

SOUTH AFRICAN CREDIT BUREAU ASSOCIATION CODE OF CONDUCT

**LAWS AND INTERNATIONAL BEST REGULATORY PRACTICE PRINCIPLES
APPLICABLE TO CREDIT BUREAUS, WHICH THIS CODE TAKES COGNISANCE OF:**

The National Credit Act No. 34 of 2005 and Regulations thereto, as amended ("the NCA);

The Promotion of Access to Information Act ("PAIA);

The Financial Intelligence Centre Act ("FICA");

Policy Directives issued by the Credit Bureau Association; and

EU General Data Protection Regulations.

The CBA has established a Code of Conduct relating to credit bureau obligations under the Protection of Personal Information Act, No 4 of 2013, which can be found on the CBA's website.

Once POPIA becomes effective, the CBA POPIA Code will prevail in event of a conflict between the POPIA Code and this Code of Conduct.

DEFINITIONS

- a. "Credit bureau" means an entity required to be registered in terms of section 43 of the NCA who procures, records, processes, maintains and makes available to any person, natural or juristic consumer credit information as defined in section 70(1) of the NCA. It also refers to a database of information on borrowers in a credit market
- b. "Consumer credit information" or "credit information" shall mean all categories of data falling within the definition of consumer credit information in section 70(1) of the NCA
- c. "Consumer" or "data subject" means a natural person or a juristic person to whom the consumer credit information and/or personal information relates, where the juristic entity has an annual turnover or asset value of below R1million
- d. "Consumer credit report" or "credit report" means any written, oral or other communication of any factual data held by a credit bureau, "concerning" or about that consumer and which is displayed to other parties
- e. "Credit providers" means those persons who are registered with the NCR to provide credit to consumers
- f. "Data breach" means a confirmed incident in which sensitive, confidential or otherwise protected data has been accessed and or disclosed in an unauthorised manner
- g. "Data contributors" means persons, companies or partnerships, which enter into credit agreements or payment agreements, that is, credit providers or data providers, who access consumer credit information from a credit bureau and supply consumer credit information to a credit bureau
- h. "Data providers" means those persons who provides data to credit bureaus in accordance with the Guideline to Regulation 19 (13), as issued by the NCR
- i. "NCR" means the National Credit Regulator
- j. "NCA" means the National Credit Act, 34 of 2005 and the Regulations pursuant thereto, as amended from time to time
- k. "Payment profile information" means the payment history and financial information relating to a debt or credit transaction, including relevant payment dates, both negative and positive information and/or signs depicting action taken in respect of such debit or credit transaction, which provides information on how a consumer is conducting a credit agreement or payment of an account
- l. "Person" means any individual, partnership, close corporation, trust, estate, co-operative, association, government or governmental subdivision or agency or other entity.

TABLE OF CONTENTS

- 1. INTRODUCTION**
- 2. OBJECTS OF THE CREDIT BUREAU ASSOCIATION**
- 3. APPLICABILITY OF THE CODE**
- 4. DATA GOVERNANCE PRINCIPLES**
 - 4.1 Lawfulness, fairness and transparency
 - 4.2 Purpose limitation
 - 4.3 Data minimisation
 - 4.4 Accuracy
 - 4.5 Storage limitation
 - 4.6 Integrity and confidentiality (security)
 - 4.7 Accountability
 - 4.8 Role of consent of a consumer
- 5. CONSUMER RIGHTS IN THE NATIONAL CREDIT ACT**
- 6. POLICY DIRECTIVES**
- 7. BREACH OF THE CODE**
- 8. DISCIPLINARY ACTION**
- 9. DATE OF COMMENCEMENT OF THE CODE**
- 10. REVIEW OF THE CODE**

1. INTRODUCTION

The credit information system, of which credit bureaus are an important aspect, is a vital necessity within a well-functioning credit market. Credit bureaus hold data that assist a credit provider/data provider in assessing the creditworthiness of a consumer before granting credit or entering into a payment obligation with that consumer. Credit bureaus make available comprehensive information on the payment behaviour of consumers by collating public records and payment profile information in respect of credit agreements and payment obligations to help data contributors identify consumers in a manner that assists them improve risk management, enables the increase or decrease of lending in the market, manage default rates and enables consumers to develop their personal credit profiles. Credit Bureaus also assist in preventing consumers from obtaining credit from multiple credit providers at the same time, thereby becoming over-indebted, by ensuring that at the time of assessment of a credit application the credit provider is aware of the applicant's total level of indebtedness which may not necessarily be disclosed to the credit provider by the consumer.

