

# Good News for Consumers!

Instalment Finance under the  
National Credit Act (NCA)

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## The National Credit Act:

### What you should know?

WesBank embraces the NCA. We believe it is very positive for you, our clients.

The NCA is here from the 1st of June – and as part of WesBank's ongoing plain language explanations, we demystify the NCA for you. WesBank is proud of the relationship it has nurtured with both our clients and partners over the past 30 years.

The NCA is all about flexibility and transparency in financing your asset. If you find yourself in financial difficulty, we encourage you to talk to us with a view to entering into repayment arrangements. If we can't help you, you have the right to apply to a registered debt counsellor to help you in this regard.

### Will the NCA apply to me?

The NCA was passed mainly to protect the consumer (regardless of his or her personal wealth). It applies to all juristic persons (with limitations) and to all natural persons (even if they are a sole proprietor). It also applies to trusts that have 2 or fewer trustees (unless one of the trustees is itself a juristic person).

True rental agreements are not credit agreements for the purposes of the NCA. This means that a consumer entering into a true rental agreement is not governed by the NCA. Remember, however, that such a rental would have to carry a true residual value.

The NCA does not apply to large juristic persons, i.e. those that have an annual turnover or asset value in excess of R1 000 000.

### What is private leasing?

With the advent of the NCA, any private person can now enter into an asset-based credit agreement (an instalment sale) for an unrestricted period, with no deposit and with a balloon payment. Such a person can also enter into a lease agreement. However, it must be borne in mind that credit providers will implement a policy internally with regards the agreement period and balloon, in an effort to protect the consumer.

To balance the extended finance-period benefit that private leasing brings against the reckless-lending risk, credit providers may insist on a deposit. They will base this on your personal credit rating.

### What are small, intermediate, and large agreements?

- A small agreement is one with a principle debt of less than R15,000.
- An intermediate agreement is one with a principle debt of between R15 001 and R249,999.
- A large agreement is one with a principle debt in excess of R250,000.

## How do these agreements affect me?

From 1 June 2007, all credit agreements that are subject to the NCA must be NCA-compliant. For consumers who are not subject to the NCA, the terms of the sale, lease or rental agreement will be governed the Credit Agreements Act and the common law. (Examples of consumers outside the NCA are large juristic persons – i.e. juristic persons that have an asset value or turnover in excess of R1000 000 a year).

## What types of agreement are now available?

There are leases, instalment agreements and rental agreements in the asset-based forum.

## Who can apply for credit?

Everyone has a right to apply for credit. This does not mean that the credit provider has to grant it: it first has to assess your credit rating. It may turn down your credit application on a number of grounds, such as lack of affordability and prior judgments. If your credit application is declined, you have the right to request the reasons. If the application was declined on the basis of an adverse report from a credit bureau, you have the right to be advised of this and to receive the credit bureau details. You have a right under the NCA to take the listing up with the credit bureau, to challenge the listing and to have erroneous entries corrected.

Type of Person Applying for Finance	Does the NCA Apply?
Individual (the consumer)	Yes, unless the person is entering into a true rental agreement
Sole proprietor (self-employed person)	Yes, unless the person is entering into a true rental agreement
A trust with less than 3 trustees	Yes, unless one of the trustees is itself a juristic person, in which case it must be dealt with in the same vein as a trust with 3 or more trustees
A trust with 3 or more trustees with an asset value or annual turnover of less than R1 000 000.	Yes, unless the trust is entering into a large agreement or a true rental agreement. Certain of the provisions of the NCA do not apply to juristic persons.
Small juristic person (annual turnover or asset value of less than R1 000 000)	Yes, unless the juristic person is entering into a large agreement or a true rental agreement. (Note that certain of the provisions of the act do not apply to juristic persons.)
Large juristic person	No
Government	No



## Can I buy a vehicle without a driver's license?

You can only buy a vehicle if you have a valid South African driver's license. It is illegal and very risky to drive without a valid license. Any insurance you thought you had will also be invalid – the insurer will refuse to pay any claims because you were driving without a license.

## What about insurance?

The NCA allows credit providers to insist that the consumer must, as an absolute minimum, have credit insurance. This is insurance that protects the debt in the event of the motor vehicle being lost, damaged or stolen. The insurance is limited to the amount outstanding under the credit agreement as it is from time to time.

Consumers are strongly advised to consider maintaining their own comprehensive insurance as an alternative, as this is linked to the market value of the asset.

Credit providers may also insist on the consumer having credit life insurance. This is insurance that protects the debt in the event of the consumer's death, disability or retrenchment.

