

TRADE ACCOUNTS & 30 DAY ACCOUNTS – ARE THESE “CREDIT AGREEMENTS” FALLING UNDER THE NATIONAL CREDIT ACT?

What do you need to do to make sure that you are able to allow your customers to “pay you off” without transgressing the law?

As a small business, it is important to know the difference between “Incidental Credit” and “normal” credit” as regulated by the National Credit Act, No 34 of 2005. If your business grants credit, then in terms of the NCA, you will have to register as a credit grantor with the National Credit regulator (the ‘NCR’). However, in certain instances you may be running “trade accounts” or allowing your consumers to pay you at the “end of the month” or “within 30 days” of rendering an invoice to them – and in these instances, you are not granting credit but you may be granting what is called: “*incidental credit*”.

Let’s look at Incidental credit under the NCA and set out the steps that you must follow in order to comply with the law in this regard.

Incidental credit is a type of credit agreement provided for in the National Credit Act. However, the NCA application to *incidental credit agreements* is limited. This is because the main aim or principal component of the transaction is *not* the provision of credit, but where the credit granted is *incidental* to the transaction.

Without going into the absolute detail of the limited application of the NCA to incidental credit agreements, it is important to note that if your business only grants incidental credit you will **not** have to register as a Credit Provider (under the National Credit Act (“NCA”) with the National Credit Regulator. But you need to follow the rules relating to incidental credit carefully.

What does “incidental” mean?

The standard definition of “incidental” means: *related to or accompanying something more important; or something that occurs by chance or without intention*. Examples of incidental credit would be trade debtors; dentists and doctors’ accounts; pharmacy accounts where a patient purchases medication from a pharmacy but only pays the amount at the end of the month in full.

In the motor industry this can also occur whether this is a business that provides vehicle services or the business is a tyre and fitment dealer selling tyres to consumers. In these instances the consumer may be rendered with an account (either for the service provided or for the items bought) and the consumer cannot immediately pay the full account as rendered. The consumer asks if he can pay this at the end of the month or over two or three months (whichever time period is agreed to) and the service provider or dealer says to the consumer:

(1) “*the purchase is 30 days interest free but if you do not pay me in full at the end of the month then I will charge interest on the account*”; or

(2) “*You may pay me in three monthly instalments but I am going to charge you interest on the account*”.

You may be getting confused now because all of this sounds just like a normal credit facility because a credit facility also says a consumer may buy goods and take them home but only pay the seller at a later stage and in installments. However, there is a difference. A credit facility intended to be just that. It intended from inception to be an agreement in terms of which credit is extended and the credit, when used, will be repaid according to a set of specific terms which would include the charging of interest and possible other charges and costs as well: then you are dealing with a credit agreement falling under the NCA.

An *incidental credit agreement* is different to the above.

So what is an incidental credit agreement under the NCA?

An incidental credit agreement arises in terms in the NCA in a number of ways. It is defined as being an instance where goods or services are rendered but with payment of the price on a postponed date

in an agreement – (just like the doctor’s accounts).

An incidental agreement does not have to be in writing. But there are certain requirements that must be met in order for it to be seen as an incidental agreement. These requirements are:

- That an account must be provided to the customer showing the price of the goods or services that have been provided **and either:**
 - (1) Payment is delayed to an agreed time in the future (and *no fee or interest* is charged *until* the customer fails to pay on the date agreed in the future) **or:**
 - (2) Two prices are applicable to the transaction - meaning a discount is given if the customer pays early. An example of this is where you charge your customer for the service provided to his vehicle and when the consumer comes to collect his car you say: “*You have to pay the full amount right now. If you pay me now instead of waiting to the end of the month then I will give you an early settlement fee of 10%. If you do not pay now, then you will have to pay the full amount at the end of the month*”. A discount is given for early settlement.

The fact that there is this discount makes this an incidental agreement. The reason for this is because a higher price is paid if the customer pays at the end of the month. This higher price results from an additional cost / charge being levied to the consumer. Early payment means a lower cost. Later payment means a higher cost. This higher cost is therefore a *charge* or *fee* (almost like a late payment fee). And the payment is late because it is not made on the date that the service was provided.

