



# Updates from the credit industry forum

## CIRCULAR 01 OF 2019

The National Credit Regulator (“the NCR”) established the Credit Industry Forum (CIF) to identify and address operational difficulties that come with implementation of the National Credit Act as amended (“the Act”) and to make advisory recommendations to the NCR which, upon acceptance, will be issued as guidelines to the credit industry.

The objective of this circular is to provide the industry with the latest update and resolutions regarding the projects undertaken by the CIF as follows:

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
<p><b>JOINT BONDS/ MORTGAGE AGREEMENTS</b></p>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to address implementation difficulties of joint bond/mortgage agreement debt review applications and to clarify whether a party to a joint bond/mortgage agreement, who did not apply for debt review, has to be cited and served as an interested party to the debt review court or National Consumer Tribunal (NCT) application.</p> <p><b>Resolution</b></p> <ol style="list-style-type: none"> <li>1. The sub-committee developed a document which provides for various applicable scenarios and proposed processes on how the industry can consistently implement this in the debt review process. This process was recommended to the NCR and approved to be issued as guidelines as per “Annexure A” attached hereto.</li> <li>2. The NCR’s position on whether a party to a joint bond/mortgage agreement, who did not apply for debt review, has to be cited and served as an interested party to the debt review court or National Consumer Tribunal (NCT) application is that a non-debt review consumer should be cited and served as an interested party on a debt review Court or NCT application in relation to the joint mortgage agreement.</li> </ol>

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
<p><b>PROTECTION OF PERSONAL INFORMATION ACT,4 OF 2013 (POPIA)</b></p>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to identify the provisions of POPIA that will impact the debt review process and to propose practical industry guidelines to assist the various stakeholders to understand their roles and responsibilities in handling the personal information of debt review consumers.</p> <p><b>Resolution</b></p> <p>The sub-committee developed a document which provides general information and implementation guidelines of POPIA in the debt review process. This process was recommended to the NCR, however since the NCR is not the custodian of POPIA, the NCR will engage with the Information Regulator on the developed documents prior to issuance as guidelines.</p>
<p><b>End Balance Differences</b></p>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to identify weaknesses in the existing processes and to find practical solutions to deal with the end balance discrepancies.</p> <p><b>Resolution</b></p> <p>The sub-committee was dissolved as it was concluded that various systematic solutions within the industry are in place to overcome end-balance discrepancies.</p>
<p><b>PENSION BACKED LENDING (PBL)</b></p>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to deal with identified operational difficulties by the credit industry when processing applications for debt review where Pension Backed Loan (PBL) is included in a consumer’s debt portfolio and to determine whether PBL is a credit agreement in terms of the National Credit Act (NCA).</p> <p><b>Resolution</b></p> <ol style="list-style-type: none"> <li>1. The sub-committee developed a document which proposes how PBL can be implemented in the debt review process. This process was recommended to the NCR and approved to be issued as guidelines as per “Annexure B” attached hereto.</li> <li>2. It was confirmed that a PBL agreement constitutes a credit agreement as contemplated in the NCA.</li> </ol>
<p><b>WITHDRAWAL GUIDELINES</b></p>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to revise and align the withdrawal guidelines issued in 2015 due to the implementation challenges and case law on the interpretation.</p>

	<p><b>Resolution</b></p> <p>The revised withdrawal guidelines were recommended to the NCR however will not be issued as guideline at this stage as the NCR has joined as an <i>animus curiae</i> in a pending high court matter where some legal questions pertaining to the withdrawal from debt review will be ventilated.</p>
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**MATTERS PENDING FINALISATION:**

