

CGF

RESEARCH INSTITUTE
(PTY) LTD

The National Credit Act, No.34 of 2005

(This is an abridged version of the full report which is available for purchase. The 60 page report may be used throughout your company.)

The National Credit Act is designed to protect consumers from unscrupulous lending activities by creating a well-regulated credit economy.



CGF Research Institute (Pty) Ltd
Reg. No. 2004/000744/07
+ 27 11 476 8264 / 1 / 0
+ 27 82 373 2249
www.cgf.co.za www.corporate-governance.co.za
gmeyer@cgf.co.za

INDEX

Section One

- Executive summary

Section Two

- The National Credit Act, 2005
 - Purpose & objectives
 - Overview of the Act
 - Regulatory bodies
 - Scope of application
 - Marketing & advertising
 - Consumer rights
 - Reckless credit
 - Charges, interest & fees
 - Debt enforcement
 - Offences & penalties
- Further definitions, acronyms used within this presentation, references & additional reading



Executive summary - National Credit Act No. 34 of 2005

(This is an abridged version of the full report which is available for internal use within your company.)

“ . . . the legislation [The National Credit Act, 2005] was written to create a more transparent & more accessible credit market.”

Gabriel Davel: CEO of the National Credit Regulator

The National Credit Act aims to create a more transparent & more accessible credit market by providing for the general regulation on consumer credit which prohibit reckless & irresponsible credit granting practices

- The National Credit Act No. 34 of 2005 (NCA) was promulgated largely due to consensus by the Department of Trade & Industry & other industry players that the credit market & its regulation required radical transformation. Inadequate regulation of the credit industry has resulted in:
 - a lack of transparency in credit lending practices
 - inaccessibility for a large percentage of the SA population to credit facilities
 - complex terms & conditions in credit agreements that are often difficult to understand
 - irresponsible marketing of credit
 - the emergence of many unscrupulous operators that have taken advantage of overburdened consumers
 - large numbers of consumers at all levels of the economic spectrum becoming overburdened due to continual & reckless extension of credit
 - negative effects on the economy due to excessive credit extension that inhibits growth
- Initially, the NCA was aimed at unifying regulation of the credit market. The NCA replaces the:
 - Usury Act No.73 of 1968,
 - Credit Agreements Act No.75 of 1980 &
 - Usury Exemption Notices of 1992, 1999 & 2005
- The NCA has grown in scope to encompass the entire consumer credit industry & introduces a wide range of reforms to the industry that will now be regulated by the Act & the National Credit Regulator (NCR)

Virtually all credit agreements made & effective in SA are governed by the NCA . . .

Overview of the NCA

1. The NCA generally *applies to every credit agreement* between parties dealing at arm's length that is made in, or is effective in, SA

– the NCA protects consumers over a wide spectrum

❖ the protection extends to natural & juristic persons - but is excluded in the case of juristic persons if they conclude large transactions

2. The NCA contains detailed provisions regarding:

– the *permissible fees, charges & interest* under credit agreements

– *advertising & marketing practices* of credit providers

– *consumers' rights* to, amongst other:

❖ apply for credit

❖ certain information

❖ protection of confidential information

❖ reasons for credit being refused

❖ “cooling-off” - certain contracts may be cancelled by the consumer within a certain time

❖ return goods to the credit provider & have them sold by the credit provider to settle outstanding debt

❖ accelerate payments & to settle an account prematurely

– the rights of a credit providers to enforce an agreement where consumers are in default

– *dispute resolution & debt enforcement procedures*, including the regulating of:

❖ dispute resolution agents, the NCR, ombuds & debt counsellors

... a wide spectrum of consumers are protected by the NCA through the provision of many rights & duties for both consumers & credit providers

Overview of the NCA

3. The NCA prohibits:

- certain credit agreements (unlawful agreements),
- the inclusion of unlawful provisions in credit agreements,
- the extension of reckless credit or credit which will cause the consumer to become over-indebted

4. The NCA attempts to prevent over-indebtedness of consumers, & assists if they experience financial difficulty

- credit providers are obliged to evaluate a consumer's creditworthiness before extending credit
- consumers that become over-committed may apply for a debt review & a re-scheduling of debt

5. The NCA establishes a *National Credit Regulator* (NCR), whose functions include:

- the promotion of a fair, sustainable, accessible credit market & regulation of the consumer credit industry

6. A *National Consumer Tribunal* has also been established & has powers to adjudicate:

- applications in terms of the NCA & allegations of prohibited conduct

7. The NCA provides for the *registration of credit providers, credit bureaux & debt counsellors* with the NCR

8. *Credit bureaux* are regulated by the NCA

- they provide credit providers with information to enable them to consider the consumer's ability to repay the credit applied for

The NCA specifies general & specific offences, as well as the penalties for a conviction in terms of the Act

OFFENCES

PENALTIES

SPECIFIC OFFENCES

General

- Failure by unregistered persons to comply with a notice of the NCR to stop engaging in activities subject to the Act

Consumers

- Knowingly providing false or misleading information to a credit provider or sheriff concerning address, location of goods etc

Credit bureaux

- Failure by a credit bureau to:
 - protect the confidentiality of information
 - fulfil its duties such as verifying consumer information & issuing accurate
 - expunge certain information from its records
 - deal with a challenge by a consumer of the accuracy of its information or remove information if justified

Credit providers

- Failure to make a valuation of goods surrendered by a consumer & to sell them at the best price
- Engaging in prohibited collection & enforcement practices

GENERAL OFFENCES

- Disclosure of confidential information obtained in carrying out a function in terms of the Act
- Obstructing, hindering, opposing or unduly influencing a person who is exercising a power or performing a duty
- Failure to attend a hearing when summoned
- Giving false evidence or failing to answer questions when under oath
- Failure to comply with an order of the Tribunal

- The penalty for offences against the Regulator or failure to comply with an order of the Tribunal is a fine or imprisonment for a period not exceeding 10 years, or both

- The penalty for any other offence in terms of the NCA is a fine or imprisonment for a period not exceeding 12 months, or both

How to order this report

Report name: The National Credit Act 34 of 2005

Pages: 60

Reviewers: CGF Research Institute (Pty) Limited ("CGF") would like to express its appreciation for the peer review & editorial contribution to this presentation by Gary Paul from MicroFinance SA.

Price: R 580.00 ex Vat

Price: R 661.00 incl Vat

Should you wish to order this report, please supply CGF Research Institute (Pty) Ltd the following information:

- 1) Your company's name (in full) to be invoiced;
- 2) Your company's registration number;
- 3) Your company's VAT registration number;
- 4) Your company's physical address;
- 5) Your company's postal address;
- 6) The person's name who will be taking delivery of the product; designation and email address.

Submit your information to: accounts@cgf.co.za

Our process from here:

- 1) On receipt of the above information;
- 2) An invoice will be issued with our terms and conditions ("t's&c's") attached;
- 3) On receipt of the signed t's&c's and proof of payment, we will send the report electronically to your designated email address.

Banking details:

Bank: First National Bank

Branch: Cresta Centre

Branch Code: 254-905

Account Number: 6-206-290-027-2

Account Holder: CGF Research Institute (Pty) Ltd

More information about CGF: www.cgf.co.za or www.corporate-governance.co.za