

**Credit Industry Code of Conduct to  
Combat  
Over-Indebtedness in terms of  
S 48 (1) (b)  
Of the National Credit Act (NCA)**

## **1. Preamble**

The Code to Combat Over-indebtedness contains valuable provisions aimed at preventing over-indebtedness where possible as well as safeguards and relief measures for the Consumers of Credit Providers who are experiencing financial distress due to over-indebtedness and are entitled to enter the statutory debt counselling process under the NCA.

As Credit Providers we will subscribe to this Code to Combat Over-indebtedness through affiliation to the National Debt Mediation Association (NDMA), the industry body created for this purpose.

We recognise that while the majority of our Consumers incur debt in a responsible and sustainable manner, a certain number of Consumers may from time to time experience financial difficulties resulting in over-indebtedness.

We acknowledge that it is necessary to implement a range of voluntary measures that are complementary to the provisions of the NCA in respect of the statutory Debt Review Process to ensure that as many as possible debt review cases are brought to mutually satisfactory resolution.

We recognise that where possible over-indebted Consumers should preferably obtain relief through consensual arrangements with their Credit Providers matched by reciprocal commitments from their side with the aim to allow them to recover from the financial difficulties. The achievement of this constitutes one of the primary aims of this Code.

We commit ourselves to accept this Code as binding on us in respect of credit agreements in the statutory Debt Review Process identified in the NCR Task Team recommendations (as contained in their final 2010 report) and any agreements which may be reached in future with the National debt Review Committee (NDRC) of the NCR once established. We commit to once NCR support for such agreements

reached is confirmed, cause such agreements reached to be adopted by the NDMA as the credit industry body through which this Code will be implemented to bind all subscribing Credit Providers for the duration of such agreements.

We accept the jurisdiction of the Credit Ombud or where relevant any other Ombud with jurisdiction, recognised in terms of the Financial Services Ombud Schemes Act 37 of 2004 (“FSOS Act”) (“other Ombud”) to make binding determinations based on this Code, the rules adopted under it through the NDMA, what is fair and appropriate in all the circumstances, taking into consideration the interests of both the industry and the Consumer, and the law where applicable.

We undertake to provide Consumers with the relevant NDMA and Credit Ombud or other Ombud contact information and documentation to lodge complaints.

A determination made by the Credit Ombud or other Ombud may be made an order of the Court or the Tribunal in terms of s 135(1) of the NCA.

## **2. Our commitments**

### **2.1. Preventing over-indebtedness:**

We will:

- 2.1.1.** Lend responsibly to our Consumers to avoid over-indebtedness from occurring where possible, subject to the Consumer’s comprehensive and truthful participation in the application process;
- 2.1.2.** Take all internal Consumer credit performance information as well as the information available on credit bureaus into consideration in granting credit to Consumers;
- 2.1.3.** Diligently and accurately report to the credit bureaus and, once established the National Register of Outstanding Credit Agreements envisaged in s 69 of the NCA in the prescribed manner and form on the credit exposure and

conduct of Consumers, to avoid over-indebtedness and inform sound granting decisions by all Credit Providers.

## **2.2. Relationship with other stakeholders in the statutory Debt Review Process**

We will:

- 2.2.1.** Support and cooperate directly and via the NDMA with the NDRC in its role of facilitating agreement and cooperation between the respective stakeholders;
- 2.2.2.** Make every effort to in good faith engage with Debt Counsellors and Payment Distribution Agents in order to resolve operational difficulties that may occur in implementing this Code and to reach agreement or establish arrangements that are in the best interests of the implementation of effective debt counselling and debt re-arrangement agreements;

## **2.3. Voluntary improvements to the statutory Debt Review Process:**

We will:

- 2.3.1.** Enable the NDMA to expand and formalize its complaints mediation and Code compliance monitoring, enforcement and reporting capacity and process nationally
- 2.3.2.** Comply with the legal and procedural provisions in terms of statutory debt counselling in the NCA and all other relevant legislation;
- 2.3.3.** Comply with additional voluntary arrangements, once and for so long as agreed by the industry with the NDRC and adopted under this Code through the NDMA, including such agreements already reached in the final 2010 NCR Debt Review Task Team report, including:
  - Debt counselling process enhancements;
  - Standardized document formats and data exchange arrangements; and
  - Debt re-arrangement rule principles and re-arrangement rules;
- 2.3.4.** Cooperate in:
  - Creating payment collection mechanisms compliant with all relevant legislative and regulatory provisions that will facilitate the efficient and

cost effective receipt and distribution of payments received in terms of debt restructuring under the statutory Debt Review Process; and

- Implementing effective policies and procedures for dealing with the cancellation of existing debit orders, payroll deduction arrangements and stop orders on the duly authorized instruction of the Consumer;

**2.3.5.** Act cooperatively, fairly and reasonably in liaising with a Consumer and a Debt Counsellor representing the Consumer in the Debt Review Process.

