
GENERAL NOTICE

NOTICE 560 OF 2013

DEPARTMENT OF TRADE AND INDUSTRY

DRAFT NATIONAL CREDIT AMENDMENT BILL, 2013

INVITATION FOR THE PUBLIC TO COMMENT ON THE DRAFT NATIONAL CREDIT AMENDMENT BILL, 2013

I, Dr Rob Davies, Minister of Trade and Industry, having obtained Cabinet approval, hereby publish the National Credit Amendment Bill for broader public comments.

Interested persons may submit written comments on the proposed Amendment Bill not later than thirty (30) days from the date of publication of this notice to:

Director-General, Department of Trade and Industry
Private Bag X84
Pretoria
0001

Or hand deliver to:

77 Meintjies Street
Block B, 1st Floor
Sunnyside
Pretoria

Tel : 012 394 5646

Fax No: 012 394 6646

Email : nca@thedti.gov.za

For Attention: Mr Klaas Mokaba



Dr Rob Davies (MP)
Minister of Trade and Industry
Date: 23 / 5 /2013

REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill
published in Government Gazette....)
(The English text is the official text of the Bill)*

(Minister of Trade and Industry)

[B... - 2013]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Credit Act, 2005, by amending certain definitions; to allow the CEO of the national credit regulator to delegate certain functions to other officials of the NCR; to tighten measures relating to debt counsellors and the conduct of their practices as debt counsellors; to allow debt counsellors to voluntarily cancel their registration; to empower the NCR to cancel registrations; to empower the NCT to suspend certain reckless credit agreements; to tighten the requirements that credit providers must adhere to in respect of marriages in community of property; to provide for the registration and accreditation of Alternative Dispute Resolution structures and to provide for matters connected therewith;

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 34 of 2005

1. Section 1 of the National Credit Act, 2005 (hereinafter referred to as the principal Act) is hereby amended by:-

(a) the deletion in the definition of 'lease' of paragraph (d):

(b) the substitution in the definition of 'secured loan' for paragraph (b) of the following paragraph:

“(b) retains, or receives a pledge or cession of **[the title to]** any movable property or other thing of value as security for all amounts due under that agreement;

Amendment of section 25 of Act 34 of 2005

2. Section 25 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

(1) The Chief Executive Officer or any official delegated by the Chief Executive Officer-

Amendment of section 45 of Act 34 of 2005

3. Section 45 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

(3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant, subject to section 48: provided that the National Credit Regulator is satisfied that there are no other grounds that render the applicant not to be a fit and proper person to be a debt counsellor.

Amendment of section 46 of Act 34 of 2005

4. Section 46 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

(2) A natural person may not be registered as a credit provider or debt counsellor if that person is an unrehabilitated insolvent.

Amendment of section 48 of Act 34 of 2005

5. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the compliance with the affordability assessment and standards for industry codes guidelines issued by the National Credit Regulator [commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority]; and”.

Amendment of section 49 of Act 34 of 2005

6. Section 49 of the principal Act is hereby amended by the insertion in subsection (1) of the following paragraph:

“(e) at any time, if the National Credit Regulator deems it necessary for the proper attainment of the objects of this Act.”.

Amendment of section 57 of Act 34 of 2005**7. Section 57 of the principal Act is hereby amended by-**

- (a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Subject to subsection (2), a registration in terms of this Act may be cancelled **[by the Tribunal on request]** by the National Credit Regulator, if the registrant **[repeatedly]**”;
- (b) the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) **[contravenes]** if it is in relation to the contravention of this Act, it shall be referred to the Tribunal.”
- (c) the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) at the request, or with the consent, of the regulatory authority that licensed that regulated financial institution, **[request the Tribunal to]** cancel the registration.”;
- (d) the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) may request, or consent to, the National Credit Regulator cancelling the registration **[filing a request with the Tribunal as contemplated in subsection (2)(c)]**.”;
- (e) the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“If the **[Tribunal]** National Credit Regulator has cancelled a registration, the National Credit Regulator must notify the registrant in writing of-”;
- (f) the substitution in subsection (7) for paragraph (a) of the following paragraph:

“(a) the date on which the **[Tribunal]** National Credit Regulator issues an order, or,”

Insertion of section 58A in Act 34 of 2005**8. The principal Act is hereby amended by the insertion after section 58 of the following section:****“Additional requirements for voluntary cancellations**

58A. (1) A debt counsellor who voluntarily requests that his or her registration be cancelled shall -

- (a) submit a letter to-
 - (i) all credit providers;
 - (ii) all credit bureaus; and
 - (iii) all the consumers he or she was counselling.

advising them of his or her deregistration; and

(b) submit an affidavit to the National Credit Regulator, advising it that the consumers referred to in (a) (iii) above have been transferred to another registered debt counsellor.

