
GENERAL NOTICE

NOTICE 1740 OF 2004

DEPARTMENT OF TRADE AND INDUSTRY**PUBLICATION OF THE CONSUMER CREDIT BILL, 2004, FOR PUBLIC COMMENT**

I, MANDISI MPAHLWA, Minister of Trade and Industry do hereby publish for general comment the Consumer Credit Bill, 2004.

All interested parties are invited to submit, within six (6) weeks from the date of this notice, written presentations to:

Ms Lynn Layman
Business Unit: Policy and Legislation
Private Bag X84
PRETORIA
0001
TEL: (012) 394 1506
FAX: (012) 394 2517

MANDISI MPAHLWA, MP
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 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 providers and debt counselling services, to provide for financing for debt counselling services and consumer credit education programmes, to establish national norms and standards relating to consumer credit, to promote a consistent enforcement framework relating to consumer credit, to provide for consultation between National and Provincial spheres of government with respect to consumer credit and for that purpose to establish the National Consumer Credit Council, to establish the National Credit Regulator and the Consumer Tribunal, to provide for consultation among the Minister and representatives of the credit industry and consumers and for that purpose to provide for the appointment of a National Consumer Credit Advisory Committee, to repeal the Usury Act, 1968 (Act 73 of 1968), the Credit Agreements Act, 1980 (Act 75 of 1980), and to provide for related incidental matters.

Table of Contents

<i>Table of Contents</i>	4
<i>Chapter 1—Interpretation, Purpose and Application</i>	8
Part A—Interpretation	8
1. Definitions	8
2. Interpretation	10
Part B—Purpose and Application	11
3. Purpose of Act	11
4. Application of Act	11
5. Threshold determination and industry tiers	12
6. Credit Agreements	12
7. Categories of credit agreements	12
<i>Chapter 2—Consumer Credit Institutions</i>	13
Part A—National Consumer Credit Council	13
8. Establishment of National Consumer Credit Council	13
9. Functions of National Consumer Credit Council	13
10. Council Meetings	13
Part B—National Consumer Credit Advisory Committee	14
11. Appointment, composition and functions of Committee	14
Part C—National Credit Regulator	14
12. Establishment of National Credit Regulator	14
13. Objects and functions of the National Credit Regulator	14
14. Relations with provincial regulatory authorities	16
15. Composition of National Credit Regulator	16
16. Conflicting interests	17
17. Resignation, removal from office, and vacancies	18
18. Meetings of the National Credit Regulator	18
19. Committees of National Credit Regulator	18
Part C—The Consumer Tribunal	19
20. Establishment and constitution of Tribunal	19

21. Functions of Consumer Tribunal	19
22. Qualifications of members of Tribunal	19
23. Term of office of members of Tribunal	20
24. Deputy Chairperson of Tribunal	20
25. Tribunal proceedings	20
26. Conflicts and disclosure of interest	21
27. Acting by member of Consumer Tribunal after expiry of term of office	21
Part D—Administrative Matters	21
28. National Credit Regulator remuneration and benefits	21
29. Consumer Tribunal Remuneration and benefits	21
30. Conflicting interests	21
31. Appointment of inspectors	22
32. Finances	22
33. Accountability, audits and reports	22
Chapter 3—Consumer Credit Industry Regulation	23
Part A—Registration of credit agreements	23
34. National register of credit agreements	23
Part B—Registration of credit providers and counsellors	24
35. Obligation to be registered	24
36. Threshold determination	24
37. Determination of application	24
38. Conditions of registration	24
39. Variation of conditions of registration	25
40. Cancellation of registration	25
41. Voluntary cancellation	26
42. Application, registration and renewal fees	26
43. Certificate, validity, and public notice of registration	26
44. National record of registrations	27
45. Review or appeal of decisions	27
Part C—Compliance with registration requirements	27
46. Compliance notices	27
47. Objection to compliance notice	28
Part D—Jurisdiction over registration	28
48. Registration authority of provincial regulatory authorities	28
49. Responsibilities of provincial regulatory authorities	28
50. Registration authority of National Credit Regulator	29
51. Authority of national registration	29
52. Information sharing	29
53. Conflicting exercise of concurrent jurisdiction	29
Chapter 4—Consumer Credit Policy	30
Part A—Consumer Rights	30
54. Protection against discrimination in access to credit	30
55. Protection of consumer credit rights	30
56. Right to confidential treatment	31
57. Right to reasons for credit being refused	31
58. Right to information in plain and understandable language	31
59. Right to receive documents	31
60. Right to access records and information	32
Part B—Credit Marketing Practices	32
61. Limited application of this Part	32
62. Negative option marketing	33
63. Marketing and sales of credit at home or work	33
64. Advertising practices	33
65. Required marketing information	34
66. Notice of interest rates	34
Part C—Consumer Credit Agreements	34
67. Unlawful credit agreements	34
68. Unlawful provisions of credit agreement	35
69. Supplementary requirements and documents	36
70. Assessment of consumer's credit ability	36
71. Pre-agreement disclosure	36
72. Form of credit agreements	37