## How much credit can I obtain from a credit provider?

The amount of credit that you can obtain depends on your income and your expenditure. A cornerstone of the NCA is the prevention of reckless credit and over-indebtedness, so credit providers will very carefully assess what you, the consumer, can afford, to ensure you are protected from taking on too much debt. If you apply for credit that you cannot afford, your application will be rejected.

When credit providers assess a credit application they look at factors such as your credit rating, your monthly income, your expenses, the length of the agreement period, the repayment rate, the residual or balloon payment, and the deposit you may pay. Each of these factors influences the amount of credit for which you will qualify.

## What if my application for credit is refused?

In this case you have a right to request the reasons for the declination. The credit provider will provide reasons upon your request to enable you to correct the problem.

## What type of vehicle can I buy?

You can buy any vehicle in good condition, whether it is new or used, but you must buy it from a supplier that is authorized (or approved) by WesBank.

## What interest rate will I be charged?

The NCA specifies the maximum interest rate that you can be charged. Within this boundary, WesBank will determine the interest rate by assessing your credit rating and credit history (the status of your finances – how much debt you have).

### What other costs will I be liable for?

Apart from the principle debt, you will be charged:

An initiation or processing fee – a once-off fee payable in cash or as part of the principle debt (whereupon interest will be charged)

A service fee -as determined by your credit provider

Costs of optional extras – for example, the cost of an extended warranty; delivery of the vehicle; extras like a radio and air-conditioning; your first tank of petrol; credit life or credit insurance premiums; default administration costs and collection charges; and interest.

### How much deposit must I pay?

The NCA allows you to enter into a credit agreement without paying a deposit. To protect the consumer and its own risk, however, credit providers may implement policies that allow them to ask for a deposit if your personal credit profile (i.e. the state of your personal finances) justifies this.

### What documentation must I take with me when I apply for finance?

Here is a list of the documents you must bring with you. The documents need to be originals, or certified as originals.

- Your identity document.
- Your driver's license
- Your salary advice slip
- A water and lights bill or telephone bill (i.e. a utility bill). It must not be older than three months
- Details of your bond (house repayment)
- Details of your repayments for any other vehicles (if you're already paying back a vehicle, tell us how much you have to pay back monthly)
- Details of any personal loan you are paying back
- Details of any credit card repayments
- Details of any furniture store or clothing account payments you need to make
- Details of any overdraft payments you need to make
- Details of any policy or insurance repayments you make
- Details of telephone payments you regularly make
- Details of your monthly transport costs
- Details of your monthly food and entertainment costs
- Details of your monthly general maintenance costs
- Details of the monthly education costs
- Details of your monthly household expenses
- Any other payments you have to make regularly.

## **I've never bought a car before. Will I need a guarantor/surety?**

(A guarantor is a person who agrees to pay your debt for you if you can't pay it.)

You may be asked to provide some form of security, which could be in the form of a person who is willing to stand surety for you. All credit applications are open to negotiation. If you are able to offer a surety, you may be able to obtain finance more easily.

## **In whose name can I register the vehicle?**

The vehicle has to be registered in the name of the person who applies for finance (called 'the owner') and in the name of the credit provider (called 'the title-holder'). Exceptions may sometimes be made in agreement with WesBank.

## **When do I have to make my first payment to the credit provider?**

You may negotiate this with WesBank. Normally you would pay a deposit on signing the agreement (if a deposit is required). The next payment would be within 45 days of the signing of the agreement.

## **Can I change my due date?**

(This is the date on which you must make a payment every month)

Yes -you can call WesBank and ask for a date change. Your telephone call will be recorded and you will receive a copy of your request in writing within 20 business days.

## **Will I own the vehicle at the end of the agreement?**

In the case of an instalment sale, YES - ownership passes to you automatically at the end of the agreement once you have paid all amounts you owe.

In the case of a lease, YES - ownership passes to you if you pay the nominal amount and meet the other conditions set out in the lease agreement.

In the case of a rental agreement, NO – you must return the vehicle to the credit provider at the end of the agreement.

## **If the vehicle is stolen and not recovered can I get another vehicle**

(i.e. substitute the stolen vehicle)?

Yes, provided all parties (WesBank, the motor dealer, the insurance company and you) agree to substitute the vehicle, and provided the vehicle is credit insured; failing which you are responsible.



**If I get a new car and then can't pay for it, what should I do?**

Contact WesBank as soon as possible and tell us about your problems. If we cannot help you to resolve your problem by agreeing to a repayment arrangement, you have the right to go to a debt counsellor.

