

GUIDELINE FOR THE DIGITAL SERVICE AND DELIVERY OF NOTICES AND DOCUMENTS UNDER THE NATIONAL CREDIT ACT 34 OF 2005 ("THE NCA")



02/2022
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EXPLANATORY NOTICE IN TERMS OF SECTION 16 (B) OF THE NCA: THE DIGITAL SERVICE AND DELIVERY OF NOTICES AND DOCUMENTS UNDER THE NCA

1. INTRODUCTION

- a. In recognition of the acceleration of digitisation of services, the objective of this explanatory notice is to:
- i. provide guidance to registrants on the digitisation of certain obligations under the NCA, specifically obligations relating to the service and delivery of documents and notices;
 - ii. highlight the general guidance provided by the NCA in relation to the service and delivery of documents and notices, having regard to applicable legislation governing electronic communication.
- b. This explanatory notice does not purport to interpret the provisions of any other legislation, other than providing the guidance outlined above.

2. THE GENERAL PROVISIONS OF THE NCA APPLICABLE TO THE SERVICE AND DELIVERY OF DOCUMENTS AND NOTICES

- a. Sections 65, 96 and 168 of the NCA regulate the service and delivery of documents and notices and serve as general guidelines where notices are, in general, prescribed or required by the NCA.
- i. Section 65 states that every document that is required to be delivered to a consumer in terms of the NCA must be delivered in the prescribed manner, if any.
 - ii. If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must make the document available to the consumer through one or more of the following mechanisms-
 - 1. in person at the business premises of the credit provider, or at any other location designated by the consumer but at the consumer's expense, or
 - (a). by ordinary mail;
 - (b). by fax;
 - (c). by email; or
 - (d). by printable web-page; and
 - 2. deliver it to the consumer in the manner chosen by the consumer from the options made available in terms of paragraph 1 herein.
- b. In terms of section 96 of the NCA, whenever a party to a credit agreement is required or wishes to give legal notice to the other party for any purpose contemplated in the agreement, the NCA or any other law, the party giving notice must deliver that notice to the other party the address of that other party as set out in the agreement, or the address most recently provided by the recipient.
- c. A party to a credit agreement may change their address by delivering to the other party a written notice of the new address by hand, registered mail, or electronic mail, if that other party has provided an email address.
- d. Lastly section 168 states that unless otherwise provided in the NCA, a notice, order or other document that, in terms of the NCA, must be served on a person will have been properly served when it has been either delivered to that person or sent by registered mail to that person's last known address. These provisions also apply to legal notices.
- e. The above mentioned provisions of the NCA can be summarised as follows:
- i. Where a method of service has been prescribed by the NCA, that method must be followed.
 - ii. Where a legal notice must be sent, the method of delivery is either service or delivery to that person, or by registered mail. The address to be used is the one on the agreement or the one most recently chosen by the recipient (section 96).
 - iii. Where a method has not been prescribed by the NCA, and where the document to be delivered is not a legal notice, the document can be delivered by ordinary mail, by fax, by email, or by printable web page and as chosen by the consumer.

3. ELECTRONIC COMMUNICATION

- a. Electronic communication is regulated in terms of the Electronic Communication and Transactions Act of 2002 ("ECT Act"). Electronic communication is defined as a communication by means of data messages. Data message is in turn defined as data generated, sent, received or stored by electronic means and includes voice, where the voice is used in an automated transaction and a stored record. Data is defined as electronic representations of information in any form.
- b. Short messaging service or SMS is not defined in the ECT Act, but it is generally defined as electronic means of sending short text messages between mobile phones. The NCA defines SMS in section 1 as a short message service provided through a telecommunication system. Electronic mail or email is also not defined in the ECT Act either, but the generally accepted definition is that it is an electronic means of sending messages from one computer user to one or more recipients via a network. Therefore, both sms and email communication fall under the definition of electronic communication, regulated under the ECT Act.
- c. Section 11 of the ECT Act provides that information is not without legal force and effect merely on the grounds that it is wholly or partly in the form of a data message.
- d. Section 12 of the ECT Act states that a requirement in law that a document or information must be in writing is met if the document or information is (i) in the form of a data message; and (ii) is accessible in a manner usable for subsequent reference. Considering this, where the NCA requires certain notices to be delivered in writing, the principles of section 12 of the ECT Act will apply, in that those notices may be delivered through electronic communication, i.e. email, provided that the applicable requirements set out in the ECT Act are met.

4. APPLICATION OF THE NCA PROVISIONS READ TOGETHER WITH THE PROVISIONS OF THE ECT ACT

- a. Email and sms communication are recognised as valid forms of electronic communication under the ECT Act. Any notices or documents that are required to be served and delivered to consumers under the NCA can be delivered through electronic communication, in the form of sms or email, unless the NCA has prescribed a particular method of communication, then that method supersedes the provisions stated in the ECT Act.
- b. Where the NCA has prescribed a method of service and delivery of a document to be a registered mail, in terms of section 19 of the ECT Act, it will be compliant and sufficient if the electronic copy of the document or information is sent to the South African Post Office Limited, is registered by the said Post Office and sent by that Post Office to the electronic address provided by the sender.

5. GENERAL

- a. The NCR encourages credit providers to have regard to the provisions of the ECT Act in relation to the electronic service and delivery of notices and documents prescribed by the NCA, in view of the need to digitise services as a result of the Covid-19 pandemic.
- b. If service and delivery of notices and documents mentioned in the NCA is done in terms of the provisions of the ECT Act, registrants must comply with: all other provisions of the ECT Act, including all the consumer protection provisions in the ECT Act; the protection of personal information provisions in the Protection of Personal Information Act of 2013, and; the confidentiality obligations in the NCA.

FOR MORE INFORMATION, QUESTIONS OR CLARITY RELATING TO THIS GUIDELINE:

Please address all queries to **Ms Mhlali Matibe** at mmatibe@ncr.org.za