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COMMERCIAL ATTORNEYS

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"A good head and a good heart are always a formidable combination."
Nelson Mandela

NATIONAL CREDIT ACT: REMOVAL OF INFORMATION FROM A CREDIT BUREAU

Many debtors have grappled with the question whether information can be removed from a credit bureau listing after the debt to which that information relates has been paid in full. The Credit Provider Association's Constitution and the National Credit Act ("NCA") explicitly deal with this question.

One of the primary functions of a credit bureau is to provide information to credit grantors. The information supplied has foretelling value for credit risk and therefore plays a valuable role in the decision making process.

It is of critical importance that the information considered during the credit application is as complete and factually correct as possible, due to the predicative nature of adverse information. Should the information be removed prior to the retention period coming to an end, it will negatively influence the information available to the credit grantor when making credit risk assessments and could lead to an increase in the granting of reckless credit.

The Credit Provider Association's Constitution forbids the removal of any record, even though the record may refer to a debt that has been paid in full. Where the defaulting consumer has subsequently settled the outstanding debt, the default information can only be updated to "Paid In Full". However, the fact that payment has been missed in the past, will remain on the consumer's profile.

The National Credit Act ("NCA") stipulates that "credit bureaus are to maintain consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer". Furthermore, Regulation 17(1) of the Regulations to the "NCA" provides that "consumer credit information may be displayed and used for credit scoring or credit assessment".

Accordingly, information relating to a debtor's past behaviour, will remain on that debtor's credit profile for the retention period (usually between 2 and 5 years from the date of settlement of the outstanding debt in full) as an indication to credit providers whether to grant any new facilities or deny the person further credit.

Law & Laughter

ATTORNEY: "Were you present when your picture was taken?
WITNESS: "Are you kidding me?"

TRUST LAW: HOW TO DISSOLVE/TERMINATE A TRUST

As with a company, trusts generally have a perpetual existence, meaning that a trust will have to be actively terminated before it can be dissolved. If not so terminated, it will in essence continue to exist indefinitely. Louis Venter, joint head of fiduciary advice, wealth and investment at RMB Private Bank, lists the following as some of the more prevalent reasons for a trust being terminated:

1. The amount left in the trust makes it uneconomical to continue with the trust and the beneficiaries are better off managing the assets themselves.
2. The trust has served its purpose and either the trust deed or the trustees by majority vote determine that the trust should be dissolved.
3. The trust fails, due to the purpose it was set up for no longer being reachable.
4. The trustees merely decide to terminate the trust on own accord.

Regardless of the reason behind the trust being dissolved or whether the trust in question is a testamentary or inter vivos trust, the process for termination largely remains the same. Venter suggests that the following steps be taken to ensure that a trust is successfully dissolved and deregistered:

1. The trustees must sign a resolution setting out the reasons behind the decision to terminate the trust.
2. All assets must be transferred from the trust to the beneficiaries and all debts paid so as to leave the trust devoid of any assets and liabilities. The trust's accountant must then confirm this in writing.
3. The trust bank account needs to be closed and proof of this obtained from the relevant bank.
4. All beneficiaries must consent to the termination and indicate that they feel they have received their fair share of the trust assets.
5. The above documents must be submitted to the Master of the High Court in whose jurisdiction the trust was created along with the original Letters of Authority.

In the event that a trust's liabilities exceed its assets, a better route to follow would then be sequestration in terms of the Insolvency Act.

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