

CREDIT AMNESTY—WIN OR LOSE

The call for credit information amnesty, aims to address the situation where credit active South Africans cannot have listings against them erased from ITC despite them having settled the debt giving rise to the listing. The credit amnesty aims to address this situation by erasing some of the adverse information from the credit records of these consumers, but it will not erase the debts of any consumers.

9 million credit active South Africans are in arrears. However, of the 9 million, about 1.6 million consumers still have their names listed with the credit bureau despite them having paid all their debts. These consumers are technically in good credit standing as they can afford further credit. The purpose of government's new credit amnesty drive is to ensure that these consumers are no longer blacklisted to allow them to apply for further or employment.

A select committee for the Trade and International relations, which is part of the **National Council of Provinces**, asked the **Department of Trade and Industry** to explore the merits of an amnesty. The DTI then gave the **National Credit Regulator** the task of consulting with the credit industry to establish the advantages and disadvantages of credit amnesty.

It is important to take into consideration the South African Constitution when trying to understand a legal matter, as the South African Constitution is our supreme law, which means that all laws and regulations need to comply and promote the Constitution, including the new Credit Amnesty proposal.

Section 9 of the Bill of Rights, the equality clause, entails that everyone is equal before the law and has the right to equal protection and benefit of the law. The law needs to promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination.

The credit information amnesty proposal achieves the equality goal on the one hand by preventing the retention of a bad credit listing where the debt has been paid as the retention of this information is in a way discriminatory to the consumer as it denies the consumer an opportunity to get his or her life back in order.



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On the other hand the credit amnesty proposal raises the issue of “weighing of rights”. The rights of the banks and credit providers to have access to information in terms of section 32 of the Constitution, which will assist them to either grant or deny credit applications, versus the right of the average consumer or person who have paid their debts to have their name removed from the records.

When a weighing of two rights takes place, one right has to be limited. In terms of section 36 of the Constitution, the limitation clause, rights can only be limited if it is justifiable and reasonable, in an open democratic society base on human dignity, equality and freedom.

Therefore it remains to be seen if the proposed Credit Amnesty will be promulgated or if the right to access to information entrenched in section 32 of the Constitution, may be limited in order to achieve the growth of a society by allowing consumers a second opportunity to apply for credit to enable them to purchase property or obtain future employment by clearing their bad credit history.



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