

NATIONAL CREDIT BILL

*(As amended by the Select Committee on Economic and Foreign Affairs (National Council
of Provinces))
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

BILL

To promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information; to promote black economic empowerment and ownership within the consumer credit industry; to prohibit certain unfair credit and credit-marketing practices; to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting; to provide for debt re-organisation in cases of over-indebtedness; to regulate credit information; to provide for registration of credit bureaux, credit providers and debt counselling services; to establish national norms and standards relating to consumer credit; to promote a consistent enforcement framework relating to consumer credit; to establish the National Credit Regulator and the National Consumer Tribunal; to repeal the Usury Act, 1968, and the Credit Agreements Act, 1980; and to provide for related incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION OF ACT

Part A

Interpretation

1. Definitions
2. Interpretation

Part B

Purpose and application

3. Purpose of Act
4. Application of Act
5. Limited application of Act to incidental credit agreements
6. Limited application of Act when consumer is juristic person
7. Threshold determination and industry tiers

Part C

Classification and categories of credit agreements

8. Credit agreements
9. Categories of credit agreements
10. Developmental credit agreements
11. Public interest credit agreements

CHAPTER 2

CONSUMER CREDIT INSTITUTIONS

Part A
National Credit Regulator

12. Establishment of National Credit Regulator
13. Development of accessible credit market
14. Registration functions of National Credit Regulator
15. Enforcement functions of National Credit Regulator
16. Research and public information
17. Relations with other regulatory authorities
18. Reporting requirements of National Credit Regulator
19. Governance of National Credit Regulator
20. Qualifications for Board membership
21. Conflicting interests of members of Board
22. Resignation, removal from office and vacancies
23. Appointment of Chief Executive Officer
24. Conflicting interests
25. Appointment of inspectors and investigators

Part B
National Consumer Tribunal

26. Establishment and constitution of Tribunal
27. Functions of Tribunal
28. Qualifications of members of Tribunal
29. Term of office of members of Tribunal
30. Deputy Chairperson of Tribunal
31. Tribunal proceedings
32. Conflicts and disclosure of interest
33. Acting by member of Tribunal after expiry of term of office
34. Remuneration and benefits

Part C
Administrative matters

35. Finances
36. Reviews and reports to Minister

Part D
National and provincial co-operation

37. Co-operative exercise of concurrent jurisdiction
38. Information sharing

CHAPTER 3

CONSUMER CREDIT INDUSTRY REGULATION

Part A
Registration requirements, criteria and procedures

39. Limited application of this Part
40. Registration of credit providers
41. Supplementary registration to provide developmental credit
42. Thresholds applicable to credit providers
43. Registration of credit bureaux
44. Registration of debt counsellors
45. Application for registration
46. Disqualification of natural persons
47. Disqualification of juristic persons and associations

48. Conditions of registration
49. Variation of conditions of registration
50. Authority and standard conditions of registration
51. Application, registration and renewal fees
52. Certificate, validity and public notice of registration
53. National record of registrations

Part B

Compliance procedures and cancellation of registration

54. Restricted activities by unregistered persons
55. Compliance notices
56. Objection to notices
57. Cancellation of registration
58. Voluntary cancellation of registration
59. Review or appeal of decisions

CHAPTER 4

CONSUMER CREDIT POLICY

Part A

Consumer rights

60. Right to apply for credit
61. Protection against discrimination in respect of credit
62. Right to reasons for credit being refused
63. Right to information in official language
64. Right to information in plain and understandable language
65. Right to receive documents
66. Protection of consumer credit rights

Part B

Confidentiality, personal information and consumer credit records

67. Conflicting legislation
68. Right to confidential treatment
69. National register of credit agreements
70. Credit bureau information
71. Removal of record of debt adjustment or judgment
72. Right to access and challenge credit records and information
73. Verification, review and removal of consumer credit information

Part C

Credit marketing practices

74. Negative option marketing and opting out requirements
75. Marketing and sales of credit at home or work
76. Advertising practices
77. Required marketing information

Part D

Over-indebtedness and reckless credit

78. Application and interpretation of this Part
79. Over-indebtedness
80. Reckless credit
81. Prevention of reckless credit
82. Assessment mechanisms and procedures
83. Court may suspend reckless credit agreement
84. Effect of suspension of credit agreement
85. Court may declare and relieve over-indebtedness
86. Application for debt review

- 87. Magistrate's Court may re-arrange consumer's obligations
- 88. Effect of debt review or re-arrangement order or agreement

CHAPTER 5

CONSUMER CREDIT AGREEMENTS

Part A

Unlawful agreements and provisions

- 89. Unlawful credit agreements
- 90. Unlawful provisions of credit agreement
- 91. Supplementary requirements and documents

Part B

Disclosure, form and effect of credit agreements

- 92. Pre-agreement disclosure
- 93. Form of credit agreements
- 94. Liability for lost or stolen cards or other identification devices
- 95. Changes, deferrals and waivers
- 96. Address for notice
- 97. Consumer must disclose location of goods
- 98. Agreement attaches to substituted goods
- 99. Obligations of pawn brokers

Part C

Consumer's liability, interest, charges and fees

- 100. Prohibited charges
- 101. Cost of credit
- 102. Fees or charges
- 103. Interest
- 104. Changes to interest, credit fees or charges
- 105. Maximum rates of interest, fees and charges
- 106. Credit insurance

Part D

Statements of account

- 107. Limited application of this Part
- 108. Statement of account
- 109. Form and content of statement of account
- 110. Statement of amount owing and related matters
- 111. Disputed entries in accounts
- 112. Dating and adjustment of debits and credits in accounts
- 113. Statement of settlement amount
- 114. Tribunal may order statement to be provided
- 115. Disputes concerning statements

Part E

Alteration of credit agreement

- 116. Alteration of original or amended agreement document
- 117. Changes by agreement
- 118. Reductions to credit limit under credit facility
- 119. Increases in credit limit under credit facility
- 120. Unilateral changes by credit provider

Part F

Rescission and termination of credit agreements

- 121. Consumer's right to rescind credit agreement

- 122. When consumer may terminate agreement
- 123. Termination of agreement by credit provider

CHAPTER 6

COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

Part A

Collection and repayment practices

- 124. Charges to other accounts
- 125. Consumer's or guarantor's right to settle agreement
- 126. Early payments and crediting of payments

Part B

Surrender of goods

- 127. Surrender of goods
- 128. Compensation for consumer

Part C

Debt enforcement by repossession or judgment

- 129. Required procedures before debt enforcement
- 130. Debt procedures in a Court
- 131. Repossession of goods
- 132. Compensation for credit provider
- 133. Prohibited collection and enforcement practices

CHAPTER 7

DISPUTE SETTLEMENT OTHER THAN DEBT ENFORCEMENT

Part A

Alternative dispute resolution

- 134. Alternative dispute resolution
- 135. Dispute resolution may result in consent order

Part B

Initiating complaints or applications

- 136. Initiating a complaint to National Credit Regulator
- 137. Initiating applications to Tribunal
- 138. Consent orders

Part C

Informal resolution or investigation of complaints

- 139. Investigation by National Credit Regulator
- 140. Outcome of complaint
- 141. Referral to Tribunal

Part D

Tribunal consideration of complaints, applications and referrals

- 142. Hearings before Tribunal
- 143. Right to participate in hearing
- 144. Powers of member presiding at hearing
- 145. Rules of procedure
- 146. Witnesses
- 147. Costs
- 148. Appeals and reviews

Part E
Tribunal orders

- 149. Interim relief
- 150. Orders of Tribunal
- 151. Administrative fines
- 152. Status and enforcement of orders

CHAPTER 5
ENFORCEMENT OF ACT

Part A
Searches

- 153. Authority to enter and search under warrant
- 154. Powers to enter and search
- 155. Conduct of entry and search

Part B
Offences

- 156. Breach of confidence
- 157. Hindering administration of Act
- 158. Failure to attend when summoned
- 159. Failure to answer fully or truthfully
- 160. Offences relating to regulator and Tribunal
- 161. Penalties
- 162. Magistrate's Court jurisdiction to impose penalties

Part C
Miscellaneous matters

- 163. Agents
- 164. Civil actions and jurisdiction
- 165. Variation of order
- 166. Limitations of bringing action
- 167. Standard of proof
- 168. Serving documents
- 169. Proof of facts
- 170. Credit provider to keep records

CHAPTER 9
GENERAL PROVISIONS

- 171. Regulations
- 172. Conflicting legislation, consequential amendments, repeal of laws and transitional arrangements
- 173. Short title and commencement

SCHEDULE 1

Rules concerning conflicting legislation

SCHEDULE 2

Amendment of laws

SCHEDULE 3

Transitional provisions

1. Definitions
2. Delayed application of required registration
3. National register of credit agreements
4. Application of Act to pre-existing agreements
5. Maximum interest rate
6. Specific preservation of rights, instructions, registration and similar status
7. General preservation of regulations, rights, duties, notices and other instruments
8. National Credit Regulator
9. Provincial regulatory capacity
10. Continued enforcement of repealed laws
11. Regulations

CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION OF ACT

Part A

Interpretation

Definitions

1. In this Act—

"advertisement" means any written, illustrated, visual or other descriptive material, communication, representation or reference by means of which a person seeks to bring to the attention of all or part of the public the nature, properties, advantages or uses of, conditions on, or prices of—

- (a) goods to be purchased, leased or otherwise acquired;
- (b) any available service; or
- (c) credit to be granted

"agreement" includes an arrangement or understanding between or among two or more parties, which purports to establish a relationship in law between those parties;

"alternative dispute resolution agent" means a person providing services to assist in the resolution of consumer credit disputes through conciliation, mediation or arbitration;

"applicable provincial legislation" means legislation enacted by a province concerning credit agreements;

"Board" means the governing body of the National Credit Regulator, established in accordance with section 19;

"Cabinet" means the Cabinet referred to in section 91 of the Constitution;

"collection costs" means an amount that may be charged by a credit provider in respect of enforcement of a consumer's monetary obligations under a credit agreement, but does not include a default administration charge;

"collective agreement" has the meaning set out in the Labour Relations Act, 1995 (Act No. 66 of 1995);

"complainant" means a person who has filed a complaint in terms of section 136(1);

"confidential information" means personal information that belongs to a person and is not generally available to or known by others;

"co-operative" means an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through a jointly owned and democratically controlled enterprise organised and operated on co-operative principles;

"consumer", in respect of a credit agreement to which this Act applies, means—

- (a) the party to whom goods or services are sold under a discount transaction, incidental credit agreement or instalment agreement;
- (b) the party to whom money is paid, or credit granted, under a pawn transaction;
- (c) the party to whom credit is granted under a credit facility;
- (d) the mortgagor under a mortgage agreement;

- (e) the borrower under a secured loan;
- (f) the lessee under a lease;
- (g) the guarantor under a credit guarantee; or
- (h) the party to whom or at whose direction money, is advanced or credit granted under any other credit agreement;

"consumer court" means a body of that name, or a consumer tribunal, established by provincial legislation;

"continuous service" means the supply for consideration of a utility or service, other than credit or access to credit, or the supply of such a utility or service combined with the supply of any goods that are essential for the utilisation of that utility or service by the consumer, with the intent that, so long as the agreement to supply that utility or service remains in force, the supplier will make the service continuously available to be used, accessed or drawn upon—

- (a) from time to time as determined by the consumer; and
- (b) with any frequency or in any amount as determined, accessed, required, demanded or drawn upon by the consumer, subject only to any total use or cost limits set out in the agreement;

"credit", when used as a noun, means—

- (a) a deferral of payment of money owed to a person, or a promise to defer such a payment; or
- (b) a promise to advance or pay money to or at the direction of another person;

"credit agent" means a person appointed to represent a credit provider as contemplated in section 163, other than an employee of that credit provider;

"credit bureau" means a person required to apply for registration as such in terms of section 43(1);

"credit agreement" means an agreement that meets all the criteria set out in section 8;

"credit facility" means an agreement that meets all the criteria set out in section 8(3);

"credit guarantee" means an agreement that meets all the criteria set out in section 8(5);

"credit insurance" means an agreement between an insurer, on one hand, and a credit provider or a consumer or both, on the other hand, in terms of which the insurer agrees to pay a benefit upon the occurrence of a specified contingency, primarily for the purpose of satisfying all or part of the consumer's liability to the credit provider under a credit agreement as at the time that the specified contingency occurs, and includes—

- (a) a credit life insurance agreement;
- (b) an agreement covering loss of or damage to property; or
- (c) an agreement covering—
 - (i) loss or theft of an access card, personal information number or similar device; or
 - (ii) any loss or theft of credit consequential to a loss or theft contemplated in subparagraph (i);

"credit life insurance" includes cover payable in the event of a consumer's death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer's ability to earn an income or meet the obligations under a credit agreement;

"credit provider", in respect of a credit agreement to which this Act applies, means—

- (a) the party who supplies goods or services under a discount transaction, incidental credit agreement or instalment agreement;
- (b) the party who advances money or credit under a pawn transaction;
- (c) the party who extends credit under a credit facility;
- (d) the mortgagee under a mortgage agreement;
- (e) the lender under a secured loan;
- (f) the lessor under a lease;
- (g) the party to whom an assurance or promise is made under a credit guarantee;
- (h) the party who advances money or credit to another under any other credit agreement; or
- (i) any other person who acquires the rights of a credit provider under a credit agreement after it has been entered into;

"credit regulator" means a provincial credit regulator or the National Credit Regulator established by section 12;

"credit transaction" means an agreement that meets the criteria set out in section 8(4);

"credit co-operative" means a co-operative whose predominant purpose is to offer financial services to its members;

"default administration charge" means a charge that may be imposed by a credit provider to cover administration costs incurred as a result of a consumer defaulting on an obligation under a credit agreement;

"developmental credit agreement" means a credit agreement that satisfies the criteria set out in section 10;

"discount transaction" means an agreement, irrespective of its form, in terms of which—

- (a) goods or services are to be provided to a consumer over a period of time; and
- (b) more than one price is quoted for the goods or service, the lower price being applicable if the account is paid on or before a determined date, and a higher price or prices being applicable if the price is paid after that date, or is paid periodically during the period;

"educational loan" means—

- (a) a student loan;
- (b) a school loan; or
- (c) another credit agreement entered into by a consumer for purposes related to the consumer's adult education, training or skill's development;

"effective date", in relation to any particular provision of this Act, means the date on which that provision came into operation;

"emergency loan" means a credit agreement entered into by a consumer to finance costs arising from or associated with—

- (a) a death, illness or medical condition;
- (b) unexpected loss or interruption of income; or
- (c) catastrophic loss of or damage to home or property due to fire, theft, or natural disaster,

affecting the consumer, a person who is dependent upon the consumer or a person for whom the consumer is financially responsible;

"equality court" has the meaning set out in the Promotion of Equality and Prevention of Unfair Discrimination Act;

"incidental credit agreement" means an agreement, irrespective of its form, in terms of which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer over a period of time and either or both of the following conditions apply:

- (a) a fee, charge or interest became payable when payment of an amount charged in terms of that account was not made on or before a determined period or date; or
- (b) two prices were quoted for settlement of the account, the lower price being applicable if the account is paid on or before a determined date, and the higher price being applicable due to the account not having been paid by that date.

"initiation fee" means a fee in respect of costs of initiating a credit agreement, and—

- (a) charged to the consumer by the credit provider; or
- (b) paid to the credit provider by the consumer upon entering into the credit agreement;

"inspector" means a person appointed as such in terms of section 25(1)(a);

"instalment agreement" means a sale of movable property in terms of which—

- (a) all or part of the price is deferred and is to be paid by periodic payments;
- (b) possession and use of the property is transferred to the consumer;
- (c) ownership of the property either—
 - (i) passes to the consumer only when the agreement is fully complied with; or
 - (ii) passes to the consumer immediately subject to a right of the credit provider to re-possess the property if the consumer fails to satisfy all of the consumer's financial obligations under the agreement; and
- (d) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred;

"juristic person" includes a partnership, association or other body of persons, corporate or unincorporated, or a trust if—

- (a) there are three or more individual trustees; or
 - (b) the trustee is itself a juristic person,
- but does not include a stokvel;

"Land and Agricultural Development Bank" has the meaning set out in the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002);

"lease" means an agreement in terms of which—

- (a) temporary possession of any movable property is delivered to or at the direction of the consumer, or the right to use any such property is granted to or at the direction of the consumer;
- (b) payment for the possession or use of that property is—
 - (i) made on an agreed or determined periodic basis during the life of the agreement; or
 - (ii) deferred in whole or in part for any period during the life of the agreement;
- (c) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred; and
- (d) at the end of the term of the agreement, ownership of that property either—
 - (i) passes to the consumer absolutely; or
 - (ii) passes to the consumer upon satisfaction of specific conditions set out in the agreement;

"licence" means the authority, regardless of its specific title or form, issued to a regulated financial institution and in terms of which it is authorised to conduct its business;

"low income housing" includes any housing provided in terms of a housing development program, housing assistance measure or any other measure or arrangement designed to—

- (a) facilitate access to housing or housing delivery; or
- (b) rehabilitate or upgrade existing housing stock, or related municipal infrastructure and services, for the benefit of persons contemplated in section 13(a), or other persons who cannot independently provide for their own housing needs;

"Magistrates' Courts Act" means the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);

"MEC" means a Member of the Executive Council;

"member of the Board" means a person designated or appointed to the Board in terms of section 19;

"Minister" means the member of the Cabinet responsible for consumer credit matters;

"mortgage" means a pledge of immovable property that serves as security for a mortgage agreement;

"mortgage agreement" means a credit agreement that is secured by a pledge of immovable property;

"official language" means an official language listed in section 6(1) of the Constitution;

"ombud with jurisdiction", in respect of any particular dispute arising out of a credit agreement in terms of which the credit provider is a "financial institution" as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), means an "ombud", or the "statutory ombud", as those terms are respectively defined in that Act, who has jurisdiction in terms of that Act to deal with a complaint against that financial institution;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"pawn transaction" means an agreement, irrespective of its form, in terms of which—

- (a) one party advances money or grants credit to another, and at the time of doing so, takes possession of goods as security for the money advanced or credit granted; and
- (b) either—
 - (i) the estimated resale value of the goods exceeds the value of the money provided or the credit granted, or
 - (ii) a charge, fee or interest is imposed in respect of the agreement, or in respect of the amount loaned or the credit granted; and

(c) the party that advanced the money or granted the credit is entitled on expiry of a defined period to sell the goods and retain all the proceeds of the sale in settlement of the consumer's obligations under the agreement;

"premises" includes land, or any building, structure, vehicle, ship, boat, vessel, aircraft or container;

"prescribed" means prescribed by regulation;

"principal debt" means the amount calculated in accordance with section 101(l)(a);

"private dwelling" means any part of a formal or informal structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used principally for the purposes of, a residence;

"prohibited conduct" means an act or omission in contravention of this Act, other than an act or omission that constitutes an offence under this Act, by—

(a) an unregistered person who is required to be registered to engage in such an act; or

(b) a credit provider, credit bureau or debt counsellor;

"Promotion of Equality and Prevention of Unfair Discrimination Act" means the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);

"provincial credit regulator" means a body within the provincial sphere of government authorised to regulate consumer credit matters within a province;

"public interest credit agreement" means a credit agreement that meets all the criteria prescribed in terms of section 11, and which is therefore exempt from the application of provisions of this Act concerning reckless credit;

"public regulation" means any national, provincial or local government legislation or subordinate legislation, or any licence, tariff, directive or similar authorisation issued by a regulatory authority or pursuant to any statutory authority;

"reckless credit" means the credit granted to a consumer under a credit agreement concluded in circumstances described in section 80;

"registrant" means a person who has been registered in terms of this Act;

"regulated financial institution" means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990), a Mutual Bank as defined in the Mutual Banks Act, 1993 (Act No. 124 of 1993), or any other financial institution that is similarly licensed and authorised to conduct business and take deposits from the public, in terms of any national legislation;

"regulation" means a regulation made under this Act;

"regulatory authority" means an entity established in terms of national or provincial legislation responsible for regulating an industry, or sector of an industry;

"repealed law" means an Act mentioned in section 172(4), or a public regulation made in terms of such an Act;

"representative trade union" has the meaning set out in the Labour Relations Act, 1995 (Act No. 66 of 1995);

"respondent" means a person against whom a complaint or application has been initiated in terms of this Act;

"school loan" means a credit agreement in terms of which—

(a) money is paid to a primary or secondary school on account of school fees or related costs for the benefit of the consumer's child or other dependant; or

(b) a primary or secondary school defers payment of all or part of the school fees or related costs for the consumer's child or other dependant;

"secured loan" means an agreement, irrespective of its form but not including an instalment agreement, in terms of which a person—

(a) advances money or grants credit to another., and

(b) retains, or receives a pledge or cession of the title to any movable property or other thing of value as security for all amounts due under that agreement;

"service fee" means a fee that may be charged periodically by a credit provider in connection with the routine administration cost of maintaining a credit agreement;

"settlement value" means the amount in respect of a credit agreement that is required to be paid on a particular date to satisfy all the consumer's financial obligations to the credit provider, as calculated in accordance with section 125(2);

"sms" means a short message service provided through a telecommunication system;

"small business" has the meaning set out in the National Small Business Act, 1996 (Act No. 102 of 1996);

"South African Reserve Bank" has the meaning set out in the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

"statutory exception" means a provision of this Act that specifically provides for exceptional treatment of developmental credit agreements;

"stokvel" means a formal or informal rotating financial scheme with entertainment, social or economic functions, which—

- (a) consists of two or more persons in a voluntary association, each of whom has pledged mutual support to the others towards the attainment of specific objectives;
- (b) establishes a continuous pool of capital by raising funds by means of the subscriptions of the members;
- (c) grants credit to and on behalf of members;
- (d) provides for members to share in profits from, and to nominate management of, the scheme; and
- (e) relies on self-imposed regulation to protect the interest of its members;

"student loan" means a credit agreement in terms of which—

- (a) money is paid by the credit provider to an institution of tertiary education on account of education fees or related costs for the benefit of the consumer or a dependant of the consumer; or
- (b) an institution of tertiary education defers payment of all or part of the consumer's education fees or related costs;

"temporary increase" with respect to the credit limit applicable to a credit facility, means an increase in circumstances described in section 119(2);

"this Act" includes a Schedule to this Act, a regulation made or a notice issued under this Act;

"Tribunal" means the National Consumer Tribunal established by section 26; and

"utility" means the supply to the public of an essential—

- (a) commodity, such as electricity, water, or gas; or
- (b) service, such as waste removal, or access to sewage lines, telecommunication networks or any transportation infrastructure.

Interpretation

2. (1) This Act must be interpreted in a manner that gives effect to the purposes set out in section 3.

(2) Any person, court or tribunal interpreting or applying this Act may consider appropriate foreign and international law.

(3) If a provision of this Act requires a document to be signed or initialed by a party to a credit agreement, that signing or initialing may be effected by use of—

- (a) an advanced electronic signature, as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002); or
- (b) an electronic signature as defined in the Electronic Communications Act, 2002 (Act No. 25 of 2002), provided that—
 - (i) the electronic signature is applied by each party in the physical presence of the other party or an agent of the party; and
 - (ii) the credit provider must take reasonable measures to prevent the use of the consumer's electronic signature for any purpose other than the signing or initialing of the particular document that the consumer intended to sign or initial.

(4) Despite the periods of time set out in section 7(1) and 42(1), each successive threshold determined by the Minister in terms of either section continues in effect until a subsequent threshold in terms of that section takes effect.

(5) When a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by—

- (a) excluding the day on which the first such event occurs;
- (b) including the day on or by which the second event is to occur; and
- (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively.

(6) For all purposes of this Act, a person is a historically disadvantaged person if that person—

- (a) is one of a category of natural persons who, before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), came into operation, were disadvantageded by unfair discrimination on the basis of race;
 - (b) is an association, a majority of whose members are natural persons referred to in paragraph (a);
 - (c) is a juristic person other than an association, and natural persons referred to in paragraph (a) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes; or
 - (d) is a juristic person or association, and persons referred to in paragraph (a), (b) or (c) own and control a majority of its issued share capital or members' interest and are able to control a majority of its votes.
- (7) Except as specifically set out in, or necessarily implied by, this Act, the provisions of this Act are not to be construed as—
- (a) limiting, amending, repealing or otherwise altering any provision of any other Act;
 - (b) exempting any person from any duty or obligation imposed by any other Act; or
 - (c) prohibiting any person from complying with any provision of another Act.

Part B
Purpose and application

Purpose of Act

3. The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers, by—

- (a) promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions;
- (b) ensuring consistent treatment of different credit products and different credit providers;
- (c) promoting responsibility in the credit market by—
 - (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and
 - (ii) discouraging reckless credit granting by credit providers and contractual default by consumers;
- (d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;
- (e) addressing and correcting imbalances in negotiating power between consumers and credit providers by—
 - (i) providing consumers with education about credit and consumer rights;
 - (ii) providing consumers with adequate disclosure of standardised information in order to make informed choices; and
 - (iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;
- (f) improving consumer credit information and reporting and regulation of credit bureaux;
- (g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations;
- (h) providing for a consistent and accessible system of consensual resolution of disputes arising from credit agreements; and
- (i) providing for a consistent and harmonised system of debt restructuring, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.

Application of Act

4. (1) Subject to sections 5 and 6, this Act applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except—

- (a) a credit agreement in terms of which the consumer is—

- (i) a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1);
 - (ii) the state; or
 - (iii) an organ of state;
 - (b) a large agreement, as described in section 9(4), in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of section 7(1);
 - (c) a credit agreement in terms of which the credit provider is the Reserve Bank of South Africa; or
 - (d) a credit agreement in respect of which the credit provider is located outside the Republic, approved by the Minister on application by the consumer in the prescribed manner and form.
- (2) For greater certainty in applying subsection (1)—
- (a) the asset value or annual turnover of a juristic person at the time a credit agreement is made, is the value stated as such by that juristic person at the time it applies for or enters into that agreement;
 - (b) in any of the following arrangements, the parties are not dealing at arm's length:
 - (i) a shareholder loan or other credit agreement between a juristic person, as consumer, and a person who has a controlling interest in that juristic person, as credit provider;
 - (ii) a loan to a shareholder or other credit agreement between a juristic person, as credit provider, and a person who has a controlling interest in that juristic person, as consumer;
 - (iii) a credit agreement between natural persons who are in a familial relationship and—
 - (aa) are co-dependent on each other; or
 - (bb) one is dependent upon the other; and
 - (iv) any other arrangement—
 - (aa) in which each party is not independent of the other and consequently does not necessarily strive to obtain the utmost possible advantage out of the transaction; or
 - (bb) that is of a type that has been held in law to be between parties who are not dealing at arm's length;
 - (c) this Act applies to a credit guarantee only to the extent that this Act applies to a credit facility or credit transaction in respect of which the credit guarantee is granted; and
 - (d) a juristic person is related to another juristic person if—
 - (i) one of them has direct or indirect control over the whole or part of the business of the other; or
 - (ii) a person has direct or indirect control over both of them.
- (3) The application of this Act in terms of subsection (1) extends to a credit agreement or proposed credit agreement irrespective of whether the credit provider—
- (a) resides or has its principal office within or outside the Republic; or
 - (b) subject to subsection (1)(c), is—
 - (i) an organ of state;
 - (ii) an entity controlled by an organ of state;
 - (iii) an entity created in terms of any public regulation; or
 - (iv) the Land and Agricultural Development Bank.
- (4) If this Act applies to a credit agreement—
- (a) it continues to apply to that agreement even if a party to that agreement ceases to reside or have its principal office within the Republic; and
 - (b) it applies in relation to every transaction, act or omission under that agreement, whether that transaction, act or omission occurs within or outside the Republic.
- (5) If a person sells any goods or services and accepts, as full payment for those goods or services—
- (a) a cheque or similar instrument upon which payment is subsequently refused for any reason; or

(b) a charge by or on behalf of the buyer against a credit facility in terms of which a third person is the credit provider, and that credit provider subsequently refuses that charge for any reason,
the resulting debt owed to the seller by the issuer of that cheque or charge does not constitute a credit agreement for any purpose of this Act.