73. Deferrals, waivers and changes	37
74. Address for notice	37
75. Consumer must disclose location of goods	38
76. Consumer maximum liability is limited	38
77. Agreement attaches to substituted goods.....	38
Part D—Interest and Fees.....	39
78. Limitation on consumer's liability.....	39
79. Cost of Credit.....	39
80. Maximum rates of interest and fees.....	39
81. Interest.....	40
82. Credit Insurance	40
83. Fees or charges.....	41
84. Changes to Credit fees or charges	41
Part E—Statements of Account and Repayment Practices.....	42
85. Limited application of this Part	42
86. Statements of account	42
87. Form and content of statements of account.....	42
88. Statement of amount owing and other matters	42
89. Disputed accounts	43
90. Dating and adjustment of debits and credits in accounts	43
91. Statement of pay out amount	43
92. Tribunal may order statement to be provided.....	44
93. Disputes concerning statements	44
94. Consumer's or guarantor's right to pay out agreement.....	44
95. Early payments and crediting of payments	44
96. Repayment changes	44
97. Payroll deduction provisions	44
98. Payment processing practices	45
Part F—Alteration of Credit Agreement.....	45
99. Alteration of original or amended agreement document.....	45
100. Changes by agreement	45
101. Increased credit limits under credit facility	46
102. Unilateral changes by credit provider.....	46
Part G—Rescission and Termination of Credit Agreements.....	46
103. Consumers right to rescind credit agreement	46
104. When consumer may terminate agreement	46
105. Surrender of goods.....	47
106. Compensation for consumer	48
107. Termination of agreement by credit provider.....	48
Chapter 5—Debt enforcement, Complaints, Applications and Remedies.....	48
Part A—Debt enforcement.....	48
108. Repossession of goods	48
109. Compensation for credit provider.....	49
110. Prohibited collection and enforcement practices.....	49
111. Deferral of debt enforcement procedures	49
112. Court may suspend reckless credit agreement.....	49
Part B—Over-indebtedness and reckless credit	50
113. Over-indebtedness.....	50
114. Application for debt re-structuring	50
115. Tribunal may restructure consumer's obligations	51
116. Effect of suspension of credit agreement.....	51
117. Effect of debt rearrangement	51
Part C—Initiating Complaints or applications.....	52
118. Initiating a complaint to National Credit Regulator	52
119. Initiating applications to Tribunal.....	52
120. <u>Alternative complaint procedures</u>	52
121. Consent orders	52
Part D—Informal Resolution or Investigation of complaints	53
122. Investigation by National Credit Regulator.....	53
123. Outcome of complaint	53
124. Referral to Consumer Tribunal	53

Part E—Tribunal consideration of complaints, applications and referrals.....	54
125. Hearings before Consumer Tribunal.....	54
126. Right to participate in hearing	54
127. Powers of member presiding at hearing.....	54
128. Rules of procedure	55
129. Witnesses.....	55
130. Costs.....	55
131. Appeals and reviews	55
Part F—Tribunal Orders	55
132. Interim relief	55
133. Orders of Consumer Tribunal	56
134. Administrative fines	57
135. Status and enforcement of orders	57
Chapter 6—Enforcement of Act.....	57
Part A—Searches	57
136. Authority to enter and search under warrant.....	57
137. Powers to enter and search	58
138. Conduct of entry and search	58
Part B—Offences.....	59
139. Breach of confidence	59
140. Hindering administration of Act.....	59
141. Failure to attend when summoned.....	59
142. Failure to answer fully or truthfully	59
143. Failure to comply with Act.....	59
144. Penalties	60
145. Magistrate's Court jurisdiction to impose penalties	60
Part C—Miscellaneous matters.....	60
146. Agents and brokers	60
147. Civil actions and jurisdiction	61
148. Variation of order	61
149. Limitations of bringing action	61
150. Standard of proof	62
151. Serving documents	62
152. Proof of facts.....	62
Chapter 7—General Provisions	62
153. Regulations.....	62
154. Repeal of laws and transitional arrangements	63
155. Short title and commencement	63
Schedule 1—Transitional Provisions.....	64
1. Definition	64
2. Application of Act to existing agreements	64
3. General preservation of regulations, rights, duties, notices and other instruments.....	64
4. National Credit Regulator.....	65
5. Provincial regulatory capacity	65
6. Continued enforcement of repealed laws	65
7. Regulations.....	65

