national consumer tribunal

Physical
Building B
Lakefield Office Park
272 West Ave
Centurion

Postal
Private Bag X110
Centurion
0046

Tel: 012 683-8140
Fax: 012 663-5693
Email: registry@thenct.org.za

6 June 2017

Ms Joan Fubbs,
Chairperson of the Portfolio Committee
P O Box 15
Cape Town
8000

Dear Ms Fubbs

**Re: WRITTEN SUBMISSION RE PROPOSED DEBT RELIEF MEASURES**

## 1. INTRODUCTION

(1) This written submission contains input into the proposed draft National Credit Policy review for debt relief and the National Credit Amendment Bill, 2017, developed by the Portfolio Committee on Trade and Industry.

(2) It does not seek to respond to all sections proposed in the sought amendment. It responds however in particular to sections and subsections or in some instances paragraphs in the proposed text that may be problematic to the validity of such an amendment in terms of the law and the Constitution. Legal authority relied upon is extensive and as much as possible, provided in each section covered.

(3) The selective response to only problematic aspects of the draft amendment does not in itself preclude any further challenges or defects that may exist in the proposed Bill. This submission only seeks to highlight the aspects that already stand out as marred with legal and constitutional difficulties should they be included in the Bill as it stands at the time of writing this input.

(4) Kindly therefore find our specific submissions below.

## 2. EFFECTIVE ENFORCEMENT OF THE NCA BY THE NCR

*(1)* In terms of the discussion document on Credit Law Review, the NCR made submissions to **the dti** that its administrative powers should be extended to allow amongst others, the

imposition of remedial sanctions for contraventions to the NCA, without referrals to the NCT, in order to effectively enforce the NCA. It is then submitted in the section headed "Purpose and Problem Statement" that *"The NCA does not empower the NCR to impose remedial sanctions such as fines after completion of their investigations. Referrals to the NCT for this purpose render the NCR ineffective in enforcing the NCA."*

(2) It is our submission that the NCA correctly does not empower the NCR to impose remedial sanctions as documented in more detail below.

(3) Section 15 of the NCA sets out the enforcement functions of the NCR as follows:

> *"**Enforcement functions of National Credit Regulator***
>
> ***15.** The National Credit Regulator must enforce this Act by-*
>
> *(a) promoting informal resolution of disputes arising in terms of this Act between consumers on the one hand and a credit provider or credit bureau on the other, without intervening in or adjudicating any such dispute;*
>
> *(b) receiving complaints concerning alleged contraventions of this Act;*
>
> *(c) monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted;*
>
> *(d) investigating and ensuring that national and provincial registrants comply with this Act and their respective registrations;*
>
> *(e) issuing and enforcing compliance notices;*
>
> *(f) investigating and evaluating alleged contraventions of this Act;*
>
> *(g) negotiating and concluding undertakings and consent orders contemplated in section 138(l)(b);*
>
> *(h) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998);*
>
> *(i) referring matters to the Tribunal and appearing before the Tribunal, as permitted or required by this Act; and*
>
> *(j) dealing with any other matter referred to it by the Tribunal."*

(4) Section 15(e) specifically bestows the NCR with the power to issue and enforce compliance notices.

(5) It is unclear whether or not the NCR is utilising this power and to what extent, as no specifics could be obtained on either the NCR's website or in their 2015/16 annual report.

(6) Section 55 of the NCA provides as follows:

> ***"Compliance notices***
>
> ***55.*** *(1) Subject to subsection (2), the National Credit Regulator may issue a compliance notice in the prescribed form to-*
>
> *(a) a person* ***or*** *association of persons whom the National Credit Regulator on reasonable grounds believes-*
>
> *(i) has failed to comply with a provision of this Act; or*
>
> *(ii) is engaging in an activity in a manner that is inconsistent with this Act; or*
>
> *(b) a registrant whom the National Credit Regulator believes has failed to comply with a condition of its registration.*
>
> *(2) Before issuing a notice in terms of subsection (1)(a) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution.*
>
> *(3) A compliance notice contemplated in subsection (1) must set out-*
>
> *(a) the person or association to whom the notice applies;*
> *(b) the provision, or condition, that has not been complied with;*
> *(c) details of the nature and extent of the non-compliance;*
> *(d) any steps that are required to be taken and the period within which those steps must be taken; and*
> *(e) any penalty that may be imposed in terms of this Act if those steps are not taken.*
>
> *(4) Subject to section 59, a compliance notice issued in terms of this section remains in force until-*
>
> *(a) it is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice; or*
>
> *(b) the National Credit Regulator issues a compliance certificate contemplated in subsection (5).*
>
> *(5) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the National Credit Regulator must issue a compliance certificate.*
>
> *(6) If a person fails to comply with a compliance notice as contemplated in this section without raising an objection in terms of section 56, the National Credit Regulator may refer the matter-*

*(a) to the National Prosecuting Authority, if the failure to comply constitutes an offence in terms of this Act; or*

*(b) otherwise, to the Tribunal for an appropriate order."*

(7) This is a very serious power in terms of which the NCR may instruct a registrant to stop engaging in prohibited conduct failing which certain penalties may be imposed.

(8) In terms of section 55(4) the compliance notice further remains in force until it is set aside by the Tribunal or there is compliance with the notice upon which the NCT will issue a compliance certificate.

(9) In terms of the NCT's statistics, we have received 5 applications to enforce compliance notices and 11 applications objecting to compliance notices being issued from 1 April 2010 to 31 March 2017.

(10) In our view it would be very important to understand to what extent the NCR is utilizing this power already conferred to it in terms of the NCA in enforcing the NCA. In order to truly understand the effectiveness of this section, it would be useful to know how many notices were issued and for which contraventions, how many compliance notices were complied with and how many defied. Of those instances of defiance, how many matters were not referred to the NCT for enforcement? As indicated above only five compliance notices were referred to the NCT for enforcement since 2010. Two of these matters are still pending (one with a condonation application and one matter heard with a judgment still outstanding), one matter withdrawn and two matters where judgments were issued in favour of the NCR.

(11) It should also be considered whether or not the NCR can be made more effective by increasing its powers to enforce its own conclusions - considering that the "*issuing and enforcing of compliance notices"* is already a severe form of enforcement as opposed to mediation.

(12) If it is to be found that the NCR can indeed be made more effective by increasing its enforcement mandate beyond issuing compliance notices, how would that increase or deepen their effectiveness?

(13) It is our submission that the NCR already has the discretion to determine whether or not prohibited conduct has occurred which it exercises when it orders parties to comply as already empowered to do so by the Act. The question would then be whether this amendment is even

necessary at all? Would it be deemed prudent to amend a statute in such a way that it remains the same as before the amendment?