(6) Despite any other provision of this Act—

- (a) if a consumer pays fully or partially for goods or services through a charge against a credit facility that is provided by a third party, the person who sells the goods or services must not be regarded as having entered into a credit agreement with the consumer merely by virtue of that payment; and
- (b) if an agreement provides that a supplier of a utility or other continuous service—
 - (i) will defer payment by the consumer until the supplier has provided a periodic statement of account for that utility or other continuous service; and
 - (ii) will not impose any charge contemplated in section 103 in respect of any amount so deferred, unless the consumer fails to pay the full amount due within at least 30 days after the date on which the periodic statement is delivered to the consumer,

that agreement is not a credit facility within the meaning of section 8(3), but any overdue amount in terms of that agreement, as contemplated in subparagraph (ii), is incidental credit to which this Act applies to the extent set out in section 5.

(7) In respect of an advertisement concerning credit, or in respect of a credit agreement or proposed credit agreement to which this Act applies, if there is an inconsistency between a provision of this Act read with any relevant definition in section (1), and a provision of sections 42 to 51 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)—

- (a) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and
- (b) the provisions of this Act prevail to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second.

Limited application of Act to incidental credit agreements

5. (1) Only the following provisions of this Act apply with respect to an incidental credit agreement:

- (a) Chapters 1, 2, 7, 8 and 9;
- (b) Chapter 3, sections 54 and 59;
- (c) Chapter 4, Parts A and B;
- (d) Chapter 4, Part D, except to the extent that it deals with reckless credit;
- (e) Chapter 5, Part C, subject to subsection (3)(a);
- (f) Chapter 5, Parts D and E, once the incidental credit agreement is deemed to have been made in terms of subsection (2); and
- (g) Chapter 6, Parts A and C.

(2) The parties to an incidental credit agreement are deemed to have made that agreement on the date that is 20 business days after—

- (a) the supplier of the goods or services that are the subject of that account, first charges a late payment fee or interest in respect of that account; or
- (b) pre-determined higher price for full settlement of the account first becomes applicable,

unless the consumer has fully paid the settlement value before that date.

(3) A person may only charge or recover a fee, charge or interest—

- (a) in respect of a deferred amount under an incidental credit agreement as provided for in section 101(d), (f) and (g) subject to any maximum rates of interest or fees imposed in terms of section 105; or

- (b) in respect of an unpaid amount contemplated in paragraph (a) of the definition of "incidental credit agreement" only if the credit provider has disclosed, and the consumer has accepted, the amount of such a fee, charge or interest, or the basis on which it may become payable, on or before the date on which the relevant goods or services were supplied.

Limited application of Act when consumer is juristic person

6. The following provisions of this Act do not apply to a credit agreement or proposed credit agreement in terms of which the consumer is a juristic person:

- (a) Chapter 4 — Parts C and D;
- (b) Chapter 5 — Part A — section 89 (2)(b);
- (c) Chapter 5 — Part A — section 90 (2)(o); and
- (d) Chapter 5 — Part C.

Threshold determination and industry tiers

7. (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine—

- (a) a monetary asset value or annual turnover threshold of not more than R 1 000 000 for the purpose of section 4(1); and
- (b) two further monetary thresholds for the purposes of determining the three categories of credit agreements contemplated in section 9.

(2) For the purpose of applying a monetary threshold determined in terms of subsection (1)(b) to a credit facility, the principal debt of the credit facility is the credit limit under that facility.

(3) The initial thresholds determined by the Minister in terms of this section take effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.

Part C

Classification and categories of credit agreements

Credit agreements

8. (1) Subject to subsection (2), an agreement constitutes a credit agreement for the purposes of this Act if it is—

- (a) a credit facility, as described in subsection (3);
- (b) a credit transaction, as described in subsection (4);
- (c) a credit guarantee, as described in subsection (5); or
- (d) any combination of the above.

(2) An agreement, irrespective of its form, is not a credit agreement if it is—

- (a) a policy of insurance or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;
- (b) a lease of immovable property; or
- (c) a transaction between a stokvel and a member of that stokvel in accordance with the rules of that stokvel.

(3) An agreement, irrespective of its form but not including an agreement contemplated in subsection (2) or section 4(6)(b), constitutes a credit facility if, in terms of that agreement—

- (a) a credit provider undertakes—
 - (i) to supply goods or services or to pay an amount or amounts, as determined by the consumer from time to time, to the consumer or on behalf of, or at the direction of, the consumer; and
 - (ii) either to—
 - (aa) defer the consumer's obligation to pay any part of the cost of goods or services, or to repay to the credit provider any part of an amount contemplated in subparagraph (i); or
 - (bb) bill the consumer periodically for any part of the cost of goods or services, or any part of an amount, contemplated in subparagraph (i); and
- (b) any charge, fee or interest is payable to the credit provider in respect of—
 - (i) any amount deferred as contemplated in paragraph (a)(ii)(aa); or

(b) a charge by or on behalf of the buyer against a credit facility in terms of which a third person is the credit provider, and that credit provider subsequently refuses that charge for any reason,
the resulting debt owed to the seller by the issuer of that cheque or charge does not constitute a credit agreement for any purpose of this Act.

(6) Despite any other provision of this Act—

(a) if a consumer pays fully or partially for goods or services through a charge against a credit facility that is provided by a third party, the person who sells the goods or services must not be regarded as having entered into a credit agreement with the consumer merely by virtue of that payment; and

(b) if an agreement provides that a supplier of a utility or other continuous service—

(i) will defer payment by the consumer until the supplier has provided a periodic statement of account for that utility or other continuous service; and

(ii) will not impose any charge contemplated in section 103 in respect of any amount so deferred, unless the consumer fails to pay the full amount due within at least 30 days after the date on which the periodic statement is delivered to the consumer,

that agreement is not a credit facility within the meaning of section 8(3), but any overdue amount in terms of that agreement, as contemplated in subparagraph (ii), is incidental credit to which this Act applies to the extent set out in section 5.

(7) In respect of an advertisement concerning credit, or in respect of a credit agreement or proposed credit agreement to which this Act applies, if there is an inconsistency between a provision of this Act read with any relevant definition in section (1), and a provision of sections 42 to 51 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)—

(a) the provisions of both Acts apply concurrently, to the extent that it is possible to apply and comply with one of the inconsistent provisions without contravening the second; and

(b) the provisions of this Act prevail to the extent that it is impossible to apply or comply with one of the inconsistent provisions without contravening the second.

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5. (1) Only the following provisions of this Act apply with respect to an incidental credit agreement:

(a) Chapters 1, 2, 7, 8 and 9;

(b) Chapter 3, sections 54 and 59;

(c) Chapter 4, Parts A and B;

(d) Chapter 4, Part D, except to the extent that it deals with reckless credit;

(e) Chapter 5, Part C, subject to subsection (3)(a);

(f) Chapter 5, Parts D and E, once the incidental credit agreement is deemed to have been made in terms of subsection (2); and

(g) Chapter 6, Parts A and C.

(2) The parties to an incidental credit agreement are deemed to have made that agreement on the date that is 20 business days after—

(a) the supplier of the goods or services that are the subject of that account, first charges a late payment fee or interest in respect of that account; or

(b) a pre-determined higher price for full settlement of the account first becomes applicable,

unless the consumer has fully paid the settlement value before that date.

(3) A person may only charge or recover a fee, charge or interest—

(a) in respect of a deferred amount under an incidental credit agreement as provided for in section 101(d), (f) and (g) subject to any maximum rates of interest or fees imposed in terms of section 105; or

- (i) between a credit co-operative as credit provider, and a member of that credit co-operative as consumer, if profit is not the dominant purpose for entering into the agreement, and the principal debt under that agreement does not exceed the prescribed maximum amount;
 - (ii) an educational loan; or
 - (iii) entered into for any of the following purposes—
 - (aa) development of a small business;
 - (bb) the acquisition, rehabilitation, building or expansion of low income housing; or
 - (cc) any other purpose prescribed in terms of subsection (2)(a).
- (2) The Minister may prescribe—
- (a) additional purposes, as contemplated in subsection (1)(b)(iii)(cc), that are designed to promote the socio-economic development and welfare of persons contemplated in section 13(a);
 - (b) a maximum principal debt above which a credit agreement contemplated in subsection (1)(b)(i) does not automatically qualify as a developmental credit agreement; and
 - (c) criteria and standards to be applied by the National Credit Regulator in considering whether a credit provider's dominant purpose for making an agreement was profit or a purpose other than profit, including but not limited to the extent to which the credit agreement concerned contributes to the socio-economic development and welfare of persons contemplated in section 13(a).

Public interest credit agreements

11. (1) The Minister—
- (a) by declaration in accordance with subsection (2); or
 - (b) by regulation in accordance with subsection (3),
- may declare that credit agreements entered into in specified circumstances, or for specified purposes, during a specific period or until the declaration or regulation is repealed, are public interest credit agreements.
- (2) The Minister, by notice in the Gazette, may make a declaration contemplated in subsection (1)(a)—
- (a) in order to promote the availability of credit in all or part of the Republic in circumstances of natural disaster or similar emergent and grave public interest; and
 - (b) with or without prior notice or consultation, as the Minister may determine having regard to the circumstances.
- (3) The Minister may make a regulation contemplated in subsection (1)(b)—
- (a) in order to promote the availability of credit in all or part of the Republic in any circumstances that the Minister considers to be in the public interest; and
 - (b) in accordance with the provisions of section 171(2).
- (4) When making a declaration or regulation contemplated in subsection (1) the Minister must prescribe the following criteria applicable to determining whether a credit agreement qualifies as a public interest credit agreement:
- (a) The public interest circumstances in which credit may be granted or made available to a consumer;
 - (b) the maximum permissible principal debt;
 - (c) the maximum permissible duration of the credit agreement; and
 - (d) the area within the Republic in which the consumer under such an agreement must reside or carry on business.
- (5) A public interest credit agreement is exempt from the application of Part D of Chapter 4 to the extent that it concerns reckless credit.

CHAPTER 2**CONSUMER CREDIT INSTITUTIONS****Part A**
National Credit Regulator**Establishment of National Credit Regulator**

- 12.** (1) There is hereby established a body to be known as the National Credit Regulator, which—
- (a) has jurisdiction throughout the Republic;
 - (b) is a juristic person;
 - (c) is independent and subject only to the Constitution and the law;
 - (d) must exercise its functions in accordance with this Act;
 - (e) must be impartial; and
 - (f) must perform its functions—
 - (i) in as transparent a manner as is appropriate having regard to the nature of the specific function; and
 - (ii) without fear, favour, or prejudice.
- (2) Each organ of state must assist the National Credit Regulator to maintain its independence and impartiality, and to perform its functions effectively.
- (3) The National Credit Regulator is responsible to carry out the functions and exercise the powers—
- (a) set out in sections 12 to 18; or
 - (b) assigned to it by or in terms of this Act, or any other national legislation.
- (4) In carrying out its functions, the National Credit Regulator may—
- (a) have regard to international developments in the field of consumer credit and consumer financing; or
 - (b) consult any person, organisation or institution with regard to any matter.
- (5) In respect to a particular matter within its jurisdiction or responsibility, the National Credit Regulator may exercise its responsibility by way of an agreement contemplated in section 17(4)(b).

Development of accessible credit market

- 13.** The National Credit Regulator is responsible to—
- (a) promote and support the development, where the need exists, of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry to serve the needs of—
 - (i) historically disadvantaged persons;
 - (ii) low income persons and communities; and
 - (iii) remote, isolated or low density populations and communities, in a manner consistent with the purposes of this Act;
 - (b) set appropriate conditions for the supplementary registration of credit providers wishing to enter into developmental credit agreements, in order to promote access to credit in the manner, and for the persons, contemplated in paragraph (a);
 - (c) monitor the following matters and report to the Minister annually in respect of:
 - (i) Credit availability, price and market conditions, conduct and trends;
 - (ii) market share, market conduct and competition within the consumer credit industry, the credit industry structure, including the extent of ownership, control and participation within the industry by historically disadvantaged persons;
 - (iii) access to consumer credit by small businesses or persons contemplated in paragraph (a)(i) to (iii);
 - (iv) levels of consumer indebtedness and the incidence and social effects of over-indebtedness; and
 - (v) any other matter relating to the credit industry; and
 - (d) conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve access to credit for persons contemplated in paragraph (a)(i) to (iii).

Registration functions of National Credit Regulator

- 14.** The National Credit Regulator is responsible to regulate the consumer credit industry by—
- (a) registering credit providers, credit bureaux and debt counsellors;
 - (b) suspending or cancelling any registration issued in terms of this Act, subject to section 57(2); and
 - (c) establishing and maintaining the registries contemplated in sections 53 and 69(1) and by making information from those registries available to
 - (i) each provincial credit regulator; and
 - (ii) other persons in the prescribed manner and form, subject to Part B of Chapter 4.

Enforcement functions of National Credit Regulator

- 15.** The National Credit Regulator must enforce this Act by—
- (a) promoting informal resolution of disputes arising in terms of this Act between consumers on the one hand and a credit provider or credit bureau on the other, without intervening in or adjudicating any such dispute;
 - (b) receiving complaints concerning alleged contraventions of this Act;
 - (c) monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted;
 - (d) investigating and ensuring that national and provincial registrants comply with this Act and their respective registrations;
 - (e) issuing and enforcing compliance notices;
 - (f) investigating and evaluating alleged contraventions of this Act;
 - (g) negotiating and concluding undertakings and consent orders contemplated in section 138(l)(b);
 - (h) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998);
 - (i) referring matters to the Tribunal and appearing before the Tribunal, as permitted or required by this Act; and
 - (j) dealing with any other matter referred to it by the Tribunal.

Research and public information

- 16.** (1) The National Credit Regulator is responsible to increase knowledge of the nature and dynamics of the consumer credit market and industry, and to promote public awareness of consumer credit matters, by—
- (a) implementing education and information measures to develop public awareness of the provisions of this Act;
 - (b) providing guidance to the credit market and industry by—
 - (i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act; or
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act;
 - (c) monitoring socio-economic patterns of consumer credit activity within the Republic, and in particular identifying factors concerning—
 - (i) over-indebtedness; and
 - (ii) the patterns, causes and consequences of over-indebtedness;
 - (d) conducting reasonable periodic audits of registered credit providers in respect of historical data relative to credit applications and credit agreements in order to—
 - (i) establish demographic patterns of the credit market;
 - (ii) investigate socio-economic trends in the credit market, particularly among persons contemplated in section 13(a); and
 - (iii) detect patterns of possible discriminatory practices;
 - (e) monitoring trends in the consumer credit market and industry with respect to—
 - (i) the needs of persons contemplated in section 13(a); and
 - (ii) the promotion of black economic empowerment and ownership within the industry;

- (f) monitoring trends in the market—
 - (i) for credit insurance, patterns of sale of credit insurance, costs of credit insurance, performance of credit insurance in meeting the obligations of consumers, and loss ratios of insurers in respect of credit insurance; and
 - (ii) for alternative dispute resolution agents, the patterns and costs of services, impartiality and neutrality of such agents, and the impact of such agents on the incidence and cost of debt enforcement and consumers' access to redress in the market; and
 - (g) over time, reviewing legislation and public regulations, and reporting to the Minister concerning matters relating to consumer credit.
- (2) For the purposes of exercising its responsibilities in terms of subsection (1)(f)(i), the National Credit Regulator may—
- (a) require an insurer to provide periodic synoptic reports of aggregate information relating to credit insurance policies issued by it, in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and
 - (b) make further reasonable requests for information from an insurer related to the information contemplated in paragraph (a).

Relations with other regulatory authorities

- 17.** (1) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator—
- (a) may engage with that provincial credit regulator in co-operative activities of research, publication, education, staff development and training; and
 - (b) in consultation with the Minister, may—
 - (i) engage with that provincial credit regulator in staff exchanges or secondments; or
 - (ii) provide technical assistance or expertise to that provincial credit regulator.
- (2) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator may engage with that provincial credit regulator in co-operative activities to detect and suppress prohibited conduct, if there are reasonable grounds to believe that any such conduct may be occurring within the province, or across its provincial boundaries.
- (3) At the direction of the Minister, the National Credit Regulator must engage with any relevant provincial credit regulator in co-operative activities to detect and suppress prohibited conduct occurring within the province or across its provincial boundaries.
- (4) The National Credit Regulator may—
- (a) liaise with any regulatory authority on matters of common interest;
 - (b) negotiate agreements with any regulatory authority to—
 - (i) co-ordinate and harmonise the exercise of jurisdiction over consumer credit matters within the relevant industry or sector; and
 - (ii) ensure the consistent application of the principles of this Act;
 - (c) participate in the proceedings of any regulatory authority; and
 - (d) advise, or receive advice from, any regulatory authority.
- (5) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer credit matters within a particular industry or sector—
- (a) may negotiate agreements with the National Credit Regulator, as anticipated in subsection 4(b); and
 - (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.
- (6) The National Credit Regulator may request a provincial credit regulator to submit any report or information related to the activities of that provincial credit regulator to the National Credit Regulator.
- (7) The President may assign to the National Credit Regulator any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purpose of this Act.
- (8) The National Credit Regulator may liaise with any foreign or international authorities having any objects similar to the functions and powers of the National Credit Regulator.

Reporting requirements of National Credit Regulator

18. (1) In addition to any other advice or reporting requirements set out in this Part, the National Credit Regulator is responsible to—
- (a) advise the Minister on matters of national policy relating to consumer credit and on the determination of national norms and standards regarding consumer protection in terms of this Act that should apply generally throughout the Republic;
 - (b) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act;
 - (c) report to the Minister annually on—
 - (i) the volume and cost of different types of consumer credit products, and market practices relating to those products; and
 - (ii) the implications for consumer choice and competition in the consumer credit market;
 - (d) enquire into and report to the Minister on any matter concerning the purposes of this Act; and
 - (e) advise the Minister in respect of any matter referred to it by the Minister.
- (2) The Minister must table in Parliament any report submitted in terms of—
- (a) section 13(c) or section 16(1)(g); or
 - (b) any other provision of this Part, if that report deals with a substantial matter relating to the purposes of this Act.

Governance of National Credit Regulator

19. (1) The National Credit Regulator is governed by a Board, consisting of—
- (a) a member designated by the Cabinet member responsible for finance, to serve until substituted by that Cabinet member;
 - (b) a member designated by the Cabinet member responsible for housing matters, to serve until substituted by that Cabinet member;
 - (c) a member designated by the Cabinet member responsible for social development matters, to serve until substituted by that Cabinet member;
 - (d) a Chairperson appointed by the Minister;
 - (e) a Deputy Chairperson appointed by the Minister; and
 - (f) not more than six other members, at least two of whom must be knowledgeable on consumer matters, appointed by the Minister.
- (2) The Chairperson, Deputy Chairperson and members contemplated in subsection (1)(f) each serve for a period of not longer than five years determined by the Minister in each case at the time of their appointment.
- (3) The persons contemplated in subsection (2) must each have applicable knowledge or experience of matters connected with the purpose of this Act.
- (4) The Board must—
- (a) guide the strategic development of the National Credit Regulator;
 - (b) oversee and ensure the efficient and effective use of the resources of the National Credit Regulator;
 - (c) ensure that the National Credit Regulator is in compliance with all its legal requirements and reporting and financial accountability obligations; and
 - (d) provide advice to the Chief Executive Officer concerning the exercise of the functions and powers of the National Credit Regulator.
- (5) The Board may refer to the Minister any matter concerning the functioning of the National Credit Regulator.

Qualifications for Board membership

20. (1) To be eligible for appointment or designation as a member of the Board, and to continue to hold that office, a person must—
- (a) not be subject to any disqualification set out in subsection (2); and
 - (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (2); and
 - (ii) does not have any interests referred to in subsection (2)(b).
- (2) A person may not be a member of the Board if that person—

- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
- (b) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a registrant; or
 - (ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Board;
- (c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;
- (d) has ever been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
- (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
- (f) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or
- (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No, 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

(3) For the purpose of subsection (2)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

Conflicting interests of members of Board

21. (1) A member of the Board must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 20(2)(h).

(2) A member of the Board must not—

- (a) engage in any activity that may undermine the integrity of the National Credit Regulator;
- (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member has an interest—
 - (i) contemplated in section 20(2)(b); or
 - (ii) that precludes that member from performing the functions of a member of the Board in a fair, unbiased and proper manner;
- (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (7);
- (d) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Board; or
- (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.

(3) If at any time, it appears to a member of the Board that a matter being considered by the Board at a meeting concerns an interest of that member referred to in subsection (2)(b), that member must—

- (a) immediately and fully disclose the nature of that interest to the meeting; and
- (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(4) The disclosure by a member of the Board in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting in question.

(5) Proceedings of the Board, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that—

- (a) a member of the Board failed to disclose an interest as required by subsection (3); or
- (b) a member of the Board who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings.

Resignation, removal from office and vacancies

22. (1) A member of the Board appointed in terms of section 19(1)(d), (e) and (f) may resign by giving to the Minister—

- (a) one month written notice; or
- (b) less than one month written notice, with the approval of the Minister.

(2) A member of the Board designated in terms of section 19(1)(a), (b) and (c) may resign by giving written notice jointly to the Minister and the relevant member of the Cabinet responsible for the designation of that member.

(3) The Minister, after taking the steps required by subsection (4), may remove a member of the Board appointed in terms of section 19(1)(d), (e) and (f), only if that member has—

- (a) become disqualified in terms of section 20(2);
- (b) acted contrary to section 21(2);
- (c) failed to disclose an interest or withdraw from a meeting as required by section 21(3); or
- (d) neglected to properly perform the functions of their office.

(4) Before removing a person from office in terms of subsection (3), the Minister must afford the person an opportunity to state a case in defence of their position.

(5) Upon the expiry of the first term of office of a member of the Board appointed in terms of section 19(1)(d), (e) and (f), the member may be re-appointed to a further term, subject to section 19.

(6) A person may not be appointed in terms of section 19(1)(d), (e) and (f), to serve for more than two terms as a member of the Board.

Appointment of Chief Executive Officer

23. (1) The Minister must appoint a suitably qualified and experienced person as Chief Executive Officer of the National Credit Regulator, who—

- (a) with the advice, and subject to the oversight, of the Board, is responsible for all responsibilities pertaining to the functions of the National Credit Regulator; and
- (b) is accountable to the Board.

(2) The Chief Executive Officer is an *ex officio* member of the Board, but may not vote at its meetings.

Conflicting interests

24. The Chief Executive Officer, and each other employee of the National Credit Regulator, must not—

- (a) engage in any activity that may undermine the integrity of the National Credit Regulator;
- (b) participate in any investigation, hearing, or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the National Credit Regulator; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the National Credit Regulator.

Appointment of inspectors and investigators

25. (1) The Chief Executive Officer—

- (a) may appoint any suitable employee of the National Credit Regulator, or any other suitable person employed by the State, as an inspector; and
- (b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act.

(2) When an inspector performs any function in terms of section 139 or Chapter 8, the inspector must—

- (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (1); and

- (b) show that certificate to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; and
 - (ii) requests to see the certificate.
- (3) When exercising powers in terms of this Act, an inspector is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.
- (4) The Chief Executive Officer may appoint or contract with any suitably qualified person to conduct research, audits, inquiries or other investigations on behalf of the National Credit Regulator.
- (5) A person appointed in terms of subsection (4) is not an inspector within the 10 meaning of this Act.

Part B
National Consumer Tribunal

Establishment and constitution of Tribunal

- 26.** (1) There is hereby established a body to be known as the National Consumer Tribunal, which—
- (a) has jurisdiction throughout the Republic;
 - (b) is a juristic person;
 - (c) is a tribunal of record; and
 - (d) must exercise its functions in accordance with this Act or any other applicable legislation.
- (2) The Tribunal consists of a Chairperson and not less than 10 other women or men appointed by the President, on a full or part-time basis.
- (3) The President must—
- (a) appoint the Chairperson and other members of the Tribunal no later than the date on which this Act comes into operation; and
 - (b) appoint a person to fill any vacancy on the Tribunal.
- (4) Sections 20 and 21, each read with the changes required by the context, apply to the Tribunal and each of its members.

Functions of Tribunal

- 27.** The Tribunal or a member of the Tribunal acting alone in accordance with this Act may—
- (a) adjudicate in relation to any—
 - (i) application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application; or
 - (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in this Act;
 - (b) grant an order for costs in terms of section 147; and
 - (c) exercise any other power conferred on it by law.

Qualifications of members of Tribunal

- 28.** (1) The members of the Tribunal, viewed collectively—
- (a) must represent a broad cross-section of the population of the Republic; and
 - (b) must comprise sufficient persons with legal training and experience to satisfy the requirements of section 31(2)(a).
- (2) Each member of the Tribunal must—
- (a) be a citizen of South Africa, who is ordinarily resident in the Republic;
 - (b) have suitable qualifications and experience in economics, law, commerce, industry or consumer affairs; and
 - (c) be committed to the purposes of this Act.

Term of office of members of Tribunal

- 29.** (1) Each member of the Tribunal serves for a term of five years.
- (2) The President may re-appoint a member of the Tribunal at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.

- (3) The Chairperson, on one month written notice addressed to the Minister, may—
 - (a) resign from the Tribunal; or
 - (b) resign as Chairperson, but remain as a member of the Tribunal.
- (4) A member of the Tribunal other than the Chairperson may resign by giving at least one month written notice to the Minister.
- (5) The President, on the recommendation of the Minister—
 - (a) must remove the Chairperson or any other member of the Tribunal from office if that person becomes subject to any of the disqualifications referred to in section 20(2); and
 - (b) other than as provided for in paragraph (a), may, remove the Chairperson or a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or
 - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

Deputy Chairperson of Tribunal

30. (1) The President must designate a member of the Tribunal as Deputy Chairperson of the Tribunal.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever—
 - (a) the office of Chairperson is vacant; or
 - (b) the Chairperson is for any other reason temporarily unable to perform those functions.

Tribunal proceedings

31. (1) The Chairperson is responsible to manage the caseload of the Tribunal, and must assign each matter referred to the Tribunal to—
 - (a) a member of the Tribunal, to the extent that this Act provides for a matter to be considered by a single member of the Tribunal; or
 - (b) a panel composed of any three members of the Tribunal, in any other case.
- (2) When assigning a matter to a panel in terms of subsection (1)(b), the Chairperson must—
 - (a) ensure that at least one member of the panel is a person who has suitable legal qualifications and experience; and
 - (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of resignation, illness, death, or withdrawal from a hearing in terms of section 29, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must—
 - (a) direct that the hearing of that matter proceed before the remaining members of the panel, subject to the requirements of subsection (2)(a); or
 - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) A decision of a single member of the Tribunal hearing a matter as contemplated in subsection (1)(a), or of a majority of the members of a panel in any other case, is the decision of the Tribunal.

Conflicts and disclosure of interest

32. (1) A member of the Tribunal may not represent any person before the Tribunal.
- (2) If, during a hearing in which a member of the Tribunal is participating, it appears to that member that the matter concerns a financial or other interest of that member contemplated in section 20(2)(b), that member must—
 - (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
 - (b) withdraw from any further involvement in that hearing.

Acting by member of Tribunal after expiry of term of office

33. If, on the expiry of the term of office of a member of the Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

Remuneration and benefits

34. During the term of office of a member of the Tribunal, the member's salary, allowances or benefits may not be reduced.