Chapter 1—Interpretation, Purpose and Application

Part A—Interpretation

Definitions

1. (1) In this Act—

“**accredited agency**” means a consumer court or other agency accredited in term 5
of section 120 to assist in the resolution of disputes through conciliation, mediation
or arbitration;

“**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, 10
advantages or uses of, conditions on, or prices at which—

(a) goods may be purchased, leased or otherwise acquired; or

(b) any service is available;

“**agreement**” includes a agreement, arrangement or understanding, whether or not
legally enforceable; 15

“**civil court**” means a High Court or Magistrates Court, as referred to in section
166(c) and (d) of the Constitution, or another court contemplated in section 166(e)
of the Constitution;

“**Cabinet**” means the body of the national executive described in section 91 of the
Constitution; 20

“**complainant**” means a person whose complaint has been investigated in terms of
section 122(1)(b);

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

“**Constitution**” means the Constitution of the Republic of South Africa, 1996 (Act 25
No. 108 of 1996);

“**consumer**” means the party to a credit agreement to whom money or credit is
advanced under that agreement;

“**consumer court**” means a body of that name established by provincial
legislation; 30

“**Council**” means the National Consumer Council established by section 8;

“**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; 35

“**credit agreement**” means an agreement or arrangement between or among two
or more persons that meets all of the criteria set out in section 6(1);

“**credit insurance**” means credit life insurance, or insurance against loss of
property;

“**credit life insurance**” includes cover for loss of income due to disability, 40
terminal illness or unemployment;

“**credit provider**” in respect to 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 transaction; 45

(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;

(e) the lender under a secured loan;

(f) the lessor under a lease agreement; 50

(g) the party to whom an indemnity promise is made under a credit guarantee; or

(h) the party who advances money or credit to another under any other credit
agreement;

“**credit facility**” means an agreement between or among two or more persons that
meets all of the criteria set out in section 6(2); 55

“**credit guarantee**” means an agreement between or among two or more persons
that meets all of the criteria set out in section 6(4);

“credit transaction” means an agreement or arrangement between or among two or more persons that meets the criteria set out in section 6(3);

“discount transaction” means an arrangement, irrespective of its form, in which—

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

“effective date” with reference to any particular provision of this Act, means the date on which that provision came into operation;

“effective rate of interest” in respect of a credit agreement, means the rate calculated in accordance with section 81;

“incidental credit agreement” means an outstanding account or a prepaid transaction;

“instalment agreement” means a sale of goods in terms of which—

- (a) all or part of the price is deferred and is to be paid by periodic payments; and
- (b) possession and use of the goods is transferred to the consumer at the time of the sale; and
- (c) either—
 - (i) title to the goods passes to the consumer only when the agreement is fully complied with; or
 - (ii) title to the goods passes to the consumer at the time of sale, but the consumer pledges that title as security for all amounts due under that agreement;

“lease” means an agreement in terms of which—

- (a) temporary possession of, or right to use, any property other than real property is delivered to, or at the direction of, the consumer,
- (b) payment for the possession or use of that property is—
 - (iii) made on a periodic basis during the life of the agreement; or
 - (iv) deferred in whole or in part for any period during the life of the agreement, and
- (c) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred.

