



Limitation of Fees and Interest Rates



In terms of Regulation 42, 43 and 44 of the National Credit Act, Act 34 of 2005 (the “Regulations”), the maximum prescribed interest and initiation fees are as follows:

Maximum Prescribed Interest Rate

Credit Type		Maximum Interest Rate
Mortgage Agreements		RR + 12% per year
Credit Facilities		RR + 14% per year
Unsecured Credit Facilities		RR + 21% per year
Developmental Credit Agreements	For the development of a small business	RR + 27% per year
	For low income housing (unsecured)	RR + 27% per year
Short term credit transactions		<ul style="list-style-type: none"> • 5% per month on the first loan • 3% per month on subsequent loans within a calendar year
Other credit agreements		RR + 17%
Incidental credit agreements		2% per month

Maximum Initiation Fee

Sub-sector		Maximum Initiation Fee
Mortgage Agreements		a) R1,100.00 per credit agreement, plus 10% of the amount in excess of R10,000.00 b) But never to exceed R5,250.00
Credit Facilities		a) R165.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R1,050.00
Unsecured Credit Facilities		a) R165.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R1,050.00
Developmental Credit Agreements	For the development of a small business	a) R275.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R2,600.00
	For low income housing (unsecured)	a) R550.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R2,600.00
Short term credit transactions		a) R165.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R1,050.00
Other credit agreements		a) R165.00 per credit agreement, plus 10% of the amount in excess of R1,000.00 b) But never to exceed R1,050.00
Incidental credit agreements		Nil

The following key questions are not an exhaustive list of the issues that arose from the implementation of the Regulations and merely contains Experian's views on the rates and fees. It should however not be construed as a legal opinion as there are various different interpretations being offered.

No	FAQ
Q1	What is a 'calendar month' and 'calendar year'?
A1	<p>The term 'calendar month', may be interpreted in two ways, either as a month as it appears on the calendar, (eg. 1 January until 31 January) or a month reckoned in terms of one day in a particular month until the corresponding day of the next month; thus for example, from the 4th day of March until the 4th day of April. Both possibilities arise in practice.</p> <p>However, Experian follows the first interpretation, being a month as it appears on the calendar, e.g. 1 January until 31 January or 1 April to 30 April etc.</p> <p>The term 'calendar year' can be interpreted in a similar manner as 'calendar month'. Experian interprets a 'calendar year' as being the year as it appears on the calendar, 1 January until 31 December.</p>
Q2	If credit provider X granted a short term credit transaction to consumer Y during the calendar year, may credit provider Z only charge 3% interest pm after consumer Y approach him for a short term credit loan, later that same calendar year?
A2	<p>Nothing in the NCA or Regulations state that the short term credit transaction interest rate is applicable to all short term loans granted by any credit provider to a specific consumer. Therefore, Experian interprets that the maximum interest rate to be charged in respect of short term credit transactions are for short term credit agreements entered into between a specific credit provider and a specific consumer during the calendar year.</p>
Q3	Charging of interest on deferred initiation fees
	<p>In terms of Section 101(1) of the NCA "a credit agreement must not require payment by the consumer of any money or other consideration, except –</p> <ol style="list-style-type: none"> the principal debt, being the amount deferred in terms of the agreement plus the value of any item contemplated in section 102, and an initiation fee, which may not exceed the prescribed amount and a service fee and interest, which – <ol style="list-style-type: none"> must be expressed in percentage terms and must not exceed the applicable maximum and costs of any credit insurance; and default administration charges and collection costs" <p>The initiation fee provided for in section 101(1)(b) above, may be included in the principal debt deferred under the agreement, in terms of section 102 (1), but only if the credit agreement is an instalment agreement, a mortgage agreement, a secured loan or a lease and if the consumer has been offered and declined the option of paying that fee separately. Thus, for unsecured loans, deferred initiation fees may not form part of the principal debt.</p> <p>However if the initiation fee is not paid "up front" or immediately when the credit or loan is taken up, but only later, i.e. when payment thereof is "deferred", credit providers of short-term and unsecured loans may indeed charge interest upon an initiation fee charged on such loans.</p> <p>This view was confirmed by the High Court in its recent judgment in Micro Finance South Africa and The Banking Association of South Africa v The National Credit Regulator, the Minister of Trade and Industry and the National Consumer Tribunal on 14 August 2020.</p>
Q4	What is the pro rata calculation of the service fee required in the Regulations?
A4	<p>Regulation 44(4) specifies the following two requirements:</p> <ol style="list-style-type: none"> A service fee must be charged for the calendar month in which it is due and payable; and On a pro rata basis where the credit agreement was concluded during the course of that calendar month.
Q5	How should a credit provider perform the pro rata calculation of the maximum service fee of R60 pm, in terms of Regulation 44(4)?