Part C
Administrative Matters

Finances

35. (1) The National Credit Regulator and the Tribunal are each financed from—
- (a) money appropriated by Parliament;
 - (b) any fees payable in terms of this Act;
 - (c) income derived from their respective investment and deposit of surplus money in terms of subsection (2); and
 - (d) other money accruing from any source.
- (2) The National Credit Regulator or the Tribunal may invest or deposit money that is not immediately required for contingencies or to meet current expenditures—
- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
 - (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

Reviews and reports to Minister

36. (1) At least once every five years, the Minister must conduct an audit review of the exercise of the functions and powers of the National Credit Regulator, and the Tribunal.
- (2) In addition to any other reporting requirement set out in this Act, the National Credit Regulator and the Tribunal must each report to the Minister annually on its activities, as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (3) As soon as practicable after receiving a report of a review contemplated in subsection (1), or after receiving a report contemplated in subsection (2), the Minister must—
- (a) transmit a copy of the report to the Premier of each province; and
 - (b) table it in Parliament.

Part D
National and provincial co-operation

Co-operative exercise of concurrent jurisdiction

37. (1) The Minister must consult with the responsible MEC of any province concerned—
- (a) to co-ordinate and harmonise the functions relating to consumer credit to be performed by the National Credit Regulator and one or more provincial credit regulators; and
 - (b) to facilitate the settlement of any dispute between the National Credit Regulator and one or more provincial credit regulators.
- (2) If this Act requires the provincial credit regulators to perform a particular function within their respective provinces, and—
- (a) within a particular province, no provincial credit regulator has been established; or
 - (b) the Minister concludes on reasonable grounds that the provincial credit regulator within a particular province is unable to perform that function effectively,

the Minister must consult with the responsible MEC of that province to determine the steps to be taken to ensure the fulfilment of that statutory obligation.

Information sharing

38. (1) A provincial credit regulator must keep a register of each person whom it registers in terms of applicable provincial legislation.

(2) The register must include prescribed information relating to—

- (a) the activities permitted under each such registration;
- (b) the address of any premises in, on or from which registered activities may be engaged in, conducted or made available under registrations issued by it; and
- (c) any other prescribed information.

(3) Each provincial credit regulator must report to the National Credit Regulator, at the prescribed intervals, the information kept by that provincial credit regulator in terms of subsection (1).

(4) A credit regulator must, on request from another credit regulator, provide a copy of all prescribed information in its possession concerning a registrant or applicant for registration.

(5) The Minister, by regulation in accordance with section 171, may prescribe the timing, manner and form, and content of information to be provided in terms of this section.

CHAPTER 3

CONSUMER CREDIT INDUSTRY REGULATION

Part A

Registration requirements, criteria and procedures

Limited application of this Part

39. (1) Sections 40, 42, 45, 48, 49 and 51 do not apply to a credit provider who—

- (a) operates only within one province; and
- (b) is registered as a credit provider in terms of applicable provincial legislation, if the Minister has declared that the registration requirements in terms of that provincial legislation are comparable to or exceed the registration requirements in terms of this Act.

(2) The Minister may make a declaration contemplated in subsection (1) by notice in the *Gazette* after consulting the relevant MEC of the province concerned.

Registration of credit providers

40. (1) A person must apply to be registered as a credit provider if—

- (a) that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or
- (b) the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42(1).

(2) In determining whether a person is required to register as a credit provider—

- (a) the provisions of subsection (1) apply to the total number and aggregate principal debt of credit agreements in respect of which that person, or any associated person, is the credit provider;
- (b) each associated person that is a credit provider in its own name and falls within the requirements of subsection (1) must apply for registration in its own name;
- (c) a credit provider that conducts business in its own name at or from more than one location or premises is required to register only once with respect to all of such locations or premises; and
- (d) "associated person"—
 - (i) with respect to a credit provider who is a natural person, includes the credit provider's spouse or business partners; and
 - (ii) with respect to a credit provider that is a juristic person, includes—

- (aa) any person that directly or indirectly has a controlling interest in the credit provider, or is directly or indirectly controlled by the credit provider;
- (bb) any person that has a direct or indirect controlling interest in, or is directly or indirectly controlled by, a person contemplated in clause (aa); or
- (cc) any credit provider that is a joint venture partner of a person contemplated in this subparagraph.

(3) A person who is required in terms of subsection (1) to be registered as a credit provider, but who is not so registered, must not offer, make available or extend credit. enter into a credit agreement or agree to do any of those things.

(4) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not so registered is an unlawful agreement and void to the extent provided for in section 89.

(5) A person to whom this section does not apply in terms of section 39, or who is not required to be registered as a credit provider in terms of this section, may voluntarily apply to the National Credit Regulator at any time to be registered as a credit provider.

(6) When determining whether, in terms of subsection (1), a credit provider is required to register—

- (a) the value of any credit facility issued by that credit provider is the credit limit under that credit facility; and
- (b) any credit guarantee to which a credit provider is a party is to be disregarded.

Supplementary registration to provide developmental credit

41. (1) A registered credit provider, or a credit provider who has applied to be registered in terms of section 40, may apply for supplementary registration as a credit provider in respect of developmental credit agreements if the credit provider—

- (a) is a close corporation, company, credit co-operative, trust, statutory entity, mutual bank or bank;
- (b) is registered with the South African Revenue Service; and
- (c) does not employ any person in a controlling or managerial capacity who would be disqualified from individual registration in terms of section 46(3).

(2) The National Credit Regulator may grant supplementary registration to a credit provider only if it concludes that the credit provider has—

- (a) sufficient human, financial and operational resources to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources; and
- (b) adequate administrative procedures and safeguards to justify the application of statutory exceptions from this Act, or presents to the National Credit Regulator a credible plan to develop those procedures and safeguards before entering into any developmental credit agreement.

Thresholds applicable to credit providers

42. (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine a threshold of not less than R 500 000, for the purpose of determining whether a credit provider is required to be registered in terms of section 40(1).

(2) An initial threshold determined by the Minister in terms of this section takes effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.

(3) If, as a result of a determination made by the Minister in terms of subsection (1) after the effective date—

- (a) a credit provider is required to be registered for the first time, that credit provider must apply for registration by the time the threshold takes effect, and may thereafter continue to provide credit until the time that the National Credit Regulator makes a decision in respect of its application;
- (b) a credit provider who previously was required to be registered falls below the newly determined threshold, that credit provider—
 - (i) may apply to the National Credit Regulator for a clearance certificate to release it from the obligation to be registered; and

- (ii) until the National Credit Regulator makes a decision in respect of such an application, must continue to be registered, despite section 40(1).

Registration of credit bureaux

43. (1) A person must apply to be registered as a credit bureau if that person engages for payment, other than as a credit provider or an employee of a credit provider, in the business of—

- (a) receiving reports of, or investigating—
 - (i) credit applications;
 - (ii) credit agreements;
 - (iii) payment history or patterns; or
 - (iv) consumer credit information as defined in section 70(1), relating to consumers or prospective consumers, other than reports of court orders or reasons for judgment or similar information that is in the public domain;
- (b) compiling and maintaining data from reports contemplated in subparagraph (i); and
- (c) issuing reports concerning consumers or other natural persons based on information or data referred to in this paragraph.

(2) A person must not offer or conduct business as a credit bureau, or hold themselves out to the public as being authorised to offer any service customarily offered by a credit bureau, unless that person is registered as a credit bureau in terms of this Chapter.

(3) The National Credit Regulator must not register a person as a credit bureau unless that person—

- (a) maintains and imposes appropriate qualification, competence, knowledge and experience requirements for its employees or contractors who will have authority to represent it in any function under this Act;
- (b) has, in the opinion of the National Credit Regulator, sufficient human, financial and operational resources to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources;
- (c) has adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated equitably and consistently in a timely, efficient and courteous manner, or presents to the National Credit Regulator a credible plan to acquire or develop those procedures; and
- (d) is registered with the South African Revenue Services.

(4) In addition to the requirements of section 46, a person may not be registered as a credit bureau if any person who has a controlling interest in the applicant is—

- (a) a credit provider;
- (b) a debt collection agency; or
- (c) a person who conducts any disqualified business prescribed in terms of subsection (5).

(5) The Minister may, by regulation, declare any business activity disqualified as contemplated in subsection (4)(c) if that business activity is inconsistent with the function of operating an independent and objective credit bureau.

Registration of debt counsellors

44. (1) A natural person may apply to be registered as a debt counsellor.

(2) A person must not offer or engage in the services of a debt counsellor in terms of this Act, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as such in terms of this Chapter.

(3) In addition to the requirements of section 46, an applicant for registration as a debt counsellor must—

- (a) satisfy any prescribed education, experience or competency requirements, or
- (b) be in a position to satisfy within a reasonable time such requirements as the National Credit Regulator may determine as a condition of the applicant's registration.

Application for registration

45. (1) A person who wishes to be registered in terms of this Act must apply for registration in the prescribed manner and form to the National Credit Regulator.

(2) The National Credit Regulator may—

- (a) require further information relevant to an application contemplated in subsection (1); and
- (b) refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time.

(3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant, subject to section 48.

Disqualification of natural persons

46. (1) A natural person may not be registered as a credit bureau.

(2) A natural person may not be registered as a credit provider if that person is an unrehabilitated insolvent.

(3) A natural person may not be registered as a credit provider or debt counsellor if that person—

- (a) is under the age of 18 years;
- (b) as a result of a court order, is listed on the register of excluded persons in terms of section 14 of the National Gambling Act, 2004 (Act No. 7 of 2004);
- (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
- (d) has ever been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money, whether in the Republic or elsewhere;
- (e) has ever been a director or member of a governing body of an entity at the time that such an entity has—
 - (i) been involuntarily deregistered in terms of a public regulation;
 - (ii) brought the consumer credit industry into disrepute; or
 - (iii) acted with disregard for consumer rights generally; or
- (f) has been convicted during the previous 10 years, in the Republic or elsewhere, of—
 - (i) theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or comparable legislation of another jurisdiction;
 - (ii) a crime involving violence against another natural person; or
 - (iii) an offence in terms of this Act, a repealed law or comparable provincial legislation,

and has been sentenced to imprisonment without the option of a fine unless the person has received a grant of amnesty or free pardon for the offence.

(4) In addition to the disqualifications set out in subsection (3), a natural person may not be registered as a debt counsellor if that person is—

- (a) subject to an administration order as contemplated in section 74 of the Magistrates' Court Act, 1944 (Act No. 32 of 1944);
- (b) subject to debt re-arrangement as contemplated in sections 86 and 87; or
- (c) engaged in, employed by or acting as an agent for a person that is engaged in—
 - (i) debt collection;
 - (ii) the operation of a credit bureau;
 - (iii) credit provision; or
 - (iv) any other activity prescribed by the Minister on the grounds that there is an inherent conflict of interest between that activity and debt counselling.

(5) The National Credit Regulator must deregister a natural person if the registrant becomes disqualified in terms of this section at any time after being registered.

Disqualification of juristic persons and associations

47. (1) A registered credit provider, a juristic person or an association of persons may not be registered as a debt counsellor.

(2) Subject to subsection (4), a juristic person or an association of persons may not be registered as a credit provider or credit bureau if any natural person who would be disqualified from individual registration in terms of section 46(3) exercises general management or control of that person or association, alone or in conjunction with others.

(3) Subject to subsection (4), if a natural person contemplated in subsection (2) becomes disqualified from individual registration in terms of section 46(3) after the business concerned was registered in terms of this Act—

- (a) that natural person must advise the registrant, and the National Credit Regulator, in the prescribed manner and form; and
- (b) if that natural person—
 - (i) holds an interest in that business, it must be disposed of within a reasonable period of not more than three years, determined by the National Credit Regulator after considering the circumstances and the nature of the disqualification; or
 - (ii) is a manager or controller of the business, the National Credit Regulator may impose reasonable conditions on the continuation of the registration with the object of ensuring continuing compliance with the principles of this Act.

(4) Subsections (2) and (3) do not apply to a regulated financial institution.

(5) The provisions of subsection (3), read with the changes required by the context, apply to a natural person who—

- (a) acquires a financial interest in a registrant; or
- (b) assumes a management or control function with a registrant.

(6) The National Credit Regulator must deregister a juristic person if the registrant becomes disqualified in terms of this section at any time after being registered.

Conditions of registration

48. (1) If a person qualifies to be registered as a credit provider, the National Credit Regulator must further consider the application, relating to the following criteria:

- (a) to the extent it is appropriate having regard to the nature of the applicant, the commitments, if any, made by the applicant or any associated person in terms of black economic empowerment considering the purpose, objects and provisions of the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (b) the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority; and
- (c) registration with the South African Revenue Services.

(2) If the National Credit Regulator has determined that an applicant qualifies for registration as a debt counsellor, the National Credit Regulator must further consider the application, relating to the applicant's education, experience and competence relative to any prescribed standards.

(3) The National Credit Regulator, having regard to the objects and purposes of this Act, the circumstances of the application and the applicable criteria set out in subsections (1) and (2), may propose any conditions on the registration of an applicant by delivering a written notice in the prescribed manner and form setting out the proposed conditions, and the reasons for them.

(4) Conditions contemplated in subsection (3) may extend to an associated person, and in any case must be—

- (a) reasonable and justifiable in the circumstances; and
- (b) in the case of a regulated financial institution, consistent with its licence.

(5) An applicant who has received a proposal of conditions must respond to the National Credit Regulator within—

- (a) 20 business days after the date on which the applicant received the proposal; or
- (b) such longer period as the National Credit Regulator may permit, on good cause shown.

(6) If an applicant who has received a proposal of conditions—

- (a) consents to the conditions being imposed, the National Credit Regulator must register the applicant, subject only to the conditions as proposed; or

- (6) does not respond, or responds but does not consent to the proposed conditions, the National Credit Regulator must consider any response submitted by the applicant and may finally determine the conditions to be imposed and register the applicant.
- (7) The National Credit Regulator must—
 - (a) inform an applicant in writing of a decision in terms of subsection (6); and
 - (b) provide written reasons for that decision if the National Credit Regulator has amended a previously proposed condition.

Variation of conditions of registration

- 49.** (1) The National Credit Regulator may review, and propose new conditions on, any registration—
- (a) upon request by the registrant submitted to the National Credit Regulator in the prescribed manner and form;
 - (b) if at least five years have passed since the National Credit Regulator last reviewed or varied the conditions of registration;
 - (c) if the registrant has contravened this Act; or
 - (d) if the registrant—
 - (i) has not satisfied any conditions attached to its registration;
 - (ii) has not met any commitment or undertaking it made in connection with its registration; or
 - (iii) has breached any approved code of conduct applicable to it, and cannot provide adequate reasons for doing so.
- (2) Before imposing a condition in terms of subsection (1)(c) or (d), the National Credit Regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.
- (3) The National Credit Regulator may impose new or alternative conditions—
- (a) in the case of a regulated financial institution—
 - (i) only to the extent that the conditions are consistent with its licence; and
 - (ii) if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review; or
 - (b) in the case of any other registrant, if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review.

Authority and standard conditions of registration

- 50.** (1) A registration issued in terms of this Act is valid throughout the Republic and authorises the registrant to conduct, engage in, or make available the registered activities at any place within the Republic.
- (2) It is a condition of every registration issued in terms of this Act that the registrant must—
- (a) permit the National Credit Regulator or any person authorised by the National Credit Regulator to enter any premises at or from which the registrant conducts the registered activities during normal business hours, and to conduct reasonable inquiries for compliance purposes, including any act contemplated in section 154(1)(d) to (h);
 - (b) comply with every applicable provision of—
 - (i) this Act;
 - (ii) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
 - (iii) applicable provincial legislation within any province in which the registrant conducts, engages in, or makes available the registered activities.

Application, registration and renewal fees

- 51.** (1) The Minister may prescribe—
- (a) an application fee to be paid in connection with any application in terms of this Chapter;
 - (b) an initial registration fee to be paid upon registration; and
 - (c) an annual registration renewal fee to be paid by registrants.

(2) The Minister may prescribe different fees in terms of subsection (1) for different categories of applicants or registrants, including but not limited to group registration and registration renewal fees based on the number of locations at or from which persons carry on registered activities in their own names as contemplated in section 40(2)(c).

Certificate, validity and public notice of registration

- 52.** (1) Upon registering an applicant, the National Credit Regulator must—
- (a) issue a prescribed certificate of registration to the applicant, and in the case of persons contemplated in section 40(2)(c), a duplicate copy of the certificate of registration for each registered location at or from which that person conducts the registered activities;
 - (b) enter the registration in the register; and
 - (c) assign a unique registration number to that registrant.
- (2) A registration certificate, or duplicate registration certificate issued in terms of this section must specify—
- (a) the identity of the registrant;
 - (b) the activities that the registration permits the registrant to engage in, conduct or make available to the public; and
 - (c) any other prescribed information.
- (3) A valid certificate or duplicate certificate of registration, or a certified copy of it, is *prima facie* proof that the registrant is registered in terms of this Act.
- (4) A registration—
- (a) takes effect on the date on which the certificate or duplicate certificate of registration is issued; and
 - (b) subject to timely payment of the prescribed registration renewal fees, remains in effect until—
 - (i) the registrant is deregistered; or
 - (ii) the registration is cancelled in terms of this Act.
- (5) A registrant must—
- (a) post the certificate or duplicate registration certificate in any premises at or from which it conducts its registered activities;
 - (b) reflect its registered status and registration number, in a legible typeface, on all its credit agreements and communications with a consumer;
 - (c) comply with its conditions of registration and the provisions of this Act;
 - (d) pay the prescribed annual renewal fees within the prescribed time;
 - (e) keep any prescribed records relating to its registered activities, in the prescribed manner and form; and
 - (f) file any prescribed reports with the National Credit Regulator in the prescribed manner and form.
- (6) In addition to the requirements of subsection (5), a registered credit bureau must submit to the National Credit Regulator an annual compliance report, certified by an independent auditor, addressing the following matters:
- (a) Accuracy of data received and reported by it;
 - (b) incidence of complaints and complaint resolution;
 - (c) adequacy of procedures employed by it to ensure—
 - (i) the accuracy of data received and reported by it;
 - (ii) that confidentiality of data is maintained and all relevant legislation concerning the privacy and confidentiality of information is complied with; and
 - (iii) that complaints are resolved; and
 - (d) any other related or similar matters prescribed by regulation.

National record of registrations

53. (1) The National Credit Regulator must establish and maintain a register in the prescribed form of all persons who have been registered—

- (a) under this Act; or
- (b) in terms of applicable provincial legislation, as reported by provincial credit regulators in terms of section 38,

including those whose registration has been altered or cancelled.

(2) The National Credit Regulator must make the information contemplated in subsection (1) available to a provincial credit regulator, upon request.

- (3) The National Credit Regulator must—
- (a) permit any person to inspect the register established in terms of subsection (1), during normal business hours, and upon payment of the prescribed fee;
 - (b) publish and maintain the register on a website; and
 - (c) provide a print copy of the register, or an extract from it, at any time to a person requesting it, upon payment of the prescribed fee.
- (4) Any person may—
- (a) inspect a copy of a registration certificate issued in terms of this Act: and
 - (b) obtain a copy of it, upon payment of the prescribed fee.

Part B

Compliance procedures and cancellation of registration

Restricted activities by unregistered persons

54. (1) Subject to subsection (2), the National Credit Regulator may issue a notice in the prescribed form to any person who, or association of persons, that—

- (a) is engaging in in activity that, in terms of this Act, requires registration, or offering to engage in such an activity, or holding themselves out as authorised to engage in such an activity; and
- (b) is not registered in terms of this Act to engage in that activity, requiring that person or association to stop engaging in, offering to engage in or holding themselves out as authorised to engage in, that activity.

(2) Before issuing a notice in terms of subsection (1) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution.

(3) A notice contemplated in subsection (1) must set out—

- (a) the name of the person or association to whom the notice applies;
- (b) details of the nature and extent of the activity concerned;
- (c) the date from which the unregistered person must discontinue engaging in that activity;
- (d) the basis of the opinion that the person engaging in that activity is required to be registered; and
- (e) any penalty that may be imposed in terms of this Act if the person fails to discontinue that activity.

(4) Subject to section 59, a notice issued in terms of this section remains in force until—

- (a) a registration certificate is issued to the person to whom the notice was issued; or
- (b) the notice is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice.

(5) Failure to comply with a notice issued in terms of this section is an offence.

Compliance notices

55. (1) Subject to subsection (2), the National Credit Regulator may issue a compliance notice in the prescribed form to—

- (a) a person or association of persons whom the National Credit Regulator on reasonable grounds believes—
 - (i) has failed to comply with a provision of this Act; or
 - (ii) is engaging in an activity in a manner that is inconsistent with this Act; or
- (b) a registrant whom the National Credit Regulator believes has failed to comply with a condition of its registration.

(2) Before issuing a notice in terms of subsection (1)(a) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution.

(3) A compliance notice contemplated in subsection (1) must set out—

- (a) the person or association to whom the notice applies;
- (b) the provision, or condition, that has not been complied with;
- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken; and

- (e) any penalty that may be imposed in terms of this Act if those steps are not taken.
- (4) Subject to section 59, a compliance notice issued in terms of this section remains in force until—
 - (a) it is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice; or
 - (b) the National Credit Regulator issues a compliance certificate contemplated in subsection (5).
- (5) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the National Credit Regulator must issue a compliance certificate.
- (6) If a person fails to comply with a compliance notice as contemplated in this section without raising an objection in terms of section 56, the National Credit Regulator may refer the matter—
 - (a) to the National Prosecuting Authority, if the failure to comply constitutes an offence in terms of this Act; or
 - (b) otherwise, to the Tribunal for an appropriate order.

Objection to notices

- 56.** (1) Any person issued with a notice in terms of section 54 or 55 may apply to the Tribunal in the prescribed manner and form to review the notice within—
- (a) 15 business days after receiving that notice; or
 - (b) such longer period as may be allowed by the Tribunal on good cause shown.
- (2) After considering any representations by the applicant and any other relevant information, the Tribunal may confirm, modify or cancel all or part of a notice.
- (3) If the Tribunal confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it.

Cancellation of registration

- 57.** (1) Subject to subsection (2), a registration in terms of this Act may be cancelled by the Tribunal on request by the National Credit Regulator, if the registrant repeatedly—
- (a) fails to comply with any condition of its registration;
 - (b) fails to meet a commitment contemplated in section 48(1); or
 - (c) contravenes this Act.
- (2) in any circumstance contemplated in subsection (1) concerning a registrant that is a regulated financial institution, the National Credit Regulator may—
- (a) impose conditions on the registration of that person, consistent with its licence;
 - (b) refer the matter to the regulatory authority that licensed that regulated financial institution, with a request that the regulatory authority review that licence in the circumstances; or
 - (c) at the request, or with the consent, of the regulatory authority that licensed that regulated financial institution, request the Tribunal to cancel the registration.
- (3) A regulatory authority to whom a matter is or may be referred in terms of subsection (2)(b)—
- (a) must conduct a formal review of the registrant's licence;
 - (b) to the extent permitted by the legislation in terms of which the registrant is licensed, may suspend that licence pending the outcome of that review; and
 - (c) may request, or consent to, the National Credit Regulator filing a request with the Tribunal as contemplated in subsection (2)(c).
- (4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issues licences to regulated financial institutions, to co-ordinate the procedures to be followed in taking any action in terms of subsections (2) and (3).
- (5) If the Tribunal has cancelled a registration, the National Credit Regulator must notify the registrant in writing of—
- (a) the cancellation;
 - (b) the reasons for the cancellation; and
 - (c) the date of cancellation.

- (6) If a registraton is cancelled in terms of this section or section 58, the National Credit Regulator must—
- (a) cancel the registration certificate; and
 - (b) amend the register accordingly.
- (7) A registration is cancelled as of—
- (a) the date on which the Tribunal issues an order, or
 - (b) in the case of a cancellation in terms of section 58, the date specified by the registrant in the notice of voluntary cancellation.
- (8) A registrant whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.
- (9) The obligations of—
- (a) a registrant under this Act, or under any credit agreement in respect of which it is the credit provider, survive any suspension or cancellation of its registration; and
 - (b) a consumer under a credit agreement survive the cancellation of the credit provider's registration.

Voluntary cancellation of registration

58. A registrant may cancel its registration by giving the National Credit Regulator written notice in the prescribed manner and form—

- (a) stating the registrant's intention to voluntarily cancel the registration; and
- (b) specifying a date, at least five business days after the date of the notice, on which the cancellation is to take effect.

Review or appeal of decisions

59. (1) A person affected by a decision of the National Credit Regulator under this Chapter may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision in whole or in part.

(2) An order contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Tribunal is not satisfied that the condition is reasonable and justifiable, having regard to the objects and purposes of this Act, the circumstances of the application or review, as the case may be, and the provisions of section 48.

(3) A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148.

CHAPTER 4

CONSUMER CREDIT POLICY

Part A

Consumer rights

Right to apply for credit

60. (1) Every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.

(2) Subject to sections 61 and 66, a credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.

(3) Subject to sections 61 and 92(3), nothing in this Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person.

Protection against discrimination in respect of credit

61. (1) Relative to the treatment of any other consumer or prospective consumer, a credit provider must not unfairly discriminate directly or indirectly against any natural person, juristic person or association of persons on one or more grounds set out in section 9(3) of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, when—

- (a) assessing the ability of the person to meet the obligations of a proposed credit agreement;
 - (b) deciding whether to refuse an application to enter into a credit agreement, or to offer or enter into a credit agreement;
 - (c) determining any aspect of the cost of a credit agreement to the consumer;
 - (d) proposing or agreeing the terms and conditions of a credit agreement;
 - (e) assessing or requiring compliance by the person with the terms of a credit agreement;
 - (f) exercising any right of the credit provider under a credit agreement, this Act or applicable provincial legislation;
 - (g) determining whether to continue, enforce, seek judgment in respect of, or terminate a credit agreement; or
 - (h) determining whether to report, or reporting, any credit information or record.
- (2) Subsection (1), read with the changes required by the context, applies equally to—
- (a) a credit bureau, when offering its services to the public, and when accepting, compiling, analysing, modifying or reporting any credit information or record;
 - (b) the ombud with jurisdiction or alternative dispute resolution agent, when offering or holding out the ability to resolve a dispute or assist in the resolution of a dispute between a credit provider and a consumer in terms of this Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to credit providers and consumers;
 - (c) a debt counsellor when offering or holding out the ability to serve as a debt counsellor in terms of this Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to consumers; and
 - (d) an employer or trade union, when acting in terms of section 75(3) or (4).
- (3) Subsections (1) and (2) apply in respect of a consumer or prospective consumer that is an association or juristic person to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person.
- (4) It is not discrimination on the basis of age to—
- (a) refuse to receive or consider an application for credit from an unemancipated minor; or
 - (b) refuse to offer an unlawful credit agreement to, or enter into an unlawful credit agreement with, an unemancipated minor.
- (5) A credit provider may determine for itself any scoring or other evaluative mechanism or model to be used in managing, underwriting and pricing credit risk, provided that any such mechanism or model is not founded or structured upon a statistical or other analysis in which the basis of risk categorisation, differentiation or assessment is a ground of unfair discrimination prohibited in section 9(3) of the Constitution.
- (6) In respect of an alleged contravention of this section, any person contemplated in section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, may either—
- (a) institute proceedings before an equality court, in terms of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act; or
 - (b) make a complaint to the National Credit Regulator in terms of section 136, which must refer the complaint to the equality court, if the complaint appears to be valid.
- (7) A court may draw an inference that a credit provider has discriminated unfairly against a consumer or prospective consumer if that credit provider—
- (a) knew or reasonably could have known that the consumer or prospective consumer, or a natural person contemplated in subsection (3), was a historically disadvantaged person;
 - (b) has made a decision contemplated in section 62(1)(a) through (d), with respect to that consumer or prospective consumer; and
 - (c) has refused, or failed without reasonable cause, to respond to a request made in terms of section 62 in respect of that decision.

Right to reasons for credit being refused

62. (1) On request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for—

- (a) refusing to enter into a credit agreement with that consumer;
- (b) offering that consumer a lower credit limit under a credit facility than applied for by the consumer, or reducing the credit limit under an existing credit facility;
- (c) refusing a request from the consumer to increase a credit limit under an existing credit facility; or
- (d) refusing to renew an expiring credit card or similar renewable credit facility with that consumer.