(2) A credit provider who voluntarily requests that his or her registration be cancelled shall –

(a) submit a cancellation notice to the National Credit Regulator accompanied by –

(i) the registration certificate that was issued to that credit provider;

(ii) a letter or affidavit from the accounting officer or auditor or authority of the registrant, confirming that the registered activities have seized.”.

Insertion of section 83A in Act 34 of 2005

9. The principal Act is hereby amended by the insertion after section 83 of the following section:

“Suspension of reckless credit agreement by National Consumer Tribunal

83A. (1) Despite any provision of law or agreement to the contrary, upon application to it by a consumer or by the National Credit Regulator, the National Consumer Tribunal may declare that the credit agreement is reckless, as determined in accordance with this Part.

(2) If the National Consumer Tribunal declares that a credit agreement is reckless in terms of section 80(1)(a) or 80(1)(b)(i), the Tribunal may make an order-

(a) setting aside all or part of the consumer’s rights and obligations under that agreement, as the Tribunal determines just and reasonable in the circumstances; or

(b) suspending the force and effect of that credit agreement in accordance with subsection (3)(b)(i).

(3) If the National Consumer Tribunal declares that a credit agreement is reckless in terms of section 83A (1), the National Consumer Tribunal -

(a) must further consider whether the consumer is over-indebted at the time of such hearing; and

(b) if the Tribunal concludes that the consumer is over-indebted, may make an order suspending the force and effect of that credit agreement until a date it shall determine when making the order of suspension;

(4) Before making an order in terms of subsection (3), the Tribunal must consider-

(a) the consumer’s current means and ability to pay the consumer’s current

financial obligations that existed at the time the agreement was made; and
(b) the expected date when any such obligation under a credit agreement
will be fully satisfied, assuming the consumer makes all required payments
in accordance with any proposed order.

Amendment of section 86 of Act 34 of 2005

10. Section 86 of the principal Act is hereby amended by:

(a) the substitution for subsection (2) of the following subsection:

“(2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section **[129]** 130 to enforce that agreement.

(b) the substitution for subsection (10) of the following subsection:

“(10) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to -

- (a) the consumer;
- (b) the debt counsellor; and
- (c) the National Credit Regulator,

at any time at least 60 business days after the date on which the consumer applied for the debt review: Provided that an application for debt review has not been lodged in court as contemplated in section 87, in which case the credit provider shall be precluded from terminating the debt review in terms of this section.”.

(c) by the substitution for subsection (11) of the following subsection:

“(11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the **[Magistrate’s]** Court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.”.

Amendment of section 89 of Act 34 of 2005

11. Section 89 of the principal Act is hereby amended by the deletion in subsection (5) of subparagraph (ii) of paragraph (c).

Insertion of section 92A of Act 34 of 2005

12. The principal Act is hereby amended by the insertion after section 92 of the following section:

“Applicants married in community of property

92A.(1) A credit provider shall not enter into a credit agreement with any consumer who is married in community of property unless the spouse of that consumer, has signed or written to the credit provider consenting that the consumer may enter into such a credit agreement.”.

Amendment of section 129 of Act 34 of 2005

13. Section 129 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 130 of Act 34 of 2005

14. Section 130 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 ~~[(9)]~~(10), or section 129(1), as the case may be;”.

Insertion of section 134A of Act 34 of 2005

15. The principal Act is hereby amended by the insertion after section 134 of the following section:

“Registration and Accreditation of Alternative Dispute Resolution Structures and Agents

134A To put effect to the requirements of section 134, the National Credit Regulator may register and accredit Alternative Dispute Resolution agents and/or structures and shall also have the right to de-register them, subject to review by the Tribunal.”.

Amendment of section 140 of Act 34 of 2005

16. Section 140 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) After completing an investigation into a complaint, the National Credit Regulator may take any enforcement action provided for in this Act, not limited to but including-

Amendment of section 163 of Act 34 of 2005

17. Section 163 of the principal Act is hereby amended by:

- (a) the substitution for subsection (1) of the following subsection:

“(1) A credit provider or debt counsellor must ensure that its employees or agents are trained in respect of the matters to which this Act applies.”.

- (b) the insertion after subsection (1) of the following subsection:

“(1A) A debt counsellor may only make use of agents for administrative tasks relating to debt review.”.

- (c) the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) that person must disclose to the consumer in writing the amount of any fee or commission that will be paid if the agreement is concluded; and”.

Amendment of law

16. The Act mentioned in the Schedule hereto is hereby amended to the extent indicated therein.

Short title and commencement

17. This Act is called the National Credit Amendment Act, 2013 and shall come into operation on a date fixed by the President by proclamation in the Gazette.

Schedule

No and year of Act	Short title	Extent of Amendment
Act 24 of 1936	Insolvency Act, 1936	The Insolvency Act, 1936, is hereby amended by the insertion of the following section: 8A. <u>A debtor who has applied for a debt review must not be regarded as having committed an act of insolvency.</u>