Not only do credit bureaus provide information that assists in the assessment of creditworthiness, they also play an important role in acting as a "consumer discipline mechanism", as consumers are less inclined to default if they are aware that this default will affect their future applications for credit. If there were no consequence to consumer defaults, lenders would increase interest rates in anticipation of defaults. Advanced scoring systems/statistical models for risk assessment which categorizes consumers according to risk classes, prevents data contributors from making bad lending decisions or turning away profitable business by assisting them in assessing the probability of default. Score cards which indicate the probability of repayment allows the data contributor, depending on the risk it is willing to accept, to determine a "cut-off" level. It is in the interest of both consumers and credit providers to have the level of bad debt at economically viable levels, with credit bureaus assisting with the assessment of creditworthiness, providing advanced scoring systems and data which data contributors incorporate into their approval processes, and acting as a discipline mechanism for consumers, to reduce bad debt.

Credit decisions should be made with the best possible information available to broaden access, which is essential to the growth of an economy.

Moreover, it is particularly essential in a developing country that the financial infrastructure makes provision for comprehensive data provided by credit bureaus, particularly because credit is used to finance the most basic needs, from housing, vehicle finance to clothing, education and even food.

Credit providers and data providers, as well as credit bureaus are important role players in the credit information industry. Credit and data providers collect, share and use the information which is processed, stored and kept safe by the credit bureaus. As custodians of this data, credit bureaus recognize that one of their primary responsibilities is to reasonably maintain its accuracy and appropriate use within the laws and regulations of South Africa. Data management policies implemented by credit bureaus impose the strictest security, data protection and quality control procedures.

This Code applies to all credit bureaus who are members of the Credit Bureau Association ("the CBA), who shall be obliged to agree to be bound by the Code.

2. OBJECTS OF THE CREDIT BUREAU ASSOCIATION

- 2.1 To create a framework of standards and policies that protect consumer credit information in South Africa, aligning these standards and policies with other applicable legislation to ensure fair and good practice within the consumer credit industry.
- 2.2 To promote the effective management of credit in South Africa through the information and education that credit bureaus provide to both business and consumers.
- 2.3 To create a platform for members to discuss:
 - 2.3.1 the nature and quality of information recorded, stored and reported;
 - 2.3.2 explore opportunities that will influence the sustainability of the credit industry;
 - 2.3.3 adherence to the CBA Constitution, policies and directives.
- 2.4 To liaise and consult with, and to make representations to government authorities, data contributor associations or any other body with a view to ensuring that the role of the CBA and the credit bureaus, in ensuring a sustainable and well-functioning credit information system in South Africa, is clearly positioned.

3. APPLICABILITY OF THE CODE

3.1 The Code shall apply to, and be adhered to by, all credit bureaus who are members of the CBA, but nothing in this Code shall prevent any member from adhering to higher standards than those referred to in this Code.

3.2 Credit bureaus shall –

- Uphold the Constitution of the Republic of South Africa and the principles and values enshrined in the Constitution, and without limiting the generality of these principles and values shall not, in the course of their business activities, discriminate against any person on any grounds prohibited in the Constitution;
- Adhere to the provisions of the NCA and any other legislation applicable to them;
- Refrain from doing anything in a manner prohibited by law or by the Code of Conduct, including acting in an anti-competitive manner or in contravention of the Competition Act;
- Refrain from doing anything which could or might bring the CBA, other credit bureaus or the industry, into disrepute; and
- Comply with the provisions of this Code of Conduct and any other code applicable to them, and with the laws and regulations applicable to them.

