



**Portfolio Committee on Trade and Industry**

**21 October 2009**



**Ms Diane Terblanche  
Chairperson:  
National Consumer Tribunal  
Contact Number : 012 683 8140**



**ESTABLISHMENT (WHO IS THE NCT?)**

**The NCT is established in terms of Section 26 of the National Credit Act (NCA) Act 34 of 2005 with jurisdiction throughout South Africa**

**The Tribunal is mandated to be:**

- Quick
- Accessible
- Informal
- Fair – in accordance to principles of natural justice



## THE NCT SCOPE

### **FUNCTIONS OF THE NCT:**

The NCT may adjudicate on:

- Applications
- Allegations of prohibited conduct

In accordance with NCA (Section 27) and Consumer Protection Act (CPA)(Schedule 1, item 1 – consequential amendments of NCA)

### **PROCESS OF THE NCT:**

Regulated by the Rules of conduct for Proceedings of the Tribunal set out in Government Gazette no 30225 dated 28/08/07.



## POWERS OF THE NCT

### **EFFECT OF THE TRIBUNAL ORDERS:**

- Tribunal Orders have the same effect as the High Court orders (Section 152 (i) NCA).

### **TRIBUNAL ORDERS BINDING ON:**

- Orders are binding on NCR, NCC, Provincial Credit Regulators, Consumer Courts, ADR agents, Ombudsmen with jurisdiction, Debt Counsellors, Magistrate Courts, Provincial Consumer Protection Authorities (Section 152 of NCA and Schedule 1A, Item 152) (CPA)



## ORDERS THE NCT MAY ISSUE

Tribunal may issue orders as set out in Section 150/Schedule 1, Item 9 in terms of NCA/CPB as follows:

- Declare conduct prohibited.
- Interdict prohibited conduct.
- Impose administrative fines.
- Confirm consent orders.
- Condone non compliance of Rules.
- Confirm an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act.
- Suspend or cancel the registrant's registration.
- Repayment of excess amount charges
- Any other appropriate orders.

Admin fine 10% of annual turnover of previous financial year/ R1 000 000, whichever the greater.



## ENFORCEMENT OF ORDERS

### ENFORCEMENT OF ORDERS:

- NCR/NCC may institute action in High Court for recovery of administrative fine imposed by NCT (Section 152 (2) NCA/Schedule 1A, Item 11).

### EFFECT OF TRIBUNAL ORDERS:

- Failure to contravene/failure to comply with an order of the Tribunal is a criminal offence (Section 160 (1) NCA).

### PENALTIES:

Person convicted of an offence into 160 (1) is liable to a:

- Fine.
- Imprisonment not exceeding 10 years.
- Or both a fine and imprisonment.

Magistrate's court may impose the penalties (Section 162 NCA).



## MEASURES TO RECOVER ADMINISTRATIVE FINES

### CIVIL CLAIMS:

- Civil action may be commenced in court on certification of prohibited conduct by NCT after adjudication (Section 164 (3) (b)).
- Certificate is binding on civil court.

### APPEAL AND REVIEW:

- Orders of Tribunal may be appealed or reviewed (Section 148 NCA)
  1. One member panel by three member panel.
  2. Three member panel by High Court.



## WHO MAY BRING CASES BEFORE THE NCT

### LITIGANTS BEFORE TRIBUNAL:

Parties who may bring cases to Tribunal:

Applications may be brought by:

- Registrants
- NCR/NCC
- Consumers

Prohibited conduct may be referred by:

- Regulators – NCR/NCC
- Consumers
- Person himself or herself
- Authorised person
- Interest group or class of affected persons
- Public interest (person acting in public interest)
- Association for members (Section 4- CPA)



## ROLE OF THE NCT IN CURRENT ECONOMIC DOWNTURN / DEBT REVIEW

NCT has a major role in consumers' debt re-structuring by way of consent orders in terms of Section 138 read with section 86(8)(a), removing / alleviating debt stress.

