

A BRIEF OVERVIEW OF THE DEBT REVIEW PROCESS

1. The National Credit Act, No 34 of 2005 ("the Act"), finally came into operation on 1 June 2007.
 2. The Act provides for a debt relief mechanism whereby Consumers, who are over-indebted, can apply for debt-review in terms whereof a Consumer's debt repayment obligations are reduced.
 3. The aim and purpose of the said debt relief mechanism provided for in the Act, is therefore to assist Consumers to lead a normal economic life without being pressurised by credit providers for payment in circumstances where a Consumer can no longer afford to honour his payment obligations unto his credit providers.
 4. A Consumer will broadly be over-indebted if, after providing for the monthly living expenses and maintenance requirements of himself and his dependants, is unable to afford his debt obligations unto his credit providers.
 5. By availing himself of the debt relief mechanism provided for in the Act, a Consumer can, for example, prevent his assets, including his home, motor vehicle and furniture being foreclosed upon and attached by unsympathetic credit providers.
 6. What is more, a credit provider is, in terms of the provisions of the Act, obligated to participate in the debt review process and therefore cannot avoid it.
 7. In the final analysis, once a Consumer's debt obligation unto his credit providers has been re-arranged, the Consumer's will be financially liberated and will henceforth be able to honour his payment obligations unto his/her credit providers in reduced instalments affordable to the Consumer.
2. How does the Act protect Consumers?
 - By prohibiting and preventing unfair credit and credit marketing practices.
 - By promoting responsible credit granting.
 - By providing for a debt relief mechanism whereby debt can be restructured in the event of a Consumer being over-indebted.
 3. Who monitors the execution of the Act?
 - The National Credit Regulator ("the NCR").
 - The Consumer is encouraged to visit the website of the NCR at www.ncr.co.za.
 4. Is debt review a loan?
 - The debt review process is **not** a loan.
 - On the contrary, the debt review process entails that a Consumer settles his credit payment obligations with his own funds, but which payment obligations are re-arranged to reduced amounts affordable to the Consumer with due regard to the Consumer's income and living expenses.
 5. Who may apply for debt-review?
 - Any Consumer who is over-indebted.
 - As stated before, a Consumer will be over-indebted if, after having provided for the monthly living expenses and maintenance requirements in respect of himself and that of his dependants, he is unable to afford his payment obligations unto his credit providers.
 - No company, trust or close corporation can apply for debt review and the debt relief mechanism provided for in the Act is therefore only available to private individuals.
 - A Trust, comprising of less than three trustees is, however, deemed to be a private individual.
 6. When should one apply for debt counselling?
 - A Consumer should realistically consider his financial circumstances.
 - Ideally a Consumer, who is over-indebted and experiencing difficulty in making ends meet and/or honouring his payment obligations unto creditors, should act pre-emptively by applying to a debt counsellor for debt review before his creditors institute legal proceedings against him.
 - So doing legal action can be avoided.
 - Most certainly Consumers should not let considerations of pride or embarrassment prevents them from applying to a debt counsellor to be placed under debt review as debt respects no class.

FREQUENTLY ASKED QUESTIONS

1. Why was the Act instituted?

- To regulate the credit industry.
- To regulate credit bureaus.
- To protect Consumers.

- Debt obligations will not disappear and Consumers can, via the debt review process, confront their creditors head-on in the secure knowledge that they will enjoy complete statutory protection from their creditors.
 - In the final analysis, should a Consumer need protection from creditors or be at risk of losing his home, motor vehicle or other assets, then a Consumer should consider applying to a debt counsellor for debt review.
7. Who can assist an over-indebted Consumer?
- A registered debt counsellor.
 - A debt counsellor would have attended a course in debt counselling and successfully passed an examination.
 - A debt counsellor is monitored by the NCR and is duty bound to abide the dictates of the Act and the guidelines issued by the NCR from time to time.
8. What is the role of the debt counsellor?
- To assist Consumers who are experiencing debt related problems in accordance with the provisions of the Act.
 - To act as mediator and to negotiate in good faith with a Consumer's credit providers so as to obtain, in the final instance, a debt re-arrangement order of court.
9. What is the relationship between the debt counsellor and the Consumer?
- The relationship requires utmost good faith.
 - The Consumer needs to understand that it is imperative that he trusts the debt counsellor, takes the latter into his confidence and makes a **full disclosure of his financial affairs and circumstances**.
 - The Consumer must be mindful that the debt counsellor will, on the strength of the information provided by the Consumer, objectively and in good faith negotiate the re-arrangement of the Consumer's payment obligations with the Consumer's credit providers.
 - The debt review process is therefore founded on and requires **absolute honesty** and there is no scope for non disclosures, misrepresentations and like conduct.
10. How does the debt counselling process work in practice?
- A Consumer, who believes that he is over-indebted, will apply to a debt counsellor for debt review.
 - The debt counsellor will obtain such information, inclusive of documentary proof, relevant to the Consumer's financial circumstances;
 - The Consumer will be required to sign an application form and related documentation and pay a registration fee of R50,00 (excluding Vat) as well as an administration fee of R300,00.
 - The debt counsellor will thereafter register the application with the NCR and list it with all credit bureaus.
 - In addition, the debt counsellor will notify all the Consumer's credit providers, in writing, of the fact that the Consumer has applied for debt review in terms of the Act;
 - Once the Consumer's application for debt review has been registered as aforesaid, the debt review process must be finalized within 60 business days thereafter.
 - During this 60 business day period, no credit provider can take any further steps in collecting moneys from the Consumer in respect of credit agreements with regard to which no summons has yet been issued.
 - During the 60 business day period the debt counsellor will determine if the Consumer is over indebted or not.
 - Should the debt counsellor conclude that the Consumer is not over-indebted, then the application for debt review will unfortunately be rejected.
 - Should the debt counsellor conclude that the Consumer is indeed over-indebted, the debt counsellor will notify the Consumer's credit providers accordingly.
 - Thereafter, the debt counsellor will, with reference to the Consumer's required living expenses, prepare a debt re-arrangement payment proposal and which will be forwarded to the Consumer's credit providers for their consideration.
 - The said proposal effectively entails that the debt counsellor, with due regard to the Consumer's monthly disposable income and required living expenses, determines how much money the Consumer has available with which to pay his creditors.
 - Provision is therefore firstly made for the Consumer's required monthly living expenses to the effect that creditors are only paid with the balance available on the Consumer(s) budget,
 - This necessarily means that the creditors receive a lesser amount, affordable to the Consumer, in such proportions as what the debt counsellor objectively determines.

