



INTERPRETATION OF SECTION 71 OF THE NCA

CIRCULAR 6 OF 2017 - INTERPRETATION OF SECTION 71 OF THE NCA

Pursuant to the implementation of the National Credit Amendment Act (NCAA), the credit industry was faced with interpretation and implementation challenges of Section 71. The credit industry through various platforms including the Credit Industry Forum (CIF) approached the National Credit Regulator (NCR) to provide the requisite clarity.

This Circular is intended to communicate the interpretation of the NCR pertaining to the following provisions of Section 71:

1. Whether the word “agreement” referred to in Section 71(1) (a) and (b) refers to the contractual agreement or the agreement reached under debt counselling

NCR Interpretation: The word “agreement” refers to the debt counselling proposal and not the contractual agreement.

2. Whether the vehicle finance agreement is classified as a long-term agreement

NCR Interpretation: The vehicle finance agreement is not prescribed as a “long-term agreement” by the Minister of Trade and Industry; therefore it is not classified as such.

3. Whether the debt counselling court order must be rescinded before a clearance certificate is issued

NCR Interpretation: The debt counselling court order need not be rescinded before a clearance certificate can be issued.

4. Interpretation of Section 71(2)

NCR Interpretation: The phrase “measures as may be prescribed” in Section 71(2) merely affords the Minister the discretion to prescribe additional measures in future should he deem it necessary. Until such time, debt counsellors are to employ the measures currently utilised for assessing over-indebtedness when assessing the consumer’s financial ability to satisfy future obligations in terms of this Section.

Disclaimer:

While the NCR has taken reasonable care to ensure the factual accuracy of this Circular, it cannot guarantee such accuracy, especially with regards to future events. Accordingly, NCR does not accept any liability for damages incurred by any party as a result of decisions or actions taken on the basis of information supplied in this Circular.

5. Whether the balance on the books of the debt counsellor or the credit provider are to be relied on when assessing the consumer's eligibility for a clearance certificate

NCR Interpretation: In the event that a credit provider, in response to a request for a paid-up letter from a debt counsellor, advises that the debt has not been settled in full, both parties must apply the industry agreed-upon process still to be issued, as guidelines for end balance difference.

6. Whether the credit provider subsequent to the issuance of clearance certificate as per Section 71(1) (b) is required to still provide the concessions granted to the consumer under debt counselling on the mortgage agreement until the entire agreement is settled in full

NCR Interpretation: It could not have been the intention of the legislature for the credit provider to receive payments on the mortgage agreement in terms of the debt counselling proposal until the entire mortgage agreement is settled in full. Instead, the consumer would benefit from the concessions only for the remaining repayment term as specified in the debt restructuring agreement. Thereafter, the contractual obligations would apply.

7. Measures to align the current Form 19 to the amendments

The **Form 19** is currently not aligned to Section 71(1) (b) of the NCAA and this can only be amended through regulation.

FOR MORE INFORMATION

Please direct all the queries relating to this Circular to Peter Michaels at pmichaels@ncr.org.za

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