**Can I hand the asset back at any stage, and if so, what are the consequences?**

Yes -if you no longer want the vehicle for any reason (be it financial difficulty or otherwise) you may hand it back to your credit provider at any time. Your credit provider will value the vehicle and tell you what the valuation is. If you are not in arrears, you may then change your mind and re-take possession of the vehicle.

If you are in arrears, the consequence is that you must pay these arrears before re-taking possession of the vehicle. Otherwise your credit provider will sell the vehicle. If the sale of the vehicle does not achieve enough money to settle your account, you will have to pay your credit provider the shortfall, failing which your credit provider could take a judgment against you. This could negatively affect your credit rating.

**Can I pay off my agreement (settle) earlier than planned?**

Yes -you may settle your agreement early at any time.

If your agreement had a principle debt of less than R249,999.99 when you entered into it, you may pay your credit provider the outstanding capital, plus any arrear interest and outstanding costs. If your agreement had a principle debt of R250 000.00 or more, you can give your credit provider 90 days' notice in lieu of a settlement charge.

**If I choose a vehicle and then find I am not happy with it, can I return it with no charge?**

Yes – only if you signed the credit agreement off the registered business premises of your credit provider. In this case you have 5 days (the 'cooling-off period') to return the vehicle. You will be charged for the use of the vehicle during the cooling-off period.

(Motor dealer and credit provider premises are seen as registered business premises. As such, the 5-day cooling-off period will not apply.)

**Can I pay extra every month so that I pay off the vehicle faster?**

Yes - you will pay less interest overall. (Note that you can't take back the extra payment later.)



### **How often will I receive statements?**

You may choose to get your statement every month, every 2 months or every 3 months, in email, fax or post format.

### **When I change my address what must I do?**

You must inform WesBank of the change either by registered mail or email; or you can visit WesBank in person and give us your change of address. When you change your address you need to give us a copy of proof of your identity and your physical address, so please bring this proof with you or enclose it in your notification.

### **Will my personal information be kept confidential?**

Absolutely. The NCA is very specific about the protection of your personal information. Only you can give permission to for the distribution of your details to other people.

### **Can I waive my rights under the NCA?**

No - you may not sign any document that takes away your rights, or any documentation that is incomplete or blank.

## Asset-Based Credit Agreements

### Rental agreement

A rental agreement is a type of asset finance agreement where you are buying the use of an asset. You will never own the asset. Rental agreements often have a true residual value. This is the amount that WesBank thinks the asset will be worth at the end of the credit agreement. It represents the part of the capital that you do not have to repay the bank, and makes the rental more affordable.

At the end of the credit agreement you must return the asset to WesBank. We will sell it to recover the amount of the residual value.

A drawback with a rental is that, whilst the residual value reduces the amount that you pay per month, you are liable for returning the asset to the credit provider in 'good condition. If the asset is a vehicle, and you exceed any agreed mileage restrictions, or the vehicle is not deemed to be in 'good condition', you will be responsible for paying any restoration and excess mileage costs.

### Here is an example:

A R105, 527 (excl. VAT) vehicle, the rental cost of which is R2276 per month (excl. VAT), and which is rented over 54 months with a residual value of 22% and a kilometre limit of 100 000km, means that:

- You will pay R2276 (excl. VAT) per month.
- You must return the car to the credit provider at the end of the agreement.
- You must rent the vehicle for 54 months.
- If you travel over 100 000 kilometres in the vehicle, you must pay the credit provider a Rand-per-kilometre cost for the excess kilometres.
- If the vehicle is in poor condition, you must pay the credit provider restoration costs.

### In summary:

The credit provider has bought the vehicle for R105, 537 (excl. VAT). At the end of the credit agreement you will have repaid the credit provider R82, 311 plus interest and VAT, and the credit provider has estimated that it can sell the car for R23, 216 (excl. VAT).

## Instalment sale agreement / instalment agreement

Under an instalment sale agreement, the consumer becomes owner of the asset at the end of the contract, provided all due amounts under the agreement have been paid. In the case of motor vehicles, you will have to contact WesBank (or we will contact you), to initiate the change of title-holder and re-register the vehicle in your name.

Instalment agreements do not offer residuals (see glossary), but may have a balloon payment (see glossary below). This would make the instalment more affordable. Alternatively, instalment payments can be structured equally over the entire agreement period.

### Here is an example:

A vehicle costing R120, 300, the monthly instalment of which is R2595 per month, and which you are buying over a period of 54 months with a balloon payment of R26, 466, means that:

- You will pay R2595 per month for 54 months.
- You must pay the credit provider R26, 466 in the 54th month.
- You must have the vehicle registered in your own name at the end of the credit agreement, after you have obtained the change of ownership papers from WesBank.

