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GENERAL NOTICE

NOTICE 288 OF 2011

DEPARTMENT OF TRADE AND INDUSTRY

NATIONAL CREDIT ACT, 2005

INVITATION TO THE PUBLIC TO COMMENT ON THE PROPOSED DEBT COUNSELLING REGULATIONS

I, Dr Rob Davies, Minister of Trade and Industry, hereby in terms of section 171 of the National Credit Act, 2005 (Act No. 34 of 2005) re-publish Debt Counselling Regulations published in Government gazette No.32869 of 14 January 2010, for public comment.

Interested persons may submit written comments on the proposed regulations by 15 July 2011 to:

Director-General
Department of Trade and Industry
Private Bag X84
Pretoria
0001
or
77 Meintjies Street
Block B, 1st Floor
Sunnyside
Pretoria
Fax No: 012 394 2679
Email: TMavhuthugu@thedti.gov.za
For Attention: Tshifhiwa Mavhuthugu

Dr. Rob Davies, MP
Minister of Trade and Industry

GOVERNMENT NOTICE

DEPARTMENT OF TRADE AND INDUSTRY

No. R.

2011

NATIONAL CREDIT ACT, 2005

DEBT COUNSELLING REGULATIONS

I, Dr Rob Davies, the Minister of Trade and Industry, hereby in terms of section 171 of the National Credit Act, 2005 (Act No. 34 of 2005), make Debt Counselling Regulations, as set out in the schedule hereto.

Dr. R Davies, (MP)

Minister of Trade and Industry

SCHEDULE

DEFINITIONS

1. In these regulations any word or expression to which a meaning has been assigned in the Act bears the meaning assigned to it in the Act, and unless the context indicates otherwise;

"clerk of the court" means a clerk of the court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and includes an assistant clerk of the court so appointed;

"court" means Magistrates' Court established in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), having jurisdiction over a consumer by virtue of such consumer's residence or place of business or the debt counselor carrying on business in the jurisdiction of such court irrespective of the monetary value of the credit agreements being considered by the court;

"deliver" means delivering documents, proposals, notices and written submissions is in terms of Magistrates' Court Act No. 32 of 1944, parties may however agree to the delivery of documents by registered post, facsimile or e-mail;

"file" means to file with the clerk of the court and 'filed' has a corresponding meaning;

"legal practitioner" means any person admitted to practice as an advocate or attorney in the Republic of South Africa;

"Magistrates' Court Rules" means the Rules confirmed by the Minister of Justice in terms of section 25 (5) of the Magistrates' Courts Act and appeared for the first time in Government Notice R1108 published in Regulation Gazette 980 of 21 June 1968; and

"the Act" means National Credit Act, 2005 (Act No. 34 of 2005).

APPLICATION BY A DEBT COUNSELLOR FOR ORDERS CONTEMPLATED IN SECTION 86(7)(c) OF THE ACT

2. (1) An application by a debt counsellor for orders contemplated in section 86(7) (c) of the Act must be lodged in a manner and form prescribed by Rule 55 of the Magistrate's Court Rules.
- (2) The application referred to in regulation 2(1) above must be substantiated by an affidavit deposed to by the debt counsellor in which the following is set out:
- (a) An exposition of the debt counsellor's assessment conducted in terms of section 86(6) of the Act;
 - (b) the relief claimed in terms of section 86(7)(c);
 - (c) full particulars of the affected credit provider; and
 - (d) full particulars of the consumer and the debt counsellor.

- (3) The procedure in Rule 55 prescribing the manner and form applicable in respect of an application in the Magistrate's Court shall apply to application contemplated in regulation 2(1) above, unless the court directs otherwise.

**APPLICATION BY A DEBT COUNSELLOR FOR CONFIRMATION OF A CONSENT ORDER
CONTEMPLATED IN SECTION 86(8)(a), READ WITH SECTION 138 OF THE ACT**

3. (1) An application by a debt counsellor for confirmation of a consent order contemplated in section 86(8)(a), read with section 138 of the Act, must be lodged in a manner and form prescribed by Rule 55 of the Magistrate's Court Rules.
- (2) An application referred to in regulation 3(1) above must, be substantiated by the debt counsellor through an affidavit supported by a letter of consent from an affected credit provider indicating that they have consented and agreed upon a plan of debt re-arrangement, which may include arrangements —
- (a) that one or more of the consumer's existing obligations be re-arranged by—
- (i) extending the period of the agreement and reducing the amount of each payment due accordingly;
- (ii) postponing the date on which payments are due under the agreement during a specific period;
- (iii) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
- (iv) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6;
- (b) regarding the manner in which payments must be made by the consumer and distributed amongst the affected credit providers; and
- (c) relating to administrative costs that are payable by the consumer or credit provider, in terms of these regulations;
- (3) A copy of the court order confirming the consent order must be collected from the clerk of the court by the debt counsellor or consumer who must deliver it within five (5) days from the date of issue to the affected consumer or credit provider; and
- (4) The credit provider must comply and implement the terms of the court order within five (5) days of receipt thereof.
- (5) The procedure outlined in Rule 55 prescribing the manner and form applicable in respect of an application in the Magistrate's Court shall apply to application contemplated in regulation 3 (1) above, unless the court directs otherwise.

**APPLICATION BY A CONSUMER IN TERMS OF SECTIONS 86(9) AND
86(7) (C) OF THE ACT**

4. (1) An application by a consumer in terms of section 86(9) of the Act, to request leave of the court to institute proceedings contemplated in section 86(7)(c) of the Act, must be brought by way of an ex parte-application, in the manner and form prescribed by Rule 55 of the Magistrates' Court Rules.
- (2) The application must be accompanied by —
- (a) the decision of the debt counsellor, made in terms of section 86(7)(a) of the Act;
 - (b) an affidavit by the consumer and annexed to the application in which reasons must be set out why leave should be granted to apply for an order contemplated in section 86(7)(c) of Act; and
 - (c) if required by the court, an affidavit deposed to by any person .
- (3) If the court grants leave to the consumer to apply directly to the court for an order contemplated in section 86(7)(c) of the Act, the consumer may apply for such an order in the manner and form prescribed by Rule 55 of the Magistrates' Court Rules.
- (4) An application referred to in regulation 4(3) above must be substantiated by a founding affidavit deposed to by the consumer setting out the following:
- (a) an exposition which indicates that the consumer is over-indebted;
 - (b) the relief claimed in terms of section 86(7)(c);
 - (c) the full particulars of an affected credit provider ;
 - (d) the order of the court in proceedings contemplated in regulation 4(1); and
 - (e) full particulars of the consumer.
- (5) The procedure outlined in Rule 55 of the Magistrates' Court Rules prescribing the manner and form applicable in respect of an application in the Magistrate's Court shall apply to application contemplated in regulation 3(1) above, unless the court directs otherwise.
- (6) The consumer must deliver within five (5) days from the date of the court order a copy of the court order to an affected credit provider for implementation.
- (7) An affected credit provider must comply and implement the terms of the court order within five (5) days of receiving the court order in terms of regulation 4(6) above.

SHORT TITLE AND COMMENCEMENT

5. These Regulations are called Debt Counselling Regulations and shall come into operation on the date of publication in the *Gazette*.
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