(14) Furthermore it is to be noted that the view as expressed in the Credit Law Review document is that the administrative functions capacity of the NCR must be enhanced to effectively enforce the NCA, more specifically by transferring some administrative functions currently residing with the NCT to the NCR.[1]

(15) The problems identified in relation to this view are canvassed below.

## 3. COMPLAINANT /OR INVESTIGATOR, PROSECUTOR & JUDGE – INSTITUTIONAL BIAS

(1) Section 136(1) of the NCA entitles any person to submit a complaint concerning an alleged contravention of the NCA, or a complaint concerning an allegation of reckless credit, to the NCR in the prescribed manner and form. Section 136(2) of the NCA entitles the NCR to initiate a complaint in its own name. Under the Bill, it is now made clear that it can do so without having a reasonable suspicion that a person has engaged in prohibited conduct. In the event that this latter provision is absent, the complaint will not be insulated from a legal challenge. Such a provision will be legally ineffective as an investigation not based on a reasonable suspicion of a prohibited conduct would be unlawful.[2]

(2) The NCR will not only be empowered to investigate complaints – submitted by other parties or initiated by it on its own accord, but they will also be empowered to determine whether there is a contravention of the NCA and to impose administrative penalties or fines and other forms of relief. This makes the NCR the investigator, and in certain instances the complainant, the prosecutor and the judge. This position is contrary to the existing position in which the NCR

1 Point 5.7 of the Credit Law Review: A discussion document.

2 Compare: *Woodlands Dairy (Pty) Ltd and another v Competition Commission* [2011] 3 All SA 192 (SCA) para:

> *"[13] A complaint has to be "initiated". The commissioner has exclusive jurisdiction to initiate a complaint under section 49B(1). The question then arises whether there are any jurisdictional requirements for the initiation of a complaint by the commissioner. I would have thought, as a matter of principle, that the commissioner must at the very least have been in possession of information "concerning an alleged practice" which, objectively speaking, could give rise to a reasonable suspicion of the existence of a prohibited practice. Without such information there could not be a rational exercise of the power. This is consonant with the provisions of section 49B(2)(a) which permit anyone to provide the commission with information concerning a prohibited practice without submitting a formal complaint.*
>
> *[20] It is only during this investigation ("an investigation in terms of this Act") that the commissioner may summon persons for purposes of interrogation and production of documents (section 49A(1) read with section 49B(4)). I do not accept the submission on behalf of the commission that these far-reaching invasive powers may be used by the commissioner for purposes of a fishing expedition without first having initiated a valid complaint based on a reasonable suspicion. It would otherwise mean that the exercise of this power would be unrestricted because there is no prior judicial scrutiny as is the case with a search warrant under section 46."*

investigates complaints of prohibited conduct and which may be referred to the Tribunal for adjudication and the imposition of relief, including administrative penalties or fines.

(3) As indicated above, the NCR already has this discretion under the Act as it now stands. It can seek to enforce this discretion in compliance notices with the exception of approaching the NCT to order the administrative penalty or fine which is a punitive measure. If the amendment succeeds as it is proposed, this would mean that the NCR would become the investigator (police), the judge and punisher of the culprits. The segregation of duties between investigators (police) and adjudicators (judges) is to ensure impartiality on the part of the judges and punishers.

(4) The Tribunal conducts an open and public hearing in which the merits of the complaints referred are determined. A penalty is or is not imposed, depending on the outcome of the hearing before the Tribunal on the merits of the matter. Parties accused of contravening the NCA have a full opportunity to make representations to the Tribunal, not only on the merits of the complaint but also on any penalty to be imposed. The proceedings before the Tribunal are administrative in nature[3] and the conduct of the proceedings has to comply with the requirements of administrative justice. In this regard, section 142(1)(d) of the NCA specifically requires Tribunal proceedings to be conducted in accordance with the principles of natural justice.

(5) Where the NCR is the complainant and/or investigator, prosecutor and judge, there would be greater potential for complaints of institutional bias, since the NCR would be invested in its complaint and the outcome of its investigations.[4] Institutional bias, actual or reasonably perceived, is not consistent with the requirements for administrative justice and access to Court in terms of sections 33 and 34 of the Constitution respectively.

(6) As far as administrative justice is concerned, section 6(2)(a)(iii) of PAJA permits a review and setting aside of administrative action on the grounds that the decision maker, in this case the NCR, was biased or reasonably suspected of bias.

---

3 Compare: Federal-Mogul Aftermarket Southern Africa (Pty) Ltd v Competition Commission and another [2005] 1 CPLR 50 (CAC) decided under the Competition Act, 89 of 1998.

4 See, for example, the complaint of institutional bias in *Financial Services Board and another v Pepkor Pension Fund and another* [1998] 4 All SA 129 (C). The test is an objective one. See *Muckleneuk/Lukasrand Property Owners and Residents Association v The MEC: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government and others and Muckleneuk/Lukasrand Property Owners and Residents Association v The HOD: Department of Agriculture, Conservation and Environment, Gauteng Provincial Government and others* [2007] 4 All SA 1265 (T), in which the Court referred to *President of the Republic of South Africa and others v South African Rugby Football Union and others* 1999 (4) SA 147 (CC) at 177 para [48]:

*"[57] It is accepted that the test for a reasonable suspicion of institutional bias is whether a reasonable objective and informed person would on the correct facts reasonably apprehend that the decision-maker has not or will not bring an impartial mind to bear on the adjudication of the matter. It is to be noted that the test imports a double requirement of reasonableness. The person apprehending the bias must be a reasonable person but the apprehension of bias must in the circumstances also be reasonable."*

(7) Section 34 of the Constitution requires that disputes that may be resolved by the application of law be decided by *inter alia* an independent and impartial tribunal or forum. To the extent that the NCR will resolve disputes between complainants and credit providers regarding whether the credit provider in question has contravened the NCA, the provisions of section 34 of the Constitution would apply. Impartiality in that instance requires the absence of actual or reasonably perceived bias on the part of the NCR.

(8) The existing statutory arrangement, in which the NCR may be the complainant and investigator and refers any complaint thus investigated to the Tribunal for adjudication, avoids actual or reasonably perceived institutional bias and ought to be retained.

4. **NO PUBLIC HEARING AT ALL**

(1) It does not appear that a public hearing will occur before the NCR prior to it making a determination on whether a prohibited conduct exists or the NCA has been contravened and whether any relief, including an administrative penalty or fine, should be imposed.

