

PERSPECTIVES ON THE TERMINATION OF DEBT REVIEW IN TERMS OF SECTION 86(10) OF THE *NATIONAL CREDIT ACT* 34 OF 2005

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SUMMARY

The *National Credit Act* 34 of 2005 (the NCA) aims to address and prevent the over-indebtedness of consumers and to provide mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all his obligations. In this regard it provides *inter alia* for the mechanism of debt review, during which a debt counsellor reviews the debt situation of a consumer in order to determine if the consumer is over-indebted and to attempt to assist the consumer in obtaining debt relief in the form of a consensual debt re-arrangement agreement or court-ordered debt re-structuring. A pending debt review has serious consequences. It bars a consumer from entering into further credit agreements and creates a moratorium on debt enforcement by the credit provider. However, a debt review in terms of section 86 does not end or lapse automatically if a specific event fails to occur or upon the expiry of a specific time period. Before a credit provider can enforce a credit agreement that is the subject of a pending debt review, the debt review must be terminated in accordance with section 86(10) and certain other requirements must be met.

If a debt review is incorrectly terminated in accordance with section 86(10), the enforcement proceedings instituted thereafter will be unlawful and premature. In practice the debt review process – and specifically the termination thereof – are problematic as there appears to be uncertainty, as a result of the sparse provisions of section 86(10), regarding exactly when a debt review can be terminated. Uncertainty exists regarding

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the scope of a debt review and whether it should be afforded a narrow or broad interpretation, which will inevitably affect the cut-off date for termination. This article attempts to address some of these issues.

KEYWORDS

Termination; debt review; debt re-structuring; debt counselling; debt enforcement; *National Credit Act*