

The national credit act no. 34 of 2005: How does it affect loans to staff?



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The act was signed by the President in March 2006, and aims to protect consumers entering into credit transactions.

In addition, the act makes provision for the control and regulation of all credit transactions, including mortgages, credit cards, overdrafts, micro loans and pawnbroking transactions. It also regulates all institutions that provide consumer credit, including banks, furniture companies, retailers, micro lenders and pawnbrokers, and it includes companies which make loans to employees.

The National Credit Act applies to every credit agreement made within, or having effect within, South Africa. The following types of agreement are excluded:

1. Companies providing incidental credit (deferred payment agreements which only incur interest if not paid within a stated time) do not have to register as credit providers, as long as any interest charged for late payment is within the parameters of the Usury Act and that clients are made fully aware of terms and actual interest charges prior to the agreement being accepted or signed.
2. Juristic persons whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement was made equals or exceeds the threshold value determined by the Minister (currently R1 000 000)
3. The State
4. An organ of the State
5. Agreements where the Reserve Bank of South Africa is the credit provider
6. Agreements where the credit provider is located outside the Republic, and approved by the Minister on application.

STAFF LOANS

Who has to register?

* the National Credit Act requires all credit providers to register with the NCR.

Registration requirements

- * credit providers who have entered into at least 100 agreements, or who have a total outstanding credit book of more than R500 000;
- * juristic persons and individuals;
- * a commitment to combating over indebtedness

These registration requirements exclude those who:

- * have fewer than 100 agreements, or a total outstanding credit book equal to or less than R500 000; * provide incidental credit
- * employers who satisfied these criteria as of 1 June 2006, but failed to register as a credit provider, may still do so, but would run the risk of being issued with a notice by the National

Credit Regulator requiring registration as a credit provider. A penalty may be imposed by The Credit Regulator. Failure to comply with such a notice is an offence subject to a fine and/or imprisonment not exceeding 12 months.

Employee loans concluded after 1 of June 2007 may be declared unlawful by the courts if an employer was required to register, and has not yet done so. Unlawful employee loans would become void from the date entered into, and employers would have to refund the employee any money it had received from the employee, with interest calculated in accordance with the National Credit Act. Employers who don't have to register as credit providers must still comply with the provisions of the National Credit Act to the extent that the Act applies to employee loans. If no interest on loans to staff is charged, a company does not have to register with the National Credit Regulator. Comply with the National Credit Act if your company grants loans to staff members.