(2) In instances where the determination follows a complaint of a prohibited conduct against a credit provider, which the credit provider disputes, the provisions of section 34 of the Constitution would apply, as such a dispute would be resolved by the application of law. The absence of a requirement for a public hearing prior to the NCR making its determination would offend the provisions of section 34 of the Constitution and be unconstitutional and invalid, unless the limitation of the section 34 rights is properly justified under section 36 of the Constitution. We are not aware of any proper justification under section 36 of the Constitution. Currently, section 142(1) of the NCA obliges the Tribunal to conduct public hearings in resolving such disputes. The NCA further requires that the resolution of disputes be expeditious.

(3) A hearing serves the important purpose of resolving disputes of fact. A reading of decisions of the Tribunal regarding allegations of prohibited conduct shows that issues of law and fact are highly contested matters under the NCA. It is difficult to conceive how the NCR would be able to render justifiable decisions in such contested matters without hearing the parties orally and permitting the testing of evidence by cross-examination and/or argument.

## 5. PROCEDURAL FAIRNESS

(1) The Constitution of South Africa 1996[5] has incorporated the principle of fairness inherent in the natural justice of the Roman –Dutch law genre. This is in the DNA of our law. Procedural fairness is therefore a guaranteed Constitutional right[6] and as such further codified in the Promotion of Administrative Justice Act (PAJA).[7] This Act must be considered together with the principles of natural justice which the Tribunal is obliged to follow in terms of Section 142 of the NCA.

(2) In this regard, it would be *contra* the Constitution, specifically section 33 and section 34, for the Tribunal to *"only be guided by principles of fairness, equity and redress, regardless of whether or not the threshold of legal technicalities has been resolved".*[8]

(3) It would further breach both the requirements of administrative justice in terms of section 33 of the Constitution, as given effect to by PAJA, and access to Court under section 34 of the Constitution, for the NCR to determine a penalty to impose without first hearing the parties affected by its determination.

(4) Where penalties are imposed, there is punishment involved. The proposed amendment may seem to resemble a situation where the police would issues fines which can only be absolved by appeal to a higher court at huge legal cost to the appellant – who will most likely be a private entity using their own hard earned cash. The analogy of spot fines issued by traffic police has no application in this case as such traffic fines are admission of guilt fines. They are only available to people who do not want to defend their matters in court if they admit to the offence. There is however still room for the charged drivers to defend in the court of first

---

5 The Constitution is not an Act of Parliament. The Constitution was made by the Constitutional Assembly (CA), a body separate from Parliament. The CA had its own procedure, chairperson and administration and, unlike Parliament, was not divided into a National Assembly and Senate. That the Constitution is not an Act of Parliament is further attested to by the fact that it had to be certified by the Constitutional Court. It is therefore wrong to refer to the Constitution as Act 108 of 1996 (Van Wyk 377). The Constitution is the supreme law of the land; it has a far higher status than Acts of Parliament. You will never see us refer to the Constitution as anything else but ``the Constitution of 1996'', ``the 1996 Constitution'' or simply ``the Constitution''. The Citation of Constitutional Laws Act, 2005 (Act 5 of 2005 S1) reads as follows:

*"No Act number to be associated with Constitution of the Republic of South Africa, 1996*
*1.*
*(1) From the date of commencement of this Act, no Act number is to be associated with the ``Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).''*

*(2) Any reference to the ``Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)'', contained in any law in force immediately prior to the commencement of this Act, must be construed as a reference to the ``Constitution of the Republic of South Africa 1996''."*

6 Section 33 of the Constitution of the Republic of South Africa

7 In terms of the long title of PAJA - *"To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action as contemplated in section 33 of the Constitution of the Republic of South Africa, 1996; and to provide for matters incidental thereto."*

8 Paragraph 3.2.8 of the Credit Law Review: Discussion document on page 8.

instance; and not to engage with the defense only at an appeal in a higher court. What the amendment of this part seeks appears to be the situation that would ***presume an accused party guilty*** if the NCR unilaterally so decides - based on its own investigation.

(5) Section 8(1) and (2) of the Bill of Rights in the Constitution binds all laws, the courts, parliament, the executive, state organs and individuals as well as all juristic persons. This means that even Parliament should not be allowed by the Constitution to enact any legislation primary (as in the prosed amendments) or secondary (as in regulations); inconsistent with the Bill of Rights.

(6) The principles of natural justice which the Tribunal must apply to its cases in terms of Section 142 of the NCA as well the requirements of administrative justice dictate that both parties involved in a dispute should be allowed an equal opportunity to make representations to an independent Court, Tribunal or forum prior to reaching a decision. This would be with regards to the merits or possible penalties. This is referred to as the *audi*-principle.[9]

(7) In essence, this maxim enforces the constitutionally entrenched right whereby both sides should receive an opportunity to be heard. Insofar as the aforementioned rule is concerned it is trite that such a rule cannot be limited or isolated to a specific aspect of procedure but will find its applicability in all applications as well as applications within applications before an adjudicative body such as the Tribunal.

(8) The mandate of the Tribunal codifies expeditious, informal and fair adjudication. However, such informality cannot be extended to infringe on the principles of natural justices or infringe on the entrenched provisions of the Constitution. In general, a matter would be procedurally fair if the following three components are present:

(a) A fair hearing;
(b) An impartial decision-maker; and
(c) Reasons for decision.

(9) The principles of natural justice as set out in the common law, includes the following aspects as briefly detailed below:

9 *Audit alteram partem*. – Both sides must be heard.

### *(a) Audi alteram partem (listen to both sides)*

This first principle relates to a fair hearing. In order for a decision to comply with the principle of *audi alterim partem* affected parties must be afforded an opportunity to be heard.[10] This opportunity further does not only relate to receiving an actual opportunity to make representations, but also include fair (advance) notice of the proposed decision.[11] The decision-maker should furthermore ensure that notice of the proposed decision has come to the attention of the affected party by taking adequate steps.[12]

### **(b)** ***Nemo iudex in sua causa (no one should be a judge in his or her own cause)***

- This second principle relates to an impartial decision-maker. This maxim is often described as the rule against bias.[13] A simplified version of this maxim is that <u>where two people sue each other and end up taking each other to court, an injustice would result if one of them would actually be a judge in that case.</u> There is no better way to illustrate this point. It is furthermore codified in Section 6 (2)(a) (iii) of the Promotion of Administrative Justice Act (PAJA)[14], which states that:

> *'(2) A court or tribunal has the power to judicially review an administrative action if –*
> *(a) the administrator who took it –*
> *(i) …*
> *(ii) …*

