THE NATIONAL CREDIT ACT: AN OVERVIEW

Category: Commercial Law
written by Sanushka Padayichie | April 1, 2009

1. Introduction

The National Credit Act, Act 34 of 2005, is by many standards a relatively new piece of legislation. The NCA, as it is commonly referred to, is yet to be properly understood by the ordinary consumer, with whom in mind, it was created.

The preamble states that the purpose of the NCA is to "to promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information; to promote black economic empowerment and ownership within the consumer credit industry; to prohibit certain unfair credit and credit-marketing practices; to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting; to provide for debt re-organisation in cases of over-indebtedness; to regulate credit information; to provide for registration of credit bureaux, credit providers and debt counselling services; to establish national norms and standards relating to consumer credit; to promote a consistent enforcement framework relating to consumer credit; to establish the National Credit Regulator and the National Consumer Tribunal; to repeal the Usury Act, 1968, and the Credit Agreements Act, 1980; and to provide for related incidental matters."[1]

In the time that I have been employed at PPM Attorneys as a candidate attorney, I have been fortunate enough to work with one of our partners, Moses Mothibe, on matters pertaining to theapplication of the NCA. In particular our work has been devoted almost entirely to the scope and practical application of Debt Counselling.

This article will therefore focus on: the process of debt counselling and debt-rearrangement; the role of debt counsellors and the National Credit Regulator (NCR); the impact of this process on consumers and the role the NCA plays in rehabilitating consumers.

2. Debt Counselling

In terms of the NCA, a consumer is over-indebted if the preponderance of available information at the time a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all obligations under all the credit agreements to which the consumer is a party.[2]

This process envisages a situation where an over-indebted consumer approaches a registered debt counsellor; who undertakes to conduct an evaluation.

The NCA is by no means clear on the procedural aspects of debt counselling. To illustrate this point the National Credit Regulator recently approached the High Court to clarify some of the procedural aspects of the NCA. To date the outcome of this application is yet to be published.

It must be noted that not every application that is made to a debt counsellor will result in a consumer undergoing debt counselling, this is dealt with on a case by case basis. An aggrieved consumer who is of the view that the he is over-indebted may approach the courts for an order declaring him as such.

3. Debt Rearrangement

Once an evaluation has been conducted by the debt counsellor, that is: she is satisfied that the consumer is over-indebted, she embarks on the process of rearranging the consumer's financial portfolio. This could involve one or more of the following: decreasing monthly instalments; increasing the time period over which the debt is due; or postponing for a specified period the dates on which payments are due.[3]

Credit providers' are then provided with the debt rearrangement proposal and are given an opportunity to either accept or reject the proposal. It is unlikely that credit providers' will unreasonably reject proposals as this process is beneficial to them as well and ensures that debts will be paid.

4. Debt-Counsellors and theNational Credit Regulator

One of the most important aspects covered by the NCA is the provision for the NCR which is "responsible for the regulation of the South African credit industry. It is tasked with carrying out education, research, policy development, registration of industry participants, investigation of complaints, and ensuring the enforcement of the NCA."[4] In addition the NCR is tasked with the registration of debt counsellors and ensuring that debt counsellors perform their duties as required.

Within the debt review process debt counsellors play a pivotal role. A debt counsellor is in effect in the driving seat of this process, it is therefore crucial that the debt counsellor ensures that the interests of the consumer are paramount to all others. A debt counsellor should also ensure that the consumer is well informed on the progress of the matter.

5. The Impact of the Act on Consumers and Rehabilitation

Consumers should view the NCA not as a piece of legislation that limits their rights but rather as an instrument through which their rights may be more effectively exercised. Not only does the NCA provide consumers with greater rights but it also places consumers in a more favourable position when it comes to making decisions regarding credit.

Consumers should also take cognisance of the fact that the NCA requires that Credit Providers take a greater responsibility when providing credit and should not grant credit where it is not affordable.

Consumers should forget the age old stigma that is involved with insolvency and administrative orders and should embrace the new process of debt review.

This process may be a life line to an over-indebted consumer with the ultimate purpose of rehabilitating a consumer so that he may one day be capable of adequately managing his affairs.

—

[1] The National Credit Act, Act 34 of 2005 Preamble
[2] Op cite note 1 above s 79(1). In addition to this determination regard must be had to a number f other factor embodies within section 79(1)
[3] Op cite note 1 above s 86(7)(c)(ii)(aa) – (dd)

[4] www.ncr.org.za