(2) When responding to a request in terms of subsection (1), a credit provider who has based its decision on an adverse credit report received from a credit bureau must advise the consumer in writing of the name, address and other contact particulars of that credit bureau,

(3) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of this section if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious.

Right to information in official language

63. (1) A consumer has a right to receive any document that is required in terms of this Act in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document.

(2) If the producer of a document that is required to be delivered to a consumer in terms of this Act is, or is required to be, a registrant, that person must—

- (a) make a submission to the National Credit Regulator proposing to make such documents available in at least two official languages; and
- (b) offer each consumer an opportunity to choose an official language in which to receive any document, from among at least two official languages as determined in accordance with a proposal that has been approved by the National Credit Regulator.

(3) A proposal in terms of subsection (2) may propose—

- (a) the same official languages for use throughout the Republic; or
- (b) different official languages for use in different parts of the Republic.

(4) The National Credit Regulator must—

- (a) consider each proposal in terms of subsection (2) having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person making the proposal; and
- (b) either—
 - (i) approve the proposal; or
 - (ii) require the person making the proposal to submit a fresh proposal, if the National Credit Regulator concludes that the proposal does not adequately provide for the maximum practicable enjoyment of the right set out in subsection (1).

(5) The person who made a proposal that is the subject of a decision of the National Credit Regulator in terms of subsection (4)(b)(ii) may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision.

(6) If the producer of a document that is required to be delivered to a consumer in terms of this Act is not a registrant, and not required to register, that person must offer the consumer an opportunity to choose an official language in which to receive that document from among at least two official languages selected by the producer of the document, having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by that person.

(7) The producer of a document that is required to be delivered to a consumer in terms of this Act must provide each such document to the consumer in the official language chosen by the consumer in terms of this section.

(8) The Minister may prescribe at least two official languages to be used by the National Credit Regulator in any documents it is required to deliver in terms of this Act, for all or particular parts of the Republic, so as to give maximum effect to the right set out in subsection (1).

Right to information in plain and understandable language

64. (1) The producer of a document that is required to be delivered to a consumer in terms of this Act must provide that document—

- (a) in the prescribed form, if any, for that document; or
- (b) in plain language, if no form has been prescribed for that document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to—

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document;
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) The National Credit Regulator may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b).

(4) This section does not apply to a developmental credit agreement if—

- (a) the National Credit Regulator has pre-approved the form of all documents to be used by the credit provider for such credit agreements in terms of this Act; and
- (b) the credit provider has used only those pre-approved forms in dealing with the particular consumer.

(5) When pre-approving any form of documents as contemplated in subsection (4), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of subsection (1)(b).

Right to receive documents

65. (1) Every document that is required to be delivered to a consumer in terms of this Act must be delivered in the prescribed manner, if any.

(2) If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must—

- (a) make the document available to the consumer through one or more of the following mechanisms—
 - (i) in person at the business premises of the credit provider, or at any other location designated by the consumer but at the consumer's expense, or by ordinary mail;
 - (ii) by fax;
 - (iii) by email; or
 - (iv) by printable web-page; and
- (b) deliver it to the consumer in the manner chosen by the consumer from the options made available in terms of paragraph (a).

(3) A credit provider must not charge a fee for the original copy of any document required to be delivered to a consumer in terms of this Act.

(4) On written request from the consumer the credit provider must provide the consumer with—

- (a) a single replacement copy of a document required in terms of this Act, without charge to the consumer, at any time within a year after the date for original delivery of that document; and
- (b) any other replacement copy, subject to any search and production fees permitted by regulation.

(5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of subsection (4) if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious.

(6) Subsections (3), (4) and (5) do not apply to a developmental credit agreement if—

- (a) the National Credit Regulator has pre-approved procedures to be followed by the credit provider in the delivery of documents with respect to such credit agreements in terms of this Act; and
- (b) the credit provider has complied with those pre-approved procedures in dealing with the particular consumer.

(7) When pre-approving any procedure as contemplated in subsection (6), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of subsections (1) to (5).

Protection of consumer credit rights

66. (1) A credit provider must not, in response to a consumer exercising, asserting or seeking to uphold any right set out in this Act or in a credit agreement—

- (a) discriminate directly or indirectly against the consumer, compared to the credit provider's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right;
- (b) penalise the consumer;
- (c) alter, or propose to alter, the terms or conditions of a credit agreement with the consumer, to the detriment of the consumer; or
- (d) take any action to accelerate, enforce, suspend or terminate a credit agreement with the consumer.

(2) If a credit agreement, or any provision of such an agreement is, in terms of this Act, declared to be unlawful or is severed from the agreement, the credit provider who is a party to that agreement must not, in response to that decision—

- (a) directly or indirectly penalise another party to that agreement when taking any action contemplated in section 61(1);
- (b) alter the terms or conditions of any other credit agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (c) take any action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

Part B

Confidentiality, personal information and consumer credit records

Conflicting legislation

67. In the case of an inconsistency between a provision of this Part read with any relevant definition in section 1, and a provision of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of this Part and that Act apply concurrently, to the extent that the provisions of this Part are not excluded in terms of section 5 of that Act.

Right to confidential treatment

68. (1) Any person who, in terms of this Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information, and in particular, must—

- (a) use that information only for a purpose permitted or required in terms of this Act, other national legislation or applicable provincial legislation; and
- (b) report or release that information only to the consumer or prospective consumer, or to another person—
 - (i) to the extent permitted or required by this Act, other national legislation or applicable provincial legislation; or
 - (ii) as directed by—
 - (aa) the instructions of the consumer or prospective consumer; or
 - (bb) an order of a court or the Tribunal.

(2) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

National register of credit agreements

69. (1) The Minister may require the National Credit Regulator to establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the information provided to it in terms of this section.

(2) Upon entering into or amending a credit agreement, other than a pawn transaction or an incidental credit agreement, the credit provider must report either directly to the national register established in terms of this section, or to a credit bureau, in the prescribed manner and form, and within the prescribed time the following information, subject to subsection (6):

- (a) The credit provider's name, principal business address, and registration number, if any;
- (b) the name and address of the consumer;
- (c) if the consumer is—
 - (i) a natural person, their identity number, or in the case of a person who is not a South African citizen and who does not have an identity number, their passport number; or
 - (ii) a juristic person, its registration number;
- (d) if the agreement is a credit facility, the credit limit under that facility, and the expiry date of the agreement, if any; and
- (e) if the agreement is a credit transaction or credit guarantee—
 - (i) the principal debt under the agreement;
 - (ii) the particulars of any previously existing credit agreement that was terminated or satisfied in connection with the making of the new agreement;
 - (iii) the amount and schedule of each payment due under the agreement; and
 - (iv) the date on which the consumer's obligations will be fully satisfied if the agreement is fully complied with.

(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, either directly to the national register established in terms of this section, or to a credit bureau.

(4) If a person transfers to another person the rights of a credit provider under a credit agreement referred to in subsection (2)—

- (a) the person who transfers those rights must report the particulars of that transfer, in the prescribed manner and form, to the national register established in terms of this section; and
- (b) the person to whom those rights are transferred must satisfy any subsequent obligations of the credit provider under this section.

(5) A credit bureau must transmit to the national register established in terms of this section, in the prescribed manner and form, any information reported to it by a credit provider in terms of this section.

(6) The Minister may prescribe alternative requirements, in place of any of those set out in subsection (2), with respect to developmental credit agreements.

Credit bureau information

70. (1) In this section, "consumer credit information" means information concerning—

- (a) a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (b) a person's financial history, including the person's past and current income, assets and debts, and other matters within the scope of that person's financial means, prospects and obligations, as defined in section 78(3), and related matters;
- (c) a person's education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters; or

- (d) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters.
- (2) A registered credit bureau must—
 - (a) accept the filing of consumer credit information from any credit provider on payment of the credit bureau's filing fee, if any;
 - (b) accept without charge the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;
 - (c) take reasonable steps to verify the accuracy of any consumer credit information reported to it;
 - (d) retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
 - (e) maintain its records of consumer credit information in a manner that satisfies the prescribed standards;
 - (f) promptly expunge from its records any prescribed consumer credit information that, in terms of the regulations, is not permitted to be entered in its records or is required to be removed from its records;
 - (g) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in this Act, upon payment of the credit bureau's fee except where the Act explicitly provides that no fee be charged;
 - (h) not draw a negative inference about, or issue a negative assessment of, a person's creditworthiness merely on the basis that the credit bureau has no consumer credit information concerning that person; and
 - (i) not knowingly or negligently provide a report to any person containing inaccurate information.
- (3) In addition to—
 - (a) the consumer credit information contemplated in subsection (2), a credit bureau may receive, compile and report only other prescribed information in respect of a consumer; and
 - (b) the sources of consumer credit information contemplated in subsection (2), a credit bureau may receive consumer credit information in respect of a consumer only from other prescribed persons.
- (4) The Minister may prescribe—
 - (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and
 - (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person.
- (5) For the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit by persons contemplated in section 13(a), and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act, the National Credit Regulator may—
 - (a) require any credit bureau to provide periodic synoptic reports of aggregate consumer credit information in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and
 - (b) make further reasonable requests for information from a credit bureau related to the information contemplated in paragraph (a); and
 - (c) analyse information provided to it under this section or section 69.
- (6) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

Removal of record of debt adjustment or judgment

- 71.** (1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter, may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement.
- (2) A debt counsellor who receives an application in terms of subsection (1), must—
 - (a) investigate the circumstances of the debt re-arrangement; and
 - (b) either—

- (i) issue a clearance certificate in the prescribed form if the consumer has fully satisfied all the obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement; or
 - (ii) refuse to issue a clearance certificate, in any other case.
- (3) If a debt counsellor refuses to issue a clearance certificate contemplated in subsection (2)(b)(i) the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection (2)(b)(i), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer.
- (4) A consumer to whom a clearance certificate is issued in terms of this section may file a certified copy of that certificate with the national register established in terms of section 69 or any credit bureau.
- (5) Upon receiving a copy of a clearance certificate, a credit bureau, or the national credit register, must expunge from its records—
- (a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;
 - (b) any information relating to any default by the consumer that may have—
 - (i) precipitated the debt re-arrangement; or
 - (ii) been considered in making the debt re-arrangement order or agreement; and
 - (c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.
- (6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau must expunge from its records all information relating to that judgment.
- (7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

Right to access and challenge credit records and information

- 72.** (1) Every person has a right to—
- (a) be advised by a credit provider within the prescribed time before any prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request;
 - (b) inspect any credit bureau, or national credit register, file or information concerning that person—
 - (i) without charge—
 - (aa) as of right once within any period of twelve months;
 - (bb) if so ordered by a court or the Tribunal; and
 - (cc) once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and
 - (ii) at any other time, upon payment of the inspection fee of the credit bureau or national credit register, if any;
 - (c) challenge the accuracy of any information concerning that person—
 - (i) that is the subject of a proposed report contemplated in paragraph (a); or
 - (ii) that is held by the credit bureau or national credit register, as the case may be, and require the credit bureau or National Credit Regulator, as the case may be, to investigate the accuracy of any challenged information, without charge to the consumer; and
 - (d) be compensated by any person who reported incorrect information to a registered credit bureau or to the National Credit Register for the cost of correcting that information.
- (2) A credit provider must not require or induce a prospective consumer to obtain or request a report from a credit bureau in connection with an application for credit or an assessment under section 81.
- (3) If a person has challenged the accuracy of information proposed to be reported to a credit bureau or to the national credit register, or held by a credit bureau or the national credit register, the credit provider, credit bureau or national credit register, as the case may be, must take reasonable steps to seek evidence in support of the challenged information, and within the prescribed time after the filing of the challenge must—

- (a) provide a copy of any such credible evidence to the person who tiled the challenge, or
- (b) remove the information, and all record of it, from its files, if it is unable to find credible evidence in support of the information,

subject to subsection (6).

(4) Within 20 business days after receiving a copy of evidence in terms of subsection (3)(a), the person who challenged the information held by a credit provider, credit bureau or national credit register may apply in the prescribed manner and form to the National Credit Regulator to investigate the disputed information as a complaint under section 136.

(5) A credit bureau or the National Credit Register may not report information that is challenged until the challenge has been resolved in terms of subsection (3)(a) or (b).

(6) On application by a credit provider, credit bureau or the National Credit Regulator, as the case may be, the Tribunal may make an order limiting the applicant's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's—

- (a) particular request or requirement is frivolous, unfounded or wholly unreasonable; or
- (b) history and pattern of such requests or requirements are frivolous or vexatious.

(7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

Verification, review and removal of consumer credit information

73. (1) The Minister must, within a period of six months after the effective date, prescribe—

- (a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaux must be reviewed, verified, corrected or removed; and
- (6) the time-frame and schedule for the exercise by consumers of their rights in terms of section 72(1),

within a period of one year after the regulations being promulgated.

(2) When prescribing a matter contemplated in subsection (1), the Minister must—

- (a) consider amongst other things—
 - (i) the predictive nature of such information; and
 - (ii) the socio-economic impact on consumers of the removal of such information; and
- (6) engage in consultation with affected stakeholders.

(3) Any regulations to be made in terms of this section must be submitted to the relevant Parliamentary Committee for the necessary consultation prior to their promulgation.

Part C

Credit marketing practices

Negative option marketing and opting out requirements

74. (1) A credit provider must not make an offer to enter into a credit agreement, or induce a person to enter into a credit agreement, on the basis that the agreement will automatically come into existence unless the consumer declines the offer.

(2) Subject to section 119(4), a credit provider must not make an offer to increase the credit limit under a credit facility, or induce a person to accept such an increase, on the basis that the limit will automatically be increased unless the consumer declines the offer.

(3) A credit provider must not make a proposal to alter or amend a credit agreement, or induce a person to accept such an alteration or amendment, on the basis that the alteration or amendment will automatically take effect unless the consumer rejects the proposal, except to the extent contemplated in section 104, 116(a), 118(3) or 119(4).

(4) A credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (1), is an unlawful agreement and void to the extent provided for in section 89.

(5) A provision of a credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (2) or (3) is an unlawful provision and void to the extent provided for in section 90.

(6) When entering into a credit agreement, the credit provider must present to the consumer a statement of the following options and afford the consumer an opportunity to select any of those options:

- (a) To decline the option of pre-approved annual credit limit increases as provided for in section 119(4), if the agreement is a credit facility; and
 - (b) to be excluded from any—
 - (i) telemarketing campaign that may be conducted by or on behalf of the credit provider;
 - (ii) marketing or customer list that may be sold or distributed by the credit provider, other than as required by this Act; or
 - (iii) any mass distribution of email or sms messages.
- (7) A credit provider—
- (a) must maintain a register in the prescribed manner and form of all options selected by consumers in terms of subsection (6); and
 - (b) must not act in a manner contrary to an option selected by a consumer in terms of subsection (6).

Marketing and sales of credit at home or work

75. (1) A credit provider must not harass a person in attempting to persuade that person to apply for credit or to enter into a credit agreement or related transaction.

(2) A credit provider must not enter into a credit agreement at a private dwelling except—

- (a) during a visit pre-arranged by the consumer for that purpose;
- (b) if a credit provider visited the private dwelling for the purpose of offering goods or services for sale, and incidentally offered to provide or arrange credit to finance the purchase of those goods or services; or
- (c) if the credit agreement is of a prescribed category that is permitted to be entered into during a visit to a private dwelling.

(3) A credit provider must not visit a person's place of employment for the purpose of inducing the person to apply for or obtain credit, or enter into a credit agreement at such a place, except—

- (a) to enter into a credit agreement with the employer; or
- (b) if the visit results from—
 - (i) a formal arrangement between the credit provider, on the one hand, and the employer and any representative trade union or employee, on the other; or
 - (ii) a non-prompted invitation by the person being visited.

(4) An employer who, or representative trade union that, enters into an arrangement with a credit provider as contemplated in subsection (3)(b)(i) must not receive any fee, commission, payment, consideration or other monetary benefit in exchange for making that arrangement, or as a consequence of a credit agreement entered into during or as a result of that arrangement.

(5) Subsections (2) to (4) do not apply in respect of developmental credit agreements.

Advertising practices

76. (1) This section does not apply to an advertisement—

- (a) that does not make reference to a specific credit product or credit provider, and of which the dominant purpose is to promote—
 - (i) responsible credit practices; or
 - (ii) the use of credit generally;
- (b) that generally promotes a specific credit provider, brand or type of credit agreement, but does not make specific reference to product price, cost or availability of credit; or
- (c) by the seller of goods or services, or on the premises of such a person, if that notice or advertisement indicates only that the person is prepared to accept payment through a credit facility in respect of which another person is the credit provider.

(2) This section applies to the provider of credit that is being advertised, or the seller of any goods or services that are being advertised for purchase on credit.

(3) A person who is required to be registered as a credit provider, but who is not so registered, must not advertise the availability of credit, or of goods or services to be purchased on credit.

(4) An advertisement of the availability of credit, or of goods or services to be purchased on credit—

- (a) must comply with this section;
- (b) must contain any statement required by regulation;
- (c) must not—
 - (i) advertise a form of credit that is unlawful;
 - (ii) be misleading, fraudulent or deceptive; or
 - (iii) contain any statement prohibited by regulation; and
- (d) may contain a statement of comparative credit costs to the extent permitted by
 - (iii) be set out in the prescribed manner and form: and
 - (iv) be accompanied by the prescribed cautions or warnings concerning the use of such comparative statements.

(5) In any advertisement concerning the granting of credit, a credit provider must state or set out the interest rate and other credit costs in the prescribed manner and form.

(6) This section does not apply to developmental credit agreements if—

- (a) the National Credit Regulator has pre-approved a form of advertising to be used by the credit provider concerned; and
- (b) the credit provider has used only that pre-approved form of advertising in advertising or promoting goods, services or credit to the particular consumer.

(7) When pre-approving any form of advertising as contemplated in subsection (6), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of this section.

Required marketing information

77. Any solicitation by or on behalf of a credit provider for the purpose of inducing a person to apply for or obtain credit must include a statement with the prescribed information for the particular type of solicitation.

Part D ***Over-indebtedness and reckless credit***

Application and interpretation of this Part

78. (1) This Part does not apply to a credit agreement in respect of which the consumer is a juristic person.

(2) Sections 81 to 84, and any other provisions of this Part to the extent that they relate to reckless credit, do not apply to—

- (a) a school loan or a student loan;
- (b) an emergency loan;
- (c) a public interest credit agreement;
- (d) a pawn transaction;
- (e) an incidental credit agreement; or
- (f) a temporary increase in the credit limit under a credit facility,

provided that any credit extended in terms of paragraph (a) to (c) is reported to the National Credit Register in the prescribed manner and form, and further provided that in respect of any credit extended in terms of paragraph (b), reasonable proof of the existence of the emergency as defined in section 1 is obtained and retained by the credit provider.

(3) In this Part, "financial means, prospects and obligations", with respect to a consumer or prospective consumer, includes—

- (a) income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer or prospective consumer receives, has a right to receive, or holds in trust for another person;

- (b) the financial means, prospects and obligations of any other adult person within the consumer's immediate family or household, to the extent that the consumer, or prospective consumer, and that other person customarily—
 - (i) share their respective financial means; and
 - (ii) mutually bear their respective financial obligations; and
- (c) if the consumer has or had a commercial purpose for applying for or entering into a particular credit agreement, the reasonably estimated future revenue flow from that business purpose.

Over-indebtedness

79. (1) A consumer is over-indebted if the preponderance of available information at the time a determination is made indicates that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, having regard to that consumer's—

- (a) financial means, prospects and obligations; and
- (b) probable propensity to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party, as indicated by the consumer's history of debt repayment.

(2) When a determination is to be made whether a consumer is over-indebted or not, the person making that determination must apply the criteria set out in subsection (1) as they exist at the time the determination is being made.

(3) When making a determination in terms of this section, the value of—

- (a) any credit facility is the settlement value at that time under that credit facility; and
- (b) any credit guarantee is—
 - (i) the settlement value of the credit agreement that it guarantees, if the guarantor has been called upon to honour that guarantee; or
 - (ii) the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.

Reckless credit

80. (1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4)—

- (a) the credit provider failed to conduct an assessment as required by section 81(2), irrespective of what the outcome of such an assessment might have concluded at the time; or
- (b) the credit provider, having conducted an assessment as required by section 81(2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that—
 - (i) the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or
 - (ii) entering into that credit agreement would make the consumer over-indebted.

(2) When a determination is to be made whether a credit agreement is reckless or not, the person making that determination must apply the criteria set out in subsection (1) as they existed at the time the agreement was made, and without regard for the ability of the consumer to—

- (a) meet the obligations under that credit agreement; or
- (b) understand or appreciate the risks, costs and obligations under the proposed credit agreement,

at the time the determination is being made.

(3) When making a determination in terms of this section, the value of—

- (a) any credit facility is the credit limit at that time under that credit facility;
- (b) any pre-existing credit guarantee is—
 - (i) the settlement value of the credit agreement that it guarantees, if the guarantor has been called upon to honour that guarantee; or
 - (ii) the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor; and

- (c) any new credit guarantee is the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.

Prevention of reckless credit

81. (1) When applying for a credit agreement, and while that application is being considered by the credit provider, the prospective consumer must fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section.

(2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess—

- (a) the proposed consumer's—
 - (i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
 - (ii) debt re-payment history as a consumer under credit agreements;
 - (iii) existing financial means, prospects and obligations; and
- (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.

(3) A credit provider must not enter into a reckless credit agreement with a prospective consumer.

(4) For all purposes of this Act, it is a complete defence to an allegation that a credit agreement is reckless if—

- (a) the credit provider establishes that the consumer failed to fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section; and
- (b) a court or the Tribunal determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper assessment.

Assessment mechanisms and procedures

82. (1) Subject to subsections (2)(a) and (3), a credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 81, provided that any such mechanism, model or procedure results in a fair and objective assessment.

(2) The National Credit Regulator may—

- (a) pre-approve the evaluative mechanisms, models and procedures to be used in terms of section 81 in respect of proposed developmental credit agreements; and
- (b) publish guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 81, applicable to other credit agreements.

(3) Subject to subsections (2)(a) and (4), a guideline published by the National Credit Regulator is not binding on a credit provider.

(4) If the Tribunal finds that a credit provider has repeatedly failed to meet its obligations under section 81, or customarily uses evaluative mechanisms, models or procedures that do not result in a fair and objective assessment, the Tribunal, on application by the National Credit Regulator, may require that credit provider to—

- (a) apply any guidelines published by the National Credit Regulator in terms of subsection (2)(b); or
- (b) apply any alternative guidelines consistent with prevailing industry practice, as determined by the Tribunal.

Court may suspend reckless credit agreement

83. (1) Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, the court may declare that the credit agreement is reckless, as determined in accordance with this Part.

(2) If a court declares that a credit agreement is reckless in terms of section 80(1)(a) or 80(1)(b)(i), the court may make an order—

- (a) setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or
 - (b) suspending the force and effect of that credit agreement in accordance with subsection (3)(b)(i).
- (3) If a court declares that a credit agreement is reckless in terms of section 80(1)(b)(ii), the court—
- (a) must further consider whether the consumer is over-indebted at the time of those court proceedings; and
 - (b) if the court concludes that the consumer is over-indebted, the court may make an order—
 - (i) suspending the force and effect of that credit agreement until a date determined by the Court when making the order of suspension; and
 - (ii) restructuring the consumer's obligations under any other credit agreements, in accordance with section 87.
- (4) Before making an order in terms of subsection (3), the court must consider—
- (a) the consumer's current means and ability to pay the consumer's current financial obligations that existed at the time the agreement was made; and
 - (b) the expected date when any such obligation under a credit agreement will be fully satisfied, assuming the consumer makes all required payments in accordance with any proposed order.

Effect of suspension of credit agreement

- 84.** (1) During the period that the force and effect of a credit agreement is suspended in terms of this Act—
- (a) the consumer is not required to make any payment required under the agreement;
 - (b) no interest, fee or other charge under the agreement may be charged to the consumer; and
 - (c) the credit provider's rights under the agreement, or under any law in respect of that agreement, are unenforceable, despite any law to the contrary.
- (2) After a suspension of the force and effect of a credit agreement ends—
- (a) all the respective rights and obligations of the credit provider and the consumer under that agreement—
 - (i) are revived; and
 - (ii) are fully enforceable except to the extent that a court may order otherwise; and
 - (b) for greater certainty, no amount may be charged to the consumer by the credit provider with respect to any interest, fee or other charge that were unable to be charged during the suspension in terms of subsection (1)(b).

Court may declare and relieve over-indebtedness

- 85.** Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court may—
- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86(7); or
 - (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness.

Application for debt review

- 86.** (1) A consumer may apply to a debt counsellor in the prescribed manner and form to have the consumer declared over-indebted.
- (2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 129 to enforce that agreement.
- (3) A debt counsellor—

- (a) may require the consumer to pay an application fee, not exceeding the prescribed amount, before accepting an application in terms of subsection (1); and
 - (b) may not require or accept a fee from a credit provider in respect of an application in terms of this section.
- (4) On receipt of an application in terms of subsection (1), a debt counsellor must—
- (a) provide the consumer with proof of receipt of the application;
 - (b) notify, in the prescribed manner and form—
 - (i) all credit providers that are listed in the application; and
 - (ii) every registered credit bureau.
- (5) A consumer who applies to a debt counsellor, and each credit provider contemplated in subsection (4)(b), must—
- (a) comply with any reasonable requests by the debt counsellor to facilitate the evaluation of the consumer's state of indebtedness and the prospects for responsible debt re-arrangement; and
 - (b) participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement.
- (6) A debt counsellor who has accepted an application in terms of this section must determine, in the prescribed manner and within the prescribed time—
- (a) whether the consumer appears to be over-indebted; and
 - (b) if the consumer seeks a declaration of reckless credit, whether any of the consumer's credit agreements appear to be reckless.
- (7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that—
- (a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;
 - (b) the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or
 - (c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders—
 - (i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
 - (ii) that one or more of the consumer's obligations be re-arranged by—
 - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (bb) postponing during a specified period the dates on which payments are due under the agreement;
 - (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
 - (dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6.
- (8) If a debt counsellor makes a recommendation in terms of subsection (7)(b) and—
- (a) the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and each credit provider concerned, file it as a consent order in terms of section 138; or
 - (b) if paragraph (a) does not apply, the debt counsellor must refer the matter to the Magistrate's Court with the recommendation.
- (9) If a debt counsellor rejects an application as contemplated in subsection (7)(a), the consumer, with leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in subsection (7)(c).
- (10) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to—

- (a) the consumer;
- (b) the debt counsellor; and
- (c) the National Credit Regulator,

at any time at least 60 business days after the date on which the consumer applied for the debt review.

(11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the Magistrate's Court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.

Magistrate's Court may re-arrange consumer's obligations

87. (1) If a debt counsellor makes a proposal to the Magistrate's Court in terms of section 86(8)(b), or a consumer applies to the Magistrate's Court in terms of section 86(9), the Magistrate's Court must conduct a hearing and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations, may—

- (a) reject the recommendation or application as the case may be; or
- (b) make—
 - (i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate's Court concludes that the agreement is reckless;
 - (ii) an order re-arranging the consumer's obligations in any manner contemplated in section 86(7)(c)(ii); or
 - (iii) both orders contemplated in subparagraph (i) and (ii).

(2) The National Credit Regulator may not intervene before the Magistrate's Court in a matter referred to it in terms of this section.

Effect of debt review or re-arrangement order or agreement

88. (1) A consumer who has filed an application in terms of section 86(1), or who has alleged in court that the consumer is over-indebted, 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 one of the following events has occurred:

- (a) The debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 86(9) has expired without the consumer having so applied;
- (b) the court has determined that the consumer is not over-indebted, or has rejected a debt counsellor's proposal or the consumer's application; or
- (c) a court having made an order or the consumer and credit providers having made an agreement re-arranging the consumer's obligations, all the consumer's obligations under the credit agreements as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement.

