
GENERAL NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. 503

15 May 2009

National Credit Act, 2005 Debt Counselling Regulations

In terms of section 171 of the National Credit Act, 2005 (Act No. 34 of 2005), I Mandisi Mpahlwa, Minister of Trade and Industry hereby publish the regulations for public comments on the —

- (a) amendments to Government Notice No. R. 489 of 31 May 2006 on—
 - (i) Regulations 11 and 26;
 - (ii) Form 18.

Interested persons may submit written comments on the proposed regulations by 06/06/2009 to:

Director-General, Department of Trade and Industry
Private Bag X84
Pretoria
0001
or
77 Meintjies Street
Block B, 1st Floor
Sunnyside
Pretoria
Fax No: 012 394 2504
Email: MMosing@thedti.gov.za
For Attention: Ms Mpho Mosing

Mandisi Mpahlwa
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), having jurisdiction over a consumer by virtue of such consumer’s residence or place of business or the residence or place of business of a debt counsellor irrespective of the monetary value involved;

“deliver” means in respect of documents, proposals, notices and written submissions to hand deliver or by registered post, facsimile or e-mail and delivering has a corresponding meaning;

“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 which must be completed in accordance with Form B of the Annexure hereto 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 Form A of the Annexure hereto and shall be filed, after having been delivered to the consumer and credit providers concerned, in duplicate by the debt counsellor with the clerk who must number the form with a consecutive number for the year during which it is filed.
- (2) An order contemplated by section 86(8)(a) of the Act must be substantiated by the debt counsellor with a written statement indicating that all parties have consented and agreed upon a plan of debt re-arrangement, and must, 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 during a specified period the dates on which payments are due under the agreement;
 - (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
 - (d) suspending the accrual of interest for the entire period that the consumer is in default of his obligations.

- (3) Upon the filing of the order referred to in sub-regulations (1) and (2), the court may confirm the order or give such other order as it may deem fit
- (4) The court may for purposes of sub-regulation (3) call on the debt counsellor, the consumer or the credit provider to produce such evidence either vive voce or by affidavit in support of the order as it may deem necessary.
- (5) A consent order shall be confirmed by the court by making a record thereof.
- (6) The duplicate copy of the confirmed order must be collected from the clerk of the court by the debt counsellor who must deliver to the consumer and credit providers copies thereof.

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 Form B of the Annexure and must be filed after having being delivered to the consumer and credit providers concerned in duplicate by the debt counsellor with the clerk of the court who must number the form with a consecutive number for the year during which it is filed.
- (2) The proposal by a debt counsellor in terms of section 86(7)(c) of the Act must be substantiated by a written statement duly signed by the debt counsellor and the consumer and annexed to the proposal and must contain the following information:
 - (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 debt counsellor; and
 - (e) the physical address and postal address of the clerk of the court that signed the recommendation.
- (3) The credit provider/s affected, must be informed by the proposal that they may oppose the proposal or the terms of the proposal by filing a notice in the form of Form C of the Annexure with the clerk of the court and delivering a copy thereof to the debt counsellor.
- (4) A notice in terms of sub-regulation (3) must be—
 - (a) filed and delivered within 15 days after the proposal was served on 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 objection/s against the proposal.
- (5) After the expiry of the 15 days period contemplated in sub-regulation (4), the debt counsellor shall deliver a notice in respect of the hearing of the proposal in accordance with Form D of the Annexure hereto to each credit provider who received delivery of the proposal, provided that delivery of such notice shall be effected at least 15 days before the date of the hearing.
- (6) The proposal shall be stamped and signed by the clerk of the court who shall indicate the date of receipt thereof.

