Payment Distribution Agent’s Code of Conduct for Debt Review

1. Preamble

By subscribing to this Code of Conduct (Code), we support the provisions of the National Credit Act 34 of 2005 (NCA) aimed at assisting over-indebted consumers.

Further, we acknowledge that it is necessary to implement a range of measures that are complementary to the provisions of the service level agreement entered into with the National Credit Regulator (NCR), in order to ensure as many debt review cases as possible are brought to a successful conclusion.

We commit ourselves to implementing the provisions of this Code and any processes adopted as rules under it to give effect to these objectives.

We commit ourselves to accept this Code as binding upon us in respect of cases and circumstances that qualify in terms of the processes proposed by the National Debt Review Committee (NDRC) and that are approved by the National Credit Regulator (NCR) from time to time, except where doing so could lead to a contravention of law.

2. Our commitments

2.1 General Undertakings

We undertake to:

2.1.1 Adopt and implement processes and other arrangements between the stakeholders to improve the efficiency and effectiveness of the debt review
process as the NDRC proposes as rules and that are approved by the NCR from
time to time;

2.1.2 As an interim measure until the NDRC proposes as rules and the NCR approves
such processes or arrangements, undertake to support the Debt Review Process
Enhancements that formed part of the Task Team’s proposals and that are
attached hereto as Annexure A;

2.1.3 Affiliate ourselves to the institution created under the Code and subject
ourselves to its jurisdiction, rules, terms of reference and membership
requirements;

2.1.4 Until such time as capacity is created through such an institution, refer
complaints against subscribing members to and cooperate with the National
Credit Regulator’s Complaints Department;

2.1.5 Ensure that we are accredited by the NCR and display decals provided by the
Payment Distribution Association of South Africa (PDASA) to indicate our
accreditation;

2.1.6 Affiliate ourselves to PDASA and subject ourselves to its jurisdiction, rules, terms
of reference and membership requirements and complains resolution process;

2.1.7 Until such time as capacity is created through PDASA, refer complaints against
subscribing members to and cooperate with the National Credit Regulator’s
Complaints Department;

2.1.8 Subject ourselves to the jurisdiction, rules, terms of reference and membership
requirements of the Credit Ombud;

2.1.9 In collaboration with Debt Counsellors and Credit Providers, facilitate the referral
of disputes to the institution created under the Code, NDMA, DCASA or the
Credit Ombud or other relevant Ombud (“other Ombud”) with jurisdiction,
recognised in terms of the Financial Services Ombud Schemes Act 37 of 2004
(“FSOS Act”), as is appropriate;

2.1.10 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 collection of
money and the distribution of payments in respect of consumers under debt
review.
2.2 Undertakings relating to documents

We undertake to:

2.2.1 Adopt and implement any documents proposed by the NDRC and that are approved by the NCR from time to time, in order to facilitate the provision of detailed and accurate information for the debt review process.

2.3 Undertakings relating to debt re-arrangement rules

We undertake to:

2.3.1 As far as possible, implement payment instructions that conform to debt re-arrangement rules as proposed by the NDRC and that are approved by the NCR from time to time;
2.3.2 From time to time, conduct a review of payment plans submitted by debt counsellors and check whether these conform to the debt re-arrangement rules.
2.3.3 Where a debt counsellor habitually submit plans that appear not to conform to the debt re-arrangement rules, report that debt counsellor to DCASA or other recognised industry body, as applicable.
2.3.4 Support PDASA as a member of the NDRC in overseeing the effective implementation and ongoing monitoring and review of such rules into the debt review environment;
2.3.5 Cooperate in ensuring that the debt review process operates efficiently by adhering strictly to the service level agreement with the NCR.

3. Dispute Resolution
3.1 We will ensure that we have in place effective internal complaint handling mechanisms to deal with consumers’ complaints regarding our conduct under this Code;

3.2 We will ensure that our internal complaint handling mechanisms operate according to policies and procedures that comply with the law as well as alternative dispute resolution and debt review process enhancements and relief measures adopted through the institution created under the Code;

3.3 We will endeavour to resolve complaints received from consumers in a speedy and fair manner;

3.4 If a consumer is not satisfied with the outcome of the complaint under our internal processes, the matter may be referred for mediation to the institution created under the Code who will at no cost to the complainant attempt to mediate a resolution of the complaint according to its rules, to which we subscribe;

3.5 If the institution created under the Code is unsuccessful in resolving the complaint to the consumer’s satisfaction, the matter may be referred to the Credit Ombud or other Ombud for dispute resolution;

3.6 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 mediate, to make binding determinations based on this Code, the rules issued under it, 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;