- **Consumers will be required to commence paying the aggregate re-arranged instalment determined by the debt counsellor pending eventual finalization thereof by order of court – debt review is therefore not a payment holiday, so to speak.**
 - The credit providers concerned will be invited to accept or reject the debt counsellors recommended debt re-arrangement proposal.
 - Should the credit providers accept the recommended debt re-arrangement proposal, the debt counsellor will, via an attorney, have it converted to a consent order of court.
 - Should one or more of the credit providers not consent thereto, then the debt counsellor will negotiate with them, and if negotiations are unsuccessful, then the debt counsellor will facilitate that the debt review application of the Consumer be submitted to a magistrate for consideration.
 - This latter process (as well as the process of obtaining a consent order), entails the appointment of an attorney to advance the cause of the Consumer and to such end the Consumer will unfortunately be exposed to the legal costs of such attorney.
 - **In the final analysis the debt counsellor seeks, in a responsible and objective manner, to restructure the Consumer's debt repayment obligations to a reduced and affordable amount and to have it approved by an order of court.**
11. What, if any, sacrifices will the Consumer have to make?
- A Consumer will need to be realistic about his/her financial circumstances.
 - A Consumer must consequently accept that he/she will necessarily have to make downward adjustments to his living expenses and standard of living.
 - **A Consumer's credit providers will most certainly not agree to a re-arranged payment plan where a Consumer, at their expense, suffers in luxury, as it were and neither will the Court approve such a payment plan.**
 - Living expenses related to liquor, cigarettes, DSTV, entertainment, holiday homes etc. will be thoroughly scrutinized by credit providers in considering any debt re-arrangement proposal made by the debt counsellor.
12. Is there any limitation to the availability of the debt relief mechanism provided for by the Act?
- Unfortunately there is.
 - **Firstly**, the debt relief mechanism is only available to Consumers who indeed are over-indebted.
 - **Secondly**, it only relates to debt obligations which emanates from credit agreements (for example: bonds, motor vehicle finance, clothing and furniture accounts, overdrafts, personal loans) and so-called incidental credit agreements (for example: unpaid arrear school fees and medical accounts).
 - **Thirdly**, should a credit provider already have issued summons on the strength of a credit agreement, including a incidental credit agreement, then such debt will be excluded from the debt re-arrangement process provided for in the Act (if only a letter of demand has been sent, then such debt can still be restructured in terms of the Act).
 - **Fourthly**, should a credit provider already have obtained a judgment against a Consumer, the debt in respect of which the judgment was obtained, can also not be included in the debt review process.
 - **Fifthly**, a particular difficulty presents itself should a Consumer have a negative cash flow, meaning inadequate disposable monthly income to cover even his/her monthly living and maintenance requirements as there will then be no funds available for payment unto credit providers and the purpose of the Act is not to prevent credit providers receiving any payment whatsoever. **Consequently an unemployed consumer will ordinarily not qualify for the benefits of the debt review process.**
13. Can a Consumer receive debt relief when the Consumer is not factually over indebted?
- The first and foremost function of a debt counsellor is to establish whether a Consumer is over-indebted or not.
 - Should the Consumer clearly not be over-indebted, then the debt counsellor will, in terms of Section 86(7)(a) of the Act, have no alternative other than to reject the Consumer's application for debt review.
 - However, should the debt counsellor conclude that, although the Consumer is strictly not over-indebted, the Consumer will nevertheless experience difficulty in paying his/her credit providers, then the

debt counsellor, in terms of Section 86(7)(b) of the Act, may negotiate with the Consumer's credit providers to voluntarily agree to a debt re-arrangement plan and, if agreed to, obtain a consent order of court from the Magistrate Court.

