



# SPECTRIFIN

## Who should register as a Credit Provider?



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The National Credit Act requires certain categories of money lenders to register as Credit Providers in terms of the Act. The Act is, however, applicable to all Credit Providers, even those who are exempt from registration (this category has, in light of recent amendments, been drastically narrowed).

The National Credit Amendment Act came into effect on 13 March 2016.

The effect of the National Credit Amendment Act and the New Regulations:

### Who needs to register?

Any person or entity with a principal debt owed to them in terms of any credit agreement

- that is not an “Incidental Credit Agreement”;
- in excess of the threshold;

is required to register.

In determining whether a person or entity must be registered as a Credit Provider, Chapter 3 of the Act is relevant. Section 40(1) previously stated that a person or entity was required to register as a Credit Provider if:

- “that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or
- the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42( 1).”

Previously, the threshold of R500 000.00 excluded most casual lenders from having to register. However, a new determination of the threshold has been published which has reduced the threshold to Nil (R0.00).

And Section 40 has now been amended by removing the requirement of 100 Credit Agreements outstanding.

The term "Credit Agreement" is defined in terms of the broadly formulated Section 8. Essentially, when an amount is charged as interest, as a penalty for late payment or where a payment of a greater amount for a late payment is required by an agreement, the agreement will usually fall within at least one of the categories of "Credit Agreement" for purposes of the Act.

Basically, anyone with just one loan or other Credit Agreement with interest will be required to register as a Credit Provider in terms of the Act.

### **Exemptions:**

Incidental Credit Agreements – typically where interest is levied on late payment for goods or services;

Agreements where the consumer is a juristic person whose asset value or annual turnover at the time the agreement is made equals or exceeds R1000 000.00 or where the credit agreement is for an amount in excess of R250 000;

Interest or fee free – if the agreement does not provide for interest or a fee to be charged for the extension of credit; and

Agreements between persons who are not "at arm's length" – small personal loans between family members, friends etc. will most likely fall outside the terms of the Act.

### **What Happens When I Register?**

Credit Providers must pay an initial application fee and thereafter, an annual registration renewal fee which is based on the amount of principal debt due to that Provider. Once registered, Credit Providers become subject to parts of the Act, the Financial Intelligence Centre Act (FICA) and certain provincial legislation, which they would otherwise be exempt from.

The Regulator may issue compliance notices to Providers; failing to comply with these notices may incur civil or even criminal liability, resulting in a fine or in the latter case a fine and/or imprisonment.

### **Consequences of Failure to Register**

Where an unregistered Provider is required to register, the Regulator will issue a compliance notice, forcing the Provider to either discontinue providing credit or register in terms of the Act.

Failure to comply carries the same penalties as above.

Where a Credit Agreement is concluded between a consumer and a Credit Provider who is not registered and is required to be registered as such, the Act states that the Agreement is void.

Therefore, the Provider will be unable to enforce the terms of the Agreement and further, will not have a claim, based on the Agreement, for the amounts paid or credit extended.

It makes sense that persons or entities required to be registered as Credit Providers should do so.