4. DATA PROTECTION PRINCIPLES

The data protection principles embodied in this Code include the 7 key principles of the European Union General Data Protection Regulations (GDPR), which are broadly similar to the principles in the UK Data Protection Act, as well as international best practice in terms of data protection and its role in the credit bureau environment. This Code demonstrates how these principles are enshrined within the NCA and the credit bureau compliance processes.

4.1 Lawfulness, fairness and transparency: Data is collected, processed and used in a lawful manner that does not infringe the privacy of the data subject

Lawfulness

- Credit bureaus process the categories of consumer credit information as defined in Section 70(1) of the NCA in relation to consumers and juristics; as well as information falling within the ambit of Regulation 18(6).

- Credit bureaus must not process sensitive personal data such as racial, ethnic, political opinions, religious and similar beliefs, individual membership of trade unions, data on physical or mental health and conditions, sexual orientation, criminal offences committed and any proceedings for any offence committed or alleged to have been committed.

Credit bureaus are required to:

- Accept the filing of consumer credit information from credit providers and authorised data sources only;
- Take reasonable steps to verify the accuracy of the information reported to it;
- Display the information for the period prescribed in Regulation 17 of the NCA;
- Expunge information not permitted or which is required to be removed; and
- Issue a credit report to any person who requires it for a prescribed purpose or for a purpose contemplated in the NCA or as instructed by the consumer.

Fairness and transparency

Credit bureaus are required to process data by law:

- a) Regulation 19 (13) of the NCA requires all credit providers and data providers accessing payment profile information held on a credit bureau to upload information relating to all credit agreements or agreements for provision of goods or services / non-credit related agreements to the credit bureaus;
- b) S70 of the NCA requires credit bureaus to process credit information and issue credit reports. A consumer may only object to the processing of personal information if legislation does not impose it – for credit providers and certain data providers this processing is imposed by law.

Credit providers are lawfully obligated to collect and provide credit information on a data subject and provide such information to a credit bureau. Data providers are obliged to obtain the consent of the data subject, where consent is required by law prior to providing this information to a credit bureau. Credit bureaus will provide sufficient information on their websites to enable a data subject to understand the reason why their personal information is collected, stored, processed and accessed.

4.2 Purpose limitation

Data held on a credit bureau is collected in terms of the NCA for a specific and defined purpose. Personal information held on the records of the credit bureau is stored and accessed by parties in accordance with the provisions of Regulation 18 (4), Section 68(1) and Section 70(2)(g) of the NCA or on the express instruction of the consumer.

The main purpose of collection of the data is to provide a platform where all the credit agreements and/or payment obligations of a consumer are held and where persons can access this information in order to assess whether a consumer should be provided with credit or with goods or services on credit. Data from individual credit/data providers are provided in respect of each payment obligation or credit agreement that a data subject enters into.

The information relating to credit agreements is provided by credit providers in accordance with a lawful obligation (Regulation 19 (13)) and non-credit related payment obligations are provided voluntarily by data providers where the consent of the data subject has been obtained. All data is processed to provide a single picture of the data subject in accordance with the purpose of collection.

Regulation 19 (13) and the Guidelines issued pursuant thereto ("the Guidelines"), make it mandatory for all credit providers to provide information on their credit agreements with consumers, and to provide monthly updates in relation to the manner in which consumers are meeting their monthly credit instalments. In addition, should a data provider wish to access the payment profile information of a consumer, the data provider is obliged, in terms of Guidelines issued by the National Credit Regulator, to provide information in relation to their payment agreements with consumers, and also to provide monthly updates as to how these consumers are meeting their payment obligations.

One of the primary purposes for collecting and reporting consumer credit information is to facilitate the sharing of consumer credit information among lenders. Credit bureaus facilitate the mandatory exchange of information by credit providers, enabling credit providers to make credit decisions with the best possible information.

Information sharing enables a data contributor to more accurately quantify the risk that the data contributor will be assuming, and to distinguish between a risky consumer and a good risk consumer. This enables credit providers to charge differing interest rates for greater risk, if they choose to assume such risk. If lenders are unable to quantify the risk they are taking on, and to distinguish bad borrowers from good borrowers, the interest rate which all borrowers will be charged will be determined by the combined experience of the lenders, which will lead to good borrowers being penalized at the expense of bad borrowers. As Regulation 23A of the NCA requires all credit providers to do an affordability assessment and must consider, amongst others, the consumer's debt repayment history under credit agreements prior to entering into credit agreements, information sharing is critical to a well-functioning credit information system.