14. Can a Consumer receive debt relief in respect of debt which do not qualify as credit agreements?

- Regarding non credit agreement debt which ordinarily cannot be restructured in terms of the Act, the debt counsellor will negotiate with this category of creditors with the view to them agreeing to include such debt in the debt review process;
- Should any one or more of such category of creditors, however, refuse to voluntarily participate in the debt review process, alternative options are available, for example, to place such category of debt under administration in terms of the Magistrates Court Act.
- The administration option will find particular application in respect of judgment debts which are collected in terms of emolument attachment orders (garnishees) directly from the Consumer's salary.
- The administration procedure, which has its own cost implications, is not necessarily available to the effect that, **unless a Consumer is advised to the contrary, the Consumer must accept that no debt relief is available in respect of "non-credit agreement debt"**.

15. Can a Consumer receive debt relief if summons has already been issued or judgment obtained in respect of a credit agreement?

- In the event of a credit provider, on the strength of a credit agreement, already having issued summons or obtained a judgment against the Consumer in circumstances where the Consumer is over-indebted, then the debt counsellor will never the less negotiate with the attorney of such credit provider to consider staying the legal proceedings concerned and to voluntarily participate in the debt review process.
- Should the credit provider concerned refuse to so participate in the debt review process, then such debt cannot be included in the debt review process.
- However, if only a summons has been issued, but no judgment obtained, the prudent debt counsellor will suggest to the Consumer to instruct an attorney to defend

the action (summons) commenced by such credit provider on the strength of the provisions of Section 85 the Act. In such event the Consumer will unfortunately be exposed to legal costs.

- Section 85 of the Act, in essence, creates a defence of over-indebtedness and should such defence prevail at the trial of the matter (i.e. the court finding that the Consumer is over-indebted), the court can refer the matter to a debt counsellor for debt review of such debt. **There can, however, be no guarantee that such defence will prevail.**
- So doing, the Consumer can potentially be assisted with regard to a debt in respect of which a summons has already been issued, but no judgment yet obtained, although by way of a longer and protracted route.
- If a judgment has already been obtained by a creditor and the creditor concerned is not willing to voluntarily agree to participate in the debt review process, a debt counsellor cannot assist in respect of such debt.
- However, in certain instances, judgment debts may be capable of being placed under Administration and which process is similar to the debt review process, but occurs in terms of the Magistrates Court Act. A prudent debt counsellor will, if indicated, refer the Consumer to an attorney with the view to placing such debt under administration. The effect thereof will be that the Consumer will also receive debt relief in respect of judgment debts (and indeed also debts in respect of which only summons has been issued) which are capable of being placed under administration.
- **A Consumer must, however, accept that a debt counsellor can ordinarily not, in respect of debts with regard to which a summons has already been issued, or a judgment obtained, provide or facilitate any relief with regard thereto beyond utilizing his best efforts to persuade the creditor concerned to voluntarily participate in the debt review process. Unless a Consumer is advised to the contrary, the Consumer must accept that the debt counsellor's efforts were unsuccessful and that the Consumer will consequently be at the mercy of such category of creditors.**

- In the interim, the debt review process would have continued in respect of the Consumer's other credit providers.
16. Can a Consumer be assisted in the event of him/her having a negative cash flow?
- Should a Consumer present with a negative cash flow and which cannot be addressed merely by a down scaling of his monthly living expenses, alternative options other than debt review will be considered.
 - Possible options to explore will be the selling of assets or the sequestration of the Consumer.
 - The situation will nevertheless thoroughly be considered with the view to identifying the best possible solution.
17. What are the disadvantages of the debt review process?
- It is not a free service.
 - The Consumer will be listed with all credit bureaus as being under debt review.
 - The Consumer will not, whilst under debt review, be able to obtain any further credit, save for emergency and debt consolidation loans.
 - The Consumer's debt obligations will be extrapolated over a longer period with related interest implications.
18. What are the benefits of the debt review process?
- Consumers payment obligations unto creditors are reduced to affordable instalments.
 - Consumers enjoy absolute protection from their creditors whilst under debt review.
 - Consumer's homes, cars and other assets are protected.
 - Consumers survive and overcome their debt.
 - Consumers are financially liberated to lead an affordable and normal economic life.
 - Consumers joy of life is restored.
 - Consumers obtain complete financial and emotional peace of mind and their hope and confidence in the future is restored.
19. Who will pay the credit providers once the debt re-arrangement order of court has been obtained?
- All debt review instalments are paid to a payment distribution agent accredited by the NCR and who proceeds to pay the affected credit providers in accordance with the debt counsellor's payment plan.
20. When will the debt review process come to an end?
- The approach is to endeavour to render the Consumer debt free as soon as possible.
 - Obviously, the higher the re-arranged instalment is, the sooner the Consumer's debt obligations will be settled.
 - Consumers are therefore encouraged, as soon as circumstances allow, to increase their debt review instalment.
 - Once the Consumer is debt free, the debt counsellor will issue a clearance certificate and the listing with the credit bureaus will be removed to the effect of the Consumer having a clean credit record.