

Smarter Consumer

By South African Law Centre

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IN THIS ISSUE

A complete explanation of the so-called 'Credit Amnesty'

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Who are we?

South African Law Centre - or SALaw, is a non-profit organisation that collects, edits and redistributes legal information that is relevant to consumers. We seek to debunk the law and legal developments, making them understandable and digestible for the average citizen.

Our material is sourced from our fellows and associate attorneys. Fellows and associates are handpicked from small to medium sized attorney firms, and are chosen on the basis that they possess valuable legal knowledge and a strong acumen for making legal information more palatable and understandable for the average citizen, or as jargon free as possible.

Fellows and associate attorneys contribute their time to producing publishable material for SALaw's publications. In return SALaw's work provides a platform on which their knowledge and expertise can be showcased to a wider audience than small firms would otherwise be exposed to.

We publish:

- SmarterConsumer, a newsletter that looks at recent legal developments, and
- The DIY Law Series, self-help tool kits to allow people to take charge of legal proceedings themselves, where the advice of an attorney may not be absolutely necessary and the process largely entails procedural and administrative work.

To nominate a fellow or associate attorney, please contact us.

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"CREDIT AMNESTY" EXPLAINED ...

Government Gazette number 37386 sets out the Removal of Adverse Consumer Information and Information relating to Paid up Judgments Regulations 2014 and these Regulations shall come into effect on 1st of April 2014. The aforementioned Regulations essentially regulate the removal of adverse consumer credit information and information relating to paid up judgments.



Information affected by the Credit Amnesty

1. Adverse consumer credit information, including:
 1. subjective adverse classifications of consumer behaviour such as "delinquent", "default", "slow paying", "absconded" or "not contactable";
 2. enforcement action taken by a credit provider, including classifications such as "handed over for collection or recovery", "legal action" or "write-off";
 3. Details and results of disputes lodged by consumers irrespective of the outcome of such disputes;
 4. Adverse payment profile information'
2. Paid up judgments relating to debt where the consumer has settled the capital amount under the judgment.

Adverse consumer credit information that is listed on a consumer's credit report on the 1st of April 2014 must be removed and all information relating to paid up judgments must be removed on an ongoing basis. Credit bureaux are obliged to remove adverse consumer credit information and information relating to paid up judgments within a maximum period of two months calculated from the 1st of April 2014.

Further, within three days of removing adverse consumer credit information and information relating to paid up judgments, the credit bureau concerned must notify all other registered credit bureaux of such removal. The credit bureaux that are accordingly notified are then obliged to remove similar adverse consumer credit information and information relating to paid up judgments.

The Implications

The Removal of Adverse Consumer Information and Information relating to Paid up Judgments" Regulations:

1. Prohibits credit providers from using adverse consumer credit information and information relating to paid up judgments that have been removed in terms of these Regulations for credit scoring and assessment;
2. Prohibits credit providers from re-submitting adverse consumer credit information and information relating to paid up judgments;
3. Will result in the removal of adverse consumer credit information held by the credit bureaux as of 1st of April 2014 but the consumer nevertheless remains liable to meet his or her obligations in respect of any credit agreement, for instance, where the adverse consumer information is removed and the account is not yet paid, the consumer may very well find that the credit provider swiftly takes judgment to secure and enforce the consumer's obligations in terms of the credit agreement. Such steps may include taking a default judgment against the consumer and subsequently applying to court for an emolument attachment order (also known as a garnishee) to secure the credit provider's claim.

Submission of adverse consumer credit information and paid up judgments post 1st April 2014

Adverse consumer credit information submitted post 1st of April 2014 will not qualify for automatic removal and presumably such adverse information shall only be removed if the consumer was not given written notice that the default would be placed on his or her credit record or the adverse consumer credit information relates to an account that has prescribed and where such consumer credit information relates to subjective classifications of consumer behaviour or enforcement action taken by the credit provider, this information will only be updated to reflect that the account is "paid up". The aforementioned is likely to be the case as the Regulations further stipulate that credit providers who have not submitted all adverse consumer credit information to the credit bureaux as of 1st of April 2014 must submit remaining adverse consumer credit information to the credit bureaux within seven days calculated from the 1st of April 2014. This requirement on the part of credit providers to submit adverse consumer credit information also extends to paid up judgments, thereby obliging credit providers to submit information regarding judgments that are paid up on or before the 1st of April 2014 to the credit bureaux within seven days of the implementation of the Regulations.

Judgments that are paid post 1st of April 2014 must be removed within seven days of receipt of such payment. The onus is on the credit provider to submit such information relating to paid up judgments.

Consumer Complaints where the Removal of Adverse Consumer Credit Information and Paid up Judgment Regulations are contravened

Complaints may be referred to the National Credit Regulator.
Physical address: 127 – 15th Road, Randjiespark, Midrand
Telephone: 0860 627 627
Email: complaints@ncr.org.za