(2) If a consumer fulfils obligations by way of a consolidation agreement as contemplated in subsection 1(c), or this subsection, the effect of subsection (1) continues until the consumer fulfils all the obligations under the consolidation agreement, unless the consumer again fulfilled the obligations by way of a consolidation agreement.

(3) Subject to section 86(9) and (10), a credit provider who receives notice of court proceedings contemplated in section 83 or 85, or notice in terms of section 86(4)(b)(i), may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until—

- (a) the consumer is in default under the credit agreement; and
- (b) one of the following has occurred:
 - (i) An event contemplated in subsection (1)(a) through (c); or
 - (ii) the consumer defaults on any obligation in terms of a re-arrangement agreed between the consumer and credit providers, or ordered by a court or the Tribunal.

(4) If a credit provider enters into a credit agreement, other than a consolidation agreement contemplated in this section, with a consumer who has applied for a debt re-arrangement and that re-arrangement still subsists, all or part of that new credit agreement may be declared to be reckless credit, whether or not the circumstances set out in section 80 apply.

(5) If a consumer applies for or enters into a credit agreement contrary to this section, the provisions of this Part will never apply to that agreement.

CHAPTER 5

CONSUMER CREDIT AGREEMENTS

Part A

Unlawful agreements and provisions

Unlawful credit agreements

- 89.** (1) This section does not apply to a pawn transaction.
- (2) Subject to subsections (3) and (4), a credit agreement is unlawful if—
- (a) at the time the agreement was made the consumer was an unemancipated minor unassisted by a guardian, or was subject to—
 - (i) an order of a competent court holding that person to be mentally unfit; or
 - (ii) an administration order referred to in section 74(1) of the Magistrates' Courts Act, and the administrator concerned did not consent to the agreement,
and the credit provider knew, or could reasonably have determined, that the consumer was the subject of such an order;
 - (b) the agreement results from an offer prohibited in terms of section 74(1);
 - (c) it is a supplementary agreement or document prohibited by section 91(a);
 - (d) at the time the agreement was made, the credit provider was unregistered and this Act requires that credit provider to be registered; or
 - (e) the credit provider was subject to a notice by the National Credit Regulator or a provincial credit regulator requiring the credit provider—
 - (i) to stop offering, making available or extending credit under any credit agreement, or agreeing to do any of those things; or
 - (ii) to stop offering, making available or extending credit under the particular form of credit agreement used by the credit provider,
whether or not this Act requires that credit provider to be registered, and no further appeal or review is available in respect of that notice.
- (3) Subsection (2)(a) does not apply to a credit agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by an act or omission—
- (a) induced the credit provider to believe that the consumer had the legal capacity to contract; or
 - (b) attempted to obscure or suppress the fact that the consumer was subject to ill order contemplated in that paragraph.
- (4) Subsection (2)(d) does not apply to a credit provider if—
- (a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application; or
 - (b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the National Credit Regulator in terms of section 42(3)(b).
- (5) If a credit agreement is unlawful in terms of this section, despite any provision of common law, any other legislation or any provision of an agreement to the contrary, a court must order that—
- (a) the credit agreement is void as from the date the agreement was entered into;
 - (b) the credit provider must refund to the consumer any money paid by the consumer under that agreement to the credit provider, with interest calculated—
 - (i) at the rate set out in that agreement; and
 - (ii) for the period from the date on which the consumer paid the money to the credit provider, until the date the money is refunded to the consumer: and
 - (c) all the purported rights of the credit provider under that credit agreement to recover any money paid or goods delivered to, or on behalf of, the consumer in terms of that agreement are either—
 - (i) cancelled, unless the court concludes that doing so in the circumstances would unjustly enrich the consumer; or

- (ii) forfeit to the State, if the court concludes that cancelling those rights in the circumstances would unjustly enrich the consumer.

Unlawful provisions of credit agreement

- 90.** (1) A credit agreement must not contain an unlawful provision.
- (2) A provision of a credit agreement is unlawful if—
- (a) its general purpose or effect is to—
 - (i) defeat the purposes or policies of this Act;
 - (ii) deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
 - (b) it directly or indirectly purports to—
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a credit provider's obligation or duty in terms of this Act;
 - (iii) set aside or override the effect of any provision of this Act;
 - (iv) authorise the credit provider to—
 - (aa) do anything that is unlawful in terms of this Act; or
 - (bb) fail to do anything that is required in terms of this Act;
 - (c) it purports to waive any common law rights that—
 - (i) may be applicable to the credit agreement; and
 - (ii) have been prescribed in terms of subsection (5);
 - (d) the provision results from an offer prohibited in terms of section 74(2) or (3);
 - (e) it purports to make the agreement subject to a supplementary agreement prohibited by section 91(a);
 - (f) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by section 91(a); or
 - (g) it purports to exempt the credit provider from liability, or limit such liability, for—
 - (i) any act, omission or representation by a person acting on behalf of the credit provider; or
 - (ii) any guarantee or warranty that would, in the absence of such a provision, be implied in a credit agreement;
 - (h) it expresses an acknowledgement by the consumer that—
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the credit provider or a person on behalf of the credit provider; or
 - (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, which have or has not in fact been delivered or rendered to the consumer;
 - (i) it expresses an agreement by the consumer to forfeit any money to the credit provider if the consumer—
 - (i) exercises the right of rescission in terms of section 121, except to the extent contemplated in section 121(3)(b); or
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
 - (j) it purports to appoint the credit provider, or any employee or agent of the credit provider, as an agent of the consumer for any purpose other than those contemplated in section 102 or deems such an appointment to have been made;
 - (k) it expresses, on behalf of the consumer—
 - (i) an authorisation for any person acting on behalf of the credit provider to enter any premises for the purposes of taking possession of goods to which the credit agreement relates; or
 - (ii) a grant of a power of attorney in advance to the credit provider in respect of any matter related to the granting of credit in terms of this Act;
 - (iii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed;
 - (iv) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with Chapter 6;
 - (v) a limitation of the credit provider's liability for an action contemplated in subparagraph (iv); or
 - (vi) a consent to the jurisdiction of—

- (aa) the High Court, if the magistrates' court has concurrent jurisdiction; or
 - (bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer resides or works or where the goods in question (if any) are ordinarily kept;
- (l) it expresses an agreement by the consumer to—
- (i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or
 - (ii) provide a personal identification code or number to be used to access an account;
- (m) it purports to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
- (n) it purports to authorise or permit the credit provider to satisfy an obligation of the consumer by making a charge against an asset, account, or amount deposited by or for the benefit of the consumer and held by the credit provider or a third party, except by way of a standing debt arrangement, or to the extent permitted by section 124; or
- (o) it states or implies that the rate of interest is variable, except to the extent permitted by section 103(4).
- (3) In any credit agreement, a provision that is unlawful in terms of this section is void as from the date that the provision purported to take effect.
- (4) In any matter before it respecting a credit agreement that contains a provision contemplated in subsection (2), the court must—
- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
 - (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect,
- and make any further order that is just and reasonable in the circumstances to give effect to the principles of section 89(5) with respect to that unlawful provision, or entire agreement, as the case may be.
- (5) The Minister may prescribe particular common law rights that may not be waived in a credit agreement on the grounds that the waiver of those rights would be inconsistent with the purposes of this Act as set out in section 3.

Supplementary requirements and documents

- 91.** A credit provider must not—
- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement;
 - (b) request or demand a consumer to—
 - (i) give the credit provider temporary or permanent possession of an instrument referred to in section 90(2)(1)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number contemplated in section 90(2)(/)(ii); or
 - (c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the credit provider.

Part B

Disclosure, form and effect of credit agreements

Pre-agreement disclosure

- 92.** (1) A credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form.

- (2) A credit provider must not enter into an intermediate or large credit agreement unless the credit provider has given the consumer—
- (a) a pre-agreement statement—
 - (i) in the form of the proposed agreement; or
 - (ii) in another form addressing all matters required in terms of section 93; and
 - (b) a quotation in the prescribed form, setting out the principal debt, the proposed distribution of that amount, the interest rate and other credit costs, the total cost of the proposed agreement, and the basis of any costs that may be assessed under section 121(3) if the consumer rescinds the contract.
- (3) Subject only to subsection (4), sections 81 and 101(1)(d)(ii), for a period of five business days after the date on which a quotation is presented in terms of subsection (2)(b)—
- (a) with respect to a small agreement, the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at or below the interest rate or credit cost quoted, subject only to sections 81 and 101(1)(d)(ii);
 - (b) with respect to an intermediate or large agreement, the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at an interest rate or credit cost that—
 - (i) is at or below the interest rate or credit cost quoted; or
 - (ii) is higher than the interest rate or credit cost quoted by a margin no greater than the difference between the respective prevailing bank rates on the date of the quote, and the date the agreement is made.
- (4) If credit is extended for the purchase of an item with limited availability, the credit provider may state that the quotation provided in terms of this section is subject to the continued availability of the item during the period contemplated in subsection (3).
- (5) The Minister may prescribe different forms to be used in terms of this section in respect of—
- (a) developmental credit agreements; and
 - (b) other credit agreements.
- (6) A statement that is required by this section to be delivered to a consumer may be transmitted to the consumer in a paper form, or in a printable electronic form.
- (7) This section does not apply to any offer, proposal, pre-approval statement or similar arrangement in terms of which a credit provider merely indicates to a prospective consumer a willingness to consider an application to enter into a hypothetical future credit agreement generally or up to a specified maximum value.

Form of credit agreements

- 93.** (1) The credit provider must deliver to the consumer, without charge, a copy of a document that records their credit agreement, transmitted to the consumer in a paper form, or in a printable electronic form.
- (2) A document that records a small credit agreement must be in the prescribed form.
- (3) A document that records an intermediate or large agreement—
- (a) must be in the prescribed form, if any, for the category or type of credit agreement concerned; or
 - (b) if there is no applicable prescribed form, may be in any form that—
 - (i) is determined by the credit provider; and
 - (ii) complies with any prescribed requirements for the category or type of credit agreement concerned.
- (4) The National Credit Regulator may publish guidelines for methods of assessing whether a statement satisfies any prescribed requirements contemplated in subsection (3).
- (5) The Minister may prescribe different forms to be used in terms of subsection (2) in respect of—
- (a) developmental credit agreements; and
 - (b) other credit agreements.

Liability for lost or stolen cards or other identification devices

- 94.** (1) If a credit facility provides for access to that facility by use of a card, personal identification code or number or similar identification device, the document that records that credit agreement must set out a contact telephone number at which the consumer

may report the loss or theft of that card, personal identification code or number or other device.

(2) A credit provider must not impose a liability on a consumer for any use of a credit facility after the time that the consumer has reported the loss or theft of the associated card, personal identification code or number or similar device, unless—

- (a) the consumer's signature appears on the voucher, sales slip, or similar record evidencing that particular use of the credit facility; or
- (b) the credit provider has other evidence sufficient to establish that the consumer authorised or was responsible for that particular use of the credit facility.

Changes, deferrals and waivers

95. The provision of credit as a result of a change to an existing credit agreement, of a deferral or waiver of an amount under an existing credit agreement, is not to be treated as creating a new credit agreement for the purposes of this Act if the change, deferral or waiver is made in accordance with this Act or the agreement.

Address for notice

96. (1) Whenever a party to a credit agreement is required or wishes to give legal notice to the other party for any purpose contemplated in the agreement, this Act or any other law, the party giving notice must deliver that notice to the other party at—

- (a) the address of that other party as set out in the agreement, unless paragraph (b) applies; or
- (b) the address most recently provided by the recipient in accordance with subsection (2).

(2) A party to a credit agreement may change their address by delivering to the other party a written notice of the new address by hand, registered mail, or electronic mail, if that other party has provided an email address.

Consumer must disclose location of goods

97. (1) This section applies to a credit agreement if—

- (a) it concerns any goods, and the consumer at any time during the agreement has or had possession of those goods; and
- (b) in terms of that agreement—
 - (i) the title to those goods has not passed to the consumer; or
 - (ii) the credit provider has a right to take possession of the goods irrespective of whether they are owned by the consumer or another person.

(2) Until the termination of an agreement to which this section applies, the consumer must inform the credit provider, in the prescribed time, manner and form, of any change concerning—

- (a) the consumer's residential or business address;
- (b) the address of the premises in which any goods that are subject to the agreement are ordinarily kept; and
- (c) the name and address of any other person to whom possession of the goods has been transferred.

(3) On request by the credit provider, a deputy sheriff or messenger of the court, the consumer must inform that person, in the prescribed manner and form, of the address of the premises where the goods are ordinarily kept and the name and address of the landlord, if any, of those premises.

(4) If at the time of a request under subsection (3) the consumer is no longer in possession of the goods that are subject to the agreement, the consumer must provide the name and address of the person to whom possession of those goods has been transferred.

(5) A consumer who knowingly—

- (a) provides false or misleading information to a credit provider, deputy sheriff or messenger of the court under this section; or
- (b) acts in a manner contrary to this section with intent to frustrate or impede a credit provider exercising rights under this Act or a credit agreement,

is guilty of an offence.

Agreement attaches to substituted goods

98. If, after delivery to the consumer of goods that are subject to a credit agreement, the consumer and the credit provider agree to substitute other goods for all or part of the goods so described—

- (a) from the date of delivery of the substituted goods, the credit agreement applies to the substituted goods rather than the goods originally described; and
- (b) the credit provider must prepare and deliver to the consumer an amended credit agreement describing the substituted goods, but without making any other changes to the original agreement.

Obligations of pawn brokers

99.(1) A credit provider who enters into a pawn transaction with a consumer—

- (a) must specify in the credit agreement a date on which the agreement ends;
- (b) must retain until the end of the credit agreement, and at the risk of the credit provider, any property of the consumer that is delivered to the credit provider as security under the credit agreement; and
- (c) must deliver any property referred to in paragraph (b) to the consumer if the consumer pays, or tenders the money required to pay, the settlement value under the agreement at any time up to and including the date on which the agreement ends.

(2) If a credit provider contemplated in this section fails to deliver any property to the consumer as required in subsection (1)(c) the Tribunal, on application by the consumer, may order the credit provider to pay to the consumer an amount equal to—

- (a) the fair market value of the property, less the settlement value at the time of failure to deliver that property, as determined by the Tribunal, if the reason for the failure to return the property is that it has been damaged or destroyed by an intervening cause outside the control of the credit provider; or
- (b) double the fair market value of the property, less the settlement value at the time of failure to deliver that property, as determined by the Tribunal, if the reason for the failure to return the property is other than as contemplated in paragraph (a).

(3) If property contemplated in subsection (2) has been sold by the credit provider, evidence of the price at which that property was sold may be considered by the Tribunal, but is not conclusive, in determining the fair market value of that property.

Part C***Consumer's liability, interest, charges and fees*****Prohibited charges**

100. (1) A credit provider must not charge an amount to, or impose a monetary liability on, the consumer in respect of—

- (a) a credit fee or charge prohibited by this Act;
- (b) an amount of a fee or charge exceeding the amount that may be charged consistent with this Act;
- (c) an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act; or
- (d) any fee, charge, commission, expense or other amount payable by the credit provider to any third party in respect of a credit agreement, except as contemplated in section 102 or elsewhere in this Act.

(2) A credit provider must not charge a consumer a higher price for any goods or services than the price charged by that credit provider for the same or substantially similar goods or services in the ordinary course of business on the basis of a cash transaction.

Cost of credit

101. (1) A credit agreement must not require payment by the consumer of any money or other consideration, except—

- (a) the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 102;

- (b) an initiation fee, which—
 - (i) may not exceed the prescribed amount relative to the principal debt; and
 - (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;
- (c) a service fee, which—
 - (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or
 - (ii) in any other case, may be payable monthly or annually; and
 - (iii) must not exceed the prescribed amount relative to the principal debt;
- (d) interest, which—
 - (i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and
 - (ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105;
- (e) cost of any credit insurance provided in accordance with section 106;
- (f) default administration charges, which—
 - (i) may not exceed the prescribed maximum for the category of credit agreement concerned; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement, and only to the extent permitted by Part C of Chapter 6; and
- (g) collection costs, which may not exceed the prescribed maximum for the category of credit agreement concerned and may be imposed only to the extent permitted by Part C of Chapter 6.

(2) A credit provider who is a party to a credit agreement with a consumer and enters into a new credit agreement with the same consumer that replaces the earlier agreement in whole or in part may charge that consumer an initiation fee contemplated in subsection (1)(h) in respect of that second credit agreement, only to the extent permitted by regulation, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer.

(3) If a credit facility is attached to a financial services account, or is maintained in association with such an account, any service charge in terms of that account—

- (a) if that charge would not have been levied if there were no credit facility attached to the account, is subject to the prescribed maximum contemplated in subsection (1)(c); and
- (b) otherwise, is exempt from the prescribed maximum contemplated in subsection (1)(c).

Fees or charges

102. (1) If a credit agreement is an instalment agreement, a mortgage agreement, a secured loan or a lease, the credit provider may include in the principal debt deferred under the agreement any of the following items to the extent that they are applicable in respect of any goods that are the subject of the agreement—

- (a) an initiation fee as contemplated in section 101(1)(b), if the consumer has been offered and declined the option of paying that fee separately;
- (b) the cost of an extended warranty agreement;
- (c) delivery, installation and initial fuelling charges;
- (d) connection fees, levies or charges;
- (e) taxes, licence or registration fees; or
- (f) subject to section 106, the premiums of any credit insurance payable in respect of that credit agreement.

(2) A credit provider must not—

- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the consumer's agent in arranging for the service concerned;
- (b) require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1); or
- (c) charge the consumer an amount under subsection (1) in excess of—
 - (i) the actual amount payable by the credit provider for the service, as determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider; or

- (ii) the fair market value of a service contemplated in subsection (1), if the credit provider delivers that service directly without paying a charge to a third party.

(3) If the actual amount paid by a credit provider to another person is not ascertainable when the consumer pays an amount to the credit provider for a fee or charge contemplated in subsection (1) and if, when it is ascertained, it is less than the amount paid by the consumer, the credit provider must refund or credit the difference to the consumer.

Interest

103. (1) Subject to subsection (5), the interest rate applicable to an amount in default or an overdue payment under a credit agreement may not exceed the highest interest rate applicable to any part of the principal debt under that agreement.

(2) A credit agreement may provide for an interest charge to become payable or be debited at any time after the day to which it applies.

(3) A credit provider must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.

(4) A credit agreement may provide for the interest rate to vary during the term of the agreement only if the variation is by fixed relationship to a reference rate stipulated in the agreement, which reference rate must be the same as that used by that credit provider in respect of any similar credit agreements currently being issued by it.

(5) Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.

(6) The Minister may make regulations prescribing the manner in which interest is to be calculated and disclosed for the purposes of this Act.

(7) Subject to the review and approval of the National Credit Regulator, subsection (4) does not apply in respect of developmental credit agreements.

Changes to interest, credit fees or charges

104. (1) A credit provider must not unilaterally increase--

- (a) the periodic or incidental service fees, or the method of calculating such fees, that may be charged under the credit agreement; or
- (b) the rate of interest applicable to a credit agreement, except with respect to a credit agreement with a variable interest rate.

(2) Except as otherwise provided for in this section, a credit provider must give written notice of at least five business days to the consumer setting out particulars of a change concerning—

- (a) the rate of interest;
- (b) the amount of a credit fee or charge; or
- (c) a change in the frequency or time for payment of a credit fee or charge.

(3) In respect of a credit agreement that has a variable interest rate, the credit provider must give written notice to the consumer, no later than 30 business days after the day on which a change in the variable interest rate takes effect, setting out—

- (a) the new rate and any further prescribed information; or
- (b) if a rate is determined by referring to a reference rate as contemplated in section 103(4), the new reference rate.

Maximum rates of interest, fees and charges

105. (1) The Minister, after consulting the National Credit Regulator, may prescribe a method for calculating—

- (a) a maximum rate of interest; and
- (b) the maximum fees contemplated in this Part,

applicable to each subsector of the consumer credit market, as determined by the Minister.

(2) When prescribing a matter contemplated in subsection (1), the Minister must consider, among other things—

- (a) the need to make credit available to persons contemplated in section 13(a);

- (b) conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market; and
- (c) the social impact on low income consumers.
- (3) When establishing regulations contemplated in this section, the Minister—
 - (a) must establish different maximums for credit agreements within each subsector of the consumer credit market; and
 - (b) may prescribe the method, consistent with section 101(3), for allocating service fees between the provision of credit and the provision of related financial services, in circumstances in which a credit provider offers multiple financial services under a single agreement.

Credit insurance

106. (1) A credit provider may require a consumer to maintain during the term of their credit agreement—

- (a) credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement; and
- (b) either—
 - (i) in the case of a mortgage agreement, insurance cover in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
 - (ii) in any other case, insurance cover against damage or loss of any property other than property referred to in sub-paragraph (i), not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement.

(2) Despite subsection (1), a credit provider must not offer or demand that the consumer purchase or maintain insurance that is-

- (a) unreasonable; or
- (b) at an unreasonable cost to the consumer,

having regard to the actual risk and liabilities involved in the credit agreement.

(3) In addition to insurance that may be required in terms of subsection (1), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement.

(4) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1) or (3)—

- (a) the consumer must be given, and be informed of, the right to waive that proposed policy and substitute a policy of the consumer's own choice, subject to subsection (6);
- (b) such policy must provide for payment of premiums by the consumer—
 - (i) on a monthly basis in the case of small and intermediate agreements; or
 - (ii) on a monthly or annual basis in the case of large agreements,

for the duration of the credit agreement; and

- (c) in the case of an annual premium the premium must be recovered from the consumer within the applicable year.

(5) With respect to any policy of insurance arranged by a credit provider as contemplated in subsection (4), the credit provider must—

- (a) not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider;
- (b) disclose to the consumer in the prescribed manner and form—
 - (i) the cost to the consumer of any insurance supplied; and
 - (ii) the amount of any, fee, commission, remuneration or benefit receivable by the credit provider, in relation to that insurance;
- (c) explain the terms and conditions of the insurance policy to the consumer and provide the consumer with a copy of that policy; and
- (d) be a loss payee under the policy up to the settlement value at the occurrence of an insured contingency only and any remaining proceeds of the policy must be paid to the consumer.

(6) If the consumer exercises the right under subsection 4(a) to substitute an insurance policy of the consumer's own choice, the credit provider may require the consumer to provide the credit provider with the following written directions—

- (a) a valid direction in the prescribed manner and form requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums;
 - (i) on a monthly basis for small and intermediate agreements; and
 - (ii) on a monthly or annual basis for large agreements; and
 - (b) a valid direction to the insurer in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the consumer's obligation under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement.
- (7) If the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final year's premium.

Part D
Statements of account

Limited application of this Part

107. (1) This Part does not apply in respect of a credit guarantee, until the time that the credit provider first calls on the guarantor to satisfy an obligation in respect of that guarantee.

(2) Sections 108, 109 and 110 do not apply in respect of-

- (a) a pawn transaction; or
- (b) a discounted transaction or an incidental credit agreement, until the time that interest is first charged on the principal debt owed to the credit provider.

(3) In the case of joint consumers or guarantors, a statement required under this section need only be given to one of them, but a joint consumer or guarantor who does not receive such statement may require the credit provider to deliver a duplicate of that statement without charge.

(4) Sections 108 to 114 do not apply to a developmental credit agreement to the extent that—

- (a) the National Credit Regulator has pre-approved the form of all documents and the procedures to be used by the credit provider for such credit agreements in terms of this Part; and
- (b) the credit provider has used only those pre-approved forms and followed those pre-approved procedures in dealing with the particular consumer.

(5) When pre-approving any form of documents or procedures as contemplated in subsection (4), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of this Part.

Statement of account

108. (1) A credit provider must offer to deliver to each consumer periodic statements of account in accordance with this section.

(2) The maximum period between issuing statements of account is—

- (a) one month, except as otherwise provided for in this subsection;
- (b) two months, in respect of an instalment agreement, lease or secured loan; or
- (c) six months in respect of a mortgage agreement.

(3) Despite subsection (2)—

- (a) a consumer and credit provider may agree to reduce the frequency of statements of account referred to in subsection (2)(a) or (b), but no such agreement may provide for more than three months between delivery of successive statements of account; and
- (b) a statement of account need not be delivered in respect of a credit facility if no amount has been debited or credited to the account during the statement period.

Form and content of statement of account

109. (1) The opening balance shown in each successive statement of account must be the same as the closing balance shown in the immediately preceding statement of account.

(2) A statement of account in respect of a small credit agreement must be in the prescribed form.

(3) A statement of account in respect of an intermediate or large agreement may be in—

- (a) the prescribed form, if any, for the category or type of credit agreement concerned; or
- (b) a form determined by the credit provider, and which complies with any prescribed requirements for the category or type of credit agreement concerned.

(4) The National Credit Regulator may publish guidelines for methods of assessing whether a statement satisfies any, prescribed requirements contemplated in subsection (3).

Statement of amount owing and related matters

110. (1) At the request of a consumer, a credit provider must deliver without charge to the consumer a statement of all or any of the following—

- (a) the current balance of the consumer's account;
- (b) any amounts credited or debited during a period specified in the request;
- (c) any amounts currently overdue and when each such amount became due; and
- (d) any amount currently payable and the date it became due.

(2) A statement requested in terms of subsection (1) must be delivered—

- (a) within 10 business days, if all the requested information relates to a period of one year or less before the request was made; or
- (b) within 20 business days, if any of the requested information relates to a period of more than one year before the request was made.

(3) A statement under this section may be delivered—

- (a) orally, in person or by telephone; or
- (b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities,

as directed by the consumer when making the request.

(4) A credit provider is not required to provide—

- (a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; or
- (b) information in a statement under this section more than three years after the account was closed.

(5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious.

Disputed entries in accounts

111. (1) A consumer may dispute all or part of any particular credit or debit entered under a credit agreement, by delivering a written notice to the credit provider.

(2) A credit provider who receives a notice of dispute in terms of subsection (1)—

- (a) must give the consumer a written notice either—
 - (i) explaining the entry in reasonable detail; or
 - (ii) confirming that the statement was in error either in whole or in part, and setting out the revised entry; and
- (b) must not begin enforcement proceedings on the basis of a default arising from the disputed entry—
 - (i) until the credit provider has complied with paragraph (a); or
 - (ii) at any time that the matter is under alternative dispute resolution procedures, or before the Tribunal in terms of section 115.

Dating and adjustment of debits and credits in accounts

112. (1) A debit to a consumer's account takes effect as of the date on which the consumer incurred that debit.

(2) A credit to a consumer's account takes effect on the date the consumer makes a payment to the credit provider, or otherwise earns the right to have the account credited.

(3) A credit provider may subsequently adjust debits or credits to a consumer's account, and the account balances, so as to accurately reflect the legal obligations of the consumer and the credit provider.

Statement of settlement amount

113. (1) At the request of a consumer or guarantor, a credit provider must deliver without charge to the consumer a statement of the amount required to settle a credit agreement, as calculated in accordance with section 125, as of a date specified in the request.

(2) A statement requested in terms of subsection (1)—

(a) must be delivered within five business days;

(b) may be delivered—

(i) orally, in person or by telephone; or

(ii) in writing, either to the consumer in person or by sms, mail, fax or email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, as directed by the consumer when making the request; and

(c) is binding for a period of five business days after delivery, subject to subsection (3).

(3) A statement delivered in respect of a credit facility is not binding to the extent of any credits to that account, or charges made to that account by or on behalf of the consumer, after the date on which the statement was prepared.

(4) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious.

Tribunal may order statement to be provided

114. If a statement is not offered or delivered within the time required by this Part, the Tribunal, on application by the consumer, may—

(a) order the credit provider to provide the statement; or

(b) determine the amounts in relation to which the statement was sought.

Disputes concerning statements

115. (1) A consumer who has unsuccessfully attempted to resolve a disputed entry directly with the credit provider in terms of section 111, and through alternative dispute resolution under Part A of Chapter 7, may apply to the Tribunal to resolve—

(a) a disputed entry shown on a statement of account; or

(b) a dispute concerning a statement of the settlement amount.