A5	<p>Where a credit agreement was concluded during the course of the calendar month, the service fee should be calculated on a pro rata basis.</p> <p>The High Court confirmed in its recent judgment in <i>Micro Finance South Africa and The Banking Association of South Africa v The National Credit Regulator, the Minister of Trade and Industry and the National Consumer Tribunal</i> on 14 August 2020 that the pro rata requirement only applies to the first calendar month during the course of which the credit agreement is concluded and the monthly service fee is not required to be charged on a pro rata basis for the calendar month in which the credit agreement terminates.</p> <ol style="list-style-type: none"> 1. Therefore the pro rata calculation of the service fee is only to be calculated for the month in which the credit provider and the consumer entered into a credit agreement; and 2. All subsequent months in which the credit agreement is active, the credit provider may charge the maximum service fee, irrespective whether the agreement will end before the last day of the specific calendar month. <p>To provide you with a few practical examples, please see the below scenarios and note that it is only an illustration of the maximum service fee of R60 per month and excludes interest, charges and other fees:</p> <ol style="list-style-type: none"> The credit provider and the consumer entered into a credit agreement on the 5th day of January for an amount of R1 000 to be settled in full on the 20th day of January. <ul style="list-style-type: none"> The maximum service fee that may be charged is $R60 \times \frac{15 \text{ days}}{31 \text{ days}} = R29.03$ (The credit agreement was entered into and finalised in the same calendar month. The credit agreement was therefore active for 15 days out of a total number of 31 days in January) The credit provider and consumer entered into a credit agreement on the 5th day of January for an amount of R1 000 to be settled in full on the 20th day of February (the subsequent month). <ul style="list-style-type: none"> The maximum service fees that may be charged for January and February are: <p>January: $R60 \times \frac{26 \text{ days}}{31 \text{ days}} = R50.32$ (Pro rata as it is the month of 'conclusion'); and</p> <p>February: R60 (full).</p> The credit provider and consumer entered into a credit agreement on the 5th day of January for an amount of R1 000 to be settled in full on the 5th day of March. <ul style="list-style-type: none"> The maximum service fees that may be charged for January, February and March: <p>January: $R60 \times \frac{26 \text{ days}}{31 \text{ days}} = R50.32$ (Pro rata as it is the month of 'conclusion'); and</p> <p>February: R60 (full)</p> <p>March: R60 (full)</p>
Q6	<p>The following questions are only applicable to the initiation fees to be charged on a credit facility, unsecured credit transaction, short term credit transactions and other credit agreements</p>
A6	<p>These sub-sectors require that the maximum initiation fee that may be charged by a credit provider is</p> <ol style="list-style-type: none"> R165 per credit agreement, plus 10% of the amount of the agreement in excess of R1 000, but never to exceed R1 050 or 15% of the principal debt.
Q6.1	<p>May a credit provider charge an initiation fee of R165 per credit agreement in the amount of R1 000?</p>
A6.1	<p>No. regulation 43(3) states that the initiation fee may never exceed 15% of the principal debt. Thus only R150 may be charged.</p>
Q6.2	<p>What initiation fee may a credit provider therefore charge for a credit agreement in the amount of R5 000, being in excess of R1 100?</p>
A6.2	<p>The Regulations prescribed that the credit provider may charge R165, plus 10% of the amount of the agreement in excess of R1 000.</p> <p>Therefore the credit provider may charge R165 plus 10% of R4 000 (R5 000 minus R1 000), being R400. Thus a total initiation fee of R565. This amount is still less than R1 050 and less than R750, being 15% of the principal debt.</p>

General Note on Initiation fees: Where both a specific nominal cap (e.g. R165) and percentage cap (e.g. 15%) have been provided, then one should apply the lower of the two caps when determining the maximum permissible initiation fee.

This document incorporates Experian's understanding of the law as it stands and the contents thereof does not express a legal opinion. Our discussion of the relevant law is intended solely to serve as a background for the application of the relevant examples. We do however recommend that you seek a legal opinion on the matter from your legal advisors.