

Circular 1

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## AFFORDABILITY ASSESSMENT MECHANISMS TO BE CONSTRAINED

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From its inception, the National Credit Act 34 of 2005 (**NCA**) has allowed for credit providers to determine their own evaluative procedures to fulfil affordability assessment obligations. The only restriction is that the assessment must be “*fair and objective*”.

Credit providers are thus granted a wide discretion in the evaluative methods to be used to assess whether a prospective consumer ought to be granted a loan.

As a result, credit providers have been able to tailor their methods in accordance with the prospective consumer’s financial status.

The Draft National Credit Regulations providing for Affordability Assessments (**Draft Regulations**) have been published and, once given effect to, will force all credit providers to adhere to the affordability assessment regulations promulgated by the Minister. This will create a uniform base from which all assessments must originate.

## WHO MUST COMPLY WITH THE AFFORDABILITY ASSESSMENT REGULATIONS?

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In terms of the NCA, all credit providers will have to comply with the Draft Regulations. A credit provider includes, among others:

- a party who supplies goods or services under a discount transaction, incidental credit agreement or instalment agreement;
- a party who advances money or credit under a pawn transaction;
- a party who extends credit under a credit facility; and
- the lender under a secured loan.

## **WHAT CRITERIA MUST BE CONSIDERED BY THE CREDIT PROVIDER?**

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When conducting an affordability assessment, a credit provider must, among other things:

- calculate the prospective consumer's allocatable and discretionary income; and
- take into account all debts, including monthly debt repayment obligations in terms of any credit agreements, as reflected on the prospective consumer's credit profile held by a registered credit bureau.

If the prospective consumer has a debt repayment history, the credit provider must, within a strict time period stipulated in the Draft Regulations, assess whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the prospective consumer has such a purpose for applying for that credit agreement.

A credit provider will be required to disclose to the prospective consumer the credit costs multiple and the total cost of credit in the pre-agreement statement and quotation. The credit provider is obliged to ensure that the above concepts are understood by the prospective consumer.

## **WHAT IF A CONSUMER IS NOT SATISFIED WITH THE ASSESSMENT?**

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An aggrieved consumer may, at any time, lodge a complaint with the credit provider for the dispute to be referred to an ombudsman, consumer court or alternative dispute resolution agent, depending on the type of credit provider. The credit provider is advised to attempt to resolve the complaint within 14 days failing which, the aggrieved consumer is entitled to approach the National Credit Regulator. The National Credit Regulator may then order the credit provider to apply certain guidelines to its evaluative method. This is a much more desirable outcome than a court or tribunal declaring that a credit agreement is reckless in which case, the rights and obligations of the consumer may be set aside or the force and effect of the credit agreement may be suspended.

## **FURTHER ADVICE**

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Should you require advice or assistance on any NCA related matters, please contact Michael Jackson on 031 – 536 8512, email : [mjackson@coxyeats.co.za](mailto:mjackson@coxyeats.co.za) or Keren Watson on 031 - 536 5818, email : [kwatson@coxyeats.co.za](mailto:kwatson@coxyeats.co.za) or Simon Watson on 031 - 536 8530, email : [swatson@coxyeats.co.za](mailto:swatson@coxyeats.co.za) or Jason Goodison on 031 - 536 8517, email : [jgoodison@coxyeats.co.za](mailto:jgoodison@coxyeats.co.za) or Jenna Padoa on 031 - 536 8529, email :

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