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 the form of Form E of the Annexure and shall be filed in duplicate by the consumer with the clerk of the court who must number the form with a consecutive number for the year during which it is filed.
- (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 the form of Form F of the Annexure, which shall be filed after having been delivered to the credit providers affected in duplicate by the consumer with the clerk of the court who must number the form with a consecutive number for the year during which it is filed.
- (4) The application by a consumer once granted leave by the court must be substantiated by a written statement duly signed by him/her, which must be annexed to the application which must contain 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);

- (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 informed in terms of such application that they may oppose the application by filing a notice in the form of Form G of the Annexure with the clerk of the court and delivering a copy thereof to the consumer.
- (6) The application shall be stamped and signed by the clerk of the court who shall indicate the date of receipt thereof.
- (7) A notice in terms of sub-regulation (5) to oppose the application must be—
 - (a) filed and delivered within 15 days after the application was served on the credit provider/s;
 - (b) substantiated by a written statement duly signed by credit provider/s in which credit provider/s objections to the application are 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/s intends to tender as evidence during proceedings before the court to substantiate his/her objection/s against the application.
- (8) After the expiry of the 15 day period contemplated in sub-regulation (7)(a), the consumer shall deliver a notice in respect of the hearing of the application in accordance with Form H of the Annexure hereto to each credit provider who received delivery of the application, provided that delivery of such notice shall be effected at least 15 days before the date of the hearing .

- (9) A hearing contemplated in sub regulation (8) shall be administrative in nature, and shall be conducted expeditiously in accordance with Section 33(1) of the Constitution of the Republic of South Africa.
- (10) At the hearing contemplated in sub regulation (8) and regulation 4 (5):-
- (a) the consumer / or debt counsellor 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 parties shall not be entitled to be represented by a legal practitioner unless the consent of all the parties has been obtained or the Magistrate concludes that it is unreasonable to expect a party to deal with the application without legal representation, after considering :-
 - (i) the nature of the questions of law raised by the application;
 - (ii) the complexity of the application;
 - (iii) the public interest; and
 - (iv) the comparative ability of the opposing parties or their representatives to deal with the application.
 - (f) no party shall be entitled to cross examine any other party;
 - (h) neither party shall be entitled to recover costs on any basis howsoever arising, whether directly or indirectly from the other party;
 - (i) the presiding Magistrate shall, within 30 days of the conclusion of the application furnish reasons for any order which the court makes.
- (11) The consumer or debt counselor must deliver copies of the order of the court to the credit providers for execution.

The receipt and distribution of payments and funds by debt counsellors and other persons.

5. (1) No person shall receive or distribute monies or make payments or carry on the business of a payment distribution agent in terms of a consent order or order of debt re-arrangement as contemplated in Section 86(8) or Section 87(1) of the Act, unless such person registers with the Regulator in accordance with the terms and conditions determined by the Regulator.
- (2) An application for registration in terms of sub regulation (1) must contain at least the following information:
- (a) The proposal indicating human, financial and operational resources of the applicant, to carry out such functions;
 - (b) The capacity of the applicant to provide statements to and respond to queries from debt counsellors, consumers, employers and credit providers, in respect of the status of payment distribution and debt settlement;
 - (c) Arrangements for a separate trust account at a registered bank to deposit therein the money held or received by the applicant for distribution to credit providers;
 - (d) The verification by independent auditors of the following:
 - (i) prior to inception of the payment distribution function, the adequacy of the infrastructure, systems and procedures in respect of the payment distribution function,
 - (ii) annually, that the monies received from or on behalf of consumers and distributed to credit providers are accounted for and whether appropriate procedures are in place to safeguard such monies; and

- (iii) at any other time determined by the National Credit Regulator, that such monies are fully accounted for and that appropriate procedures are in place to safeguard such monies.
- (3) The Regulator may accept an application or reject an application on such conditions as it deems appropriate and shall inform an applicant of its decision in writing.
- (4) An applicant whose application is accepted by the Regulator after probity checks, shall comply with any guidelines published by the Regulator from time to time dealing with:
- (a) the time frame within which moneys that are received from consumers will be distributed to credit providers;
 - (b) the recovery and distribution of prescribed fees to debt counsellors;
 - (c) the fees payable in respect of payment distribution services as referred to in this regulations;
 - (d) the allocation of interest earned; and
 - (e) any other matter that is reasonable in respect of the safeguarding and effective management of re-arranged payment obligations.
- (5) The Regulator may implement reasonable procedures as it deems appropriate to monitor compliance with the standards referred to in sub regulations (2) and (3).
- (6) The Regulator shall, from time to time, be entitled upon notice published in the Government Gazette by the Minister, vary the conditions of registration as referred to in sub regulation (2).