10 In the matter of *Minister of Safety and Security and Another v Nombungu and Others 2004 (4) SA 392 (T)* certain police men were demoted and their salaries reduced without being afforded an opportunity to be heard in relation to the matter. The court a quo found for the applicant police men and the Minister appealed against the decision to a full bench. The Minister argued that he was merely rectifying an incorrect situation and as such it was not necessary to afford the affected police men an opportunity to be heard. The Court disagreed and found that the Minister and the National Commissioner were duty-bound to afford the police men a hearing and the right and privilege of *audi alteram partem* and, as they did not do so, the appeal must fail. In *Kock and Another v Department of Education Culture & Sport Province of the Eastern Cape and Others* (P317/2000) [2001] ZALC 47 (30 March 2001), it was found that the principles of natural justice had not been observed. Failure by the Department and the respondents to apply the *audi alteram partem* rule has constituted a procedural impropriety vitiating the agreement in so far as it affected Mr Kock. In this matter, the Department failed to give Mr Kock an opportunity to make representation, it acted contrary to the tenets of natural justice because he was not given the elementary right to be heard.

11 In *Diko and Others v Nobongoza and Others 2006 (3) SA 126 (C)* the applicants sat as representatives of the second respondent (the UDM) in various national and provincial legislatures. The UDM expelled the applicants from the party. The applicants did receive notice of the proposed disciplinary action; however the notice was not adequate in that it had taken the form of faxing an agenda after normal working hours to the applicants on the evening prior to the hearing. The Court held that the second respondent was obliged to comply with the principles of natural justice in the formulation and execution of its decisions relating to the applicants. The Court found that in the circumstances the applicants did not been given fair notice of the proceedings. As a result the decision to expel the applicants was unlawful and invalid.

12 In *Bushula and Others v Permanent Secretary, Department of Welfare, Eastern Cape, and Another 2000 (2) SA 849 (E)* the applicant was the recipient of a disability grant. The first respondent had undertaken a review of all social grants in respect of disability. Recipients of disability grants were advised, through different media, that social grants would be reviewed annually. None of these communications came to the notice of the applicant, who was illiterate. The Court held that a disability grant, once granted, conferred upon the beneficiary the right to receive that grant until it was lawfully terminated. Such grant could not be lawfully terminated without the rules of natural justice and the right to fair administrative action, including the right to be heard, being observed. The decision to cancel the applicant's grant was clearly a decision which prejudicially affected an existing right and before such a drastic step as cancellation of the grant could be considered, the first respondent should have ensured that the applicant received proper notice.

13 C Hoexter Administrative Law in South Africa 1ed (2007) 404

14 Act 3 of 2000

*(iii) was biased or reasonably suspected of bias.'*

The test for bias is set as a reasonable suspicion of bias.[15]

- The source of bias is in general categorised in one of the following four categories:[16]

(i) Financial interest;[17]

(ii) Personal interest;[18]

(iii) Bias on the subject matter;[19]

(iv) Official or institutional bias.[20]

---

15 The test was set out by the Appellate Division in *BTR Industries South Africa (Pty) Ltd v Metal and Allied Workers Union 1992(3) SA 673 (A)* as a "reasonable suspicion of bias". This meant that an affected party only had to proof that the decision-maker appeared to be bias and not that the decision-maker was in actual fact biased. The position was further clarified by the Supreme Court of Appeal in *S v Roberts 1999 (4) SA 915 (SCA)* where Howie AJ stated that the following principles would apply:
(i) There must be a suspicion that the judicial officer might be biased;
(ii) The suspicion must be that of a reasonable person in the position of the accused or litigant;
(iii) The suspicion must be based on reasonable grounds; and
(iv) The suspicion must be something that the reasonable person would have.

16 C Hoexter Administrative Law in South Africa 1ed (2007)407 - 411

17 Bias can be based on a perceived financial interest in scenarios where the decision-maker stands to gain financially from the exercising of its decision-making capability. In the matter of *Bam-Mugwanya v Minister of Finance and Provincial Expenditure, Eastern Cape 2001 (4) SA 120 (Ck)* the applicant was a member of a provincial tender board. She failed to disclose the fact that she was a member of a close corporation that stood to benefit from the board's decision about certain bus contracts. In addition, she failed to recuse herself from the tender board. The court found that the applicant had a direct financial interest in the bus contract and mentioned that this was a clear-cut example of a situation where the applicant should have recused herself.

18 A decision-maker may be disqualified from taking a decision as a result of a personal interest. This personal interest may be as a result of a family relationship, friendship or other emotional bond. An example of such an interest is present in the matter of *Liebenberg v Brakpan Liquor Licensing Board 1944 WLD 52* where a decision was set aside because a license was granted to the mayor's brother whilst the mayor himself sat on the board who considered the application. A similar argument was made in the famous case of *President of the Republic of South Africa v South Africa Rugby Football Union 1999 (4) SA 147 CC*. The allegations of apparent bias were based on an alleged friendship between certain Constitutional Court judges and the appellants. This application was however unsuccessful, although the Court described the application as an "*unprecedented application for recusal, implicating each of the Judges of this Court, questioning their impartiality, and impugning the integrity of the Court as an institution*". The Court furthermore made it clear that the rule against bias applies to all decisions and not only administrative decisions.

19 Bias on the subject matter relates to a decision-maker who in essence pre-judged a matter. This type of prejudice will normally arise where a decision-maker strongly associates himself with one side of a dispute. As indicated earlier in this circular, the requirement is not for actual bias, but merely for a perception of bias. In *Hamata v Chairperson, Peninsula Technikon Internal Disciplinary Committee 2000 (4) SA 621 (C)* the Court held that it is natural and human nature for a person to have an initial view on a subject. There is however a difference between a mere predisposition and pre-judgment of the issues to be decided. The Court further held that *"Bias or partiality occurs when the tribunal approaches a case not with its mind open to persuasion nor conceding that exceptions could be made to its attitudes or opinions, but when it shuts its mind to any submissions made or evidence tendered in support of the case it has to decide. No one can fairly decide a case before him if he has already prejudged it."*

