

October 2018

## DEFERRED PAYMENTS - SALE OF SHARES TRANSACTION

Parties to a sale of shares agreement may elect to defer the payment of the full purchase price or a portion thereof, often subject to interest on the due amount. This may result in the Seller having to register as a credit provider in terms of the National Credit Act 34 of 2005 (the "**Act**").

Section 40 of the **Act** requires a person to register as a credit provider if the principal debt due and owing to him exceeds the minimum threshold prescribed by the **Act**, which is currently R0.00. The Seller may be required to register as a credit provider in terms of the **Act**, subject to the Purchaser being a "Consumer" as defined in the **Act**.

This was recently confirmed in case of *De Bruyn NO & Others v Karsten*, wherein Mr. and Mrs. De Bruyn were the trustees of a Trust, which purchased shares from Mr. Karsten with the agreement that the purchase consideration will be payable in instalments, subject to interest thereon.

The Trust defaulted in payment and Mr. Karsten instituted legal action in the High Court and succeeded with his claim. The decision was appealed and the Supreme Court of Appeal set aside the court a quo's decision and confirmed that a person is obligated to register as a credit provider if the principal debt due to it exceeds the threshold (i.e. R0.00), irrespective of the fact that it may be a single transaction or if the credit provider is a regular participant in the credit industry. As such, the agreement entered into by and between the Seller (Mr. Karsten) and the trustees of the Purchaser was null and void.

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