

The Role of Debt Counsellors

The Consumer Credit Act of 2016 empowers the Financial Services Regulatory Authority (the Authority) to license debt counsellors. A debt counsellor can be a company or body corporate or natural person licensed by the Authority subject to section 61 and 62 of the Consumer Credit Act of 2016 engage in the business of;

- a) Evaluating a consumer for over-indebtedness;
- b) Assisting a consumer to achieve a re-arrangement of one or more obligations under a credit agreement; and
- c) Negotiating on behalf of a consumer with a credit provider on re-payment terms under a credit agreement.

What is over-indebtedness?

According to section 81 (2) of the Consumer Credit Act of 2016, 'A consumer is over-indebted if the gravity of available information at the time a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, having regard to the-

- (a) financial means, prospects and obligations; and
- (b) probable propensity to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, as indicated by the history of debt repayment of the consumer.

Declaration of over-indebtedness

As per the provisions of the Consumer Credit Act of 2016, the court, a juristic person or a debt counsellor may initiate an application to declare that a consumer be declared over-indebted.

In the event that consumers realise that they are over indebted they should approach the Debt Counsellor to be declared over-indebted. The Debt Counsellor will assess the consumer's financial situation and their credit responsibilities, after which a recommendation that the consumer is to be declared over-indebted will be made. This process will protect both the consumer from possible legal action by a credit provider and assist the consumer with negotiations with the credit providers to ultimately rectify the consumer's over-indebtedness.

Application for a debt review

A consumer may not make an application for a debt review or to be declared over-indebted if that application is being made in respect of a credit agreement which the credit provider has approached the court for an order to enforce it or the consumer did not respond or has responded by rejecting a notice made in writing drawing his or her attention to a default and proposal to refer the credit agreement to a debt counsellor. Further, an application for declaration of over-indebtedness cannot be made when the credit agreement is for a priority debt as elected by the consumer, in consultation with a debt counsellor.

The mere application for debt review does not mean a consumer will therefore be in effect

declared over-indebted. The debt counsellor to which the application for debt review is being made, can reject it if a determination made in a prescribed manner and within a prescribed time concludes that the consumer is not over-indebted or the credit agreement appear to be reckless.

Participation of consumer in the debt review process

A consumer who have applied for a declaration of over-indebtedness is expected as per the provisions of the Consumer Credit Act, 2016 to comply with any reasonable request by the debt counsellor to facilitate the evaluation of the state of indebtedness of the consumer and the prospects for responsible debt re-arrangement and participate in good faith in the review and in any negotiations designed to result in a responsible debt re-arrangement.

Effect of over-indebtedness

A debt counsellor who concludes that the consumer is over-indebted has to negotiate for an agreement between the consumer and the respective credit providers to voluntarily consider a plan of debt re-arrangement. If an agreement is reached between the consumer and the credit provider the debt counsellor has to then record a binding plan of debt re-arrangement in a prescribed manner and a copy of the plan has to be submitted to the Authority.

Effect of debt review

A consumer as per the provisions of the Consumer Credit Act of 2016 who has filed an application for debt review or who has alleged in court that they are over-indebted, shall not incur any further charges under a credit agreement or enter into any further credit agreement other than a consolidation agreement.

A credit agreement entered into with a consumer who has voluntarily agreed on a

plan of debt re-arrangement or in respect of whom a court has ordered re-arranging of the consumers obligations and that re-arrangement agreement still subsists the new credit agreement may be declared to be reckless.

The debt review process

A normal debt review process can take different forms but it will most likely be structured in the following process if it has been initiated by the consumer.

Step 1. You approach a debt counsellor for a declaration of over-indebtedness.

Step 2. Debt counsellor will evaluate if consumer can be declared over-indebted.

Step 3. If the consumer application for over-indebtedness is successful, the debt counsellor would then notify credit providers and the credit bureau.

Step 4. The consumer will not incur any further debt.

Step 6. A debt re-arrangement plan will be made and agreed upon by the three parties involved.

This article is meant for financial literacy purposes only and should not be construed as financial advice. For more information, questions or enquiries of debt counsellors please contact us through email at stakeholder@fsra.co.sz or call 2 406 8000.