3.7 We undertake to provide consumers with the relevant contact details of the institution created under the Code and Ombud contact information and documentation to lodge complaints;

3.8 A determination made by the Credit Ombud or other ombud may be made an order of the court or the Tribunal.
4. **Relationship with other stakeholders**

We undertake to:

4.1 Support and cooperate with the NDRC in its role of facilitating agreement and cooperation between the respective the stakeholders;

4.2 Cooperate fully with Debt Counsellors, Credit Providers and consumers in ensuring that the debt review process works efficiently;

4.3 Make every effort to engage with Debt Counsellors and Credit Providers 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 rehabilitation arrangements;

4.4 Raise and discuss such operational difficulties with Debt Counsellors and Credit Providers in good faith;

4.5 Report to the NCR any operational difficulties experienced in reaching agreements with debt counsellors or credit providers;

5. **Reporting**

5.1 We will individually report monthly to the NCR as per the Service Level Agreements and collectively on a quarterly basis:

5.1.1 Our progress in regard to carrying out our obligations under this Code;

5.1.2 Statistics regarding the number of payment instructions received and other that may be relevant in this regard;

5.1.3 Statistics that may be required by the NCR in terms of the Service Level Agreement and other statistics as may be required by the NDRC from time to time that could be beneficial to industry at large.

5.2 We will report to the NDRC any habitual behaviour by a debt counsellor, credit provider or consumer that hamper effective functioning of the debt counselling system.
6. **Monitoring and compliance**

6.1 The National Debt Review Committee (NDRC), with the support of the various associations representing credit providers, will oversee the implementation of and monitor compliance with this Code. In doing so, it shall make reference to the findings of the Credit Ombud or other ombud.

6.2 Where the institution created under the Code, the Credit Ombud or other Ombud respectively finds a payment distribution agent guilty of persistent non-compliance with this Code, this fact shall be brought to the attention of the institution created under the Code, which shall approach the payment distribution agent in question with a view to obtaining an undertaking that it will desist from the conduct which amounts to non compliance with this Code. Should the payment distribution agent refuse to give such an undertaking or persist in the conduct, this fact shall be reported to the NCR.

6.3 The institution created under the Code will on an ongoing basis monitor and promotes compliance with this Code and will regularly and transparently report in the public domain on overall levels of compliance by subscribing credit providers and the impact of the Code in combating over-indebtedness and it 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.

6.4 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.
7. **Review of the Code**

7.1 The institution created under the Code 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 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.

8. **Date of Commencement**

This Code shall come into effect on .
4. Definitions

In these Terms of Reference the following expressions have the following meanings:

“COB” means Certificate of Balance in the standardized format
“Code” means the Credit Provider’s Code of Conduct for Debt Review
“Consumer” has the meaning given to it in section 1 of the NCA
“Credit Ombud” means the Credit Ombud recognised in terms of the FSOS Act
“Credit Provider” means a registered credit provider that subscribes to this Code
“DCASA” means the Debt Counsellors’ Association of South Africa
“Debt Review Process Enhancements” means the enhanced debt review process rules proposed by the NDRC as rules and that are approved by the NCR from time to time
“FSOS Act” means the Financial Services Ombud Schemes Act 37 of 2004
“Mandatory Payments” means payroll deductions such as PAYE and UIF
“NCA” means the National Credit Act 34 of 2005
“NCR” means the National Credit Regulator
“NDMA” means the National Debt Mediation Association
“NDRC” means the National Debt Review Committee
“Other Ombud”) 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
“PDASA” means the Payment Distribution Association of South Africa
“Service Level Agreement/s” means the Service Level Agreement/s entered into between PDASA and the NCR from time to time.
“Subscribing Member” means a registered credit provider that subscribes to this Code
“Tribunal” means the Tribunal created by the NCA
Enhanced debt review process rules

1. **Form 17.1 Stage**

   The Debt Counsellor is required to issue Form 17.1 within 5 business days after accepting the application for debt review from a consumer.

2. **Credit provider information stage**

   2.1 Within 5 business days of receiving Form 17.1, the Credit Provider is required to provide a Certificate of Balance (COB) in the standardized format and include on or attached to the COB consent to receive notice of delivery of notices and legal documentation by fax or email.

   2.2 Affordability assessment, declaration of over-indebtedness (Form 17.2) and debt re-arrangement proposal.

3. **Debt Counsellor**

   3.1 The Debt Counsellor should conduct an assessment in accordance with the Affordability Assessment Guidelines to determine if the consumer is over-indebted and to determine the amount available to repay debt.