-
- (7) The Regulator may, by notice in writing, de-register a person from receiving or distributing monies or making payments or carrying on the business of a payment distribution agent in terms of a consent order or order of debt re-arrangement as contemplated in Section 86(8) or Section 87(1) of the Act, if the Regulator has sufficient reason/s to believe that the person concerned is not a fit and proper person to receive or distribute monies or make payments or carry on the business of a payment distribution agent, or has failed to comply with any guidelines issued by the Regulator, or any conditions that had been imposed by the Regulator in respect of such person's application.
- (8) The Regulator may only de-register a person as contemplated in sub regulation (7) after:
- (a) It has furnished, such person with full details of all the information the Regulator has in its possession with regard to the matters set out in sub regulation (7) ; and
 - (b) such person has been requested to furnish the Regulator with his or her comments if any thereon within thirty (30) days or such further period as the Regulator may allow; and
 - (c) such comments, if any have been considered.
- (9) (a) Any person not satisfied with the Regulator's may apply to the Tribunal, in terms of section 59 of the Act, for a review of the Regulator's decision, the Tribunal can either confirm or set the decision aside;
- (b) The decision of the Tribunal under sub regulation (a) is subject to appeal to or review by the High Court

ANNEXURE**Form A**

Consent orders in terms of section 86(8)(a) of the National Credit Act, 2005 (Act No. 34 of 2005)

(R Revenue Stamp)

To: The Clerk of the Court,

.....

In the Magistrate's Court for the District of

held at

Case No. of 20.....

In the matter between:

..... Consumer

and

- | | | |
|-----|-------|-----------------|
| (1) | ..... | Credit Provider |
| (2) | ..... | Credit Provider |
| (3) | ..... | Credit Provider |
| (4) | ..... | Credit Provider |
| (5) | ..... | Credit Provider |

(All credit providers must be listed)

I,, registered as a debt counsellor in terms of section 44 of the National Credit Act, 2005 (Act No. 34 of 2005), whose business is situated at:

.....

.....(address), and who can be contacted at the following telephone numbers:

- (a)
 (b)

hereby request the court to confirm the following order as a consent order in terms of section 138 of the National Credit Act, 2005 (Act No. 34 of 2005):

.....

.....

The written statement, in terms of regulation 2(2), is attached as Annexure A.

Order confirmed as a consent order on the day of

.....
 Clerk of the Court

.....
 Magistrate

Form B

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 National Credit Act, 2005

(R Revenue Stamp)

(* delete whichever is not applicable)

To: The Clerk of the Court,

.....

 (Physical address and postal address)

In the Magistrate's Court for the District of

held at

Case No. of 20.....

In the matter between:

..... Consumer

and

- | | | |
|-----|-------|-----------------|
| (1) | ..... | Credit Provider |
| (2) | ..... | Credit Provider |
| (3) | ..... | Credit Provider |
| (4) | ..... | Credit Provider |
| (5) | ..... | Credit Provider |

(All credit providers must be listed)

I,, registered as a debt counsellor in terms of section 44 of the National Credit Act, 2005 (Act No. 34 of 2005), whose business is situated at:

.....

.....(Physical address and postal address), and which can be contacted at the following telephone numbers:

- (a)
 (b)

hereby propose to the court, in terms of sections 86(7)(c)/86(8)(b)* of the National Credit Act, 2005 (Act No. 34 of 2005), after I concluded that the consumer is over-indebted, to:

*(a) That the under-mentioned credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder be declared to be reckless credit for the reasons set out hereunder:

.....