(2) If the Tribunal is satisfied that an entry, or the settlement amount, as shown on a statement is in error, the Tribunal may determine the matters in dispute and may make any appropriate order to correct the statement that gave rise to the dispute.

Part E**Alteration of credit agreement****Alteration of original or amended agreement document**

116. Any change to a document recording a credit agreement or an amended credit agreement, after it is signed by the consumer, if applicable, or delivered to the consumer, is void unless—

(a) the change reduces the consumer's liabilities under the agreement;

(b) after the change is made, unless the change is effected in terms of section 119(1)(c), the consumer signs or initials in the margin opposite the change;

(c) the change is recorded in writing and signed by the parties; or

- (d) any oral change is recorded electromagnetically and subsequently reduced to writing.

Changes by agreement

117. (1) If the parties to a credit agreement agree to change its terms, the credit provider must, not later than 20 business days after the date of the agreement, deliver to the consumer a document that—

- (a) reflects their amended agreement; and
- (b) complies with the requirements set out in section 93.

(2) This section does not apply in respect of an increase or decrease to the credit limit under a credit facility, subject to section 119(6).

Reductions to credit limit under credit facility

118. (1) At any time the consumer under a credit facility, by written notice to the credit provider, may—

- (a) require the credit provider to reduce the credit limit under that credit facility; and
- (b) stipulate a maximum credit limit that the consumer is prepared to accept.

(2) After receiving a notice in terms of subsection (1), the credit provider must give the consumer written confirmation of—

- (a) the new credit limit, which must not exceed the maximum limit stipulated by the consumer, if any; and
- (b) the date on which the new credit limit is to take effect, which may not be more than 30 business days after the date of the notice from the consumer.

(3) Subject to sections 61 and 66, the credit provider under a credit facility, by written notice to the consumer, may reduce the credit limit under that credit facility to take effect on delivery of the notice.

(4) If, at the time a new credit limit takes effect in terms of this section, the settlement value under that credit facility is higher than the newly established credit limit, the credit provider must not treat that excess as an over-extension of credit for the purpose of calculating the minimum payment due at any time.

(5) A credit provider must not charge the consumer a fee for reducing a credit limit.

Increases in credit limit under credit facility

119. (1) A credit provider may increase the credit limit under a credit facility only—

- (a) temporarily, as contemplated in subsection (2);
- (b) by agreement with the consumer, subject to subsection (3)—
 - (i) in response to a written or oral request initiated by the consumer at any time; or
 - (ii) with the written consent of the consumer in response to a written proposal by the credit provider, which may be delivered to the consumer at any time; or
- (c) unilaterally, in accordance with, and subject to the limitations set out in, subsection (4).

(2) An increase in the credit limit under a credit facility is temporary if—

- (a) the credit provider honours an instrument issued by the consumer, despite the fact that it results in a debt that exceeds the established credit limit; or
- (b) the credit provider agrees to raise the credit limit in response to a request from the consumer in order to accommodate a particular transaction, on condition that the preceding credit limit will again apply within a specified period, or after a specified occurrence has taken place.

(3) Before increasing a credit limit in terms of subsection (1)(b), the credit provider must complete a fresh assessment of the consumer's ability to meet the obligations that could arise under that credit facility, as required by section 81.

(4) If the consumer, at the time of applying for the credit facility or at any later time, in writing has specifically requested the option of having the credit limit automatically increased from time to time, a credit provider may unilaterally increase the credit limit under that credit facility—

- (a) once during each year, as measured from the later of—
 - (i) the date that the credit facility was established; or

- (ii) the date on which the credit limit was most recently altered in accordance with subsection (1)(b); and
- (b) by an amount not exceeding the lesser of—
 - (i) the average monthly purchases or cash advances charged to the credit facility by the consumer; or
 - (ii) the average monthly payments made by the consumer, during the 12 months immediately preceding the date on which the credit limit is increased.
- (5) For the purposes of subsection (4), a specific request—
 - (a) does not include—
 - (i) an oral request or assent by the consumer; or
 - (ii) a standard provision of an agreement, the whole of which is accepted by the consumer; but
 - (b) does include—
 - (i) a written request in any form authored and signed by the consumer and delivered to the credit provider at any time; or
 - (ii) a standard form option—
 - (aa) authored by the credit provider and presented for consideration by the consumer alongside the alternative of having credit limits increased only as contemplated in subsection (1)(b); and
 - (bb) assented to by being initialled or signed by the consumer.
- (6) If, when increasing the credit limit under a credit facility, the credit provider alters any other term of the credit agreement, the credit provider must comply with the requirements set out in sections 93 and 117.
- (7) An increase in a credit limit in terms of subsection (4) is not unlawful in terms of section 74(2).

Unilateral changes by credit provider

- 120.** (1) Despite any provision to the contrary in a credit agreement, a credit provider may not unilaterally change—
- (a) the period for repayment of the principal debt, except to lengthen it; or
 - (b) the manner of calculating the minimum payment due periodically under a credit facility, subject to section 118(4).
- (2) Except as otherwise provided for in section 104, a credit provider must give the consumer written notice of at least five business days of a unilateral change to a credit agreement and in that notice must set out the particulars of the change.

Part F ***Rescission and termination of credit agreements***

Consumer's right to rescind credit agreement

- 121.** (1) This section applies only in respect of a lease or an instalment agreement entered into at any, location other than the registered business premises of the credit provider.
- (2) A consumer may terminate a credit agreement within five business days after the date on which the agreement was signed by the consumer, by—
- (a) delivering a notice in the prescribed manner to the credit provider; and
 - (b) tendering the return of any money or goods, or paying in full for any services, received by the consumer in respect of the agreement.
- (3) When a credit agreement is terminated in terms of this section, the credit provider—
- (a) must refund any money the consumer has paid under the agreement within seven business days after the delivery of the notice to terminate; and
 - (b) may require payment from the consumer for—
 - (i) the reasonable cost of having any goods returned to the credit provider and restored to saleable condition; and
 - (ii) a reasonable rent for the use of those goods for the time that the goods were in the consumer's possession, unless those goods are in their original packaging and it is apparent that they, have remained unused.
- (4) A credit provider to whom property has been returned in terms of this section, and who has unsuccessfully attempted to resolve any dispute over depreciation of that

property directly with the consumer and through alternative dispute resolution under Part A of Chapter 7, may apply, to a court for an order in terms of subsection (5).

(5) If, on an application in terms of subsection (4), a court concludes that the actual fair market value of the goods depreciated during the time that they were in the consumer's possession, a court may order the consumer to pay to the credit provider a further amount not greater than the difference between—

- (a) the depreciation in actual fair market value, as determined by the court; and
- (b) the amount that the credit provider is entitled to charge the consumer in terms of subsection (3)(b).

When consumer may terminate agreement

122. (1) A consumer may terminate a credit agreement at any time by paying the settlement amount to the credit provider, in accordance with section 125.

(2) In addition to subsection (1), a consumer may terminate an instalment agreement, secured loan or lease of movable property, by—

- (a) surrendering to the credit provider the goods that are the subject of that agreement in accordance with section 127; and
- (b) paying to the credit provider any remaining amount demanded in accordance with section 127(7).

Termination of agreement by credit provider

123. (1) A credit provider may terminate a credit agreement before the time provided in that agreement only in accordance with this section.

(2) If a consumer is in default under a credit agreement, the credit provider may take the steps set out in Part C of Chapter 6 to enforce and terminate that agreement.

(3) A credit provider in respect of a credit facility may—

- (a) suspend that credit facility at any time the consumer is in default under the agreement; or
- (b) close that credit facility by giving written notice to the consumer at least ten business days before the credit facility will be closed.

(4) A credit agreement referred to in subsection (3) remains in effect to the extent necessary until the consumer has paid all amounts lawfully charged to that account.

(5) A credit provider may not close or terminate a credit facility solely on the grounds that—

- (a) the credit provider has declined a consumer's request to increase the credit limit;
- (b) the consumer has declined the credit provider's offer to increase the credit limit;
- (c) the consumer has requested a reduction in the credit limit, unless that reduction would reduce the credit limit to a level at which the credit provider does not customarily offer or establish credit facilities; or
- (d) the card, personal identification code or number or other identification device used to access that facility has expired.

(6) The unilateral termination of a credit agreement by a credit provider as contemplated in this section does not suspend or terminate any residual obligations of the credit provider to the consumer under that agreement or this Act.

CHAPTER 6

COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

Part A

Collection and repayment practices

Charges to other accounts

124. (1) It is lawful for a consumer to provide, a credit provider to request or a credit agreement to include an authorisation to the credit provider to make a charge or series of charges contemplated in section 90(2)(n), if such authorisation meets all the following conditions—

- (a) the charge or series of charges may be made only against an asset, account, or amount that has been—
 - (i) deposited by or for the benefit of the consumer and held by that credit provider or that third party; and
 - (ii) specifically named by the consumer in the authorisation;
- (b) the charge or series of charges may be made only to satisfy—
 - (i) a single obligation under the credit agreement; or
 - (ii) a series of recurring obligations under the credit agreement, specifically set out in the authorisation;
- (c) the charge or series of charges may be made only for an amount that is—
 - (i) calculated by reference to the obligation it is intended to satisfy under the credit agreement, and
 - (ii) specifically set out in the authorisation;
- (d) the charge or series of charges may be made only on or after a specified date, or series of specified dates—
 - (i) corresponding to the date on which an obligation arises, or the dates on which a series of recurring obligations arise, under the credit agreement; and
 - (ii) specifically set out in the authorisation; and
- (e) any authorisation not given in writing, must be recorded electromagnetically and subsequently reduced to writing.

(2) Before making a single charge, or the initial charge of a series of charges, to be made under a particular authorisation, the credit provider must give the consumer notice in the prescribed manner and form, setting out the particulars as required by this subsection, of the charge or charges to be made under that authorisation.

(3) If there is a conflict between a provision of this section and a provision of the National Payment Systems Act, 1998 (Act No. 78 of 1998), the provisions of that Act prevail.

Consumer's or guarantor's right to settle agreement

125. (1) A consumer or guarantor is entitled to settle the credit agreement at any time, with or without advance notice to the credit provider.

(2) The amount required to settle a credit agreement is the total of the following amounts:

- (a) The unpaid balance of the principal debt at that time;
- (b) the unpaid interest charges and all other fees and charges payable by the consumer to the credit provider up to the settlement date; and
- (c) in the case of a large agreement—
 - (i) at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with sub-paragraph (ii); or
 - (ii) other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between-
 - (aa) three months; and
 - (bb) the period of notice of settlement if any, given by the consumer.

Early payments and crediting of payments

126. (1) At any time, without notice or penalty, a consumer may prepay any amount owed to a credit provider under a credit agreement.

(2) A credit provider must accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due,

(3) A credit provider must credit each payment made under a credit agreement to the consumer as of the date of receipt of the payment, as follows:

- (a) Firstly, to satisfy any due or unpaid interest charges;
- (b) secondly, to satisfy any due or unpaid fees or charges; and
- (c) thirdly, to reduce the amount of the principal debt.

Part B
Surrender of goods

Surrender of goods

- 127.** (1) A consumer under an instalment agreement, secured loan or lease—
- (a) may give written notice to the credit provider to terminate the agreement: and
 - (b) if—
 - (i) the goods are in the credit provider's possession, require the credit provider to sell the goods; or
 - (ii) otherwise, return the goods that are the subject of that agreement to the credit provider's place of business during ordinary business hours within bye business days after the date of the notice or within such other period or at such other time or place as may be agreed with the credit provider.
- (2) Within 10 business days after the later of—
- (a) receiving a notice in terms of subsection (1)(b)(i); or
 - (b) receiving goods tendered in terms of subsection (1)(b)(ii),
- a credit provider must give the consumer written notice setting out the estimated value of the goods and any other prescribed information.
- (3) Within 10 business days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1)(a), and resume possession of any goods that are in the credit provider's possession, unless the consumer is in default under the credit agreement.
- (4) If the consumer—
- (a) responds to a notice as contemplated in subsection (3), the credit provider must return the goods to the consumer unless the consumer is in default under the credit agreement; or
 - (b) does not respond to a notice as contemplated in subsection (3), the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable.
- (5) After selling any goods in terms of this section, a credit provider must—
- (a) credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and
 - (b) give the consumer a written notice stating the following :
 - (i) The settlement value of the agreement immediately before the sale;
 - (ii) the gross amount realised on the sale;
 - (iii) the net proceeds of the sale after deducting the credit providers permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and
 - (iv) the amount credited or debited to the consumer's account .
- (6) If an amount is credited to the consumer's account and it exceeds the settlement value immediately before the sale, and—
- (a) another credit provider has a registered credit agreement with the same consumer in respect of the same goods, the credit provider must remit that amount to the Tribunal, which may make an order for the distribution of the amount in a manner that is just and reasonable; or
 - (b) no other credit provider has a registered credit agreement with the same consumer in respect of the same goods, the credit provider must remit that amount to the consumer with the notice required by subsection (5)(b), and the agreement is terminated upon remittance of that amount .
- (7) If an amount is credited to the consumer's account and it is less than the settlement value immediately before the sale, or an amount is debited to the consumer's account, the credit provider may demand payment from the consumer of the remaining settlement value, when issuing the notice required by subsection (5)(h).
- (8) If a consumer—
- (a) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the Magistrates' Courts Act for judgment enforcing the credit agreement; or
 - (b) pays the amount demanded after receiving a demand notice at any time before judgment is obtained under paragraph (a), the agreement is terminated upon remittance of that amount.

(9) In either event contemplated in subsection (8), interest is payable by the consumer at the rate applicable to the credit agreement on any outstanding amount demanded by the credit provider in terms of subsection (7) from the date of the demand until the date that the outstanding amount is paid.

(10) A credit provider who acts in a manner contrary to this section is guilty of an offence.

Compensation for consumer

128. (1) A consumer who has unsuccessfully attempted to resolve a disputed sale of goods in terms of section 127 directly with the credit provider, or through alternative dispute resolution under Part A of Chapter 7, may apply to the Tribunal to review the sale.

(2) If the Tribunal considering an application in terms of this section is not satisfied that the credit provider sold the goods as soon as reasonably practicable, or for the best price reasonably obtainable, the Tribunal may order the credit provider to credit and pay to the consumer an additional amount exceeding the net proceeds of sale.

(3) A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148.

Part C

Debt enforcement by repossession or judgment

Required procedures before debt enforcement

129. (1) If the consumer is in default under a credit agreement, the credit provider—

- (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before—
 - (i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86(10), as the case may be; and
 - (ii) meeting any further requirements set out in section 130.

(2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.

(3) Subject to subsection (4), a consumer may—

- (a) at any time before the credit provider has cancelled the agreement re-instate a credit agreement that is in default by paying to the credit provider all amounts that are overdue, together with the credit provider's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement; and—
- (b) after complying with paragraph (a), may resume possession of any property that had been repossessed by the credit provider pursuant to an attachment order.

(4) A consumer may not re-instate a credit agreement after—

- (a) the sale of any property pursuant to—
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 127
- (b) the execution of any other court order enforcing that agreement; or
- (c) the termination thereof in accordance with section 123.

Debt procedures in a Court

130. (1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and—

- (a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(9), or section 129(1), as the case may be;
- (b) in the case of a notice contemplated in section 129(1), the consumer has—

- (i) not responded to that notice; or
- (ii) responded to the notice by rejecting the credit provider's proposals; and
- (c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.

(2) In addition to the circumstances contemplated in subsection (1), in the case of an instalment agreement, secured loan, or lease, a credit provider may approach the court for an order enforcing the remaining obligations of a consumer under a credit agreement at any time if—

- (a) all relevant property has been sold pursuant to—
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 127; and
- (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.

(3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—

- (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;
- (b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court: and
- (c) that the credit provider has not approached the court—
 - (i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
 - (ii) despite the consumer having—
 - (aa) surrendered property to the credit provider, and before that property has been sold;
 - (bb) agreed to a proposal made in terms of section 129(1)(a) and acted in good faith in fulfilment of that agreement;
 - (cc) complied with an agreed plan as contemplated in section 129(1)(a); or
 - (dd) brought the payments under the credit agreement up to date, as contemplated in section 129(1)(a).

(4) In any proceedings contemplated in this section, if the court determines that—

- (a) the credit agreement was reckless as described in section 80, the court must make an order contemplated in section 83;
- (b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(c) the court must—
 - (i) adjourn the matter before it; and
 - (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed;
- (c) the credit agreement is subject to a pending debt review in terms of Part D of Chapter 4, the court may—
 - (i) adjourn the matter, pending a final determination of the debt review proceedings;
 - (ii) order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b); or
 - (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b);
- (d) there is a matter pending before the Tribunal, as contemplated in subsection (3)(b), the court may—
 - (i) adjourn the matter before it, pending a determination of the proceedings before the Tribunal; or
 - (ii) order the Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or
- (e) the credit agreement is either suspended or subject to a debt re-arrangement order or agreement, and the consumer has complied with that order or agreement, the court must dismiss the matter.

Repossession of goods

131. If a court makes an attachment order with respect to property that is the subject of a credit agreement, section 127(2) to (9) and section 128, read with the changes required by the context, apply with respect to any goods attached in terms of that order.

Compensation for credit provider

132. (1) A credit provider who has unsuccessfully attempted to resolve a dispute over the costs of attachment of property in terms of section 129 to 131 directly with the consumer, and through alternative dispute resolution under Part A of Chapter 7, may apply to the court for compensation from the consumer in respect of any costs of repossession of property in excess of those permitted under section 131.

(2) The court may grant an order contemplated in subsection (1) if it is satisfied that—

- (a) the consumer knowingly—
 - (i) provided false or misleading information to the credit provider in terms of section 97; or
 - (ii) engaged in a pattern of behaviour that was reasonably likely to frustrate or impede the exercise of the credit provider's right to repossess property under section 129 to 131; and
- (b) as a result, the credit provider experienced unreasonable delay or incurred exceptional costs in the exercise of those rights.

Prohibited collection and enforcement practices

133. (1) A credit provider must not—

- (a) make use of any document, number or instrument referred to in section 90(2)(i) when collecting on or enforcing a credit agreement; or
- (b) direct or permit any other person to do anything contemplated in this subsection on behalf, or as an agent, of the credit provider.

(2) When collecting money owed by a consumer under a credit agreement or when seeking to enforce a credit agreement, a credit provider must not use or rely on, or permit any person to use or rely on, any document, instrument or contract provision referred to in section 90(2)(1).

(3) A person who contravenes this section is guilty of an offence.

CHAPTER 7**DISPUTE SETTLEMENT OTHER THAN DEBT ENFORCEMENT****Part A*****Alternative dispute resolution*****Alternative dispute resolution**

134. (1) As an alternative to filing a complaint with the National Credit Regulator in terms of section 136, a person may refer a matter that could be the subject of such a complaint as follows:

- (a) If the credit provider concerned is a financial institution as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), the matter—
 - (i) may be referred only to the ombud with jurisdiction to resolve a complaint or settle a matter involving that credit provider, as determined in accordance with sections 13 and 14 of that Act; and
 - (ii) must be procedurally resolved as if it were a complaint in terms of that Act; or
- (b) if the credit provider is not a financial institution, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), the matter may be referred to either—
 - (i) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or
 - (ii) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(2) The respondent in a matter referred to an alternative dispute resolution agent under subsection (1)(b)(ii) may object to that referral in writing within 10 business days, in which case—

- (a) the matter may not be resolved by an alternative dispute resolution agent;
- (b) if the matter is the proper subject of a complaint to the National Credit Regulator, the matter is deemed to have been filed as a complaint in terms of section 136: or
- (c) if the matter is the proper subject of an application to the Tribunal, the matter is deemed to have been an application directly to the Tribunal in terms of section 137.

(3) The Tribunal, after considering a matter in terms of a deemed application under subsection (2)(c), may make an exceptional order of costs against the respondent if the Tribunal considers that the matter could have been properly resolved by conciliation, mediation or arbitration carried out in good faith.

(4) In respect of any dispute between a credit provider and a consumer that could be the subject of an application to the Tribunal in terms of this Act, other than Part C of this Chapter, the consumer or credit provider, before either may apply directly, to the Tribunal—

- (a) must attempt to resolve that matter directly between themselves: and
- (b) if unable to do so, must refer the matter—
 - (i) to the ombud with jurisdiction, for resolution in accordance with this Act and in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), if the credit provider concerned is a financial institution and a participant in a recognised scheme as defined in that Act; or
 - (ii) in any other case, to either—
 - (aa) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or
 - (bb) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(5) If an alternative dispute resolution agent concludes that either party to conciliation, mediation or arbitration in terms of subsection (4)(b)(ii)(bb) is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the alternative dispute resolution agent must issue a certificate in the prescribed form stating that the process has failed.

Dispute resolution may result in consent order

135. (1) The ombud with jurisdiction, consumer court or alternative dispute resolution agent that has resolved, or assisted parties in resolving, a dispute in terms of this Part may—

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to—
 - (i) a court to be made a consent order, in terms of its rules; or
 - (ii) the Tribunal to be made a consent order in terms of section 138.

(2) The National Credit Regulator may not intervene before the Tribunal in respect of a consent order submitted in terms of this section.

Part B

Initiating complaints or applications

Initiating a complaint to National Credit Regulator

136. (1) Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator in the prescribed manner and form.

(2) The National Credit Regulator may initiate a complaint in its own name.

Initiating applications to Tribunal

137. (1) The National Credit Regulator may apply to the Tribunal in the prescribed manner and form—

- (a) for an order resolving a dispute over information held by a credit bureau, in terms of Part B of Chapter 4;

- (b) for an order compelling the delivery of a statement of account or a review of a statement in terms of Part D of Chapter 5;
- (c) to review the conduct of a sale of goods in terms of section 127 or the distribution of proceeds from such a sale;
- (d) for leave to bring a complaint directly before the Tribunal; or
- (e) for an order condoning late filing.

(2) A registrant, or applicant for registration, may file an application in terms of section 59 at any time within—

- (a) 20 business days after the National Credit Regulator makes the decision that is the subject of the application; or
- (b) such longer time as the Tribunal may allow on good cause shown.

(3) A consumer or credit provider who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of section 134(4) may file an application contemplated in this Act at any time within—

- (a) 20 business days after the failure of the attempted alternative dispute resolution; or
- (b) such longer time as the Tribunal may allow on good cause shown.

(4) The National Credit Regulator may intervene before the Tribunal in respect of any application contemplated in this section in which the National Credit Regulator is not already a party.

Consent orders

138. (1) If a matter has been—

- (a) resolved through the ombud with jurisdiction, consumer court or alternative dispute resolution agent; or
- (b) investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the proposed terms of an appropriate order,

the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order.

(2) With the consent of a complainant, a consent order confirmed in terms of subsection (1)(b) may include an award of damages to the complainant.

Part C

Informal resolution or investigation of complaints

Investigation by National Credit Regulator

139. (1) Upon initiating or accepting a complaint in terms of section 136, the National Credit Regulator may—

- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious, or does not allege any facts which, if true, would constitute grounds for a remedy under this Act;
- (b) refer the complaint to—
 - (i) a debt counsellor, if the matter appears to concern either reckless credit or possible over-indebtedness of the consumer; or
 - (ii) the ombud with jurisdiction, consumer court or an alternative dispute resolution agent for the purposes of assisting the parties to resolve the dispute in terms of section 134; or
- (c) direct an inspector to investigate the complaint as quickly as practicable, in any other case.

(2) At any time during an investigation, the National Credit Regulator may designate one or more persons to assist the inspector conducting the investigation contemplated in subsection (1).

(3) At any time during an investigation, the National Credit Regulator may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject—

- (a) to appear before the National Credit Regulator to be interrogated; or
- (b) to deliver or produce to the National Credit Regulator such book, document or other object,

at a time and place specified in the summons.

(4) A person questioned by an inspector conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) the person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the inspector questioning such a person must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to an inspector exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 159, and then only to the extent that the answer or statement is relevant to prove the offence charged.

Outcome of complaint

140. (1) After completing an investigation into a complaint, the National Credit Regulator may—

- (a) issue a notice of non-referral to the complainant in the prescribed form;
- (b) make a referral in accordance with subsection (2), if the National Credit Regulator believes that a person has engaged in prohibited conduct;
- (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act; or
- (d) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act.

(2) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter—

- (a) to the consumer court of the province in which the consumer resides, or the consumer court of the province in which the credit provider has its principal place of business in the Republic, if there is a consumer court in such a province and if the National Credit Regulator believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or
- (b) to the Tribunal,

(3) If, in respect of a matter contemplated in subsection (2), there is no consumer court within either applicable province, the National Credit Regulator may refer the matter to either—

- (a) a consumer court in another province, if the balance of convenience or interests of justice so permit; or
- (b) the Tribunal.

(4) If the National Credit Regulator refers a matter to a consumer court in terms of subsection (2) or (3)(a), any party to that referral may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to—

- (a) a different consumer court, or
- (b) the Tribunal.

(5) If an application has been made to the Tribunal—

- (a) in terms of subsection (4)(a), the Tribunal may order that the matter be referred to a different consumer court, if the balance of convenience or interests of justice so require;
- (b) in terms of subsection (4)(b), the Tribunal may order that the matter be referred to it instead of the consumer court if the balance of convenience or interests of justice so require.

(6) A consumer court hearing a matter referred to in this section—

- (a) must conduct its proceedings in a manner consistent with the requirements of Part D of this Chapter; and
- (b) may make any order that the Tribunal could have made in terms of this Act after hearing that matter.

(7) An order of a consumer court made after hearing a matter referred to in terms of this section has the same force and effect as if it had been made by the Tribunal.

Referral to Tribunal

141. (1) If the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to—

- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or
- (b) the Tribunal, with the leave of the Tribunal.

(2) If a matter is referred directly to a consumer court in terms of subsection (1)—

- (a) the respondent may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to—
 - (i) a different consumer court; or
 - (ii) the Tribunal;
- (b) the provisions of section 140(6) and (7), read with the changes required by the context, apply to an application made in terms of paragraph (a); and
- (c) if the matter remains referred to a consumer court, the provisions of Parts D and E of this Chapter, each read with the changes required by the context, apply to the hearing of the matter by the consumer court.

(3) A referral to the Tribunal, whether by the National Credit Regulator in terms of section 140(1) or by a complainant in terms of subsection (1), must be in the prescribed form.

(4) The Tribunal must conduct a hearing into any matter referred to it under this Chapter, in accordance with the requirements of this Act.

Part D

Tribunal consideration of complaints, applications and referrals

Hearings before Tribunal

142. (1) The Tribunal must conduct its hearings in public—

- (a) in an inquisitorial manner;
- (b) as expeditiously as possible;
- (c) as informally as possible; and
- (d) in accordance with the principles of natural justice.

(2) Despite subsection (1), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings—

- (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
- (b) if the proper conduct of the hearing requires it; or
- (c) for any other reason that would be justifiable in civil proceedings in a High Court.

(3) The Chairperson of the Tribunal must assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:

- (a) Any application by a consumer or credit provider in terms of section 137(3);
- (b) consent orders in terms of this Act;
- (c) applications to permit late filing;
- (d) review of requests for additional information, in terms of section 45(2);
- (e) review of an order to cease engaging in an activity, in terms of section 54;
- (f) applications for an order limiting consumer requests in terms of section 62, 65, 72, 110 or 113; or
- (g) applications for an order concerning the remittance of proceeds of sale, in terms of section 127 or 131.

(4) At the conclusion of a hearing, the Tribunal must make any order permitted in the circumstances in terms of this Act and must issue written reasons for its decision.

(5) The Tribunal must provide the participants and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made in terms of subsection (2)(a).

Right to participate in hearing

143. The following persons may participate in a hearing contemplated in this Part, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing:

- (a) The National Credit Regulator;
- (b) the applicant or complainant, and in the case of a complaint concerning an alleged contravention of section 61, the consumer or prospective consumer, if that person is not the complainant;
- (c) the respondent; and
- (d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, that interest is adequately represented by another participant.