**2.3.6.** Ensure that the necessary measures are put in place in our businesses to facilitate the implementation of our commitments under this Code; including:

- Having in place clear internal policies and procedures regarding the treatment of debt review applications;
- Having a single appropriately mandated point of contact in our business to deal with all such matters;
- Ensuring that the policies and procedures our lawyers must follow reflect our commitments set out in this Code:

**2.3.7.** Ensure that the policies and procedures our staff as well as our lawyers must follow fairly reflect:

- Consumer and Credit Provider legal rights and obligations; and
- The commitments set out in this Code and any statutory debt counselling process enhancements and over-indebtedness relief measures adopted under this Code once and for so long as agreed by the industry with the NDRC, and adopted through the NDMA.

**2.3.8.** Diligently implement all the terms and consequential payment arrangement adjustments of any debt restructuring agreements to relieve over indebtedness reached in the statutory debt counselling process where:

- The Debt Counsellor complied with all relevant legal and regulatory requirements including all voluntary enhancements to the statutory Debt Review Process in the final 2010 NCR Task Team report and in future any such enhancements agreed with the NDRC (once established);
- The Consumer and/or relevant credit agreement meets all eligibility requirements in law and as from time to time enhanced through

agreements reached by the industry with the NDRC, and adopted under the Code by the NDMA.

- The affordability and over-indebtedness assessment done by the debt counselor is reasonable, accurate and in line with assessment guidelines as contained in the final 2010 NCR Task Team recommendations or (in future) any such agreements reached with the NDRC;
- The debt restructuring proposal tabled by the Debt Counsellor on behalf of the Consumer meets all relevant legal requirements as well as any additional debt restructuring principles and debt re-arrangement rules as and for as long as agreed by the industry with the NCR Debt Review Task Team and in future the NDRC and adopted under the Code by the NDMA;

**2.3.9.** Ensure that our staff are aware of the internal and external procedures for handling complaints and disputes related to the alternative dispute resolution and debt counselling processes to resolve financial distress due to over-indebtedness;

**2.3.10.** Not terminate debt review proceedings or resort to litigation in respect of the affected credit agreement whilst a Consumer acting in good faith, has lodged a complaint with the NDMA or declared a dispute and it is being dealt with by the Credit Ombud or other Ombud within timeframes contained in the procedures and terms of reference of the NDMA and/or relevant Ombud;

## **2.4. Complaint and dispute resolution**

### **2.4.1. Complaint resolution (Internally by Credit Providers)**

We will:

- 2.4.1.1.** Have formal internal policies and procedures that comply with the law as well as standards determined through the NDMA under this Code to resolve statutory debt review related Consumer complaints fairly and speedily.
- 2.4.1.2.** If a Consumer or Debt Counsellor (on behalf of a Consumer) wish to lodge a complaint, inform them how to do so and what to do if they are not satisfied with the outcome. Our branch, client-care or call centre staff will assist them with any queries in relation to this process.

## **2.5. Complaint mediation (NDMA)**

- 2.5.1.** If a Consumer or Debt Counsellor are not satisfied with the outcome of the complaint under our internal processes, the matter can under this Code be referred for complaint mediation to the NDMA (at [www.ndma.org.za](http://www.ndma.org.za) or 0860 111 6362) who will at no cost to the complainant attempt to mediate a resolution of the complaint within a defined time period;
- 2.5.2.** If the NDMA is unsuccessful in resolving the complaint satisfactorily, the matter can be referred to the Credit Ombud or other Ombud for dispute resolution.

## **2.6. Dispute resolution (Credit Ombud)**

- 2.6.1.** If a complaint is not resolved through the complaints resolution process via the NDMA service, Consumers or their Debt Counsellors can under this Code declare a dispute and make use of the services of the Credit Ombud.
- 2.6.2.** All registered Credit Providers that subscribe to this Code through affiliation with the NDMA are automatically subject to and bound by the jurisdiction,

rules, terms of reference and membership requirements of the Credit Ombud.