   3.2 If no COB is received within 5 business days, the Debt Counsellor may accept the information provided by the consumer as being correct to determine if the consumer is over-indebted, in terms of Regulation 24(4).

   3.3 If a COB is received within 5 business days, the Debt Counsellor should use the information provided in the COB to determine if the consumer is over-indebted.

   3.4 If the consumer is found by the Debt Counsellor not to be over-indebted or not to be legally eligible to be under debt review, the Debt Counsellor should reject the application and send a Form 17.2 to the Credit Providers and Credit Bureaus.

   3.5 If the consumer is found by the Debt Counsellor to be over-indebted and legally eligible to be under debt review, the Debt Counsellor should, within 10 business days of receiving the COB from all credit providers, notify both the Credit Provider/s and the Credit Bureaus of that fact per Form 17.2 and provide the Credit Provider/s with a debt re-arrangement proposal that includes:

   a) A summary of the affordability assessment conducted containing the before and after counselling situation with regard to monthly financial obligations and affordability of the consumer in standardized format; and

   b) A debt re-arrangement proposal in accordance with the minimum requirements of the Debt Restructuring Guidelines and consisting of a
standardised summary of the proposal (for all credit agreements).

3.6 The debt re-arrangement proposal should include confirmation of the following:

a) The income and expenditure of the consumer as established by the Affordability Assessment Guidelines
b) Confirmation if an asset/liability restructuring is possible to improve the indebtedness situation;
c) The amount available on a monthly basis for debt review repayments;
d) The identity of the appointed PDA through which payments will be received;
e) The commencement date of the proposed payments to the PDA which should not commence later than 60 business days from date of application for debt review;
f) Copies of all debit order and stop payment cancellation instructions given by the consumer.¹
g) An initial repayment plan for immediate implementation on the PDA’s system.

3.7 The Debt Counsellor should follow up on all unpaid advices received from the PDA and, where required, take steps to maintain the continuous payment as proposed in the debt re-arrangement proposal submitted to the Credit Providers.

3.8 The Debt Counsellor should, as part of the Affordability Assessment, verify that premiums in respect of credit-linked insurance² that formed part of monthly repayment obligations under the credit agreement are maintained and included in the PDA’s payment plan.

3.9 The premiums for such insurance as well as other insurance policies forming part of the consumer’s contractual obligations under the credit agreements such as asset insurance (homes and vehicles) as well as life and household content policies should be dealt with as essential expenses in the consumer’s budget.

3.10 On receipt of all the Credit Provider responses within the prescribed 10 business day period, the Debt Counsellor should:

a) Record acceptance or non acceptance of proposals.
b) Generate a final repayment plan in terms of which:
   I. Credit Providers who have consented to the repayment plan benefit from the effects of cascading³ as well as annual payment escalations agreed with the consumer.
   II. Credit Providers who have not consented to the repayment plan

¹ Should be given to as applicable:
   ▪ The bank branch of the consumer for cancellation of stop orders and blocking of third party debit orders;
   ▪ The third party credit provider beneficiaries of debit orders
   ▪ The third party credit provider beneficiaries of payroll deductions
   ▪ The employer of the consumer for payroll deductions in favour of credit providers

² Credit life or asset insurance.

³ Cascading means that as each successive debt is repaid in full, the portion of the repayment proposal that was allocated to it is applied to all of the outstanding debts in the debt re-arrangement proposal portfolio.
will receive the amount allocated to them in the repayment plan as well as annual payment escalations agreed with the consumer, subject to the other requirements of the NCA.

c) A summary repayment plan to including the effects of (b) to be submitted to Credit Providers as an indication of expected repayments. This will include the effect of cascading and annual increases agreed by the consumer and would simultaneously be submitted to the PDA to replace the interim payment plan with the final payment plan to be implemented under the consent agreement.

d) A proposed payment plan to be submitted to Magistrate Court to include the following:

I. Indication of accepted proposals with a request of confirmation through a consent order.

II. Indication of non-accepted proposals.

III. Repayment plan for non consenting Credit Providers based on the amount allocated to the non consenting Credit Provider and any other NCA requirement.

IV. Repayment plan based on repayments excluding the effect of cascading and escalation.

V. A clause to indicate that released affordability will be applied to Credit Agreements where Credit Providers have accepted the proposals with voluntary rate and term concessions.

VI. A clause to indicate that annual increase in repayments agreed by the consumer will be applied to all Credit Agreements.

VII. A clause to indicate that all relevant provisions of the NCA, including s 103 (5), are to be applied in determining the settlement date and total repayable amount due by the consumer of each credit agreement.

e) Should the Court approved repayment plan differ from the previously loaded PDA plan (with reference to non consenting Credit providers) the Debt Counsellor should load a post Court repayment plan on the PDA.