If you choose not to have a balloon payment, your monthly instalments would be higher. For example, you would have 54 equal instalments of R2595 and a final instalment of R2595. Once you have paid all of these amounts, you become the owner of the vehicle.

### Lease agreements

Under these agreements you lease an asset with a view to returning it at the end of the credit agreement, or to taking ownership of it. Ownership is subject to the conditions set out in the credit agreement, which include payment of all instalments due and payment of a nominal ownership amount.

In the case of electing to buy a motor vehicle, you will have to contact WesBank (or we will contact you), to initiate change of title-holder and re-register the vehicle in your name.

There is also the option of refinancing the nominal amount, provided at the time of your application for finance, you qualify for credit.



## Useful Terms and Jargon

**Credit agreements (in relation to asset sales)** When WesBank enters into a credit agreement with you, we place an asset in your possession. You either buy the asset by paying it off, or you lease it and pay monthly for the lease. In both cases you also pay interest or a fee. Examples of these agreements are instalment sale and lease agreements.

**Credit provider** The credit provider (e.g. WesBank) is the party that places the asset in your possession. Credit providers include banks and asset financiers.

**Credit rating or credit worthiness** This is a reference to the state of your credit and your credit history. The way you conduct your account can positively or negatively affect your credit rating at the credit bureau.

**Guarantor / surety** The surety is the person who undertakes to step into your shoes and repay your debt to the credit provider if you cannot do so. In other words, this is the person that stands surety for you. These surety agreements are also subject to the NCA.

**Owner** An owner is a person who has the beneficial use of an asset, but does not have the right to sell or transfer ownership until the finance agreement has been fully repaid. (Until such time, the titleholder has full rights to the vehicle – see definition below.) As a consumer buying a vehicle on an asset-based finance agreement, you become registered at the licensing department as the owner of the vehicle.

**Title-holder** The title-holder (also known as the credit provider) has full rights to the vehicle until the consumer (or owner) has paid all the outstanding instalments.

**Residual / Residual Value** A residual is a finance option applicable to rental agreements only. It is designed to make your monthly instalments more affordable, and refers to a lump-sum amount due at the end of the contract. As the credit provider carries the risk for this amount, in the case of motor vehicles your mileage (usage) will be specified to a maximum limit over the term of the agreement. The residual value is the credit provider's estimate of what the vehicle should be worth at the end of the contract period. If you took a residual and are now returning the vehicle to the credit provider, any costs for restoring the vehicle to good condition will be payable by you.

**Balloon / Balloon Payment** This is similar to a residual. A balloon payment reduces your monthly repayment and makes the vehicle more affordable. At the end of the agreement period, you are required to pay a lump sum to the bank. This lump sum is called the balloon. Paying the balloon amount to the bank is entirely your responsibility. You need to be certain that you will be able to sell the vehicle or trade it in at the end of the period to make up this payment. You could also ask the bank to re-finance the outstanding amount (balloon) - i.e. you could apply to borrow more money from the bank.

**Juristic person** A juristic person is an entity created by people. It is not a natural person. Examples for the purpose of the NCA are close corporations, companies, trusts with more than 3 trustees (or with less than 3 trustees if one of them is a juristic person), partnerships, clubs and any association of persons, whether formalised into a formal juristic entity or not.

**Due date** This is the date on which you elect to make your monthly payment to WesBank under the credit agreement.

**Being in arrears** A consumer goes into arrears when he or she misses a payment that is due and owing. The missed payments are called arrears. Arrears will attract additional interest and can have a negative impact on the consumer's payment record at the credit bureau. This in turn will negatively affect the consumer's credit rating.

**Principle debt** The principal debt is the amount that is deferred under the credit agreement. That principal debt is used to calculate the interest.

**Initiation fee or processing fee** This is a fee that the credit provider may charge the consumer for setting up and later concluding the credit agreement. Consumers must be given the option of paying this fee up-front in cash, or adding it to the principle debt, in which case it will attract interest.

**Service fee** As it pertains to asset-based agreements, this is a fee that is chargeable on a monthly or annual basis for the routine administration of the account.

**Interest and interest rate** Interest is a charge added to the principle debt and payable by the consumer. It is determined according to a rate such as a prime rate. Interest rates can be fixed or linked. If the rate is fixed, the instalments under the agreement will not vary. A linked rate agreement on the other hand, is linked to the reference rate. This means the instalments can increase or decrease as the prime rate or reference rate moves.

Interested in knowing more?

Call us on

0861 111 577

E-mail us on

[ncainfo@wesbank.co.za](mailto:ncainfo@wesbank.co.za)