4.3 Data Minimization: Personal information processed is to be adequate, relevant and not excessive

S70(1) of the NCA and Regulation 18(6) stipulates the categories of information that may be held by a credit bureau. The Guideline to Regulation 19 (13) sets out the fields of information that are provided by each credit/data provider, and which information is then uploaded to the credit bureaus. Credit bureaus must process personal information in accordance with S70(1), Regulation 18(6) and the Guideline.

4.4 Accuracy

Credit bureaus are not the primary source of data, but rather store the data provided by credit and data providers. There is an obligation: a) in terms of Regulation 19 (3) for credit/data providers to provide accurate, up-to-date, relevant, complete, valid and not duplicated information to credit bureaus; and b) in terms of S70 (2) of the NCA for credit bureaus to take reasonable steps to verify the accuracy of any credit information provided to it.

There are, in addition, specific rules set out in Regulation 19 (4) which pertain to the data that must be complied with by credit/data providers, for example: a) no party may submit information to a credit bureau that has prescribed; b) no party may submit adverse information to a credit bureau unless the data subject has missed 3 consecutive payment instalments; c) no party may submit adverse information to the credit bureau without first providing a 20 day notice of its intention to the data subject; d) no party may submit adverse information to a credit bureau if any arrears owing on an account are settled

within the notice period set out in c) above. The data received by credit bureaus is subject to validation rules and checks to ensure that these obligations are met.

To ensure that the data submitted to bureaus by data suppliers is accurate, up-to-date, relevant, complete, valid and not duplicated, credit bureaus have established:

4.4.1 processes and systems to ensure that data that is inaccurate or does not comply with the specified layout submission for data, which contains rules pertaining to credit bureau responsibilities, is rejected and not loaded onto the credit bureau;

4.4.2 hold regular meetings with the suppliers of data to discuss data quality with a view to ensuring the highest standards of data quality are adhered to.

4.5 Storage Limitation

Credit bureaus hold records of all documents relating to disputes per Regulation 55(1)(d) of the NCA for the period required in terms of Regulation 55(2) of the NCA and in terms of the Companies Act, 71 of 2008 for audit purposes. In addition, credit bureaus are required to display and use consumer credit information in accordance with the time periods set out in Regulation 17 of the NCA, read together with Section 71A of the NCA.

Credit bureaus have:

- a) Systems and procedures in place to ensure that the data held is automatically removed from display once the time periods set out in Regulation 17 expire;
- b) Storage mechanisms to ensure that their documents relating to disputes are retained for the periods set out in Regulation 55(2) of the NCA.

Having regard to the basic tenet of psychology that the best predictor of future behaviour is past behaviour, credit bureaus provide detailed information on a consumer's past debt repayment history; however, in order to give consumers an incentive to work on repairing their credit it is necessary to put a limit on the time that data may be displayed for. Credit Bureaus must ensure, taking into account cyclical economic trends, that sufficient time elapses before removing from display essential risk related data. This obligation must be balanced against the interests of persons who should not be prejudiced by the displaying of obsolete data. The maximum prescribed data "display periods" applicable to consumer credit information reported by credit bureaus are set out in Regulation 17 of the NCA.

The amendments to the NCA promulgated in 2015, require credit bureaus to remove negative information held on a consumer's profile when the outstanding debt is paid, providing for greater incentive for consumers to repair their credit profiles after a period when they were in arrears.

When a credit bureau receives a certified true copy of a clearance certificate from a registered debt counsellor in respect of debt re-arrangement, in terms of the NCA and various debt counselling circulars issued by the NCR, credit bureau must expunge from its records:

- the fact that the consumer was subject to a debt re-arrangement order/agreement;
- any default information that may have precipitated the debt re-arrangement or been considered in making the debt re-arrangement order/agreement.

