

National Credit Act registration requirements

The National Credit Act, No 34 of 2005, (NCA) requires that credit providers must register with the National Credit Regulator if that person, alone or in conjunction with another person, is a credit provider of at least 100 credit agreements, other than incidental credit agreements or if the total principal debt owed to that credit provider exceeds the threshold of R500 000.00.

The requirement of the 100 agreements was removed in the National Credit Amendment Act, No 19 of 2014, effective with effect from 13 March 2015.

The threshold for registration was also amended from R500 000 to Nil Rand in the National Credit Act Regulations released on 11 May 2016. The regulations become effective six months after publication and will therefore take effect on 11 November 2016.

For credit providers to decide on whether they should therefore register they need to refer to fact on whether the entity / individual is in actual fact a credit provider.

A credit provider is defined as

- a party who supplies goods or services under a discount transaction, incidental credit agreement or an instalment sales agreement;
- a party who advances money or credit under a pawn transaction;
- the party who extends credit under a credit facility;
- mortgagee under a mortgage agreement,
- a lender under a secured loan, lessor under a lease,
- a party to whom an assurance or promise is made under a credit guarantee;
- a party who advances money or credit to another under any other credit agreement; or
- any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into.

The NCA applies to all credit agreements within the Republic involving:

- individuals, except transactions:
 - at arm's length (loans between family members, partners and friends on an informal basis will not be regulated); and
 - between a stokvel, and a member of that stokvel;
- juristic persons (businesses) with an asset value or annual turnover of less than R1m, but not if such a juristic person enters into a large agreement (i.e. for more than R250 000).

A credit agreement constitutes a credit facility if the credit provider undertakes to provide goods or services or to pay an amount/s and defers the consumer's obligation to pay or bills the consumer periodically and the credit provider imposes a fee, charge or interest with respect to deferred payments or the credit provider must give a discount with respect to prepayment.

Questions raised on the registration requirements, with specific reference to the provision of employee loans need to be addressed. In many cases entities are providing employee loans at a low interest rate, for specific purposes including assisting employees to purchase computers or to assist the employees in the short term with personal issues.

These arguments raised by employers include the fact that the employers believe that these loans between the employer and employee are not at arm's length as the interest rates are minimal based on the risk of the employee. The relationship is also not at arm's length with regard to the loan transaction as the individuals are employed by the employer and is therefore not independent of the employer. The employers base this argument on section 4 of the NCA which provides for an exemption to the application of the NCA on certain credit agreements where the parties are not at arm's length.

SAICA met with the National Credit Regulator in October 2016 and feedback received is that the National Credit Regulator considers employee loans to fall within the ambit of the Act if the requirements are met.

Therefore based on the amendments to the NCA and the related Regulations, all credit providers, except credit providers that provide incidental credit, must register with the National Credit Regulator by 11 November 2016.

If the credit provider provides credit but is not registered the agreement is unlawful and is also void as from the date the agreement was entered into. The credit provider must refund the consumer any monies paid with interest and the right of the credit provider to recover money paid or goods delivered is cancelled, unless the court concludes that the consumer would be unjustly enriched.

SAICA members should therefore be aware of the duty to register as a credit provider when providing credit to the public or staff, should the agreement meet the requirements of a credit agreement and the person / entity receiving the credit meets the definition of a consumer in terms of the NCA.

Extract:

Section 4 of the NCA states that :

- 1) *Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except-*
- 2) *For greater certainty in applying subsection (1)*
 - b) *iv) any other arrangement-aa) in which each party is not independent of the other and consequently does not necessarily strive to obtain the utmost possible advantage out of the transaction; or*

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