
GENERAL NOTICE

NOTICE 22 OF 2010

Department of Trade and Industry

**National Credit Act, 2005
Debt Counselling Regulations**

In terms of section 171 of the National Credit Act, 2004 (Act No. 34 of 2005), I, Dr Rob Davies, Minister of Trade and Industry hereby re-publish the regulations for public comments on the —

- (a) amendments to Government Notice No. R. 489 of 31 May 2006 on Regulation 26;

Interested persons may submit written comments on the proposed regulations by 25/02/2010 to:

Director-General, Department of Trade and Industry

Private Bag X84

Pretoria

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or

77 Meintjies Street

Block B, 1st Floor

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For Attention: Ms Mpho Mosing

Dr. Rob Davies, MP

Minister of Trade and Industry

**DEBT COUNSELLING REGULATIONS
IN TERMS OF THE
NATIONAL CREDIT ACT, 2005**

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act bears the meaning assigned to it in the Act, and unless the context indicates otherwise;

“**the Act**” means the National Credit Act, 2005 (Act No. 34 of 2005);

“**clerk of the court**” means a clerk of the court appointed in terms of section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) and includes an assistant clerk of the court so appointed;

“**court**” means magistrate court established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) and the Magistrates Court Rules, having jurisdiction over a consumer by virtue of such consumer’s residence irrespective of the monetary value involved;

“**deliver**” means delivering documents, proposals, notices and written submissions in terms of Magistrates Court Act No. 32 of 1944, parties may however agree to the delivery of documents by registered post, facsimile or e-mail;

“**file**” means to file with the clerk of the court and ‘filed’ has a corresponding meaning;

“**legal practitioner**” means any person admitted to practice as an advocate or attorney in the Republic of South Africa;

“**proposal**” means the proposal contemplated by section 86(7)(c) of the Act by a debt counselor or consumer.

Confirming of consent orders in terms of section 86(8)(a) of the National Credit Act, 2005

2. (1) An order contemplated by section 86(8)(a) of the Act, must be in accordance with Rule 55 of the Magistrates Court Act, 32 of 1944
- (2) An order contemplated by section 86(8)(a) of the Act must be substantiated by the debt counsellor through an affidavit with supporting affidavits indicating that all parties have consented and agreed upon a plan of debt re-arrangement, which must be fully stipulated in the affidavit with supporting documents if any, and may, where applicable, include arrangements —
 - (a) that one or more of the consumer's obligations be re-arranged by-
 - (i) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (ii) postponing the date on which payments are due under the agreement during a specific period;
 - (iii) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
 - (iv) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6;
 - (b) regarding the manner in which the payments will be collected from the consumer and distributed to the credit providers;
 - (c) relating to administrative costs that is payable by the consumer or credit provider(s), in terms of these regulations; and
- (3) Upon the filing of the order referred to in sub-regulations (1) and (2), the court may confirm or refuse the order,
- (4) The duplicate copy of the confirmed order must be collected from the clerk of the court by the debt counsellor / consumer who must deliver the copy of the order within five (5) days to the credit providers,

- (5) The credit provider must effect the order immediately upon receipt of such order.

Proposal to court that consumer's credit agreements be declared reckless credit and/or re-arrangement of consumer's obligations in terms of sections 86(7)(c) and 86(8)(b) of the Act

3. (1) A proposal in terms of section 86(7)(c) of the Act must be lodged in terms of Rule 55 of the Magistrates Court Act, 32 of 1944
- (2) The proposal in sub-regulation one (1) must be substantiated to incorporate the following factors:
- (a) an exposition of the debt counsellor's assessment conducted in terms of section 86(6) of the Act which indicates that the consumer is over-indebted;
 - (b) the relief claimed in terms of section 86(7)(c);
 - (c) the full particulars of any credit provider/s that will be affected by an order of the court;
 - (d) the physical address and postal address of the consumer and the debt counsellor; and
 - (e) the physical address and postal address of the clerk of the court that signed the proposal.
- (3) The proposal must inform the credit provider/s affected thereby that they may oppose the proposal or the terms of the Magistrates Court Act, 32 of 1944
- (4) A notice in terms of sub-regulation (3) must be—
- (a) delivered and filed within 15 days after the proposal was delivered to the credit provider;
 - (b) substantiated by a written statement duly signed by the credit provider in which his / her objection/s to the proposal or the terms of the proposal of the debt counsellor is set out;
 - (c) accompanied by a certified copy of the agreement that is subject to the debt review and certified copies of relevant documentation that the credit provider intends to tender as evidence during proceeding before the court to substantiate his / her motivation against the proposal.

