

National Credit Act

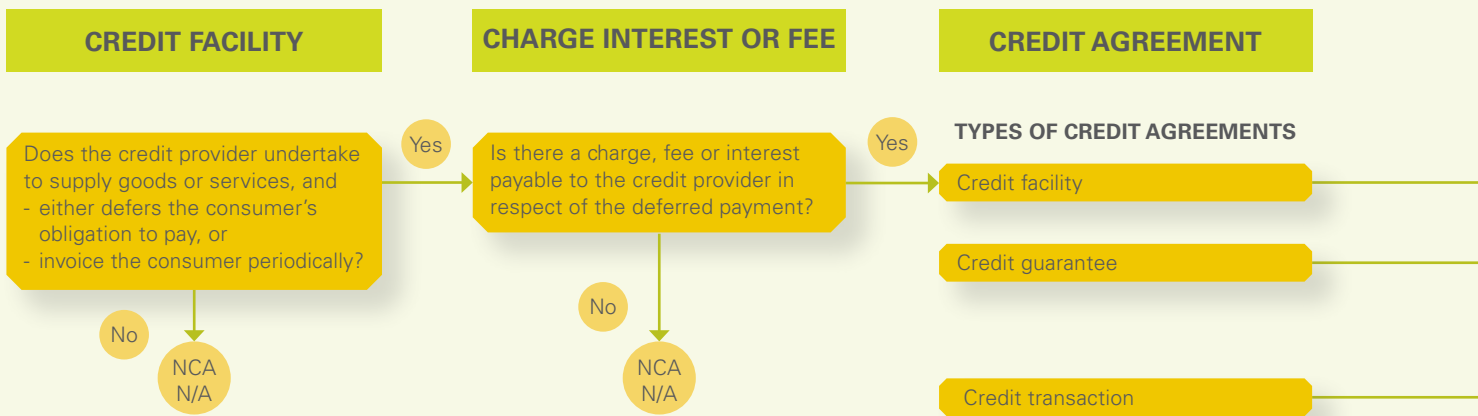
Introduction

The NCA was introduced to facilitate new and protective rights for consumers for all type of credit agreements, ranging from micro loans to home loans, and from overdrafts to retail financing. It serves as a measure that allows consumers to make more informed decisions before buying goods and services on credit. In addition, it places greater responsibility on credit providers to refuse to give you credit if you cannot afford it and, for the first time in this country, it has regulated the way credit bureaus conduct business.

Purpose and Application

- Purpose of the Act
The purpose of the Act is to promote and advance the social and economic welfare of consumers, by promoting a fair and transparent credit industry and alleviating consumers from over indebtedness.
- Application of the Act
The Act applies to all written credit agreements between parties dealing at arm's length and concluded within the Republic.

FOLLOW THE DIAGRAM FOR NCA APPLICABILITY



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CREDIT PROVIDER

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

INCIDENTAL CREDIT AGREEMENTS

Incidental credit agreements also enjoy certain exemptions. An incidental credit agreement is any agreement in terms of which a charge is levied for payment of an invoice after a specific date, or where two prices are quoted to the consumer, the lesser applying if payment is made on or before a certain date, and the higher for payments thereafter. In other words, an extra charge is levied for 'late payment'.

LIMITED APPLICATION OF THE ACT

- Where the consumer is either the state or an organ of state;
- Where the credit provider is the SA Reserve Bank;
- Where the credit provider is situated outside the Republic; exemption only applies upon successful application by the consumer to the Minister;
- An agreement, irrespective of its form, is not a credit agreement if it is:
 - a policy of insurance;
 - a lease of immovable property; or
 - of transaction between a stokvel and a member of that stokvel in accordance with the rules of that stokvel.

OTHER

- Where the credit provider enters into incidental credit agreements only, it is exempt from registration as a credit provider but must still comply with the Act.



SMALL AGREEMENT

- a pawn transaction
- a credit facility if the credit limit under that facility falls at or below the threshold established in terms of section 7(1)(b)
- any other credit transaction except a mortgage agreement or credit guarantee and the principal debt under that transaction or guarantee falls at or below the lower of the thresholds established in terms of section 7(1)(b)

INTERMEDIATE AGREEMENT

- a credit facility if the credit limit under that facility falls above the lower of the thresholds established in terms of section 7(1)(b)
- Any other credit transaction except a pawn transaction or a mortgage agreement or a credit guarantee and the principal debt under that transaction or guarantee falls above R250 000

LARGE AGREEMENT

- Mortgage agreement
- Any other credit transaction except a pawn transaction or a credit guarantee and the principal debt under that transaction or guarantee falls above R250 000

INDIVIDUAL

- Self employed individual
- Sole proprietor
- Trust with less than 3 individual trustees

JURISTIC PERSON

- Trust
- Private Company
- Partnership
- Close corporation
- Co - operative
- Unincorporated Association

Credit and cheque cards
Overdrawn cheque account
Revolving credit

Suretyships

Pawn or discount transaction
Incidental credit agreement
Instalment agreement
Mortgage agreement or secured loan
Lease
Any other agreement where payment is deferred

Does the credit provider have more than 100 agreements?
Or
Is the total principal debt outstanding >R500 000?

No

NCA EXEMPT

Yes

Is the consumer an individual?

No

Yes

The credit provider must register for NCA purposes

Is the consumer a juristic person whose asset value or annual turnover exceeds R1000 000?

Yes

No

No

Is the agreement a large agreement?

Yes

NCA EXEMPT

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Source: The information contained herein was sourced from www.acts.co.za and KPMG's decision tree.
Disclaimer: This information contained herein is meant to serve as a refresher guide to the National Credit Act.