4.6 Integrity and Confidentiality

Security measures taken by credit bureaus: Credit bureaus undergo stringent requirements to ensure that they have IT systems in place with adequate security processes and procedures at the time of registration as a credit bureau.

Regulation 18(1) of the Regulations in terms of the NCA makes provision for the following security measures to be taken by a credit bureau in protecting personal consumer credit information, which it maintains, and reports:

- Consumer credit information must be collected, processed and distributed in a manner that ensures that the records remain confidential and secure;
- Consumer credit information must be protected against, accidental, unlawful destruction and unlawful intrusion;
- Consumer credit information must be protected against loss and wrongful alteration; and
- Consumer credit information must be protected against unauthorized disclosure and access by an unauthorized person.

Credit bureaus must have generally accepted Information security practices and procedures in place to ensure security of their data and systems, taking into account: (a) (i) the latest state of technology; (ii) the costs of implementation; (iii) the risks entailed in the processing of consumer credit information; (iv) and the nature of the consumer credit information held.

Credit bureaus must, in accordance with compliance requirements from the National Credit Regulator, undergo an annual compliance and IT systems audit to ensure that their security measures are appropriate considering the nature of the sensitive information held by them.

Credit information sent to credit bureaus by credit and data providers, is sent to a Data Transmission Hub ("DTH"), in which the data is encrypted and secure (there is no access to the data in the DTH). The uploading of this data to credit bureaus is managed by way of security keys which are updated monthly.

Notification of security compromises: Credit bureaus will notify the NCR, any other applicable regulatory body and the CBA and their affected clients in event of a material security compromise.

4.7 Accountability

Credit bureaus are responsible for the lawful processing of personal information. They are regulated by the National Credit Regulator ("NCR") in terms of the NCA and undergo annual audits and provide detailed quarterly reports to the NCR to ensure that they process the information held in a lawful manner. Credit bureaus are required to have governance structures in place to ensure that they comply with the NCR's requirements.

4.8 The role of consent in relation to information held on a credit bureau

Information processed by a credit bureau

The consent of a consumer is not required for his/her credit agreements and/or payment obligations to be provided to a credit bureau by a credit provider. Credit providers and data providers who access payment profile information are obliged to provide details of a consumer's credit and payment obligations and to update these monthly in accordance with Regulation 19 (13) and the Guidelines issued pursuant thereto.

Credit bureaus are obligated by law to process this information provided by credit and data providers and to issue credit reports containing the processed information to parties permitted to access the information, including to a consumer.

Access to Information held by a credit bureau

In accordance with Regulation 18(4) in terms of the NCA consumer credit information may be accessed for the following purposes without consent, therefore it may be reported by credit bureaus and used by parties authorised to do so in terms of the NCA, for the following purposes without consent:

- an investigation into fraud, corruption, or theft provided that the South African Police Service, or any other statutory enforcement agency conducts the investigation;
- an assessment of the debtors' book of a business for the purposes of:
 - the sale of the business or debtors' book of that business;
 - any other transaction that is dependent upon determining the value of the business or debtors' book of that business;
- obtaining consumer credit information to distribute unclaimed funds, including pension funds and insurance claims;
- tracing a consumer by a credit provider in respect of a credit agreement entered into between a consumer and the credit provider; and
- developing a credit scoring system by a credit provider or credit bureau.

Furthermore, the NCA requires credit providers to do an assessment of over-indebtedness by assessing affordability and past debt repayment history, prior to entering into a credit agreement, therefore consumer credit information may be used by credit providers without consent for the following purposes required or contemplated in the NCA:

- Assessment of affordability; and
- Assessment of past debt repayment history

More specifically in the amendments promulgated in 2015, S23A of the NCA requires all credit providers to undertake an affordability assessment prior to entering into a credit agreement with a consumer, and in doing so, to check the records of the credit bureau to ascertain the payment behaviour of the consumer and his/her current credit/payment obligations.

Regulation 18(4), in terms of the NCA, provides that consent is required for the use of consumer credit information for the following purposes:

- considering a candidate for employment in a position that requires trust, and honesty and entails the handling of cash or finances;
- setting a limit for the provision of any continuous service; and
- verifying educational qualifications and employment.