- (5) After the expiry of the 15 days period contemplated in sub-regulation (4), the debt counsellors set the matter down for hearing and notify the interested parties of the date in terms of the Magistrates Court Act, provided that delivery of such notice shall be effected at least 15 days before the date of the hearing.

Application by a consumer in terms of section 86(9) of the Act to obtain leave to institute proceedings and subsequent conduct of proceedings to obtain an order contemplated in section 86(7)(c) of the Act

4. (1) An application in terms of section 86(9) of the Act, to request leave of the court to institute proceedings contemplated in section 86(7)(c) of the Act, must be brought by way of an ex parte-application, in terms of the Magistrates Court Act, 32 of 1944.
- (2) The application must be accompanied by —
- (a) the decision of the debt counsellor, in terms of section 86(7)(a) of the Act
 - (b) an affidavit by the consumer and annexed to the application in which reasons must be set out why leave should be granted to apply for an order contemplated in section 86(7)(c) of Act;
 - (c) affidavits by persons other than the consumer, if applicable.
- (3) If the court grants leave to the consumer to apply directly to the court for an order contemplated in section 86(7)(c) of the Act, the consumer may apply for such an order in terms of the Magistrates Court Act.
- (4) The application by a consumer once granted leave by the court must be substantiated by a founding affidavit contemplated in terms of the Magistrates Court Act, which shall include the following information:
- (a) an exposition which indicates that the consumer is over-indebted;
 - (b) the relief claimed in terms of section 86(7)(c);

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- (c) the full particulars of any credit provider/s that will be affected by an order of the court;
 - (d) the order of the court in proceedings contemplated in sub-regulation (1);
 - (e) the physical address and postal address of the consumer; and
 - (f) the physical address and postal address of the clerk of the court that signed the application.
- (5) The credit provider/s affected must be notified of the application and may provide a notice of intention to oppose in terms of the Magistrates Court Act, which notice shall be delivered no later than 15 days upon receipt of the notice of the application by consumer.
- (6) A notice in terms of sub-regulation (5) to oppose the application must be—
- (a) substantiated by a written statement duly signed by credit provider/s in which credit provider/s objections to the application are set out;
 - (b) accompanied by a certified copy of the agreement that is subject to the debt review and certified copies of relevant documentation that the credit provider/s intends to tender as evidence during proceedings before the court to substantiate his/her objection/s against the application.
- (7) After the expiry of the 15 day period contemplated in sub-regulation (6)(a), the consumer shall set the matter down for hearing and notify the interested parties of the date of hearing, provided that delivery of such notice shall be effected at least 15 days before the date of the hearing .
- (8) A hearing contemplated in sub regulation (7) is judicial in nature, and shall be conducted expeditiously in accordance with the Constitution of the Republic of South Africa.
- (9) notwithstanding the Magistrate Court Act's provisions on hearings; at the hearing contemplated in sub regulation (7) and regulation 4 (5):-
- (a) the consumer / or debt counselor shall present his or her submissions

- in support of the application;
- (b) the debt counselor and credit provider shall motivate their objections to the consumer's application;
 - (c) the presiding Magistrate may put any questions to any of the parties before the court, for purposes of reaching a fair determination and making an order as envisaged by section 86(9);
 - (d) the presiding Magistrate may request additional submissions from one or more of the parties before the court either orally or in writing;
 - (e) the court may order costs provided that the debt counsellor shall not be liable for costs;
 - (f) the presiding Magistrate shall, within 30 days of the conclusion of the application furnish reasons for any order which the court makes.
- (10) The consumer or debt counsellor must deliver copies of the order of the court to the credit providers for execution within five (5) days after the order was made.

Short title and commencement

5. These Regulations will be called the National Debt Counseling Regulations and will come into operation on a date fixed by the Minister of Trade and Industry by proclamation in the *Gazette*.*
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