### **3. Consumer awareness and education**

We will, individually and/or jointly through the NDMA and/or industry associations, take appropriate steps to:

- 3.1.** Make available through our websites, branch offices and periodically with statements to our Consumers educational material to:
  - Improve our Consumers' ability to manage their finances
  - Assist our Consumers in avoiding over-indebtedness,
  - Warn them about the negative consequences of taking on too much credit, and
  - Inform them about the recourse available in cases of over-indebtedness in law and in terms of this Code.
- 3.2.** Collectively (through the NDMA) or individually support national and/or joint industry initiatives, as well as initiatives by independent or non-profit organisations aimed at promoting Consumer education and financial literacy,
- 3.3.** Periodically engage independent researchers through the NDMA to measure the levels of Consumer awareness in respect of the matters referred to in this section.

#### **4. Reporting**

We will individually or collectively through the NDMA report annually to the NCR and make public:

- 4.1.** The initiatives that we have undertaken and supported and the resources allocated by our respective organizations to promoting Consumer awareness and education; and
- 4.2.** Our progress in regard to carrying out our obligations under this Code;
- 4.3.** Statistics regarding:
  - The number of debt re-arrangement proposals received;
  - The number of such proposals accepted and rejected respectively, broken down according to the type of credit transaction involved;
- 4.4.** Such other statistics as may be agreed with the NCR and or NDRC from time to time;

#### **5. Monitoring and compliance**

- 5.1.** The NDMA with the full support and cooperation of its founding members, the various associations representing Credit Providers, will monitor the implementation of and compliance with this Code and annually report on this to the National Debt Review Committee (NDRC) and NCR. In doing so, it shall make reference to the findings of the Credit Ombud or other Ombud.
- 5.2.** Where the NDMA, the Credit Ombud or other Ombud respectively find a Credit Provider guilty of persistent non-compliance with this Code and failing to respond to formal requests to comply within a reasonable period, the NDMA or relevant Ombud shall bring this to the attention of the NCR and may terminate the Credit Provider's affiliation (and therefore subscription to the Code).

- 5.3.** The NDMA will on an ongoing basis monitor and promote compliance with this Code and will regularly and transparently report to the NCR and in the public domain on overall levels of compliance by subscribing Credit Providers and the impact of the Code in combating over-indebtedness and its effects. Where subscribing Credit Providers are audited entities, their auditors would be required to report on compliance with this Code in their normal audit reports in accordance with an NDMA compliance charter once established.
- 5.4.** In addition to the above, we will individually implement measures to assist the National Credit Regulator to monitor the nature and extent of measures we have implemented in our businesses to combat over-indebtedness; the resources that have been allocated to these activities and the effectiveness of the measures implemented.

## **6. Review of the Code**

The NDMA will commission an independent and transparent review of this Code on or shortly after each five year anniversary of the date on which the Code is agreed with and approved by the NCR or sooner if appropriate, which review will involve consultation with all relevant stakeholders. The outcome of the review will be made public.

## **7. Date of Commencement**

This Code shall come into effect on 01 January 2011 and at that date replace the NDMA Code to Combat Over-Indebtedness approved by the NCR in June 2008.

## 8. Definitions

In this Code the following expressions have the following meanings:

<b>“Code”</b>	means this Credit Provider’s Code of Conduct to Combat Over-indebtedness
<b>“Consumer”</b>	Has the meaning given to it in section 1 of the NCA
<b>“Credit Ombud”</b>	Means the Credit Ombud recognised in terms of the FSOS Act
<b>“Credit Provider”</b>	Means a registered Credit Provider as defined in s 1 of the NCA that subscribes to this Code
<b>“Debt Review Process Enhancements”</b>	Means the enhanced statutory Debt Review Process rules agreed with the NDRC as rules and (where relevant) approved by the NCR from time to time
<b>“FSOS Act”</b>	Means the Financial Services Ombud Schemes Act 37 of 2004
<b>“NCA”</b>	Means payroll deductions such as PAYE and UIF
<b>“NCR”</b>	Means the National Credit Act 34 of 2005
<b>“NCR Task Team”</b>	Means the National Credit Regulator
<b>“NCR Task Team”</b>	Means a national debt review task team established by the NCR in October 2009 and who delivered a final report with recommended a range of voluntary enhancements to the statutory debt review process in 2010.
<b>“NDMA”</b>	Means the National Debt Mediation Association
<b>“NDRC”</b>	Means the National Debt Review Committee to be established by the NCR as an advisory and negotiating forum between the key stakeholders in the statutory Debt Review Process.
<b>“Other Ombud”</b>	Means an ombud other than the Credit Ombud recognised in terms of the FSOS Act with jurisdiction in respect of a complaint arising under this code and the parties to that complaint
<b>“Subscribing Member”</b>	Means a registered Credit Provider that has subscribed to this Code through affiliation with the NDMA
<b>“Tribunal”</b>	The National Consumer Tribunal established in terms of s 26 of the National Credit Act