20 Official or institutional bias is bias which originates from the nature of the hearing for which the legislature has specifically provided. In these cases the decision-maker is inevitably biased as a result of institutional factors, rather than individually biased by virtue of particular circumstances or personal characteristics. The Appellate Division upheld an allegation of institutional bias in the matter of *Council of Review, South African Defence Force v Mönnig 1992 (3) SA 482 (A)* In this case the accused was a military serviceman who was prosecuted in a court martial by senior members of the South African National Defence Force (SANDF) for conspiring to disclose secret information. The accused raised a defence in terms of which he stated that he disclosed the information in order to protect an organisation which was opposed to military conscription from an unlawful attempt by SANDF to discredit the organisation. The Court held that because the senior members of SANDF were loyal to the SANDF, it was reasonable for the accused to believe that they would not properly evaluate his defence impartially during the court martial. Further, in *Sidumo & another v Rustenburg Platinum Mines Ltd & others (Case CCT 85/06 decided on 05 October 2007)*, the Constitutional Court entrenched in the test on rationality to include the notion that the decision should be one that a reasonable decision-maker could reach. And in *Financial Services Board v Pepkor 1999 (1) SA 167 (C) at 175D-E;* the court held that:

> *"The test for [institutional bias is whether] a fully informed person would harbour a reasonable apprehension of bias in a substantial number of cases".*

### *(c) Res Judicata (Matter already dealt with in another forum)*

- This principle embodies the fact that a final judgement of a competent court is conclusive upon the parties in any subsequent litigation involving the same cause of action.

- The general rule is that a plaintiff, who has prosecuted one action against a defendant and obtained a valid final judgment, is barred by *res judicata* from prosecuting another action against the same defendant where (a) the claim in the second action is one which is based on the same factual transaction that was at issue in the first; (b) the plaintiff seeks a remedy additional or alternative to the one sought earlier; and (c) the claim is of such a nature as could have been joined in the first action. Underlying this standard is the need to strike a delicate balance between the interests of the defendant and of the courts in bringing litigation to a close and the interest of the plaintiff in the vindication of a just claim.

### **(d) The right to reasons**

This common law principle has been codified in the South African Constitution, as amplified by PAJA.

Section 33(2) of the Constitution reads as follows:

> *33. …*
> *(2) Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.*

Section 5 of PAJA is discussed under paragraph 6 below.

## 6. REASONS FOR ADMINISTRATIVE ACTION

(1) Section 5 (1) of PAJA reads as follows:

> *"5. …*
> (1) *any person whose rights have been materially and adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which that*

---

In the *Financial Services Board*-matter, the court further held, in summary, that although independence and impartiality are distinct concepts, they are closely related. Individual and structural independence are desirable in order to promote faith in the impartiality of a tribunal. And it should also be borne in mind that courts of law are judicial tribunals while administrative tribunals are administrative courts.

*person became aware of the action or might reasonably have been aware of the action, request that the administrator concerned furnish written reasons for the action.*

(2) The right to be provided with reasons is a fundamental part of administrative justice. Reasons provide both procedural as well as substantive benefits. From a procedural perspective, reasons may clarify shortcomings in an application to be rectified in a further successful attempt. From a substantive perspective, reasons concentrate the administrator's mind on what is relevant and thus leads to structured and rational decision-making.[21]

(3) The reasons should explain the rationale for the decision made.[22] It must include a description of the decision-maker's understanding of the relevant law, any findings of fact on which the conclusions depend and the reasoning process that led to the conclusions. The language utilised in the decision should furthermore be clear and unambiguous.[23]

(4) The technicalities raised by the NCR must be vigorously tested against the Constitution and the principles of natural justice which can only be limited in specific extenuating circumstances in terms of section 36 of the Constitution. These extenuating circumstances have not existed on any of the applications before the Tribunal. The Tribunal adjudicates on applications brought before it by filing parties as well as additional applications brought within these applications such as postponements and condonations. The Tribunal must also adjudicate on *points in limine* prior to tackling the merits of these matters. The above are all examples of technicalities that are necessary to impose on filing parties once application is made. To simplify and illustrate, a postponement application (or condonation) is made by a filing party and must be considered as part of the overall application by the adjudicator. The other party to the matter must be afforded an opportunity to be heard in terms of constitutional grounds as well as grounds of natural justice. If the Tribunal allows the above mentioned application without due consideration of the principles of natural justice, it would place the other party in a prejudicial position where the submissions made by the Applicant cannot be tested and an automatic right to review in a superior court would be granted.

(5) The principles of natural justice also apply to an application itself insofar as the *audi* rule is concerned whereby the Tribunal must test and interrogate service related issues. The reasons for this have been appropriately canvassed above. A Tribunal Panel must therefore be

---

21 C Hoexter Administrative Law in South Africa 1ed (2007) 416

22 Schutz JA in *Minister of Environmental Affairs v Phambili Fisheries (Pty) Ltd 2003(6) SA 407 (SCA) at para 40* quoted the following paragraph from *Ansett Transport Industries (Operations) Pty Ltd v Wraith (1983) 48 ALR 500* (an Australian case) to explain that reasons ought to enable an aggrieved person to say:

*"Even though I may not agree with it, I now understand why the decision went against me. I am now in a position to decide whether that decision involved an unwarranted finding of fact, or an error of law, which is worth challenging."*

23 *Minister of Environmental Affairs v Phambili Fisheries (Pty) Ltd 2003(6) SA 407 (SCA)*

satisfied that the other party has been served with the application correctly. If the Tribunal Panel does not vigorously apply this component, then it would fail in its duty to uphold natural justice.

(6) In some instances, when consumers refer their matters to the Tribunal as provided for in terms of Section 141 of the NCA or section 75(1)(b) of the CPA, the finding may be against the consumer. However, due to the ample and comprehensive reasons provided, the consumer will be in a position to understand why certain relief required could not be granted. It is to be noted that out of the 126 non-referral applications which the Tribunal has received since 2010 up to 31 March 2017, none of these matters were taken on further appeal or review. This may be as a result of one of two specific reasons – the quality of the reasons provided, as well as the possibility that the consumer may not have the funding to proceed further. This second reason is dealt with in more detail further down below. It would be interesting to note in how many instances consumers are non-referred by the NCR. This figure was however unfortunately not available in their 2015/16 Annual Report. From the Tribunal's perspective we will only have the statistics of those consumers who elect to take their matters further.

(7) The Tribunal in its' adjudicative capacity cannot waive legally accepted and valid processes which are the cornerstone of a democratic rule of law. It is noted that in terms of the Credit Law Review document, being "inquisitorial" is placed akin to not following the law, or alternatively not allowing parties an opportunity to exercise their constitutional rights. This can clearly not be correct. It appears as if an "Inquisitorial System" as opposed to an "Inquisitorial Approach" is suggested.

