NATIONAL CREDIT ACT - RECENT AMENDMENTS ARE ABOUT MUCH MORE THAN JUST A CREDIT INFORMATION AMNESTY

Apart from the much commented regulations setting out the details of the credit information amnesty passed at the end of March this year, other amendments to the National Credit Act 34 of 2005 ('the current Act') were assented to on the 16th of May 2014. These are equally important to the credit arena and we highlight the additional changes here.

As a brief introduction and to assist the reader to differentiate between the two sets of changes to the NCA, first a few pointers regarding the so-called 'credit information amnesty'.

1. The credit information amnesty

With effect from 1 April 2014, all credit bureaus (there are 15 in total in South Africa) were given two months in which to remove any adverse consumer classification from the records of those consumers who have settled their debts. This relates to all judgments debts that were paid up subsequent to the judgment being granted and adverse classifications or information" relating to any debt/obligation that has been paid up. The phrase includes comments such as "default", "not contactable", "handed over for collection", "legal action", and "write-off".

Therefore, as from 1 June, all adverse information is removed from all consumers' information kept by a credit bureau where the debt has been settled. In addition, all records of paid-up judgments are removed.

However, should a debtor again fall into default and judgment is obtained against him after this date (1 June 2014), then the judgment may be recorded against his name at a credit bureau. As soon as the judgment is paid up subsequently, the record of the judgment must be removed.

For *credit bureau and credit check purposes*, it will no longer be necessary for a consumer who has paid his debt to approach a court to have the judgment rescinded or go through various processes in order to have the adverse credit information removed from his/her credit record at any credit bureau.

(This does not mean, however, that the fact of the judgment is somehow obliterated; it only means that the credit bureaux must delete the information relating to such judgment

when the debt to which the judgment relates, has been settled. (See our detailed discussion of these provisions in our Law Update 3/2014)

2. The NCA Amendment Act

Apart from the credit information amnesty, the National Credit Amendment Act 19 of 2014 ('the Amendment Act') was assented to on 16 May 2014, but is not yet in force. A date for its coming into operation is still to be gazetted.

The Amendment Act follows on the legislature's continuing concerns with objectionable practices in the credit industry in South Africa. The amendments seek to address, amongst other things, the continuing irresponsible and reckless lending practices in some arenas. In addition, an attempt was made to provide clarity on certain provisions that were debated before the courts in the past years, specifically the issue regarding the sending of the prescribed section 129 notice to a defaulting debtor, before the credit provider may institute recovery steps against him. Some of the most important changes are listed below.

2.1 ALL CREDIT PROVIDERS TO REGISTER WITH NCR

In an effort to crack down on illegal lenders and reckless practices, *all* lenders are required to register with the National Credit Regulator ('the NCR'). (Currently, the Act requires only those lenders with more than 100 credit agreements on their books, or those who have a principal debt owing to them exceeding R500,000 to register.) For the smaller credit providers who will now be obliged to register, it is proposed that the registration requirements and fees payable in respect of registration would be less onerous than for the large credit providers.

2.2 PRESCRIBED AFFORDABILITY ASSESSMENT

In the current Act, credit providers were allowed to develop their own affordability assessment models. Now, the Minister is empowered to prescribe affordability assessment regulations which will include, it is envisaged, elements relating to discretionary income as well as determining the buffer in respect of income that should not be taken into account when conducting affordability assessments. This, the legislature hopes, will prevent credit providers from providing credit to the maximum of the consumer's income, leaving the consumer with little income for other things.

2.3 PROCEDURES BEFORE ENFORCEMENT

Section 129 of the current Act (listing the procedures before a credit provider may commence debt enforcement) is amended to allow a consumer to remedy a default - 'at

any time' before the credit provider has cancelled the agreement concerned - by paying all overdue amounts and related administration charges and 'reasonable costs'. Provision is also made not only for the consumer to specify - in writing - the manner in which notification of a default should be delivered, but also for proof of delivery to be recorded so that no misunderstandings arise. It is specifically stated that proof of delivery is satisfied by "written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency" or by the "signature or identifying mark of the recipient".

2.4 PROHIBITED CHARGES

The current Act contains a closed list of fees, charges, interest and items that a credit provider may recover from a consumer. In this regard, the amendment Act makes any contravention an offence. In addition, it enables the Minister to cap the cost of credit insurance, in consultation with the Minister of Finance.

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