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GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. R. 362

10 May 2012

NATIONAL CREDIT ACT, 2005

DEBT COUNSELLING REGULATIONS 2012

I, Dr Rob Davies, the Minister of Trade and Industry, hereby in terms of section 171 of the National Credit Act, 2005 (Act No. 34 of 2005), make Debt Counselling Regulations, as set out in the schedule hereto.



DR. ROB DAVIES, (MP)

MINISTER OF TRADE AND INDUSTRY

SCHEDULE**DEFINITIONS**

1. In these regulations any word or expression to which a meaning has been assigned in the Act bears the meaning assigned to it in the Act, and unless the context indicates otherwise;

“clerk of the court” means a clerk of the court appointed in terms of section 13 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) and includes an assistant clerk of the court so appointed;

“court” means Magistrates’ Court established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), having jurisdiction over a consumer by virtue of such consumer’s residence or place of business;

“deliver” means to file with the registrar or clerk of the court and serve a copy on the opposite party either by hand-delivery, registered post, or, where agreed between the parties or so ordered by court, by facsimile or electronic mail (in which instance Chapter III, Part 2 of the Electronic Communications and Transactions Act, Act No. 25 of 2002 will apply), and “delivery”, “delivered” and “delivering” have corresponding meanings;

“Magistrates’ Courts Rules” means rules regulating the conduct of the proceedings of the Magistrates’ Courts of South Africa published in Government Notice No. R. 740 of 23 August 2010; and

“the Act” means National Credit Act, 2005 (Act No. 34 of 2005).

**APPLICATION BY A DEBT COUNSELLOR FOR ORDERS
CONTEMPLATED IN SECTION 86(7) (c) OF THE ACT**

2. (1) an application by a debt counsellor for an order contemplated in section 86(7) (c) of the Act must be lodged in a manner and form prescribed by Rule 55 of the Magistrates' Courts Rules, unless the court direct otherwise.
- (2) The application referred to in regulation 2(1) above must be substantiated by an affidavit deposed to by the debt counsellor in which the following is set out:
 - (a) An exposition of the debt counsellor's assessment conducted in terms of section 86(6) of the Act, read with sections 78(3),79,80 of the Act and regulation 24 of the Regulations;
 - (b) the relief claimed in terms of section 86(7)(c);
 - (c) full particulars of each credit provider;
 - (d) full particulars of the consumer and the debt counsellor; and
 - (e) confirmatory affidavit from the affected consumer.
- (3) The debt counsellor must collect a copy of the court order from the clerk of the court and deliver it within five (5) working days from the date of issue to the affected consumer and each credit provider.
- (4) Each credit provider must comply and implement the terms of the court order within Ten (10) working days of receipt thereof.

**APPLICATION BY A DEBT COUNSELLOR FOR CONFIRMATION OF A
CONSENT ORDER CONTEMPLATED IN SECTION 86(8) (a), READ WITH
SECTION 138 OF THE ACT**

3. (1) An application by a debt counsellor for confirmation of a consent order contemplated in section 86(8)(a), read with section 138 of the Act, must be lodged in a manner and form prescribed by Rule 55 of the Magistrates Courts Rules, unless the court direct

otherwise: provided that if the application is lodged with the Tribunal, the rules prescribed for the conduct of proceedings in the Tribunal shall apply.

- (2) An application referred to in regulation 3(1) above must, be substantiated by the debt counsellor through an affidavit supported by confirmatory affidavit from the affected consumer and each credit provider indicating that they have consented and agreed upon a plan of debt re-arrangement, which may include arrangements —
 - (a) that one or more of the consumer's existing obligations be re-arranged by-
 - (i) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (ii) postponing the date on which payments are due under the agreement during a specific period;
 - (iii) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
 - (iv) re-calculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6;and
 - (b) regarding the manner in which payments must be made by the consumer and distributed amongst the affected credit providers.
- (3) The debt counselor must collect a copy of the court order from the clerk of the court and deliver it within five (5) working days from the date of issue to the affected consumer and each credit provider.
- (4) The credit provider must comply and implement the terms of the court order within Ten (10) working days of receipt thereof.

**APPLICATION BY A CONSUMER IN TERMS OF SECTIONS 86(9)
AND 86(7) (C) OF THE ACT**

4. (1) An application by a consumer in terms of section 86(9) of the Act, to request leave of the court to institute proceedings contemplated in section 86(7)(c) of the Act, must be lodged in the manner and form prescribed by Rule 55 of the Magistrates' Courts Rules, unless the court direct otherwise.
- (2) The application must be accompanied by —
- (a) the decision of the debt counsellor, made in terms of section 86(7)(a) of the Act;
 - (b) an affidavit by the consumer annexed to the application in which reasons must be set out why leave should be granted to apply for an order contemplated in section 86(7)(c) of Act;
 - (c) an application for an order contemplated in section 86(7)(c); and
 - (d) if required by the court, an affidavit deposed to by any person.
- (3) An application referred to in regulation 4(2)(c) above must be substantiated by a founding affidavit deposed to by the consumer setting out the following:
- (a) an exposition which indicates that the consumer is over-indebted, read with sections 78(3), 79 and 80 of the Act as well as regulation 24 of the Regulations;
 - (b) the relief claimed in terms of section 86(7)(c);
 - (c) the full particulars of each credit provider ; and
 - (d) full particulars of the consumer.
- (4) The consumer must deliver within five (5) working days from the date of the issuing of the court order a copy of the court order to each affected credit provider.

- (5) Each credit provider must comply and implement the terms of the court order within Ten (10) working days of receiving the court order.

SHORT TITLE AND COMMENCEMENT

5. These Regulations are called Debt Counselling Regulations, 2012 and shall come into operation on the date of publication in the *Gazette*.
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