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## GENERAL NOTICE

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### DEPARTMENT OF TRADE AND INDUSTRY

#### NOTICE 1498 OF 2005

#### **“NOTICE IN TERMS OF SECTION 12(6) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988**

I, Mandisi Mpahtwa, Minister of Trade and Industry, having considered a report by the Consumer Affairs Committee in relation to an investigation, of which notice was given in Notice 949 of 2001, published in Government Gazette No 24738 of 11 April 2003 and the subsequent amendments, and being of the opinion that it is in the public interest, herewith regulate in terms of section 12(6)(iii) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988) the business practice or type of business practice which was the subject of the investigation, by prescribing requirements, as contained in the Schedule, which must be complied with.

#### SCHEDULE

■ - In this notice, unless the context indicates otherwise -

“**contracted subscriber**” means a credit grantor accepted by a credit bureau as a subscriber, which acceptance shall be based on a written agreement in terms whereof the subscriber *inter alia* undertakes to **comply** with the conditions and requirements hereunder and the credit bureau *inferred* commits to discontinue provision of information to a subscriber who do not comply with the mentioned conditions and requirements;

“**credit bureau**” means a business which acquires, records, maintains and **makes** available to contracted subscribers information concerning the manner in which persons conduct their credit and business dealings;

“**credit grantor**” means a business or any other person who extends credit or **leasing facilities**;

**"default"** means the occurrence where a contracted subscriber reports to the credit bureau that a consumer has defaulted which can be due to one or more of the following reasons:

- (a) the consumer has absconded or disappeared and cannot be traced by a contracted subscriber;
- (b) the consumer's account is dosed by a contracted subscriber due to misconduct;
- (c) the debt of the consumer has been written off;
- (d) the consumer is classified as a "bad payer by a contracted subscriber;
- (e) final notice to settle the debt has been issued to the consumer;
- (f) a contracted subscriber has handed the matter over for legal action;
- (g) a letter of demand has been issued to the consumer;
- (h) a cheque has been referred to the drawer;
- (i) goods have been repossessed; and / or
- (j) the consumer has been classified as a "slow payer by a contracted subscriber;

**"listing"** means recording information at a credit bureau;

**"negative information"** means adverse information about a consumer;

"payment profile" means the payment performance data of a consumer supplied to the credit bureau which can be positive or negative;

**"positive information"** means information of a constructive nature;

**"public domain section"** means the section wherein the information that can be shared on request, is recorded;

2 A **credit** bureau shall adhere to the following conditions and requirements concerning the manner in which natural persons conduct their credit and business dealings:

(1) A **credit bureau** may only register and retain registration of a **credit grantor** who extends credit fairly and without unfair discrimination, as a **subscriber**.

(2) credit bureau may only keep information relevant to the **credit** and business dealings of a consumer on file. **Information of** a personal nature may not be recorded, except that which is necessary **for evaluation and correlation**.

(3) **Whenever a** credit bureau compiles a record, it must **follow reasonable procedures to ensure that** it obtains accurate, relevant and **unbiased** information about the consumer to whom the record relates.

(4) A **credit** bureau must maintain a record of all **contracted** subscribers, **who receive the information, for** a minimum **period of two years** and **of the source of each** item of information.

(5) A **credit** bureau shall take responsibility **for the correctness of information recorded by it and** must therefore **take reasonable** steps to **rectify information** if incorrect **information** is brought to its attention.

(6) **The systems of** a **credit bureau** must **provide** information wherein a **credit grantor / contracted** subscriber has to indicate that a **credit assessment** was conducted **prior** to granting **credit**.

(7) A **credit bureau** must ensure that its name will be revealed to the consumer **in the case where the credit record is the reason** for the refusal of debt.

- (8) A credit bureau shall not accept information ~~from~~ a contracted subscriber unless such subscriber has obtained the consumer's permission, which ~~permission~~ the contracted subscriber must be able to prove, to access data concerning the consumer in assessing risk and sharing the consumer's payment habits with other credit grantors.
- (9) A credit bureau may not request information regarding the amount of credit applied ~~for~~ by a consumer.
- (10) A ~~credit~~ bureau may only record information if it has been assured ~~by~~ the contracted subscriber that there is no *bona fide* dispute involved.
- (11) Where, subsequent to listing the ~~credit~~ bureau is informed of a dispute, such dispute must be noted and made available to subscribers. A credit bureau must remove the ~~disputed~~ information within 20 business days from ~~the~~ date ~~it~~ was brought to the attention ~~of~~ a ~~credit~~ bureau if the ~~correctness~~ thereof ~~cannot~~ be verified. In this regard, if the requested information is not received from the contracted subscriber within the 20 business days, the information will be regarded as ~~inaccurate~~.
- (12) Where a consumer has ~~fully~~ discharged arrears and resumed payment ~~of full instalments~~ in accordance with his ~~her~~ original contract with the subscriber, such information shall be made available by a ~~credit~~ bureau to all contracted subscribers. This information must be provided simultaneously with the credit history of the consumer and a credit bureau needs to ensure that its system can accommodate ~~this~~ principle.
- (13) ~~Where~~ the consumer does not dispute the information but does have a reasonable explanation for the ~~occurrence~~, a credit bureau must place ~~a~~ brief explanation on file provided satisfactory evidence corroborating the explanation is produced and the explanation is not frivolous or irrelevant.