So essentially for incidental agreements to arise there must be:

- An account provided **and**
- An agreement for payment at a future date plus interest to be charged only if this is not paid on that future date **or**
- A discount is given for early payment.

Only then will you have an incidental credit agreement governed by the NCA.

When is an incidental credit agreement actually concluded?

Is it at the time when the service is rendered? Is it at the time when the goods are actually provided?

The NCA deems an incidental credit agreement to have been made 20 days after the date on which the customer is first being charged (or must pay) a “*late payment fee or interest*” or the “*higher price*”.

This means that it does not arise immediately when you tell the customer that he is able to pay, for example, within 30 days. It only happens 20 days after he fails to pay (which will be the day when the interest is then charged or the late fee is then charged or when the higher price becomes payable).

Simply put: if the price or lower price is paid on time, no additional cost (of credit) arises and therefore no incidental credit agreement arises and therefore the NCA is not applicable. But remember that you must have agreed the terms with the consumer. You cannot just unilaterally impose this upon the consumer at some later stage.

In order to protect your business you need to understand how you can avoid making an error and “converting” incidental trade debtors into credit facilities.

Let’s clarify any remaining confusion you may be feeling regarding the difference between incidental credit and a credit facility.

- (1) If an agreed *fee, charge or interest* is payable where payment for goods or services is deferred (delayed) – and the interest is payable from day 1 - it falls into the category of a “*credit facility*” and all the provisions of the NCA will be applicable (and you will have to register with the NCR as a credit provider).

- (2) If the intention was not to charge interest or a fee or other charge from day 1 – the mere fact that payment is deferred to a later date – does not create a credit facility in terms of the NCA.
- (3) But if you make a mistake by, for example, “rolling” an incidental agreement month to month to month, then you could be creating a credit facility and if you have not complied with all the provisions of the NCA you could find yourself not being able to claim the amounts outstanding and owing to you by your consumers. And this would be because you have contravened the NCA as you will have granted credit when not being registered with the NCR to do so.

How would an error like that occur?

An example of this could be where an arrangement is made to provide goods to a customer on an ongoing basis on a “30 day interest free trade account” and it is agreed that the full account must be paid by the last day of each month. If no payment is received by the last day of that month then the outstanding amount will bear interest.

At the end of that month the customer only pays half of what he owes. He therefore has to start paying interest on the remaining half. But at the same time, he asks if he could make a further purchase and pay for this 2nd purchase in full at the end of that 2nd month. So now he owes half from the 1st month (on which he is paying interest) and a full amount for the 2nd month (remember this amount is not owing on a separate 30 day interest free account) and this is due for full payment at the end of this 2nd month.

At the end of month 2, he pays the half outstanding from month 1, and only half of what is due for month 2. And again he asks to pay the balance of the 2nd month at the end of the 3rd. And again he wants to buy in month 3 and pay at the end of month 3.

Do you see the pattern?

If this is what you have been doing – then you are no longer granting 30 day interest free credit (that may become incidental credit). You would be granting “proper” credit under a revolving credit facility. This will be subject to the full provisions of the NCA and not only the limited provisions as applicable to incidental credit.

Remember there are also some more rules to follow when dealing with incidental credit or trade accounts:

1. You must send monthly statement of account; and
2. You can only charge or recover a fee, charge or interest if you had disclosed this to the consumer and the consumer had accepted the amount of the fee, charge or interest, or the manner in which it must be paid, on or before the date on which the relevant goods or services were supplied (this means you must have agreed this with the consumer beforehand); and
3. If you want to charge interest, you can only charge the amount allowed under the NCA which is currently fixed at 2% per month; and finally
4. If the consumer does pay you in full *before* the postponed date, (before the period agreed to) then you cannot charge any interest or fee.

If you do want to grant trade accounts or incidental credit - it may be prudent for you to approach us ROBERTSON TEUTEBERG KIRK (“RTK”) so that we can analyse your business processes and advise you accordingly. RTK Attorneys specialises in the National Credit Act and the Consumer Protection Act and we also act for businesses within the retail motor industry and for the RMI.

You can contact us at info@rtk.co.za or on 0216715423 and ask for Jana van Zyl, Charlie Kirk or Sam Robertson. We are able to provide you with the correct documents for your clients to complete and sign and we can provide the correct legal advice to you to ensure that your business becomes (or remains) compliant.