Credit Provider

4.1 Upon receipt of the debt re-arrangement proposal that meets the requirements of the Act and debit order and stop payment cancellation instructions, the Credit Provider should:

a) Cancel all debit orders and salary deductions in respect of the debt repayments subject to the debt review (as required by law); and

b) Refrain from applying set-off against credit balances or salary and other credits to the consumer’s bank account.

4.2 Within 10 business days of receiving the Form 17.2 accompanied by the Affordability Assessment summary and a debt re-arrangement proposal, the Credit Provider should, in writing:

a) Accept the debt re-arrangement proposal (subject to the consumer complying therewith), if it meets the minimum requirements of the Debt Restructuring Guidelines, and implement the restructured terms of the agreement in accordance with the debt re-arrangement proposal on their systems, or
b) Reject the debt re-arrangement proposal, give notice of the intention to legally oppose it and provide written reasons for having rejected it.

5. Termination of Debt Review

5.1 Credit Providers should not terminate debt reviews where:

a) The 17.2 notice has been received; and
b) An Affordability Assessment summary and debt re-arrangement proposal meeting the minimum debt restructuring guidelines has been submitted to Credit Providers as set out above; and

c) The consumer is maintaining repayments, including mandatory payments, that are in line with the debt re-arrangement proposal submitted to Credit Providers and that meet the minimum requirements of the Debt Restructuring Guidelines as per Annexure D (3) of this report; and

d) The consumer does not breach any other material provisions of the credit agreement, or

e) Whilst the consumer, acting in good faith, has lodged a complaint or declared a dispute which is being investigated by the NDMA, DCASA or the Credit Ombud in terms of the applicable rules and timeframes of the respective organisation.

5.2 Credit Providers should take reasonable steps to verify whether payment in accordance with the debt re-arrangement proposal have been made before terminating debt review and instituting collection action. This includes notifying the consumer, PDA and Debt Counsellor of the pending termination notice in order to establish whether payments have been made.

5.3 Credit Providers should terminate debt reviews and institute collection action where:

(a) The consumer is in default and no 17.2 notice and debt re-arrangement proposal is received from the Debt Counsellor within 60 business days after the date on which the consumer applied for the debt review; or

(b) The consumer is in default, no repayments that are in line with the debt re-arrangement proposal submitted to Credit Providers and meet the minimum requirements of the Debt Restructuring Guidelines are received and reasonable steps have been taken to verify from the relevant PDA and Debt Counsellor that no or insufficient payments have been made by the consumer; and/or;

(c) The consumer is in default of the credit agreement in a respect other than payment default, such as a default on maintaining the payment of credit-linked insurance premiums.

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4 In terms of section 86 (10) of the NCA, Credit Providers may terminate debt review applications where a consumer is in default under a credit agreement at any time at least 60 business days after the date on which the consumer applied for the debt review.
6. **Legal Contestation**

**Debt Counsellor**

6.1 Upon receipt of the Credit Providers reply to the debt re-arrangement proposal, the Debt Counsellor should:

   a) Set the matter down in a Magistrate’s Court and obtain a court date before the expiry of the statutory 60 business days after the date on which the consumer applied for the debt review.
   
   b) Notify the respective credit providers of the outcome of the debt re-arrangement proposal and the court date within 10 business days of having obtained it.\(^5\)

6.2 If consent has been obtained from all of the Credit Providers involved, the Debt Counsellor should apply for a Consent Order.

6.3 If consent has not been obtained, the Debt Counsellor should set the matter down as an opposed matter and the unconditional consents of those Credit Providers, if any, who have accepted the debt re-arrangement proposal should be included in the proposal to the Magistrate.

6.4 The Debt Counsellor should notify all the Credit Providers involved of the Court date within 10 business days of it having been allocated.

6.5 The Debt Counsellor should limit the number of matters contested through the Courts by:

   a) Adhering to the task team assessment and debt re-arrangement guidelines in order to procure consent wherever possible; and
   
   b) Complying with the Magistrate’s Court rules and procedures in bringing matters to Court.

**Credit Provider**

6.7 The Credit Provider should:

   a) Limit the number of matters contested through the Courts by opposing only on material grounds (such as prejudicial non-compliance with the law or debt re-arrangement proposals that are unreasonable or unduly prejudicial to the Credit Providers);
   
   b) Ensure the mandates issued to their attorneys reflect this guideline.

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\(^5\) This goes further than the Magistrate’s Court Act requirement of advising Credit Providers at least 10 days before the Court date