-

 * (b) That one or more of the consumer's obligations in respect of the credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder be re-arranged by:
 * (i) Extending the period of the agreement and reducing the amount of each payment due in the manner as is set out hereunder:

-

 * (ii) Postponing during a specified period the dates on which payments are due under the credit agreement/s in the manner as is set out hereunder:

-

 * (iii) Extending the period of the agreement and postponing during a specified period the dates on which payments are due under the credit agreement/s in the manner as is set out hereunder:

-

 * (iv) Recalculating the consumer's obligations because of the under-mentioned contraventions of Part A or B of Chapter 5, or Part A of Chapter 6, in the manner as is set out hereunder:
 (c) That one or more of the consumer's obligations in respect of the credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder be re-arranged as set out below:

.....

 The written statement, in terms of regulation 3(2), duly signed by the consumer and the debt counsellor is attached as Annexure A.

Filed on the day of

.....
 Clerk of the Court

Take notice:

- (a) You as a credit provider may oppose the proposal or the terms of the proposal by filing the accompanying notice with the clerk of the court and delivering a copy thereof to the debt counsellor and all credit providers, whose particulars is mentioned in this proposal, within 15 days after this proposal was served upon you.
 (b) After you have filed and delivered the notice referred to in paragraph (a), above, you will be informed of a date of hearing of the matter by the debt counsellor.

Form C

Notice by credit providers in terms of regulation 3(3)

By hand/By registered post/By facsimile/By e-mail to:

The Clerk of the Court,

.....
.....

The debt counsellor,

.....
.....

and

(1)	.....	Credit Provider
(2)	.....	Credit Provider
(3)	.....	Credit Provider
(4)	.....	Credit Provider
(5)	.....	Credit Provider

(All credit providers must be listed and notified)

In the Magistrate's Court for the District of

Held at

Case No. of 20.....

In the matter between:

..... Consumer

and

(1)	.....	Credit Provider
(2)	.....	Credit Provider
(3)	.....	Credit Provider
(4)	.....	Credit Provider
(5)	.....	Credit Provider

(All credit providers must be listed)

Kindly take notice that the credit provider hereby notifies his, her or its intention to oppose the proposal or the terms of the proposal.

The reasons for the objection against the proposal are set out in the attached written statement and a certified copy of the agreement that is subject to the debt review.

The documentation annexed as Annexure/s to and which is explained in the written statement will be tendered during proceedings before the court.

Dated at this day of

.....
Credit provider

.....
(Physical address and postal address)

Telephone number/s: (a)
(b)

Form D

Notice of hearing of proposal in terms of regulation 3(5)

In the Magistrate's Court for the District of

held at

Case No. of 20.....

In the matter between:

..... Consumer

and

(1) Credit Provider
(2) Credit Provider
(3) Credit Provider
(4) Credit Provider
(5) Credit Provider

(All credit providers must be listed)

By hand/By registered post/By facsimile/By e-mail to:

The Clerk of the Court,

.....
The credit provider,

(1) Credit Provider
(2) Credit Provider
(3) Credit Provider
(4) Credit Provider
(5) Credit Provider

(All credit providers must be listed and notified)

Take notice that the proposal has been placed on the roll of the above-mentioned court for hearing.

Dated at this day of 20.....

.....
Debt counsellor

.....
.....
.....
.....
(Full address and postal address of debt counsellor)

Telephone number/s: (a)
(b)

Form E

Application by a consumer in terms of section 86(9) of the National Credit Act, 2005 to obtain leave to institute proceedings (Regulation 4(1))

(R Revenue Stamp)

To: The Clerk of the Court,

.....
.....
In the Magistrate's Court for the District of

held at

Case No. of 20.....

In the matter between:

..... Consumer
and

(1) Credit Provider
(2) Credit Provider
(3) Credit Provider
(4) Credit Provider
(5) Credit Provider

(All credit providers must be listed)

I, (Full names and surname, who resides at the following address,
.....
.....
.....

