outstanding debts by these debtors. As such, the new regulations aim to lend a hand only to those people who have repaid their outstanding debts and who, whether due to a lack of finances or knowledge, did not approach the courts to have the judgments against them rescinded or to request that their records at the relevant credit bureaus be amended accordingly.

What information will be removed?

The regulations provide that the following will be removed:

- 1) "Adverse classifications or information". The phrase will include comments such as "default", "not contactable", "handed over for collection", "legal action", and "write-off".
- 2) All judgments relating to debts that were, subsequent to the judgment being granted, paid up.

What information will remain?

- 1) Debt judgments which have not been paid up or settled.
- 2) Factual information pertaining to the payment profile of the consumer. This information will remain on the consumer's profile for a period of five years, enabling credit providers to obtain a detailed history of a potential debtor's payment behaviour.

Process

When a consumer has settled his/her outstanding account in terms of a credit agreement, the credit provider has seven days in which to notify the credit bureau of the settlement.

With effect from 1 April 2014, all credit bureaus will have two months in which to remove any adverse classification of consumer behaviour and adverse classification enforcement action from the records of those consumers who have settled their debts.

What does this mean for Consumers?

Records of judgments obtained against consumers in respect of debts that have subsequently been settled, will automatically be removed. It will no longer be necessary for a consumer to approach a court to have the judgment rescinded or go through various processes *in order to have the adverse credit information removed from his/her credit record*. This does not mean, however, that the fact of the judgment is somehow obliterated; it only means that the credit bureaus must delete the information relating to such judgment when the debt to which the judgment relates, has been settled.

It is important to note that the regulations are very clear to state that "the consumer remains liable to meet his/her obligations in terms of the credit agreement". Even if the adverse information has been removed from the consumer's credit record, the consumer still has to pay their accounts as per their credit agreement.

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