SUB-COMMITTEE	TERMS OF REFERENCE AND UPDATE
<b>RECKLESS LENDING</b>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to develop a practical process for debt counsellors and credit providers on how to attend to reckless lending allegations as well as the process to lodge complaints at the NCR regarding reckless lending allegations.</p>
<b>NATIONAL CREDIT AMENDMENT ACT (NCAA)</b>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to address operational difficulties that come with implementation of the following provisions:</p> <ul style="list-style-type: none"> <li>a) Section 71 (i.e. end balance disputes, classifications of long term agreements, whether court orders must be rescinded or not and others)</li> <li>b) Section 86(10) (i.e. what should happen if the matter is in court and the consumer is not making any payments)</li> <li>c) Section 126B (i.e. process on how to identify whether the credit agreement has prescribed or not.)</li> </ul>
<b>DCRS (DEBT RESTRUCTURING RULES SYSTEM)</b>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to comprehensively investigate the reasons for low usage of DCRS which is a system designed to give effect to the concession rules embodied in the Task Team Agreement. Furthermore, to identify areas of improvements to make DCRS function more efficiently and user friendly.</p> <p>The industry collectively deliberated, identified and agreed on seven (7) changes that would improve the current functionalities of DCRS.</p> <p>To date the following two (2) changes have been developed are currently being tested:</p> <ul style="list-style-type: none"> <li>• <b>The creation of a “Z” file for use by Debt counsellors</b> - This file will allow a debt counsellor to input the client’s information in order to establish whether the matter will solve without having to create an actual proposal on the system. Furthermore, if the case does not solve, the system will advise how much extra affordability is required to reach a solve. This will mean that</li> </ul>

	<p>clients will not be denied the concession offered by DCRS as a result of relatively negligible amounts and Debt Counsellors will have certainty with regards to what is required.</p> <ul style="list-style-type: none"> <li>• <b>VAF Balloon / residual balance change</b> - The first of the seven changes that was implemented into the DCRS was the strict adherence to that Task Team Agreement, regarding Vehicle and Asset Finance (VAF). The implementation of this change led to a decrease in DCRS usage since less matters were able to reach a “solve”. The credit providers have agreed to extend the term on VAF deals and to give a longer-term extension where there is a balloon/residual balance.</li> </ul> <p>These changes will go live on the weekend of 13 and 14 April 2019. Any related queries may be directed to the following contact details:</p> <ul style="list-style-type: none"> <li>• DCRS call centre on 0861 502 027 or via the helpdesk email address <a href="mailto:dcrshelpdesk@busdoc.co.za">dcrshelpdesk@busdoc.co.za</a>.</li> </ul> <p>Please note that the DCRS Call centre / Help desk is available 08:00 to 18:00 Monday to Friday.</p>
<b>DEBT HELP SYSTEM (DHS)</b>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee was established to identify areas of improvement for the optimal functioning and use of DHS. On the list of items that the sub-committee will undertake, integration of DC related system is one of the big projects that the sub-committee will undertake in due course.</p>
<b>STANDARDISED COURT ORDER</b>	<p><b>Establishment of the sub-committee</b></p> <p>Notwithstanding the independent judicial discretion of the magistrates, the sub-committee was established to consider requirements from the different magistrates courts in order develop standard guidelines and court order template aligned to these requirements in an attempt to reduce the operational challenges and disputes currently encountered.</p>

**NEWLY ESTABLISHED SUB-COMMITTEE**

<b>SUB-COMMITTEE</b>	<b>TERMS OF REFERENCE</b>
<b>ANNUAL REVIEW IN DEBT REVIEW</b>	<p><b>Establishment of the sub-committee</b></p> <p>The sub-committee is established to find an operational process that can be undertaken to conduct annual reviews of the consumers’ financial circumstances whilst under debt review. This process, even though referred to in the TTA is not being undertaken.</p> <p>Therefore, the sub-committee will deliberate and develop a proposed process on what factors to consider and how this process can efficiently be undertaken. Therefore, the credit industry is requested to send written submissions on the proposed factors and process to be considered by the sub-committee.</p> <p>All written submissions must be sent to <a href="mailto:cif@ncr.org.za">cif@ncr.org.za</a> on or before 30 April 2019.</p>

All registrants are kindly invited to submit any proposals or topics for discussion to [cif@ncr.org.za](mailto:cif@ncr.org.za) to be considered by the CIF and insofar as it relates to operational difficulties that come with the implementation of the National Credit Act 34 of 2005.

#### **FURTHER INFORMATION**

Please contact **Isabella Klynsmith** on **011 554 2819**, [iklynsmith@ncr.org.za](mailto:iklynsmith@ncr.org.za) or **Shannel Subbiah** on **011 554 2691**, [ssubbiah@ncr.org.za](mailto:ssubbiah@ncr.org.za) or **Timmy Van Der Grijp** on **011 554 2802**, [tvandergrijp@ncr.org.za](mailto:tvandergrijp@ncr.org.za) should you have any queries.

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