Powers of member presiding at hearing

144. The member of the Tribunal presiding at a hearing may—

- (a) direct or summon any person to appear at any specified time and place
- (b) question any person under oath or affirmation;
- (c) summon or order any person—
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; and
- (d) give directions prohibiting or restricting the publication of any evidence given to the Tribunal.

Rules of procedure

145. Subject to the rules of procedure of the Tribunal, the member of the Tribunal presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case and the requirements of the applicable sections of this Act.

Witnesses

146. (1) Every person giving evidence at a hearing of the Tribunal must answer any relevant question.

(2) The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing.

(3) The Tribunal may order a person to answer any question or to produce any article or document, even if it is self-incriminating to do so.

(4) Section 139(5) applies to evidence given by a witness in terms of this section.

Costs

147. (1) Subject to subsection (2), each party participating in a hearing must bear its own costs.

(2) If the Tribunal—

- (a) has not made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs to the respondent and against a complainant who referred the complaint in terms of section 141(1); or
- (b) has made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs against the respondent and to a complainant who referred the complaint in terms of section 141(1).

Appeals and reviews

148. (1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member to a full panel of the Tribunal.

(2) Subject to the rules of the High Court, a participant in a hearing before a full panel of the Tribunal may—

- (a) apply to the High Court to review the decision of the Tribunal in that matter;
- or

- (b) appeal to the High Court against the decision of the Tribunal in that matter, other than a decision in terms of section 138.

Part E
Tribunal orders

Interim relief

149. (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if—

- (a) there is evidence that the allegations may be true; and
 - (b) an interim order is reasonably necessary to—
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) prevent the purposes of this Act from being frustrated;
 - (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
 - (d) the balance of convenience favours the granting of the order.
- (2) An interim order in terms of this section must not extend beyond the earlier of—
- (a) the conclusion of a hearing into the complaint; or
 - (b) the date that is six months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

Orders of Tribunal

150. In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, including—

- (a) declaring conduct to be prohibited in terms of this Act;
- (b) interdicting any prohibited conduct;
- (c) imposing an administrative fine in terms of section 151, with or without the addition of any other order in terms of this section;
- (d) confirming a consent agreement in terms of this Act as an order of the Tribunal;
- (e) condoning any non-compliance of its rules and procedures on good cause shown;
- (f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act;
- (g) suspending or cancelling the registrant's registration, subject to section 57(2) and (3);
- (h) requiring repayment to the consumer of any excess amount charged, together with interest at the rate set out in the agreement; or
- (i) any other appropriate order required to give effect to a right, as contemplated in this Act.

Administrative fines

151. (1) The Tribunal may impose an administrative fine only in the circumstances expressly provided for in this Act.

(2) An administrative fine imposed in terms of this Act may not exceed the greater of—

- (a) 10 percent of the respondent's annual turnover during the preceding financial year; or
- (b) R1 000 000.

(3) When determining an appropriate fine, the Tribunal must consider the following factors:

- (a) The nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered as a result of the contravention;
- (c) the behaviour of the respondent;
- (d) the market circumstances in which the contravention took place;
- (e) the level of profit derived from the contravention;

- (f) the degree to which the respondent has co-operated with the National Credit Regulator and the Tribunal; and
 - (g) whether the respondent has previously been found in contravention of this Act.
- (4) For the purpose of this section, the annual turnover of—
- (a) a credit provider at the time an administrative fine is assessed, is the total income of that credit provider during the immediately preceding year under all credit agreements to which this Act applies, less the amount of that income that represents the repayment of principal debt under those credit agreements; or
 - (b) any other person, is the amount determined in the prescribed manner.
- (5) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution.

Status and enforcement of orders

- 152.** (1) Any decision, judgment or order of the Tribunal may be served, executed and enforced as if it were an order of the High Court, and is binding on—
- (a) the National Credit Regulator;
 - (b) provincial credit regulators;
 - (c) a consumer court;
 - (d) an alternative dispute resolution agent or the ombud with jurisdiction;
 - (e) a debt counsellor; and
 - (f) a Magistrate's Court.
- (2) The National Credit Regulator may institute proceedings in the High Court on its own behalf for recovery of an administrative fine imposed by the Tribunal.
- (3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative fine.

CHAPTER 8

ENFORCEMENT OF ACT

Part A ***Searches***

Authority to enter and search under warrant

- 153.** (1) A judge of the High Court, a regional magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that—
- (a) prohibited conduct has taken place, is taking place or is likely to take place on or in those premises; or
 - (b) anything connected with an investigation into possible prohibited conduct is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically—
- (a) identify the premises that may be entered and searched; and
 - (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 154.
- (3) A warrant to enter and search is valid until one of the following events occurs:
- (a) The warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) the purpose for which it was issued has lapsed; or
 - (d) the month has expired after the date it was issued.
- (4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.
- (5) A person authorised by a warrant issued in terms of subsection (2) may enter and search premises named in that warrant.

- (6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—
- (a) if the owner, or person in control, of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and
 - (ii) hand a copy of the warrant to that person or to the person named in the warrant; or
 - (b) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place.

Powers to enter and search

- 154.** (1) A person who is authorised under section 153 to enter and search premises may—
- (a) enter upon or into those premises;
 - (b) search those premises;
 - (c) search any person on those premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the investigation;
 - (d) examine any article or document on or in those premises that has a bearing on the investigation;
 - (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
 - (f) take extracts from, or make copies of, any book or document on or in the premises that has a bearing on the investigation;
 - (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
 - (h) seize any output from that computer for examination and copying; and
 - (i) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.
- (2) Section 139(5) applies to an answer given or statement made to an inspector in terms of this section.
- (3) An inspector authorised to conduct an entry and search in terms of section 153 may be accompanied and assisted by a police officer.

Conduct of entry and search

- 155.** (1) A person who enters and searches any premises under section 154 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.
- (2) During any search under section 154(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.
- (3) A person who enters and searches premises under section 154, before questioning any person—
- (a) must advise that person of the right to be assisted at the time by an advocate or attorney; and
 - (b) allow that person to exercise that right.
- (4) A person who removes anything from premises being searched must—
- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
 - (b) return it as soon as practicable after achieving the purpose for which it was removed.
- (5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information.
- (6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged.

(7) A police officer who is authorised to enter and search premises under section 154, or who is assisting an inspector who is authorised to enter and search premises under section 154, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

(9) The National Credit Regulator may compensate anyone who suffers damage because of a forced entry during a search when no-one responsible for the premises was present.

Part B ***Offences***

Breach of confidence

156. (1) It is an offence to disclose any confidential information concerning the affairs of any person or juristic person obtained—

- (a) in carrying out any function in terms of this Act; or
- (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.

(2) Subsection (1) does not apply to information disclosed—

- (a) for the purpose of the proper administration or enforcement of this Act
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector, regulator or member of the Tribunal entitled to receive the information.

Hindering administration of Act

157. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

Failure to attend when summoned

158. A person commits an offence who, having been directed or summoned to attend a hearing—

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but—
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

Failure to answer fully or truthfully

159. A person commits an offence who, having been sworn in or having made an affirmation—

- (a) subject to section 139(5), fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false.

Offences relating to regulator and Tribunal

160. (1) A person commits an offence who contravenes or fails to comply with an order of the Tribunal.

(2) A person commits an offence who—

- (a) does anything calculated to improperly influence the Tribunal or a regulator concerning any matter connected with an investigation;
- (b) anticipates any findings of the Tribunal or a regulator concerning an investigation in a way that is calculated to influence the proceedings or findings;

- (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
- (d) knowingly provides false information to a regulator;
- (e) defames the Tribunal or a member of the Tribunal, in their respective official capacities;
- (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
- (g) acts contrary to a warrant to enter and search; or
- (h) without authority, but claiming to have authority in terms of section 153—
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Penalties

161. Any person convicted of an offence in terms of this Act, is liable—

- (a) in the case of a contravention of section 160(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
- (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

Magistrate's Court jurisdiction to impose penalties

162. Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 161.

Part C *Miscellaneous matters*

Agents

163. (1) A credit provider must ensure that its employees or agents are trained in respect of the matters to which this Act applies.

(2) If a credit provider makes use of agents for solicitation, completion or conclusion of credit agreements—

- (a) the agents must show an identification card in the prescribed manner and form to any person with whom the agent interacts in the solicitation, completion or conclusion of credit agreements; and
- (b) the credit provider must maintain a register in the prescribed manner and for m of all agents.

(3) If a person who is not an employee or agent of a credit provider, solicits, completes or concludes a credit agreement for or on behalf of a credit provider or a consumer—

- (a) that person must be identified by name and identity number in the credit agreement;
- (b) that person must disclose to the consumer the amount of any fee or commission that will be paid if the agreement is concluded; and
- (c) any fee or commission to be charged to the consumer—
 - (i) must not exceed the prescribed amount; and
 - (ii) may be paid to that person only if the agreement is concluded.

Civil actions and jurisdiction

164. (1) Nothing in this Act renders void a credit agreement or a provision of a credit agreement that, in terms of this Act, is prohibited or may be declared unlawful unless a court declares that agreement or provision to be unlawful.

(2) In any action in a civil court, other than a High Court, if a person raises an issue concerning this Act or a credit agreement which the Tribunal—

- (a) has previously considered and determined that court—
 - (i) must not consider the merits of that issue; and
 - (ii) must apply the determination of the Tribunal with respect to the issue; or
- (b) has not previously determined, that court may—
 - (i) consider the merits of that issue, or
 - (ii) refer the matter to the Tribunal for consideration and determination.

- (3) A person who has suffered loss or damage as a result of prohibited conduct or dereliction of required conduct—
- (a) may not commence an action in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or
 - (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form—
 - (i) certifying that the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act;
 - (ii) stating the date of the Tribunal's finding; and
 - (iii) setting out the relevant section of this Act in terms of which the Tribunal made its finding.
- (4) A certificate referred to in subsection (3)(b) is conclusive proof of its contents, and is binding on a civil court.
- (5) An appeal or application for review against an order made by the Tribunal in terms of section 148 suspends any right to commence an action in a civil court with respect to the same matter.
- (6) A person's right to damages arising out of any prohibited or required conduct comes into existence—
- (a) on the date that the Tribunal makes a determination in respect of a matter that affects that person; or
 - (b) in the case of an appeal, on the date that the appeal process in respect of that matter is concluded.
- (7) For the purposes of section 2A(2)(a) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), interest on a debt in relation to a claim for damages in terms of this Act will commence on the date of issue of the certificate referred to in subsection (3)(b).

Variation of order

- 165.** The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order—
- (a) erroneously sought or granted in the absence of a party affected by it;
 - (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
 - (c) made or granted as a result of a mistake common to all the parties to the proceedings.

Limitations of bringing action

- 166.** (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after—
- (a) the act or omission that is the cause of the complaint; or
 - (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.
- (2) A complaint in terms of this Act may not be referred to the Tribunal or to a consumer court in terms of this Act against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct.

Standard of proof

- 167.** In any proceedings before the Tribunal, or before a consumer court, in terms of this Act the standard of proof is on a balance of probabilities.

Serving documents

- 168.** Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person will have been properly served when it has been either—
- (a) delivered to that person; or
 - (b) sent by registered mail to that person's last known address.

Proof of facts

169. (1) In any proceedings in any court for the recovery of debt in terms of a credit agreement, if the consumer—

- (a) alleges that the cost of credit claimed by, or made to, the credit provider exceeds the maximum permitted in terms of this Act; and
- (b) requests that the credit provider be called as a witness to prove the amount of debt claimed to be owing,

the court must not give judgment until it has afforded an opportunity for the consumer to examine the credit provider in relation to the debt claimed to be owing, unless it appears to the court that the consumer's allegation is *prima facie* without foundation, or that examination of the credit provider is impracticable.

(2) In any criminal proceedings in terms of this Act—

- (a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information unless the contrary is proved; and
- (b) an order certified by the Chairperson of the Tribunal is conclusive proof of the contents of the order of the Tribunal.

(3) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it.

Credit provider to keep records

170. A credit provider must maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time.

CHAPTER 9**GENERAL PROVISIONS****Regulations**

171. (1) The Minister—

- (a) may make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2);
 - (b) in consultation with the National Credit Regulator, may make regulations for matters relating to the functions of the National Credit Regulator, including—
 - (i) forms;
 - (ii) time periods;
 - (iii) information required;
 - (iv) additional definitions applicable to those regulations;
 - (v) filing fees;
 - (vi) access to confidential information; and
 - (vii) manner and form of participation in National Credit Regulator procedures;
 - (c) in consultation with the Chairperson of the Tribunal, and by notice in the *Gazette*, may make regulations for matters relating to the functions of the Tribunal and rules for the conduct of matters before the Tribunal; and
 - (d) may make regulations regarding—
 - (i) any forms required to be used for the purposes of this Act; and
 - (ii) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before making any regulations in terms of subsection (1)(a), the Minister—
- (a) must publish the proposed regulations for public comment; and
 - (b) may consult the National Credit Regulator and provincial regulatory authorities.
- (3) A regulation in terms of this Act must be made by notice in the *Gazette*.

Conflicting legislation, consequential amendments, repeal of laws and transitional arrangements

172. (1) If there is a conflict between a provision of this Act mentioned in the first column of the table set out in Schedule 1, and a provision of another Act set out in the second column of that table, the conflict must be resolved in accordance with the rule set out in the third column of that table.

(2) The laws referred to in Schedule 2 are hereby amended in the manner set out in that Schedule.

(3) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 3.

(4) Subject to subsection (3) and the provisions of Schedule 3. the following Acts are hereby repealed:

- (a) The Usury Act, 1968 (Act No. 73 of 1968);
- (b) the Credit Agreements Act, 1980 (Act No. 75 of 1980); and
- (c) the Integration of Usury Laws Act, 1996 (Act No. 57 of 1996).

Short title and commencement

173. This Act is called the National Credit Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule 1

Rules concerning conflicting legislation

(Section 172(1))

| Provisions of this Act | Conflicting Legislation | Conflict Resolution Rule |
|--|---|---|
| The whole | Chapter II of the Alienation of Land Act, 1981 (Act No. 68 of 1981) | The provisions of this Act prevail to the extent of the conflict. |
| The whole, in so far as it applies to a credit agreement | The Conventional Penalties Act, 1962 (Act No. 15 of 1962) | The provisions of this Act prevail to the extent of the conflict. |
| The whole, in so far as it applies to a credit bureau | A notice issued in terms of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No. 71 of 1988) | The provisions of this Act prevail to the extent of the conflict. |
| Chapter 2 | The Public Finance Management Act, 1999 (Act No. 1 of 1999) | The provisions of that Act prevail to the extent of the conflict. |
| Chapter 2 | The Public Service Act, 1994 (Proclamation No. 103 of 1994) | The provisions of that Act prevail to the extent of the conflict. |
| Part D of Chapter 4, Section 127 Section 129 Section 131 Section 132 Chapter 7 Section 164 | Section 57 or 58 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) | The provisions of this Act prevail to the extent of the conflict. |
| Part D of Chapter 4, Section 127 Section 129 Section 131 Section 132 Chapter 7 Section 164 | Chapter IX of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) | The provisions of this Act prevail to the extent of the conflict. |

Schedule 2

Amendment of laws

(Section 172(2))

| No. and year of Act | Short Title | Extent of amendment |
|---------------------|-------------------------------|--|
| Act No. 24 of 1936 | Insolvency Act, 1936 | <p>The amendment of section 84 by—</p> <p>(a) the substitution for the heading of the following heading: "Special provisions in case of goods delivered to a debtor in terms of an [instalment sale transaction] <u>instalment agreement</u>"; and</p> <p>(b) the substitution for the opening clause of subsection (1) of the following words: "If any property was delivered to a person (hereinafter referred to as the debtor) under a transaction [which is an instalment sale transaction contemplated in paragraphs (a) and (b) of the definition of 'instalment sale transaction' in section 1 of the Credit Agreements Act, 1980] <u>that is an instalment agreement contemplated in paragraph (a) (b) and (c)(i) of the definition of 'instalment agreement' set out in section 1 of the National Credit Act, 2005.</u>"</p> |
| Act No. 32 of 1944 | Magistrates' Courts Act, 1944 | <p>1. The amendment of subsection (1) of section 29 by—</p> <p>(a) the insertion after the expression "Subject to the provisions of this Act", of the words "<u>and the National Credit Act, 2005</u>"; and</p> <p>(b) the substitution for paragraph (e) of the following paragraph: "(e) actions on or arising out of any credit agreement, as defined in section 1 of the [Credit Agreements Act, 1980 (Act No. 75 of 1980)] National Credit Act, 2005."</p> <p>2. The amendment of section 60 by the substitution for subsection (1) of the following subsection: "(1) Unless expressly otherwise provided in this Act or the rules <u>and the National Credit Act 2005</u>, and subject to the provisions of section 19 of the Debt Collectors Act, 1998, no person other than an attorney, [or] an agent referred to in section 22 or a <u>person authorised by or under the provisions of the National Credit Act, 2005</u>, to do so shall be entitled to recover from the debtor any fees or remuneration in connection with the collection of any debt."</p> <p>3. The amendment of subsection (5) of section 65D by the substitution for the expression "hire-purchase agreement" of the expression "<u>credit agreement as defined in section 1 of the National Credit Act, 2005</u>".</p> |

| No. and year of Act | Short Title | Extent of amendment |
|---------------------|-------------|--|
| | | <p>4. The amendment of subsection (2) of section 74A by—</p> <p>(a) the substitution in paragraph (b) for the words—</p> <p>(i) "the credit transaction defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)" with the words "the credit agreement, as defined in section 1 of the National Credit Act, 2005"; and</p> <p>(ii) "purchased under such credit transaction" with the words "purchased under that credit agreement"; and</p> <p>(b) the substitution in paragraph (i) for the words "other than a credit transaction" of the words "other than a credit agreement".</p> <p>5. The amendment of section 74C by—</p> <p>(a) the substitution in paragraph (b) of subsection (1) for the words "any credit transaction regulated by the Credit Agreements Act, 1980" of the words "a credit agreement regulated by the National Credit Act, 2005"; and</p> <p>(b) the substitution in paragraph (b) of subsection (2) for the words "a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)" of the words "a credit agreement as defined in section 1 of the National Credit Act, 2005".</p> <p>6. The amendment of subsection (7) of section 74G by—</p> <p>(a) the substitution for the words "a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)" of the words "a credit agreement as defined in section 1 of the National Credit Act, 2005"; and</p> <p>(b) the substitution throughout the subsection for each instance of the word "transaction" with the word "agreement".</p> <p>7. The amendment of subsection (4) of section 74H by the substitution for the words "a credit transaction as defined in section 1 of the Credit Agreements Act, 1980 (Act No. 75 of 1980)" of the words "a credit agreement as defined in section 1 of the National Credit Act, 2005".</p> |
| | | <p>8. The amendment of section 74K by—</p> <p>(a) the substitution in subsection (2) for the words—</p> <p>(i) "credit transaction regulated by the Credit Agreements Act, 1980 (Act No. 75 of 1980)" of the words "a credit agreement regulated by the National Credit Act, 2005"; and</p> <p>(ii) "seller", in each instance, of the words "credit provider"; and</p> <p>(b) the deletion from subsection (3) of the words "of section 15"; and</p> <p>(c) the substitution in subsection (3) for the words "credit grantor as defined in section 1 of the Credit Agreements Act, 1980" of the words "credit provider as defined in section 1 of the National Credit Act, 2005".</p> |

| No. and year of Act | Short Title | Extent of amendment |
|---------------------|---------------------------------------|--|
| Act No. 15 of 1962 | Conventional Penalties Act, 1962 | The repeal of section 5. |
| Act No. 25 of 1966 | Sale and Service Matters Act, 1964 | <p>1. The amendment of the definition of "sell" in section 1 by the substitution for the expression "as defined in the Credit Agreements Act, 1980 (Act No. 75 of 1980)" of the words "as defined in section 1 of the National Credit Act, 2005".</p> <p>2. The amendment of section 2 by the insertion after the expression "the control of the Minister", of the words "and subject to the provisions of the National Credit Act, 2005".</p> |
| Act No. 91 of 1964 | Customs and Excise Act, 1964 | <p>The amendment of subsection (1) of section 114 by—</p> <p>(a) the substitution in paragraph (a)(iv) (bb) for the expression "Credit Agreement Act, 1980 (Act No. 75 of 1981))" of the expression "National Credit Act, 2005"</p> <p>(b) the substitution in paragraph (a)(v)(aa) for the expression—</p> <p>(i) "Credit Agreement Act" of the expression "National Credit Act, 2005"; and</p> <p>(ii) "credit grantor" of the expression "credit provider";</p> <p>(c) the substitution in paragraph (a)(v)(bb) for the expression "Usury Act, 1968 (Act No. 73 of 1968)" of the expression "National Credit Act, 2005";</p> <p>(d) the substitution in paragraph (a)(vi)(aa) for the expression "credit grantor" of the expression "credit provider"</p> <p>(e) the substitution in paragraph (a)(vi)(bb) for the expression "credit grantor" of the expression "credit provider";</p> <p>(f) the substitution in paragraph (a)(vi)(cc) for the expression "credit grantor" of the expression "credit provider"; and</p> <p>(g) the substitution in paragraph (b)(ii) for the expression "credit grantor" of the expression "credit provider".</p> |
| Act No. 55 of 1975 | Prescribed Rate of Interest Act, 1975 | The amendment of subsection (2) of section 2A by the insertion in paragraph (a) after the expression "between the parties" of the words "and the provisions of the National Credit Act, 2005". |
| Act No. 88 of 1984 | Matrimonial Property Act, 1984 | <p>The amendment of subsection (2) of section 15 by the substitution for paragraph (f) of the following paragraph:</p> <p>"(f) <u>enter, as a consumer, into a credit agreement to which the provisions of the National Credit Act 2005 apply, as 'consumer and 'credit agreement are respectively defined in that Act but this paragraph does not require the written consent of a spouse before incurring each successive charge under a credit facility, as defined in that Act.</u>"</p> |

| No. and | Short Title | Extent of amendment |
|--------------------|--|--|
| Act No. 61 of 1984 | Small Claims Court Act, 1984 | The amendment of section 15 by the substitution for paragraph (d) of the following paragraph: "(d) actions based on or arising out of a credit agreement, as defined in section 1 of the [Credit Agreements Act, 1980 (Act No. 75 of 1980)] National Credit Act, 2005 , where the claim or value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the <i>Gazette</i> ,". |
| Act No. 71 of 1988 | Consumer Affairs (Unfair Business Practices) Act, 1988 | 1. The amendment of subsection (1) of section 4 by the insertion in paragraph (c) after the words "with any interested party" of the words " <u>and the National Credit Regulator established in terms of the National Credit Act, 2005, if the matter falls within the jurisdiction of the National Credit Regulator.</u> " 2. The amendment of subsection (1) of section 9 by the insertion after the expression "corporate or unincorporate" of the words " <u>or the National Credit Regulator established in terms of the National Credit Act, 2005.</u> " |
| Act No. 52 of 1998 | Long-term Insurance Act, 1998 | The amendment of section 44 by the insertion of a new subsection 5: "(5) This section does not apply if the long-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies." |
| Act No. 53 of 1998 | Short-term Insurance Act, 1998 | The amendment of section 43 by the insertion of a new subsection 6: "(6) This section does not apply if the short-term policy or its policy benefits as contemplated in subsection (1), is made available for the purpose of protecting the interests of a creditor under a credit agreement to which the National Credit Act, 2005, applies." |

| No. and year of Act | Short Title | Extent of amendment |
|---------------------|--|--|
| Act No. 78 of 1998 | National Payment System Act, 1998 | <p>1. By the insertion after section 6 of the following:</p> <p>"Effectiveness and efficiency of the National Payment System</p> <p><u>6A. (1) As of 1 July 2006, a person may not change manipulate maintain or apply a payment system in any manner that provides preferential treatment to a payment instruction over any other payment instruction in that system unless such preferential treatment is prescribed by law.</u></p> <p><u>(2) With regard to any credit agreement concluded on or before 30 June 2006, which is subject to a payment system that provides preferential treatment to a payment instruction over any other payment instruction in that system other than preferential treatment prescribed by law, such preferential treatment must be terminated on or before 31 December 2007.</u></p> <p><u>(3) A person providing access to or allowing participation in a payment system may not deny any person access to or participation in that payment system if that second person meets the criteria set by the first mentioned person.</u></p> <p><u>(4) The criteria referred to in subsection (3) for access to or participation in a payment system must be fair, transparent and equitable.</u></p> <p><u>(5) A person who contravenes any provision of this section is guilty of an offence."</u></p> <p>2. By the substitution for paragraph (a) of subsection (1) of section 14 of the following: <u>"(a) sections 6(2), 6A(4) or 12(8) is liable to a fine not exceeding R1 million or to imprisonment for a period not exceeding five years or to both such a fine and such imprisonment;"</u>.</p> |
| Act No. 64 of 1990 | Financial Institutions Amendment Act, 1990 | The repeal of paragraph (1) of section 17. |
| Act No. 89 of 1991 | Value-added Tax Act, 1991 | <p>1. (a) Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (3) of the following subsection:</p> <p><u>(3) For the purposes of this Act, a credit agreement to which section [13 of the Credit Agreements Act, 1980 (Act No. 75 of 1980),] 121 of the National Credit Act, 2005 applies, [shall] will be deemed not to be a supply of goods or services [unless the credit receiver] if the consumer has [failed to] exercised the right to rescind [under that section to terminate the] that agreement in the manner and within the time permitted [period available to him or herunder] by that section".</u></p> <p>(b) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p><u>'(b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under [section 13 of the Credit Agreements Act, 1980 (ActNo. 75 of 1980)] section 121 of the National Credit Act, 2005, to [terminate] rescind the agreement;"</u></p> |

| No. and year of Act | Short Title | Extent of amendment |
|---------------------|---|--|
| Act No. 57 of 1993 | Security by Means of Movable Property Act, 1993 | The amendment of subsection (1) of section 2 by the substitution for paragraph (b) of the following paragraph: "(b) to which an instalment [sale transaction] agreement , as defined in section 1 of the [Credit Agreement Act 1980 (Act No. 75 of 1980)] National Credit Act, 2005 , relates;" |
| Act No. 63 of 2000 | Home Loan and Mortgage Disclosure Act, 2000 | The repeal of section 13. |

Schedule 3

Transitional provisions

Definitions

1. (1) In this Schedule—
 "**effective date**" means the date on which this Act, or any relevant provision of it, came into operation in terms of section 173;
 "**pre-existing credit agreement**" means an agreement that was made before the effective date, and to which this Act applies; and
 "**previous Act**" means a law repealed by section 172.
- (2) A reference in this Schedule—
 - (a) to a section by number is a reference to the corresponding section of—
 - (i) the previous Act, if the number is followed by the words 'of the previous Act'; or
 - (ii) this Act, in any other case;
 - (b) to an item or a subitem by number is a reference to the corresponding item or subitem of this Schedule.

Delayed application of required registration

2. Despite section 40, the requirement in terms of this Act for a credit provider or a credit bureau to be registered—
 - (a) takes effect 40 business days after the effective date; and
 - (b) during the first year after the effective date, that requirement is temporarily satisfied from the time that a person applies for registration as a credit provider until a regulator has made a final decision with respect to that application.

National register of credit agreements

3. (1) Despite section 69, the requirements of section 69(2), (3), (4) and (5) remain inoperative until a date declared by the Minister by notice in the *Gazette* after—
 - (a) the National Credit Regulator has established the register of credit agreements as required by section 69(1); and
 - (b) the Minister has received advice from an independent auditor that the National Credit Regulator has established reasonable and effective means to receive and compile information to be reported to it in terms of section 69.
- (2) The Minister may prescribe the information to be registered by a credit provider in respect of a pre-existing credit agreement, in lieu of the information required by section 69(2).