(8) The difference would be that an inquisitorial system refers to the type of legal system utilised. South Africa follows an adversarial system as opposed to an inquisitorial system, which is followed in some parts of Europe. In terms of an inquisitorial system, the judge participates in the collection of evidence, the prosecution etc. In terms of an adversarial system, the judge is not a party to the matter, but independent. An inquisitorial approach within an adversarial system will more relate to the collection of evidence and the presenting of cases before the Tribunal. This allows the Tribunal to identify which evidence is missing in a matter before it and to ask the parties to provide such evidence or to call its own experts if necessary in order to ensure that the matter before the Tribunal is complete and fully ventilated. It does not allow the Tribunal not to follow the law or to take the matter over from the parties before it.

## 7. UNINTENDED CONSEQUENCES

### 7.1 *OVER-REACHING PROPOSALS INCREASING APPEALS & REVIEWS*

(1) Given the extensive proposed encroachment and overreaching by the NCR into the judging and compelling of certain punitive measures against respondents, the chances that instead of easing off the work pressure between the NCR and the NCT (which still has to be verified) the pressure would increase. This time however, the additional load will consist of appeals and review applications from parties who will challenge perceptions or existence of:

(a) Bias;
(b) Unfairness;
(c) Impartiality;
(d) Lack of independence;
(e) Arguments of fact;
(f) Arguments on points of law;
(g) Quantum of the fines imposed (directed) etc.

### 7.2 IMPARTIALITY

(1) The Courts have held that the Presiding Officer must be impartial[24]; and there must be no suspicion of bias in the eyes of the accused employee[25]. That should go for the judges as well. As indicated above in the section dealing with "institutional bias", the NCR investigating and then also adjudicating its own cases it has investigated cannot be said to engender any semblance of impartiality or independence to a matter at hand.

### 7.3 HEARING CONSUMER PROTECTION COMPLAINTS PROTECTION ACT VS NCA CASES

(1) Section 75 of the Consumer Protection Act makes provision for referrals of complaints to the Tribunal for adjudication. Section 75(4) of the Consumer Protection Act obliges the Tribunal to conduct a hearing into any matter referred to it in terms of the Consumer Protection Act and empowers it to make any applicable order contemplated in the Consumer Protection Act or in section 150 or 151 of the NCA, read with the changes required by the context. Section 150 of the NCA deals with orders that the Tribunal may impose. Section 151 deals with administrative penalties that the Tribunal may impose.

24 Rossouw v SA Mediese Navorsingsraad (2) (1987) 8 ILJ 660 (IC)
25 Slade v The Pretoria Rent Board 1943 TPD 246 and Jacobsen v Tugela and Maphumulo Rural Licensing Board 1964 (1) SA 45 (D)

(2) It is to be noted that changes to the NCA, would render the Tribunal an Appeals Tribunal as opposed to a Tribunal of first instance. This will have a drastic effect on the National Consumer Commission and the enforcement of their mandate in terms of the Consumer Protection Act. This is because the same provisions in the National Credit Act is utilised for purposes of hearing and adjudicating on CPA matters.

### 7.4 NO FURTHER RECOURSE FOR CONSUMERS NON-REFERRED

(1) In the Credit Law review discussion document, reference is made to filing parties whose matters were not entertained by the NCR. Should the Tribunal be turned into an Appeals Tribunal and not a Tribunal of first instance, these consumers will in effect be denied a cost-effective alternative to the Courts and only have recourse in the Courts at great cost. This would be as a result of the Tribunal no longer being inquisitorial. In other words, whatever evidence that was not provided to the NCR in its adjudication of the matter, will not be considered by the Tribunal. This was clearly not the intention of the legislature for the NCA.[26]

## 8. EFFECTIVE SERVICE DELIVERY BY THE NCT

(1) The Credit Law Review discussion document makes the statement that the NCT's service delivery system is hampered and rendered inefficient by referrals from the NCR, applications by consumers whose cases have not been entertained by the NCR and Debt Counsellors for orders within the Debt Review process.[27] This view is with respect incorrect.

(2) The NCT did experience an issue with service delivery during 2015/16 due to a variety of issues including an excessive increase in caseload, the roll-out of a new case management system, management challenges and resource challenges. During the second part of 2015/16, continuing into 2016/17 these challenges were resolved. In addition, the NCT underwent extensive automation, specifically in relation to dealing with debt re-arrangement matters. This will assist the NCT in dealing with these matters, despite limited resources and despite an increase in caseload.

---

26 Section 3 of the NCA states that *"The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry and to protect consumers, by…" "… 3(e) addressing and correcting imbalances in negotiation power between consumer and credit providers…."* as well as *"…(f) providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements…"*

27 Credit Law Review discussion document paragraph 3.2.5 on page 7.

## 9. THE NCT'S CASELOAD IS CURRENTLY AS FOLLOWS:

(1) The Tribunal has 11,399 (2,615 filed in 2017/18 and 8,784 filed prior to 2017/18) debt re-arrangement matters to consider as at 20 May 2017. Although the amount appears to be a large number of matters, it equates to approximately one to one and half quarter's debt re-arrangement filings. Specific engagements are held with debt counsellors to assist in identifying which matters require orders and which matters should be withdrawn. Through these specific interventions, the Tribunal managed to finalise 12,749 cases during 2016/17 through withdrawal of incorrect cases filed, as opposed to matters being dismissed at adjudication for not meeting the filing requirements. It is expected that all the older matters will be finalised during 2017/18 through the specific projects targeting these matters.

(2) During 2016/17 the Tribunal managed to issue 21,342 orders with an average turnaround of 71.35 days from date of filing to date of issuing the order. The Tribunal therefore managed to finalise 34,091 matters during the year either by issuing an order or processing a withdrawal.

(3) In addition the Tribunal managed to finalise 452 non-debt re-arrangement matters which includes the issuing of 153 judgments (including one Certificate for prohibited Conduct) with an average of 22 days from final adjudication to issuing of the judgment. Of the judgments issued during the year, 20 related to matters filed by the NCR. The 299 remaining matters were finalised by lapsing 101 matters and varying 14 matters on own accord, processing 170 withdrawals, refusing 4 condonations and confirming 10 settlements. The Tribunal currently has 169 current non-debt re-arrangement matters undergoing the various steps and processes leading up to adjudication. Of these current matters, 59 are NCR matters. Of these 59 matters, 15 are pending due to High Court Applications, appeals filed as well as liquidation applications. There are accordingly 44 NCR matters currently moving through the various processes. During 2016/17, the NCR filed a total of 37 matters[28] with the Tribunal and up to 25 May 2017, a further two matters in 2017/18. The NCT engage with and report on a regular basis to NCR in relation to the status of the cases filed by NCR with the Tribunal. On more than one occasion, the NCR has indicated to the Tribunal that it is very satisfied with the progress being made on its cases. If these figures as detailed above and below are considered, it is clear that the NCT is not being hamstrung by the filings received from the NCR or any other party.