- (14) A credit bureau shall only accept a subscriber that informs consumers about the processes followed when granting or refusing **credit**, such as the utilization of information not provided by applicants to evaluate their credit worthiness and that consumers are given the opportunity to **verify** the additional information to ascertain whether it is **correct**, should it have a negative impact on the application.
- (15) Access to a consumer's own record, when requested in **the prescribed form** in accordance with the Promotion of Access to Information Act, 2000, must be **made available by a credit bureau free of charge**.
- (16) A credit bureau shall only accept a subscriber that follows due process **before** default reporting takes place. In this regard a contracted subscriber **should** inform a debtor prior to recording **him/her** as a defaulter in the public domain section by way of a prominent clause **on** the original application form and by written notice to the last known address, at least 28 days prior to forwarding the information to a credit bureau. **In this regard** a contracted subscriber may also not record a default prior to the prescription of debt provided **legal procedures** have been instituted **by** the contracted subscriber to prevent prescription.
- (7 7) **Whilst** privacy of information between a **bank and its customers** is maintained, negative information regarding the consumer's credit record may **be** supplied to a credit bureau in the public interest to protect other **credit grantors /** contracted subscribers.
- (18) A credit bureau must display on its premises the **procedures** to **view** a **record** and must have a detailed brochure available **on** how to **correct** or **improve** one's credit profile as well as the names, addresses and telephone number of bodies to whom complaints can be directed. Complaints handling procedures

and the manner in which **complaints** may be lodged must be prominently displayed at ~~the premises~~ of a **d i t** bureau.

- (19) Only judgments wherein the initials and the identity **and/or** passport numbers of the persons involved **are** stated may be recorded by a **credit** bureau.
- (20) A **credit** bureau must ensure that a contracted subscriber prominently display **at** its premise complaints handling procedures and the manner in which and where **complaints** may be lodged.
- (21) A **credit** bureau is not exempted from the requirements of the Promotion of Access to Information Act, 2000 and **strict** adhemnce to the legislation is obligatory.
- (22) A **credit** bureau must upon request disclose to **a** consumer, **who** has satisfied **the credit** bureau regarding **his** or her identity, which identification process should not be unduly cumbersome **or** difficult, the nature and substance of all information and the **sources** of the information in its files on that consumer at **the time of the** request A **credit** bureau must make the disclosures required during **normal** business hours and on reasonable notice. Disclosure in response to a telephonic and/or written request may **be made** only if a credit bureau is satisfied **that** the request is from the consumer concerned.
- (23) A **credit bureau must provide** trained personnel to explain to a consumer any information furnished and must assist consumers by providing reasonable advice **on** how to **obtain** changes to their records where possible.
- (24) In the event **of**a dispute between a consumer and a **credit** bureau, which is a member **of** an association of credit bureaus, about the accuracy or relevance **of** information on file, the credit bureau must request **the** association to investigate the matter and give a **ruling** on it. In the case of a dispute between

a consumer and a credit bureau that is not a member of an association, the Consumer Affairs Committee or any provincial consumer affairs office may be approached.

(25) Credit information may not be retained for longer than the following periods:

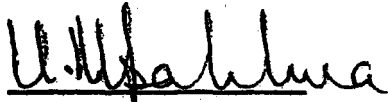
- Insolvencies / sequestration and rehabilitations for a period of 10 years
- Rehabilitation orders, whether they are granted by applications to court or automatically after the statutory period, remain on the file for 5 years from the date of rehabilitation
- Judgments for debt for a maximum of 5 years from date of judgment
- Administration orders for 5 years after lapsing or rescission thereof and if not lapsed or rescinded, for 10 years
- Default information supplied by subscribers for a maximum of 3 years or until a three year period has elapsed during which no further references to any defaults have been added to the record
- Payment profiles are maintained on an ongoing basis and the payments for the past 24 months are recorded,

3. No credit bureau may operate contrary to the above conditions and requirements in which instance the penalties as provided for in section 15 of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Ad 71 of 1988) are applicable.

4. This Notice shall come into operation upon date of publication hereof.

5. On the recommendation of the Consumer Affairs Committee I may, in a particular case, in terms of section 12 (6) (c) of the Act, in writing, grant exemption from a condition or requirement contemplated in this notice to such extent and for such period and subject to such conditions as may be specified in the exemption. Such applications for exemption must be directed to:

The Secretary  
Consumer Affairs Committee  
Private Bag X84  
PRETORIA  
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(For attention: Mr E Mohamed  
Fax: (012 3942542)



**MANDISI MPAHLWA**

**MINISTER OF TRADE AND INDUSTRY**

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