Application of Act to pre-existing agreements

4. (1) This Act applies to a credit agreement that was made before the effective date, if that credit agreement would have fallen within the application of this Act in terms of Chapter 1 if this Act had been in effect when the agreement was made, subject to subitems (2) to (5).

(2) The provisions of this Act referred to in the first column of the following table apply to a pre-existing credit agreement only to the extent indicated in the second column of the table.

| Provisions of the Act | Extent to which the provisions apply to a pre-existing credit agreement |
|---|--|
| Chapter 1 Chapter 2 Chapter 3 Sections 67 and 68 Sections 70 to 72 Sections 95 to 98 Chapter 5 — Part E Sections 122 and 123 Chapters 6 to 9 Schedules 1 and 2 | Apply fully to a pre-existing credit agreement from the effective date, except that section 5(3) does not apply in respect of a pre-existing incidental credit agreement." |
| Chapter 4 — Part D | Applies to a pre-existing credit agreement only to the extent that it does not concern reckless credit. |
| Chapter 4 — Part A Section 91 | Apply to a pre-existing credit agreement only with respect to actions or omissions that occur on or after the effective date. |
| Section 69 | Applies to a pre-existing credit agreement only after the date declared by the Minister in terms of item 3. |
| Sections 89 and 90 | Apply to a pre-existing credit agreement only to the extent that common law, national or provincial legislation applied, to similar effect, to such an agreement or provision as at the date the agreement was made. |
| Section 93 Chapter 5 — Part D | Apply to a pre-existing credit agreement from the effective date, subject to subitem (3). |
| Chapter 4 — Part C Sections 92, 94, 99 and 121. Chapter 5 — Part C | Do not apply to pre-existing credit agreements, subject to subitem (3). |

(3) With respect to any credit agreement, other than a pawn transaction, made within one year before the effective date, the credit provider must within six months after the effective date—

- (a) provide the consumer with—
 - (i) a statement that meets the requirements of section 92; and
 - (ii) a document that meets the requirements of section 93, to the extent that a document or statement contemplated in terms of subparagraphs (i) or (ii) above has not already been provided to the consumer by the credit provider prior to the effective date; and
- (b) introduce a form of periodic statement that meets the requirements of section 108.

(4) On application by a credit provider the National Credit Regulator, if it is satisfied that it is impracticable for the credit provider making best efforts in good faith to comply with all or part of subitem (3), may—

- (a) extend the time within which the credit provider must comply with the obligations of subitem (3); or
- (b) enter into a compliance agreement with the credit provider establishing a plan and schedule for meeting the requirements of subitem (3).

(5) Despite section 95, for the purposes of this item, a change after the effective date to any credit agreement that was made before the effective date constitutes the making of a new credit agreement, unless it is a change to—

- (a) the interest rate under a variable rate agreement; or
- (b) the interest rate or the credit limit under a credit facility.

Maximum interest rate

5. The maximum annual finance charge rate set in terms of the Usury Act, 1968 (Act No. 73 of 1968), and in effect immediately before the effective date continues in force despite the repeal of that Act, as the maximum interest rate, until the Minister first prescribes a maximum rate of interest in terms of section 05.

Specific preservation of rights, instructions, registration and similar status

6. (1) Subject to item 7(1), a person who, immediately before the effective date, was registered by an entity contemplated in item 8 as a debt counsellor is deemed to have been registered as such in terms of this Act as from the effective date.

(2) Despite the repeal of the Credit Agreements Act, 1980 (Act No. 75 of 1980), the provisions of section 24 of the Income Tax Act, 1962 (Act No. 58 of 1962), apply to a credit agreement to which this Act applies, to the extent that those provisions would have applied to such a credit agreement if the Credit Agreements Act, 1980 (Act No. 75 of 1980), had not been repealed.

General preservation of regulations, rights, duties, notices and other instruments

7. (1) A registration that had been issued in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), by an authority administering exemptions under that section, for an indefinite term and in force immediately before the effective date, has a duration, as from the effective date, of the period determined by regulation for that category of registration.

(2) Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, which had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(3) A notice given by any person to another person in terms of any provision of a previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act.

(4) A document that, before the effective date, had been served in accordance with a previous Act must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(5) An order given by an inspector, in terms of any provision of a previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

National Credit Regulator

8. As of the effective date—

- (a) the assets, liabilities and employees of a regulatory institution designated by the Minister in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), are transferred to and are assets, liabilities and employees, respectively, of the National Credit Regulator; and
- (b) any person appointed as an inspector or in any other capacity in terms of the Usury Act, 1968 (Act No. 73 of 1968), may be transferred to the National Credit Regulator.

Provincial regulatory capacity

9. Until provincial legislation has been enacted in a province establishing for that province a provincial credit regulator as contemplated in Part D of Chapter 2, the Minister, by notice in the *Gazette*, may delegate to the relevant MEC of that province all or any of the functions of the National Credit Regulator to be exercised within that province and in accordance with this Act.

Continued enforcement of repealed laws

10. Despite the repeal of the previous Acts, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date—

- (a) the National Credit Regulator may exercise any power of the Minister in terms of any such previous Act to investigate and prosecute any breach of that Act, as if it were proceeding with a complaint in terms of this Act; and
- (b) the Tribunal may make any order that it is authorised to make in terms of this Act that could have been made in the circumstances by a court under any previous Act as if it were proceeding with a complaint in terms of this Act.

Regulations

11. On the effective date, and for a period of 60 business days after the effective date, the Minister may make any regulation contemplated in the Act without meeting the procedural requirements set out in section 171 or elsewhere in this Act, provided the Minister has published such proposed regulations in the *Gazette*, allowing a period of at least 30 business days for comment.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL CREDIT BILL, 2005

1. Policy Review

Various developments over the past few years have indicated that consumer credit legislation needed an overview. These include the increase in micro-lending, concern about ineffectual in dealing with a complex market that increasingly affects consumers at all income levels.

A number of reports have commented on the weaknesses in consumer credit legislation. These include—

- (a) the Law Commission's 1994 review of the Usury Act, 1968 (Act No. 73 of 1968);
- (b) the Strauss Report on Rural Finance;
- (c) the National Small Business Regulatory Review by Ntsika Enterprise Promotion Agency in 1999; and
- (d) the Policy Board Report on SME Finance (Falkena Report, 2001).

In March 2002, the Director General of the Department of Trade and Industry (hereinafter referred to as "the DTI"), asked the Micro Finance Regulatory Council (MFRC) to co-ordinate a review of the legislation on consumer credit, and to make proposals for a new regulatory framework covering all consumer credit products covered by the Usury Act, 1968, Credit Agreements Act, 1980 (Act No. 75 of 1980), and the Usury Act Exemption Notice. This applied to the full range of products from mortgages, credit cards and vehicle finance through to hire purchase finance and micro-loans. A committee was established to oversee the review.

A number of other countries have undertaken similar reviews in recent years, and have subsequently modernised (or are in the process of modernising) their consumer credit legislation. These include substantial credit law reviews by the UK, the European Commission and New Zealand. The Credit Law Committee was informed by these reforms in consumer credit policy abroad.

The review included focus group discussions with consumers from a range of different income and racial profiles; workshops with consumer and industry representatives; and a statistical and economic analysis of the consumer credit market.

The Committee's primary recommendation is that the Usury Act, 1968, Credit Agreements Act, 1980, and the Usury Act Exemption Notice be replaced with an overarching National Credit Act and that a Consumer Credit Regulator be established to ensure compliance. The Committee also concluded that many of the weaknesses stem from factors outside the DTI's direct mandate, such as problems related to the application of debit orders by banks and problems related to the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and that these also have to be addressed in order to improve access to credit.

Some of the most significant of the Committee's recommendations are:

- (a) That the scope of the new National Credit Act should be narrower than the current legislation and be limited to natural persons. It should thus exclude businesses. This would ensure that the Act does not inhibit the flexibility and innovation of SME finance, and would improve access to finance for SMEs. However, some protection is retained for very small businesses by the recommendation that contracts where the owner of a small business borrows in his/her own name, should still be in the ambit of the new Act.
- (b) that the current interest cap is a primary factor that causes the division between the "prime market" and the "marginal market". The Committee also finds that the cap is regularly circumvented and thus of little significance to the majority of the population.
- (c) the committee proposes that the focus should be shifted from price control to protection against over-indebtedness, and to the regulation of predatory lending practices. By requiring credit providers to assess affordability when advancing credit, introducing penalties on credit providers who act recklessly, and tightening the Magistrates' Courts Rules to prevent predatory lenders from using court orders to recover reckless loans.
- (d) detailed proposals to simplify and standardise disclosure, to improve redress, to prevent abusive contractual clauses and to improve disclosure of credit life insurance and other credit related fees and charges. Other proposals deal with

- the curbing of certain undesirable marketing and sales practices (including door-to-door solicitation) and better regulation of credit intermediaries.
- (e) numerous weaknesses were identified in relation to credit bureau activities. The Committee proposes that the National Credit Act should include a section dealing with credit bureaux and credit information sharing. This will address one of the key inefficiencies in the consumer credit market.
 - (f) the Consumer Credit Regulator should be responsible for enforcement, borrower education and on debt rehabilitation, and for the establishment of a national network of debt counsellors, though certain of these matters could be devolved to the provinces.
 - (g) there is a need for reform in the debit order system (and regulation of the National Payments System), in the Magistrates' Courts Act, 1944, in the Insolvency Act, 1936, and in the legislation and regulations that impact upon the township property market (and access to finance for such properties).

The Committee concluded that an improvement in the efficiency of credit market in terms of both regulation and market performance-could make a dramatic contribution to improved access to finance, to a lowering in the cost of finance, to improved protection for consumers and, in general, to an improvement in the opportunities for asset accumulation for previously disadvantaged South Africans.

The DTI conducted a series of information workshops with representatives of financial institutions, retailers, NGOs, micro-lenders, and consumer organisations, for the purpose of receiving advice and comments on the proposals, and subsequently published a preliminary draft of a proposed National Consumer Credit Bill, in mid 2004. Although the preliminary draft did not give effect to every proposal or recommendation of the Committee, it was fundamentally premised on the Committee's work, and guided by the thrust of their recommendations, and all of the stakeholder groups concerned supported the broad policy initiatives of the proposed Bill.

Following the publication of the preliminary draft, the DTI received several dozen written submissions, and held meetings with major stakeholder groups to address their concerns, in preparation of the present Bill.

2. Summary of Bill

2.1 Overview

Under existing law, consumer credit is regulated by the Usury Act, the Credit Agreements Act, the Magistrates' Courts Act and common law. This Bill proposes to repeal the Usury Act 1968, and the Credit Agreements Act, 1980, replacing both with a single National Credit Act, which will also give priority to its own procedures for enforcement over those of the Magistrates' Courts Act, 1944, and will modify the common law in several respects.

2.2 Scope of Bill

The Bill will apply to all credit agreements within the Republic, with the following exceptions:

- (a) It will not apply to agreements between parties dealing closer than at arm's length, as described in clause 4(1). Thus, loans between family members, partners and friends on an informal basis will not be regulated;
- (b) it will not apply to a transaction between a stokvel, and a member of that stokvel;
- (c) it will not apply to loans to the state, or any organ of state, or to a juristic person whose asset base or turnover exceeds a prescribed threshold. The DTI agrees with the committee that neither the state nor large businesses require the protection that the Bill would provide, and that they will rather benefit from having the flexibility of operating in an unregulated credit market;
- (d) it will not apply to mortgages in respect of immovable property, or other transactions whose principal value exceeds a prescribed threshold, and in which the consumer is a juristic person whose asset base or turnover is lower than the threshold referred to in paragraph (c). The DTI believes that while such small businesses generally benefit from the protection of the Act, when they engage in large transactions, they typically have professional advisers to protect their interests, and again, they will in such instances benefit from the flexibility of an unregulated market;

- (e) it will not apply to policies of insurance, or to leases in respect of immovable property. Despite the fact that interest may be a significant factor in the pricing of each of those products, the DTI believes that in each case, the purpose of the agreement is not primarily to lend money or advance credit, and it would be inappropriate to attempt to apply credit law to them;
- (f) It will not apply to certain circumstances, as set out in clause 4(5), in which a debt arises without any intention on the part of the creditor to enter into a credit agreement.

In addition, the Bill proposes a limited application of certain provisions—

- (a) as enumerated in clause 5, with respect to credit agreements in the nature of an outstanding account owed to a credit, or in the nature of a pre-paid transaction; and
- (b) as enumerated in clause 6, with respect to all credit agreements in terms of which the consumer is a juristic person.

2.3 Meaning of credit agreement

The Bill identifies the following two common elements that make an agreement a credit agreement, which together bring it within the scope of the Bill:

- (a) Some deferral of repayment, or a prepayment; and
- (b) a fee, charge or interest imposed with respect to deferred payments; or
- (c) a discount given with respect to prepayment.

The Bill distinguishes between three types of credit agreements, for the purpose of making variable provisions within the Bill for the appropriate regulation of each type, as follows:

- (a) A credit facility, for example a credit card, line of credit, overdraft protection.
- (b) a credit transaction, which sub-divides into several sub-species of agreement—
 - (i) mortgage (of immovable property)
 - (ii) lease of personal property
 - (iii) secured loan (secured by pledge of personal property)
 - (iv) instalment account
 - (v) discount account
 - (vi) pawn transaction
 - (vii) incidental credit agreement
 - (viii) Other similar transaction, e.g. unsecured loan; and
- (c) a credit guarantee.

In establishing the framework for effective regulation, the Bill provides for the use of thresholds to sub-divide the market by size of transaction, creating three categories of credit agreements, as follows:

- (a) Small agreements, being—
 - (i) all pawn transactions, regardless of size; and
 - (ii) other credit transactions (but not mortgages), or credit guarantees at or below lower of two thresholds to be determined.
- (b) intermediate agreements, being—
 - (i) all credit facilities, regardless of size; and
 - (ii) other credit transactions (but not mortgages), or credit guarantees between two thresholds to be determined.
- (c) large agreements, being—
 - (i) all mortgages, regardless of size; and
 - (ii) other credit transactions (but not mortgages), or credit guarantees at or above the higher of two thresholds to be determined.

Finally, the Bill recognises two special categories of credit agreement, which are singled out for unique treatment. In particular—

- (a) developmental credit agreements are described in clause 10, and include loans from a credit co-operative, educational loans, loans to develop a small business, build, acquire or rehabilitate low income housing, or to finance another purpose prescribed by the Minister. Developmental credit grantors must hold a special category of registration, subject to a higher degree of probity oversight. In return, the developmental credit agreements issued by them are subject to less stringent regulation under certain of the Bill's disclosure requirements.
- (b) The Bill creates a category of public interest credit agreements, for purposes to be declared by the Minister in terms of clause 11. Such agreements, which

are designed to meet urgent need for available credit, are exempt from the reckless credit provisions of the Bill.

2.4 Regulatory institutions

The Bill proposes the establishment of two entities, which together will provide for the effective administration of the Act, and the continuing development of consumer credit policy. In particular—

- (a) A National Credit Regulator will be established as the primary administrative regulator under the Act, to carry out education, research, policy development, registration of industry participants, investigate serious complaints, and ensure enforcement of the Act. The Act provides for some functions of the Regulator to be performed by parallel provincial entities, in those provinces that have established such bodies, and further provides for the Minister to delegate functions of the Regulator to provincial MECs in those provinces that have not established, or choose not to establish, self-standing provincial entities.
- (b) A National Consumer Tribunal is to be established to adjudicate in a wide variety of applications, and to conduct hearings into complaints under the Act. At the same time, the Bill promotes the use of Ombuds and other alternative dispute agencies on the basis of prescribed standards. Parties to credit agreements are encouraged to seek resolution of disputes through mediation, conciliation or arbitration in either provincial consumer courts, Ombuds or other such agencies. In addition to its powers to adjudicate disputes directly, the Tribunal will have the authority to make a consent order reflecting any resolution arrived at through an alternative forum.

2.5 Functions of the Regulator

The Bill requires the Regulator to—

- (a) promote the development of an accessible credit market, particularly to address the needs of historically disadvantaged persons, low income persons and communities, and remote, isolated or low density populations and communities;
- (b) register credit providers, credit bureaux and debt counsellors; and
- (c) enforce compliance with the Bill.

2.6 Registration requirements

To properly address the problem of over-indebtedness and granting of reckless credit, the Bill permits the Minister to require the National Credit Regulator to establish a national register of all credit agreements, except pawn transactions and prepaid agreements, to be maintained by the National Credit Regulator, based on information which credit providers are required to report. Credit providers, credit bureaux, debt counsellors and courts will have access to reports from the register as a factual basis for determining whether a consumer is in fact over indebted, and whether a credit agreement was entered into recklessly.

The Bill requires registration of all credit providers except a person who—

- (a) provides incidental credit only as a result of outstanding transactions; or
- (b) has fewer than 100 agreements, or a total outstanding book of credit equal to or less than a threshold to be prescribed.

However, in recognition of the concurrent legislative competence in consumer protection matters, the Bill waives the national registration requirement for any credit provider who operates only within one province, and who is registered in terms of comparable provincial legislation.

Although basic registration of credit providers is a right under this Bill—

- (a) the Regulator may impose conditions to address matters relating to the purpose of the Act generally, and to address BEE and over-indebtedness concerns specifically; and
- (b) a credit provider who intends to enter into developmental credit agreements must apply for supplementary registration, and satisfy the requirements for such registration, as set out in clause 41.

The Bill requires the registration of all credit bureaux, and in clause 43(3), sets out norms and standards with registrants must satisfy in order to qualify for registration.

Finally, the Bill requires the registration of all persons offering services as a debt counsellor. Under the Act, debt counsellors will conduct independent inquiries into a

consumer's financial circumstances, and make recommendations to courts and the tribunal concerning debt re-structuring and suspension of apparently reckless credit agreements. The Minister is to prescribe standards for their experience and training requirements to qualify for registration.

2.7 Consumer credit rights

The Bill codifies a number of fundamental rights of consumers in the credit market, as follows:

- (a) Protection against discrimination in credit granting, a right that expands on, but is conceptually linked to both the Bill of Rights, and the Promotion of Equality and Protection from Unfair Discrimination Act;
- (b) Right to be given reasons for credit being refused, or discontinued;
- (c) Right to information relating to the agreement, including disclosure, the contract, and account statements, in an official language, and in plain and understandable language, and the right to choose whether to receive certain documents electronically or in paper copy;
- (d) Protection against punitive or retaliatory measures brought against a consumer who seeks to uphold or enforce his or her rights under the Act;
- (e) Right to confidential treatment;
- (f) Right to have information acquired, held and reported by credit bureaux to meet national norms and standards, as set out in section 70, and to have records of debt adjustments expunged;
- (g) Right to access information held by credit bureaux, to be notified when a prescribed adverse information is reported, to demand investigation of disputed information, and correction of erroneous information, and a right to compensation for the cost of correcting negligently incorrect information.

2.8 Credit marketing practices

To restrain or correct the worst abuses in the area of credit marketing, the bill introduces, or re-enacts a number of provisions to address the following:

- (a) Negative option marketing (telling someone that they have agreed to buy credit unless they specifically deny it in writing) is to be prohibited. However, this rule is modified in respect of credit card limits, which are subject to an alternative scheme of regulation;
- (b) marketing of credit at the consumer's home or workplace is significantly restrained, but allowed if the consumer invites the credit provider to visit for that purpose;
- (c) a credit provider who is required to be registered, but fails to do so, must not advertise credit;
- (d) advertising must not be misleading, fraudulent, or deceptive, not promote a form of unlawful credit, must contain any prescribed information and may contain a statement of comparative credit costs only to the extent permitted by law or relevant codes of conduct;
- (e) any written solicitation of credit must contain prescribed information.

2.9 Credit agreements

Codifying or re-enacting existing legal norms, the Bill will render certain agreements unlawful, as follows:

- (a) If the consumer is a minor, mentally unfit, or subject to a debt administration order, and the administrator has not consented;
- (b) if the agreement results from negative option marketing;
- (c) if credit provider was unregistered and Act required registration, or was subject to a suspension or cease trading order;
- (d) if the agreement was formed by prohibited use of split documentation such that the unlawful provisions are set out in a separate "agreement".

Saving provisions in clause 89 will preserve an otherwise unlawful agreement if the court finds that the consumer or person acting on behalf of the consumer induced a material mistake on the part of the credit provider concerning the consumer's capacity to contract, or attempted to suppress or obscure the fact that the consumer was under an administration order or similar impediment.

If the Tribunal or a court declares a credit agreement to be unlawful, all its provisions are unenforceable, the consumer is not required to return any goods or money received from the credit provider under the agreement and the court may either order the credit

provider to return all money received from the consumer under the agreement or order such funds forfeit to the State. The DTI believes that the remedy serves to balance the relative inequality of control in the design of such contracts between consumers and credit providers, and will ensure that credit providers will have a real incentive to avoid unlawful credit agreements.

In addition to stipulating the circumstances that render a contract unlawful, the Bill establishes the following as unlawful provisions of credit agreements. A provision is unlawful if its general purpose is to defeat the policy and purposes of the Bill, deceive the consumer, subject the consumer to fraudulent conduct, if it results from an improper negative option offer or if it purports to—

- (a) "contract out" of the Bill, set aside or over-ride any provision of the Bill, waive a consumer's right under the Bill, or avoid a credit provider's obligation under the Bill;
- (b) waive a prescribed common law right that may be applicable to the agreement;
- (c) exempt the credit provider from certain liabilities;
- (d) have the consumer acknowledge that no other representations or warranties were made by or on behalf of the credit provider;
- (e) have the consumer acknowledge receipt of goods or services that have not in fact been delivered;
- (f) have the consumer agree to forfeit money to the credit provider if the consumer seeks to lawfully rescind the agreement;
- (g) appoint a credit provider or a person named by him or her to be agent of consumer under the agreement;
- (h) have the consumer pre-authorise entry to premises for enforcement (other than as contemplated in the Bill), grant a power of attorney to the credit provider, sign any enforcement documentation in advance, authorise the credit provider to do, or fail to do, anything contrary to the Bill, or consent to a pre-determined cost of enforcement;
- (i) have the consumer agree to deposit with the credit provider or an agent, any identity document, PIN, bank access card or similar payment device or give authority to a credit provider to use such a document or device on behalf of the consumer other than for the purpose of establishing the consumer's identity; and
- (j) establish a variable interest rate, unless the rate is tied to a fixed reference rate, stipulated in the agreement, if the consumer is a natural person.

An unlawful provision of an agreement is void from the date of the agreement, and the court is authorised to sever such a provision if possible from the agreement, or to nullify the entire agreement if the provision cannot be severed.

2.10 Pre-agreement requirements and reckless credit

The Bill's provisions concerning steps to be taken before an agreement is concluded seek to advance competitiveness within the market, and to avoid reckless credit and over-indebtedness.

To give effect to those policies, the Bill requires disclosure statements in advance that include both the main features of the proposed agreement, and a cost quotation of the credit, which is binding on the credit provider for seven days.

Secondly, the Bill requires the credit provider (with some exceptions) to conduct a proper assessment of each consumer's ability to meet obligations, taking reasonable steps to investigate and evaluate the consumer's—

- (a) understanding and appreciation of the obligations of the proposed agreement; and
- (b) ability to meet those obligations in a timely manner.

The credit provider must not enter into a reckless credit agreement. The Bill defines an agreement as reckless if the creditor fails to conduct the required evaluation, or having conducted it, enters into an agreement with a consumer despite the fact that the preponderance of information available to the creditor indicated that the consumer did not appreciate the nature of the obligations, or could not afford them.

Once again, saving provisions will preserve an agreement if the court is satisfied that the consumer failed to fully and truthfully answer any question for information, and the failure materially affected the ability of the credit provider to make a proper assessment.

If a court or the Tribunal later hold that an agreement was reckless they may suspend the agreement. A suspended agreement remains in force, but cannot be enforced until the

consumer is able to afford it. In addition, the National Credit Regulator may ask the Tribunal to impose an administrative fine, or make an order to alter the credit provider's business practice.

2.11 Cost of credit

The Bill regulates the cost of credit in the following manner:

- (a) Allowing for the Minister to establish an interest cap and other cost controls, and prohibiting interest or other costs in excess of those prescribed rates;
- (b) prohibiting any costs other than the principal sum borrowed, interest, an initiation fee (which may not be charged unless a credit agreement results from the application), periodic or transaction-based service fees, insurance premiums for credit insurance, and delivery, installation and like charges, and collection costs. Each of the categories of fees, premiums and charges is subject to regulatory maximums or standards;
- (c) prohibition of surcharges of amounts spent on account of the consumer for insurance and incidental costs;
- (d) modification of the *in duplum* rule, as set out in clause 103(5).

In addition, the Bill requires advance disclosure of all costs, and requires that the consumer has the right to—

- (a) arrange incidental matters directly, rather than pay the credit provider to do so, and
- (b) choose to arrange his or her own insurance policies.

2.12 Payment of accounts

The Bill allows for the consumer to—

- (a) prepay any amount owing at any time; and
- (b) to fully pay out the account at any time, subject to a termination charge of not more than three months interest, only in the case of a large agreement.

2.13 Termination of agreement

The Bill allows the consumer to rescind an instalment contract or lease of goods within five business days after concluding agreement, but does not apply to non-returnable goods, as defined in clause 1 of the Bill.

Beyond that, a consumer may terminate an agreement at any time by paying it out, or in the case of an instalment contract or lease of returnable goods, may surrender the goods with notice to terminate the agreement. Clause 127 sets out a very specific process for the credit provider to determine the value of surrendered goods, and credit the consumer's account, and refund to the consumer, any excess value if the goods are worth more than the pay-out value of the agreement.

2.14 Other debt enforcement provisions

The Magistrates' Courts Act continues to apply as the predominant law governing debt enforcement, but the Bill modifies that in two respects:

- (a) The court may deal with a credit agreement only if the court is first satisfied that the procedures of the Bill have been followed, and the matter is not pending before the Tribunal; and
- (b) when considering a matter concerning a credit agreement, the court may make any order contemplated under the Bill with respect to that agreement.

2.15 Over-indebtedness and re-structuring

In addition to the provisions concerning reckless credit, discussed above, the Bill allows for debt re-structuring if the consumer is over-indebted.

The Bill stipulates that a consumer is over-indebted if, having regard to the consumer's means, income and obligations, the consumer cannot reasonably satisfy all obligations under credit agreements in a timely manner. A consumer may apply to a debt counsellor for review of debt, and the debt counsellor makes recommendation to the Magistrate's Court, which in turn may re-organise the consumer's debt by extending the term of any agreement, postponing payments, re-calculating unlawful fees or interest, or ordering adjustments to improperly charged items.

Once a consumer applies to a debt counsellor, or a court refers a case to a counsellor, and until the process is complete or is terminated by notice—

- (a) the consumer is prohibited from entering into any fresh credit agreement, except to consolidate existing obligations;

- (b) all credit providers under agreements being reviewed may not enforce those agreements; and
- (c) if a credit provider has notice of the review and enters into a new credit agreement, during that time, that new agreement may be declared reckless.

If the debt review process does not conclude within 60 days, and the consumer is in default, a credit provider may serve notice to end the process, so that the credit provider may approach the Magistrate's Court to enforce the agreement. In those circumstances, the court will have a discretion to order the debt review to continue in appropriate circumstances.

3. OTHER DEPARTMENTS AND BODIES CONSULTED

National Treasury;
South African Reserve Bank;
Competition Commission;
South African Law Commission;
Financial Services Board;
Department of Housing;

4. FINANCIAL IMPLICATIONS

It is estimated that the annual operating costs of the institutions established in terms of the Bill will not exceed R 48 million.

5. CONSTITUTIONAL IMPLICATIONS

Given the fact that the national and provincial governments have concurrent legislative competence in respect of consumer protection, initial consultation was conducted with provinces to ensure that there was broad agreement on the Bill and that potential constitutional concerns have been dealt with.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely "consumer protection".

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.