

# BUSINESS LAW & TAX REVIEW



A REVIEW OF THE GOVERNMENT GAZETTE AND NEW DEVELOPMENTS IN LAW

## The power of assisting indebted consumers

The National Credit Act 2005 has consumer protection at its heart

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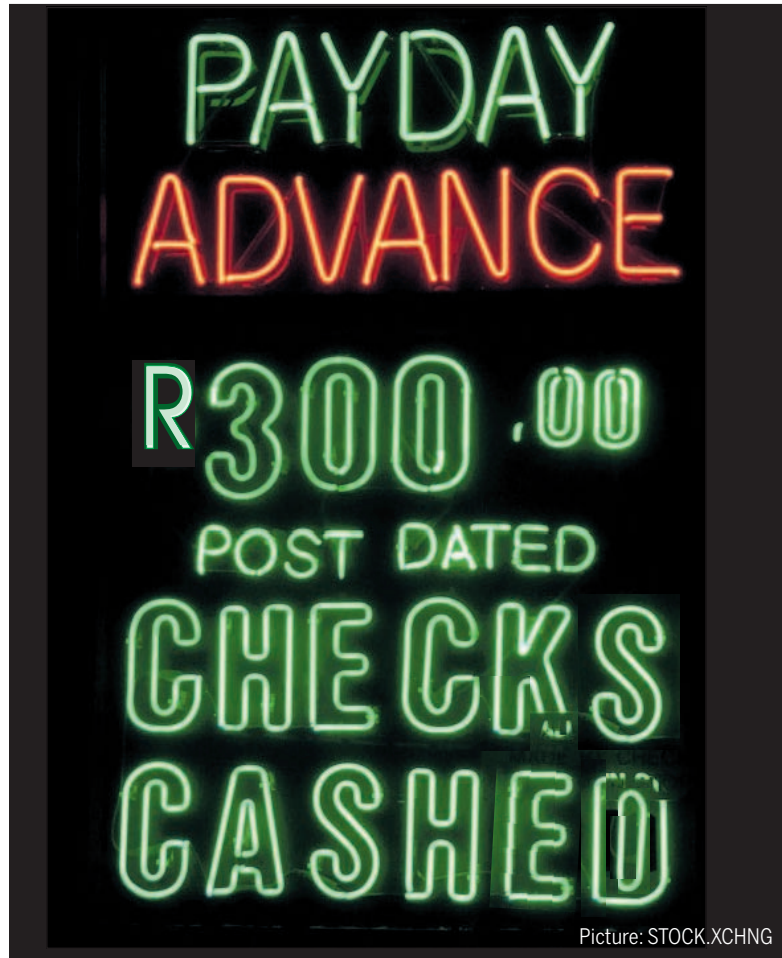
WHEN the National Credit Act 2005 came into force in June 2006, it was reported that globally consumer confidence and labour market conditions were strengthening and business confidence was rising.

Indeed, an economic counsellor of the International Monetary Fund (IMF) had just pronounced that "it would be fair to say the world has never had it so good". How things can change in just two years.

By March this year the global econ-

omy was mired in the deepest recession in more than half a century. Locally, after years of debt-fuelled and consumption-driven growth, the South African economy has been projected to contract by 2% this year. The days of easy credit and profligate spending seem long gone. The National Credit Act has been hailed as an act of supreme prescience.

The act has consumer protection at its heart. In terms of section 86(1), a consumer may apply to a debt counsellor to be declared over-indebted. Debt counsellors are individuals who are empowered to assist consumers in rearranging their obligations so that



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they can escape from spiraling debt traps. Two years after the legislation came into effect, 982 debt counsellors have registered with the National Credit Regulator, though it has been suggested that 2 500 more are needed. By March, 50 000 people had entered into formal debt review processes, with that figure expected to grow to

150 000 by the end of the year and possibly to up to 1,8-million within three years.

A consumer may not make an application for debt review in respect of a particular credit agreement if at the time of application the credit provider under that credit agreement has taken the steps set out in the act to enforce

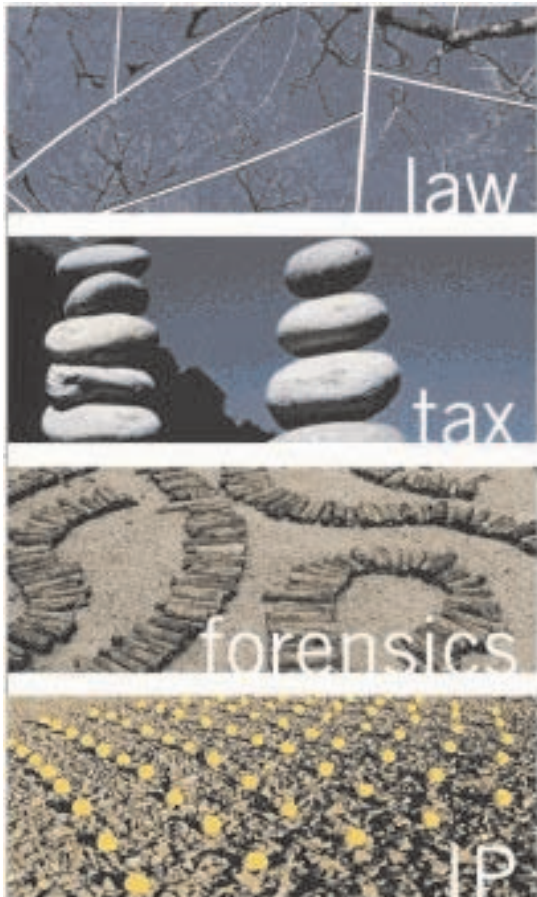
that agreement.

A debt counsellor may require the consumer to pay an application fee, not exceeding a prescribed amount (currently R50), before accepting an application and may not require or accept a fee from a credit provider in respect of an application. Initially it was assumed that the only fee a debt counsellor could recover was the application fee which made debt counseling an unviable business proposition. However, it has been argued, and accepted by the National Credit Regulator, that the prescribed fee is merely an "application fee" and that further fees can be recovered by debt counsellors.

In February last year, the regulator and the Debt Counsellors' Association of SA agreed to interim guidelines setting the maximum fees that debt counsellors may charge pending finalisation of fee regulations by the Trade and Industry Department. Under the guidelines, all fees must be disclosed and agreed upfront with the consumer and are refundable or reduced if the debt counseling proves unsuccessful. To assist the poor, the Regulator has set up a fund to subsidise consumers earning less than R2 500 per month.

On receipt of an application, a debt counsellor must notify all credit providers that are listed in the application and every registered credit bureau of the application. Once a consumer has applied for debt review, subsection 88(1) of the National Credit Act provides: "[a] consumer ... must not incur any further charges under a credit facility or enter into any further credit agreement, other than a consolidation agreement, with any credit provider" until certain events have occurred. This

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