.....(Physical address and postal address), and who can be contacted at the following telephone numbers:

(a)
(b)

hereby apply for leave to apply directly to the court for an order contemplated in section 86(7)(c) of the National Credit Act, 2005 (Act No. 34 of 2005).

The conclusion by the debt counsellor, in terms of section 86(7)(a) of the National Credit Act, 2005, that I am not over-indebted, is annexed as Annexure

The reasons why the court should grant leave to apply for an order contemplated in section 86(7)(c) of the National Credit Act, 2005, are set out in my attached affidavit annexed as Annexure

The affidavits, annexed as Annexure/s are tendered in support of this application.

*(a) That the under-mentioned credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder, be declared to be reckless credit for the reasons set out hereunder:

.....

*(b) That one or more of the consumer's obligations in respect of the credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder * be re-arranged by:

*(i) Extending the period of the agreement and reducing the amount of each payment due in the manner as is set out hereunder:

.....

*(ii) Postponing during a specified period the dates on which payments are due under the credit agreement/s in the manner as is set out hereunder:

.....

*(iii) Extending the period of the agreement and postponing during a specified period the dates on which payments are due under the credit agreement/s in the manner as is set out hereunder:

.....

*(iv) Recalculating the consumer's obligations because of the under-mentioned contraventions of Part A or B of Chapter 5, or Part A of Chapter 6, in the manner as is set out hereunder:

.....

(c) That one or more of the consumer's obligations in respect of the credit agreement/s, concluded between the consumer and the credit provider/s mentioned hereunder be re-arranged as set out below:

.....

The written statement, in terms of regulation 4(4), duly signed by the consumer is attached as Annexure A.

Filed on the day of

.....
 Clerk of the Court

Take notice:

- (a) You as a credit provider may oppose the proposal or the terms of the proposal by filing the accompanying notice with the clerk of the court and delivering a copy thereof to the consumer and all credit providers, whose particulars is mentioned in this proposal, within 15 days after this proposal was served upon you.
- (b) After you have filed and delivered the notice referred to in paragraph (a), above, you will be informed of a date of hearing of the matter by the consumer.

Form G

Notice to consumer in terms of regulation 4(5)

By hand/By registered post/By facsimile/By e-mail to:

The Clerk of the Court,

.....
.....

The consumer,

.....
.....

and

(1)	.....	Credit Provider
(2)	.....	Credit Provider
(3)	.....	Credit Provider
(4)	.....	Credit Provider
(5)	.....	Credit Provider

(All credit providers must be listed and notified)

In the Magistrate's Court for the District of

Held at

Case No. of 20.....

In the matter between:

..... Consumer

and

(1)	.....	Credit Provider
(2)	.....	Credit Provider
(3)	.....	Credit Provider
(4)	.....	Credit Provider
(5)	.....	Credit Provider

(All credit providers must be listed)

Kindly take notice that the credit provider hereby notifies his, her or its intention to oppose the proposal or the terms of the proposal.

The reasons for the objection against the proposal are set out in the attached written statement.

The documentation annexed as Annexure/s to and which is explained in the written statement will be tendered during proceedings before the court.

Dated at this day of

.....
Credit provider

.....
(Physical address and postal address)

Telephone number/s: (a)
(b)

Form H

Notice of hearing of proposal in terms of regulation 4(9)

In the Magistrate's Court for the District of

held at

Case No. of 20.....

In the matter between:

..... Consumer

and

(1)	.....	Credit Provider
(2)	.....	Credit Provider
(3)	.....	Credit Provider
(4)	.....	Credit Provider
(5)	.....	Credit Provider

(All credit providers must be listed)

By hand/By registered post/By facsimile/By e-mail to:

The Clerk of the Court,
.....
.....

The credit provider,
.....
.....

Take notice that the proposal has been placed on the roll of the above-mentioned court for hearing.

Dated at this day of 20.....

.....
Consumer

.....
.....
.....
.....

(Full address and postal address of consumer)

Telephone number/s: (a)
(b)

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