### Relevant sections of the NCA

#### Section 86(8)

Enabling section in the NCA for debt re-arrangement proposal to be made an order of the Tribunal through consent order application under section 138 of the NCA

#### Section 86(7)(b)

Requirement of when Debt Counsellors may approach the Tribunal

#### Section 86(7)(c)

When Debt Counsellor has to approach the Magistrates' Court  
Difference between NCT and Magistrates' Courts

#### Section 161

Consequences of non-compliance for consumer with consent order –  
•execution of debt by credit providers due to non-compliance / termination of debt review  
•contempt of a court order and criminal sanction



## ROLE OF THE NCT IN CURRENT ECONOMIC DOWNTURN (cont.)

CASE STATISTICS APRIL 2009 – SEPTEMBER 2009		
	Total	Consent orders
Q1	28	8
Q2	156	149
TOTAL	184	157



## ROLE OF THE NCT IN CURRENT ECONOMIC DOWNTURN (cont.)

### Consent orders - factors impacting numbers of consent orders:

Confusion regarding when DC's may approach the Tribunal for consent order applications as opposed to approaching the Magistrates' court - definition and interpretation of over-indebtedness

#### Procedural requirements in terms of Rules

#### Interpretation and application of NCA

e.g. Meaning of "respective credit providers" referred to in section 86(7)(b)

- Only credit providers party to debt re-arrangement – many out of the loop?
- If one out of twenty credit providers do not agree to debt re-arrangements - where does that leave the process?
- Those credit providers not part of process – enforcement of debt outside debt re-arrangement process?

#### Payment Distributing Agencies (PDA's)



## FACTORS IMPACTING ROLE OF NCT

### Tribunal vs. Magistrates' court

Definition for over-indebtedness in Section 79 similar to requirement in section 86(7) when a consumer may approach the Tribunal - this creates confusion -

#### Section 79

A consumer is over-indebted if the preponderance of available information at the time of determination is made indicates that the particular consumer is or will be **unable to satisfy in a timely manner all the obligations** under all the credit agreements to which the consumer is the party..."

#### Section 86(7)(b)

The consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, **difficulty satisfying all the consumer's obligations under credit agreements in a timely manner**, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or



## **ADDRESSING FACTORS IMPACTING ROLE OF NCT**

### **Procedural requirements in terms of Rules**

- Practice notes for guidance to Debt Counsellors
- Education by NCT



## **ADDRESSING FACTORS IMPACTING ROLE OF NCT (cont.)**

### **Meaning of “respective credit providers” referred to in section 86(7)(b)**

- Through setting precedent from cases before the Tribunal



## ADDRESSING FACTORS IMPACTING ROLE OF NCT (cont.)

### Payment Distribution Agencies

Issues -

- PDA not party to consent order proceedings before Tribunal
- Transparency
- Non compliance with consent orders – timely payments in terms of consent order
- Funds paid over by consumer to PDA



## ADDRESSING FACTORS IMPACTING ROLE OF NCT (Cont.)

### Transparency

*"It may become appropriate to lay down a practice of requiring proof that creditors and debtors consent to the involvement of a PDA. We live in a world of informed consent. I was told that the terms of registration of all debt counsellors required use of a PDA. That is not patent to persons involved in debt restructuring events."*





## **ADDRESSING FACTORS IMPACTING ROLE OF NCT (cont.)**

**PDA not party to consent order proceedings before Tribunal:**

*"If it is so that the PDA participation is part of executing the payment process, it may be necessary to know who the PDA is and to see proved consent to an order binding the PDA. [That may involve considering the legality of the PDA scheme, of debit orders for future payments, and of involving parties other than debtor and creditors (actually 'credit providers' in a statutory 'consent order'.) Similarly it can not be simply assumed that creditors consent to not getting payments directly, waiting for PDA delays, and so forth.]"*



## **CONCLUDING REMARKS ON PROSPECTIVE INTERVENTIONS**

- Tighten definitions
- Setting precedent
- Increase education
- Issue guidance / practice notes
- Clarify role and involvement of PDA's / issue regulations



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