

Consumer Credit Agreements

There are a variety of ways in which retailers make high priced items affordable – you can choose to ‘buy now and pay later’, or spread the cost in monthly instalments, or both. You may choose to get an independent loan or finance it through a credit card. Whatever method you choose, you will be party to a consumer credit agreement. Credit agreements are regulated by the Consumer Credit Act, 2016, which has important points for in terms of how the information is presented and your rights with regard to the agreement.

What is a credit agreement?

A credit agreement as per Section 20 (1) of the Consumer Credit Act, 2016 is an agreement where the credit provider agrees to grant a credit of any type requested by a consumer and the consumer accepts that credit from the credit provider.

Classification of credit agreements

Credit agreements may be classified as developmental or commercial credit agreement. For the purpose of this article we will discuss commercial credit agreements only.

Commercial Credit Agreement

Under commercial credit agreements there are certain differentiations and they are;

1. Hire purchase (HP) agreements - Under this arrangement, you will pay monthly instalments to hire the item, but will not legally own it until the final instalment has been paid. This type of agreement may also give you the option to buy with a lump sum at the end of the period, such as with ‘balloon payments’ on car finance.
2. Mortgage loan- this an agreement by which a creditor lends money in

exchange for taking title of the debtor's property, usually with the condition that the conveyance of title becomes void upon the payment of the debt.

3. Pawn transaction / discount transaction means an agreement, irrespective of its form, in terms of which (a) goods or services are to be provided to a consumer over a period of time; and (b) more than one price may be quoted for the goods or service, the lower price being applicable if the account is paid on or before a determined date, and a higher price or prices being applicable if the price is paid after that date, or is paid periodically during the period.
4. Credit facility - an arrangement between a bank and a business that allows the business to borrow a particular amount of money for different purposes for a particular period of time.

Pre – contractual information

The Consumer Credit Act, 2016 Section 24 (1) makes it mandatory for a credit provider to issue a quote to a consumer before a credit agreement is entered into. This is for you as a consumer to see exactly what you will end up paying and so that you can compare the costs of different credit agreements, you must pay particular attention or request your credit provider to clearly present and explain key financial information relating to your agreement which may include;

- The loan amount
- The charge for credit
- The credit period
- The interest rate
- The total amount payable
- The monthly instalments
- The Annual Percentage Rate (APR)
- Any other fees or charges - eg for missing a payment

Rescission of a credit agreement

A consumer who has entered into a credit agreement is entitled to a cooling off period of 5 days. A cooling off period is time allowed to enable the consumer to cancel an agreement without incurring any penalty. Section 58 (1) of the Consumer Credit Act, 2016 states that a consumer may rescind a credit agreement within five days after the date on which the agreement was signed by the consumer, by-

- a) Delivering a notice in the prescribed manner to the credit provider; and
- b) Tendering the return of any money or goods, or paying in full for any services, received by the consumer in respect of the agreement.

Terminating a credit agreement

You can terminate a credit agreement at any time by paying the settlement amount to the credit provider with or without advance notice to the credit provider. Section 97 (2) of the Consumer Credit Act, 2016 states that the amount required to settle a credit agreement is the total of the following amounts-

- a) The unpaid balance of the principal debt at that time;
- b) The unpaid interest charges and all other fees save for early termination charge payable by the consumer to the credit provider up to the early settlement date;
- c) In the case of a mortgage agreement, a credit provider shall not demand an early termination charge.

For hire purchase agreement, secured loan, you can terminate the credit agreement by-

- a) Surrendering to the credit provider the goods that are the subject of that agreement in accordance with Section 99; and
- b) Paying to the credit provider any remaining accordance with section 99 (7)

Early repayment

The Consumer Credit Act, 2016 gives you the right to repay your debt early and complete the payments ahead of time. Section 98 (1) states that at any time, without notice or penalty, a consumer may prepay any amount owed to a credit provider under a credit agreement. A credit provider is duly expected in Section 98 (2) of the Act to accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due.

Defaulting on payments

Consumers need to be aware of their obligations and risks of defaulting in credit agreements. The notice you receive will tell you how behind you are in your payments, what action you must take and when, and whether any additional sums of money (default sums) have been incurred as a result. It also informs you of the consequences of ignoring the notice and what the credit provider is entitled to do. This is corroborated by the Consumer Credit Act, 2016 as stated below.

If you have missed (defaulted on) payments (i.e. you are in arrears), the credit provider shall in terms of Section 100 (1) of the Consumer Credit Act, 2016, deliver to you a notice in writing drawing your attention to the default and propose, in the case of inability to pay, that the consumer refer the credit agreement to a debt counsellor with the intent that the parties develop and agree on a plan to bring the payments under the agreement up to date or, in the case of any other dispute under the agreement, refer the matter to the ombudsman.

For more questions or enquiries, contact the Financial Services Regulatory Authority at 2 406 8000 or email info@fsra.co.sz