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SHOULD A SELLER REGISTER AS A CREDIT PROVIDER?

The judgment of the Supreme Court of Appeal (the SCA) in Du Bruyn NO & others v Karsten (929/2017) [2018] ZASCA 143 has far-reaching consequences for any agreement which can be classified as a credit agreement in terms of the National Credit Act. In short, the court found that the requirement to register as a credit provider is applicable to any credit agreement where the prescribed threshold is met, even if the agreement is a once-off transaction and the parties do not ordinarily participate in the credit market.

As the prescribed threshold is currently zero, even a credit agreement for a relatively small amount of money will trigger the requirement to register as a credit provider. The requirement of registration as a credit provider will apply to an agreement for the sale of immovable property in the following circumstances:

- Where payment of the purchase price is deferred,
- a fee or interest is charged because of this deferral, and
- the agreement constitutes an arm's length transaction (where the contracting parties are independent from each other, and both seek to gain commercial advantage from the transaction).

An instalment sale agreement in which there is interest payable on the outstanding amount will fall within the above requirements, and it will be required that the Seller register as a credit provider.