Any party accessing consumer credit information for the above purposes must therefore obtain consent prior to accessing such information. In addition, in terms of section 68 of the NCA consumer credit information may be reported or released by a credit bureau,

- to the extent permitted in regulations (Regulation 18(4)), required by the NCA, other national or provincial legislation; or
- as directed by the instructions of the consumer/ prospective consumer; or
- as directed by an order of a court or tribunal.

5. CONSUMER RIGHTS IN THE NATIONAL CREDIT ACT

Access to personal information by a consumer

In terms of section 72(1) of the NCA, consumers have the right, provided that the consumer's request meets the requirements of section 53 of the Promotion of Access to Information Act and the Financial Intelligence Centre Act No.38 of 2001 (FICA), to inspect their credit profiles at no charge once in any 12 month period and, in terms of Regulation 20(1), the report must disclose the same information that is provided to other parties such as data users. In light of the above NCA provision, credit bureaus must have in place adequate processes to deal with requests from data subjects to access their credit profiles, including the receipt of the documents proving identity and residential address. Credit bureaus must also on request, provide information in respect of any party who has accessed the data subject's credit profile sufficient for the data subject to reasonably ascertain who has accessed their profile.

Right to challenge incorrect information

Credit bureaus must have processes in place to deal with enquiries or disputes by consumers, in accordance with section 72 of the NCA:

- When a consumer challenges the accuracy of information held by a credit bureau, the credit bureau in accordance with section 72(5) of the NCA, must not report the challenged information until the challenge is resolved;

- In terms of section 72(3) of the NCA read with Regulation 20(2) in terms of the NCA, after a dispute is lodged or information held by a credit bureau is challenged, the credit bureau must within 20 business days seek evidence in support of the challenged information;
- If credible evidence is found during the 20 business day investigation period, the challenged information will continue to be reported and a copy of the evidence must be provided to the consumer.
- If no credible evidence is found all record of the challenged information must be removed;
- During the 20 business day investigation period the credit bureau must return to any person who attempts to access information in respect of a consumer who has lodged a dispute or challenged information, a “flag” indicating that a challenge or dispute has been lodged;
- Within 20 business days of receiving credible evidence in support of challenged information the person who challenged the information may apply to the National Credit Regulator to investigate the disputed information as a complaint in terms of Section 136 of the NCA.

6. POLICY DIRECTIVES

This Code incorporates the Policy Directives attached as Annexure A to this Code and issued by the Credit Bureau Association. These Policy Directives refer to matters where the legislation may not be specific or clear in regard to a matter or where the credit bureaus have determined that the retention of a specific class of data is not in the best interests of the consumer or where such data does not fairly represent the consumer’s credit or payment behaviour.

The Policy Directives may be amended from time to time by the Credit Bureau Association, whereupon the relevant Policy Directive will be amended accordingly, without requiring an amendment to this Code.

7. BREACH

7.1 In the event of a breach being committed by a member, any other member may refer the matter to the Credit Bureau Association for investigation.

7.2 In the event that a member is the subject of a data breach where such breach has resulted in unauthorised access/disclosure in respect of a significant number of consumers' credit information, the credit bureau shall provide notification of such data breach to both the CBA and the NCR as soon as reasonably possible after the incident has been confirmed.

8. DISCIPLINARY ACTION

In the event that the CBA makes a finding that a breach of the Code of Conduct has been committed by a member ("the defaulting member"), the CBA may serve a notice on the defaulting member requiring rectification of the contravention, within a stipulated, agreed to, period having regard to the steps that need to be taken to rectify the contravention. If there is a failure to comply with the notice, disciplinary action will be taken against the defaulting member in accordance with the Credit Bureau Association Constitution.

9. DATE OF COMMENCEMENT

This Code shall come into effect on [insert date], as and when approved by the National Credit Regulator. This Code will co-exist with the Credit Bureau Association's POPIA Industry Code.

10. REVIEW OF THE CODE

The Credit Bureau Association will review this Code on or shortly after each five-year anniversary of the date on which the Code is adopted by its members or sooner if appropriate, which review will involve consultation with all members.