28 22 (59,46%) of these matters were filed during Quarter 4 of 2016/17. Nine matters filed during January 2017 and February 2017. Four matters were filed between 3 and 29 March 2017 and a further 9 of the 33 matters were filed on 31 March 2017.

(4) The overall status of current NCR matters is set out in Annexure A, attached to this written submission.

(5) From the information contained in Annexure A, it is clear that the Tribunal finalised more NCR matters (61 matters) during 2016/17 and 2017/18 up to 25 May 2017, than what was filed by the NCR in the same period (39 matters). In addition to the NCR matters, the Tribunal also finalised non-debt re-arrangement matters, filed by other parties. It is therefore clear that the Tribunal is executing its mandate as required.

(6) The NCT has previously requested certain amendments to the NCA to allow it to be more efficient. So as to not unnecessarily burden this lengthy submission, the submissions are briefly mentioned below:

a. Change to allow the Chairperson a discretion in relation to the allocation of matters;

b. Change to allow full-time Tribunal members to be permanent appointments as opposed to contract appointments (excluding the Executive Chairperson)

c. Change to allow a rescission or variation in terms of Section 165 where a consumer's circumstances change or by agreement between the parties.

## 10. CONCLUSION

(1) It is not clear from the Credit Law Review discussion document in which way the NCR would be in a position to adjudicate on its own matters in a more efficient way than the NCT. As has been demonstrated in this written submission, any shortened process would result in an inadvertent infringement on the rights of a Respondent, which in return would result in further appeals and reviews and ultimate additional delays. The NCR has certain powers in terms of the current NCA allowing it to out of own accord and based on its own investigation to determine that prohibited conduct was committed and to issue compliance notices insisting that a party should cease this conduct, failing which an administrative fine would be payable as determined by the Tribunal. This process does not shut the doors of justice for an affected Respondent. Such a party may apply to the Tribunal to review the NCR's decision. The current process is furthermore in line with the constitutional rights of parties, as an independent body determines the merits of the matter, as well as any penalties, should same be warranted in a specific matter. In addition, any finding made is provided with adequate

reasons contained in a written judgment, which is subject to review or appeal in the High Court.

(2) Should the nature of the Tribunal be changed to an Appeals Tribunal, it would also impact on the implementation of the NCC's mandate in terms of the Consumer Protection Act, as well as numerous consumers who file applications with the Tribunal after receiving certificates of non-referral from the Regulators. These consumers will in effect have no further recourse, as litigation in Courts is an expensive process and in many instances out of the reach of normal, everyday consumers and especially out of reach of vulnerable previously disadvantaged consumers. This, with respect, was not the intention of the legislature in the drafting of either the NCA or the CPA.

(3) In addition, as demonstrated in this written submission, the NCT is in a position to effectively and efficiently implement its mandate, within the ambit of the legislation and constitutional imperatives. The Tribunal has ensured that the additional capacity required has been negated by the implementation of automated systems as well as enhanced case management processes. In addition, should the Chairperson of the Tribunal obtained the additional powers as sought by the NCT amendments, it will result in further efficiencies being realised within the Tribunal.

(4) As has been demonstrated in this submission, we are uncertain as to the rationale and justification for the need to make the proposed amendments and we have addressed where efficiencies and numbers are concerned.

(5) We are however certain that the proposed changes addressed in our submission will mean that the proposed amending Act would not survive constitutional muster.

(6) Even if our submissions do not curry favour, they will still feature in the Constitutional Court tests at the level of Assent when they are legally and constitutionally reconsidered as is the practice.

(7) Even if by some fluke of nature, Assent would be obtained, the courts would strike and excise those provisions when challenged by litigants, which is a guaranteed certainty.

## ANNEXURE A: STATUS OF NCR MATTERS AS AT 25 MAY 2017

### (a) Matters Carried Forward From 2014/15

| **CURRENT** | | | **12** |
|---|---|---|---|
| **Pre Close of Pleadings** | | **1** | |
| Condonation In Progress | 1 | | |
| **Post Close Of Pleadings** | | | |
| **Set Downs** | | **11** | |
| Set Down | 1 | | |
| Judgment Outstanding | 2 | | |
| Postponed - Cannot Set Down | 8 | | |

### (b) Matters Filed In 2015/16

| **CURRENT** | | | **18** |
|---|---|---|---|
| **Pre Close Of Pleadings** | | **3** | |
| Pleadings Open | 2 | | |
| Condonation In Process | 1 | | |
| **Post Close Of Pleadings** | | **15** | |
| To Be Set Down | 3 | | |
| SET DOWN (Pre-Hearing) | 1 | | |
| Set Down | 3 | | |
| Cannot Set Down | 7 | | |
| Judgment Outstanding | 1 | | |

### (c) Matters Filed In 2016/17

| **CURRENT** | | | **27** |
|---|---|---|---|
| **Pre Close Of Pleadings** | | **11** | |
| Condonation In Process | 8 | | |
| Pleadings Open | 3 | | |
| **Post Close Of Pleadings** | | **16** | |
| To Be Set Down | 2 | | |
| Set Down | 10 | | |
| Judgment Outstanding | 4 | | |

## (d) Matters Filed In 2017/18

| CURRENT | | | 2 |
|---|---|---|---|
| **Pre Close Of Pleadings** | | **1** | |
| Pleadings Open | 1 | | |
| **Post Close Of Pleadings** | | **1** | |
| Set Down | 1 | | |

## (e) Finalised (Judgment Issued)

The following 61 NCR matters were finalised during 2016/17 and 2017/18 to date:

| NO | PARTIES TO THE CASE | 20 |
|---|---|---|
| 1 | NCR V JOY MINNIES & 2 OTHERS | NCT/21258/2015/57(1) & 140(1) |
| 2 | NCR V RUMAT GENERAL TRADING CC | NCT/35044/2015/138(1) |
| 3 | NCR V EUGEN KRUGER | NCT/74712/2017/140(1) |
| 4 | NCR V PHEPHANI TRAFFIC FINE MANAGEMENT CC | NCT-71780-2016 57(1) |
| 5 | NCR V PATMAT GENERAL TRADING CC | NCT-71775-2016-57(1) |
| 6 | NCR V PIERRE GOOSEN | NCT-71737-2016-57(1) |
| 7 | NCR V TOYN TRADING (PTY) LTD | NCT-71754-2016-57(1) |
| 8 | NCR V MRS YILWE | NCT/39821/2016/140(1) |
| 9 | THE NATIONAL CREDIT REGULATOR V GOITSEONE LEONARD GABAOUTLLOELE | NCT/48770/2016/140(1) |
| 10 | NCR V ALLIED CAPITAL | NCT/41672/2016/140(1) |
| 11 | NCR V BURGERT WYNAND DU PLESSIS T/A EAGLE CASH LOANS | NCT/40817/2016/57(1) |
| 12 | NCR V HENDRIK CORNELIUS WILHERMUS VERMAAS | NCT/40575/2016/55(6) |
| 13 | NCR V PATRICK MACU T/A MADODA CASH LOANS | NCT/39814/2016/140(1) |
| 14 | NCR VS MOBIMOOLA FINANCIAL SERVICES (PTY) LTD | NCT/18256/2014/140(1) |
| 15 | NCR V SOUTHERN AFRICA FRAUD PREVENTION SERVICE NPC | NCT/23181/2015/140(1) |
| 16 | NCR V BONGANI NTATISO | NCT/38746/2016/140(1) |
| 17 | NCR V T. KABUANGA N SELE TRADING CC | NCT/39447/2016/57(1) |
| 18 | NCR V ZODUMO LUPOKO | NCT/38601/2016/57(1) |
| 19 | NCR V EZ TRADE 490 T/A NCEDULUNTU CASH LOANS | NCT/38719/2016/57(1) |
| 20 | NCR V ZAHID ADAMS | NCT/22129/2015/140(1) |

## (f) Finalised (Settled And Confirmed)

| NO | PARTIES TO THE CASE | 10 |
|---|---|---|
| 1 | NATIONAL CREDIT REGULATOR / ACORN MOBILE CASH LOANS (PTY) LTD | NCT/76858/2017/138(1) |
| 2 | NATIONAL CREDIT REGULATOR V FEL GOLDEN CASH LOANS | NCT/70510/2016/138(1) |
| 3 | NCR V SIJABULILE FINANCE | NCT/15540/2014/57(1) |
| 4 | NCR V PRO FINANCIAL SERVICES | NCT/38607/2016/57(1) |
| 5 | NCR V CCD CASH LOANS | NCT/38723/2016/51(1) |

| | | |
|---|---|---|
| 6 | NCR V KAGISO FINASIELE DIENSTE | NCT/38604/2016/140(1) |
| 7 | NCR V KITSO TRADING 52 CC T/A CRISIS CASH | NCT/38606/2016/140(1) |
| 8 | NCR V LA ROOYEN FINANSIELE | NCT/39808/2016/140(1) |
| 9 | NCR V MAGDEL EN TIA FINANCIAL SERVICES CC T/A IMPALA CASH LOANS | NCT/38083/2016/140(1) |
| 10 | NCR V AMSA | NCT/23135/2015/140(1) |

## (g) Finalised (Withdrawn)

| NO | PARTIES TO THE CASE | 31 |
|---|---|---|
| 1 | NCR V G & A FINANCIAL SERVICES | NCT-71746-2016-140(1) |
| 2 | NCR V ABSA BANK LIMITED | NCT/26396/2015/140(1) |
| 3 | NCR V MULTI PROPERTY CARE T/A QUICKFIN NATIONWIDE RUSTENBURG 2, | NCT/40571/2016/57(1) |
| 4 | NCR V QUICKFIN NATIONWIDE GROUP CC T/A TEMBA CASH RUSTENBURG, | NCT/40560/2015/57(1) |
| 5 | NCR V MR RIF' AT BROWERS | NCT/7288/2013/57(1) |
| 6 | NCR V TIGER PERSONAL CREDITS CC | NCT/7287/2013/57(1) |
| 7 | NCR V GIGS FINANCIAL SERVICES CC | NCT/7277/2013/57(1) |
| 8 | NCR V GLEN INVESTEMENTS CC | NCT/7289/2013/57(1) |
| 9 | NCR V 3E CAPITAL PARTNERS (PTY) LTD | NCT/7276/2013/57(1) |
| 10 | NCR V MPONWA TRADING CC | NCT/7290/2013/57(1) |
| 11 | NCR V ALFA LOANS CC | NCT/7279/2013/57(1) |
| 12 | NCR V FULL SWING TRADING 179 CC T/A MONEY MARKET | NCT/37762/2016/57(1) |
| 13 | NCR V MIDNIGHT SPARK TRADING 400 CC T/A SURE CASH | NCT/38602/2016/57(1) |
| 14 | NCR V MADITABA LEFETA | NCT/39812/2016/140(1) |
| 15 | NCR V GOLDEN FALLS TRADING (PTY) LTD | NCT/7286/2013/57(1) |
| 16 | NCR V SUMMER CLIFFS TRADING 48 BK | NCT/7280/2013/57(1) |
| 17 | NCR V VENDA CASH LOAN | NCT/38608/2016/140(1) |
| 18 | NCR V SOUTHERN VIEW FINANCE | NCT/21374/2015/57(1) |
| 19 | NCR V UBANK | NCT/20590/2014/140(1) |
| 20 | NCR V UBANK LIMITED | NCT/26231/2015/140(1) |
| 21 | NCR V CAPITEC BANK LIMITED | NCT/38081/2016/140(1) |
| 22 | NCR V FIN AFRICA TRADING IN PARTNERSHIP | NCT/34950/2016/57(1) |
| 23 | NCR AND SIYASIZANA CASH LOANS | NCT/23786/2015/57(1) |
| 24 | NCR AND AKELOB FINANSIELE DIENSE BOLEKA | NCT38724/2016/140(1) |
| 25 | NCR V DRAGONFLY INVESTMENTS 11 CC - STUTTERHEIM | NCT/40726/2016/57(1) |
| 26 | NCR V COMPREHENSIVE FLEXIBUY (PTY) LTD & PROSPERIAN CAPITAL (PTY) LTD & PLANET CARD SOLUTIONS (PTY) LTD | NCT/37766/2016/140(1) |
| 27 | NCR V EMINEM CASH LOANS KEIMOES CC | NCT/40578/2016/57(1) |
| 28 | NCR V D EN AG FOURIE BK T/A CITY FINANCIAL SERVICES | NCT/40564/2016/140(1) |
| 29 | THE NATIONAL CREDIT REGULATOR V BUSINESS SHELF 27 CC T/A RED DOOR CASH LOANS | NCT/39810/2016/140(1) |
| 30 | NCR V REATHUSA AFRICA FINANCE | NCT/39816/2016/140(1) |
| 31 | NCR V MULAMELI CASH LOANS | NCT/39819/2016/140(1) |