



LAYING DOWN *the liquor law*

You and the Credit Act

South Africa's new National Credit Act has been in full swing since 1 June 2007. No doubt your contact with the Act has manifested so far in your bank manager or your lawyer flapping around you trying to make sense of this bizarre but important piece of legislation.

Whether it will impact on you and your business, will largely depend on how you operate, and whether you are granting credit to your customers.

Most of you are probably trading off a payment on '30/45/60 days of statement' system and if your customers don't pay within the allotted time period you charge them interest on the overdue amount. Alternatively, you offer your consumer a discount if they pay cash or if they pay COD. What this means for you is that you are transacting by means of an 'incidental credit agreement' and further that your agreement falls within the realm of the Act.

As with all Acts, there are certain exceptions to the rule. Your transaction will not fall under the Act if your customer turned over more than R1m during the last financial year or if they have a total asset value in excess of this amount. In both these instances, you would carry on as you have before.

What the Credit Act does do, is open doors for you to delve into the credit worthiness of your customer. You may, for example, request in your standard Application for Credit that your customer give you a list of all the credit agreements that they have entered into, and which are still in force. Ask them to detail their credit provider/s, the extent of their credit facilities, their repayments per month/weekly/yearly, and the balance owing on the account/s.

If your customer is a human being (as opposed to a company, CC or trust) also ask them

to state whether they have ever applied to a debt counsellor to have themselves declared over-indebted, or whether they have alleged in court that they are over-indebted. If the answer is 'yes' to either of these questions, ask for details – which you should then pass on to your lawyer, who will help you assess whether or not you should transact with the person. The reason why a red flag should go up is because a person who has applied to a debt counsellor to have themselves declared over-indebted or has told a court that they are over-indebted can't enter a credit agreement with you, and this could mean for you that a court may judicially extend your payment terms, or oblige your consumer to make a series of smaller payments to you to defray the debt.

It is also prudent for you to have your customer state on your Application for Credit exactly how they want to be notified in the event that they default, for example, by not paying. You may have this termed as a *domicilium citandi et executandi* address in your existing documentation, which denotes a physical address at which your customer agrees to receive Notice. The Act, however, allows for Notice to be given via e-mail, which is great if you have a message acknowledgment system (and your customer actually acknowledges receipt), but not so great if you never hear from the customer again. It may be in your best interests to hand-deliver your Notice or send it by registered mail.

The reason why this information is so important, is that you can't sue your customer unless you have dispatched Notice to them that they are in default. The Act, however, goes further, obliging you to propose to them that they "refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent

that" you and your consumer "resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date" (these words are quoted directly from Section 129 of the Act - use them verbatim). If the consumer remains in default for 10 business days after receipt of the Notice - by not paying you what is due to you, or by rejecting your proposals written in italics above - you can go ahead and cancel the contract and claim the return of your goods, or claim the monies due to you. I suggest you don't delay: if the consumer decides to take your advice, everything is put on hold pending the advices of the debt counsellor, etc., and it could take ages before you see any payments. Sue first and negotiate later if it suits you.

If you are on your way to cancelling the credit agreement after your customer defaults and they thereafter pay all the monies due to you, plus your reasonable legal costs, the customer can elect to re-instate the agreement and/or re-take possession of the goods.

If you are or can run a COD business, stick strictly to COD. If you have no choice but to allow payment terms, either don't charge interest on your overdue accounts, alternatively don't offer a discount for immediate payment. Either way, make sure your credit controller is up to speed with the Act.

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