“member of the National Credit Regulator” means a person appointed to the National Credit Regulator in terms of section 15;

“minister” means the member of the Cabinet responsible for consumer credit matters;

“mortgage” means a mortgage of real property;

“official language” means a language mentioned in section 6(1) of the Constitution;

“organ of state” has the meaning set out in section 239 of the Constitution;

“outstanding account” means an arrangement, irrespective of its form, in which a statement of account is tendered for goods or services provided to the consumer, and either or both of the following conditions apply:—

- (a) a fee, charge or interest becomes payable if payment of that fee statement is deferred beyond a determined period or date; or
- (b) two prices are quoted for settlement of the account, the lower applicable if the account is paid before a determined date, and the higher price applicable if the account is paid after that date;

“pawn transaction” means an agreement in terms of which—

- (a) one party advances money or 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 credit is entitled on expiry of a defined period to sell the goods and retain all the proceeds of 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;

“prepaid transaction” means an arrangement, irrespective of its form, in which goods or services are to be provided to the consumer over a period of time, and either or both of the following conditions apply:—

(a) a fee, charge or interest becomes payable if payment of any part of the price is deferred beyond a determined period or date; or

(b) the price for the goods or service may be paid by a single payment before a determined date, or in instalments, and if the price is paid by instalments, the total amount to be paid is greater than the price if paid by a single payment;

“prescribed” means prescribed from time to time by regulation in terms of this Act;

“principal value” means the total amount to be paid by a consumer under a credit agreement, minus the total of all interest, charges and fees, as calculated in accordance with section 79;

“private dwelling” means any part of a structure that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used wholly for the purposes of, a residence;

“prohibited conduct” means an act or omission in contravention of 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 credit counsellor or employer;

“provincial regulatory authority” means a body within the provincial sphere of government authorised to regulate consumer credit matters within a province;

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

“reckless credit” means a credit agreement concluded in circumstances described in section 115(b)(i);

“regulated person” means a bank or other financial institution that is licensed and authorised to lend money to the public in terms of a public regulation other than this Act;

“regulation” means a regulation made under this Act;

“regulator” means a provincial authority or the National Credit Regulator established by section 12;

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

“respondent” means a person or firm against whom a complaint has been initiated in terms of this Act;

“secured loan” means an agreement in terms of which a person advances money or credit to another, and receives a pledge of the title to any personal property as security for all amounts due under that agreement;

“temporary increase” with respect to a credit limit, means an increase in circumstances described in section 103;

“Tribunal”, depending on the context, means the Consumer Tribunal established by section 20, a panel of the Tribunal hearing a matter, or a member of the Tribunal hearing a matter alone in terms of section 125(3);

“this Act” includes the regulations and Schedules;

Interpretation

2. (1) This Act must be interpreted in a manner that is consistent with the Constitution and gives effect to the purpose set out in section 3.

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

(3) Despite the periods of time set out in section 5(1) and 37(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.

(4) 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, as well as any public holiday, Saturday and Sunday; and
 - (b) including the day on or by which the second event is to occur.
- (5) For all purposes of this Act, a person is a historically disadvantaged person if that person—
- (a) is one of a category of individuals 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 individuals referred to in paragraph (a);
 - (c) is a juristic person other than an association, and individuals 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.

Part B—Purpose and Application

Purpose of Act

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

- (a) addressing and correcting imbalances in negotiating power between consumers and credit providers;
- (b) ensuring consistent treatment of different credit products and different credit providers;
- (c) providing consumers with adequate disclosure of standardized information in order to make informed choices; and
- (d) providing consumers with education about credit and consumer rights;
- (e) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;
- (f) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness; and
- (g) improving consumer credit information and reporting, and better regulating credit bureaux.

Application of Act

4. (1) 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 a credit provider advances money or credit to—
 - (i) a company, a close corporation, or a partnership whose asset value or annual turnover equals or exceeds the threshold value determined by the Minister in terms of section 5(1); or
 - (ii) the state, or an organ of state; or
- (b) a large agreement in terms of which a credit provider advances money or credit to a company, a close corporation, or a partnership whose asset value or annual turnover is below the threshold value determined by the Minister in terms of section 5(1).

(2) The application of this Act in terms of subsection (1) extends to a credit agreement or proposed credit agreement irrespective whether the credit provider resides or has its principal office within or outside the Republic.

(3) If, in terms of subsections (1) and (2), 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 or not that transaction, act or omission occurs within or outside the Republic.

Threshold determination and industry tiers

5. (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 R1 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 7.

(2) For the purpose of applying the monetary threshold determined in terms of this section to a credit facility, the principle value 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.

Credit Agreements

6. (1) For the purposes of this Act, an agreement or arrangement, other than a policy of insurance or a lease of real property, constitutes a credit agreement if it is—

- (a) a credit facility, as described in subsection (2);
- (b) a credit transaction, as described in subsection (3);
- (c) a credit guarantee, as described in subsection (4); or
- (d) any combination of the above.

(2) An agreement, irrespective of its form, constitutes a credit facility if, in terms of that agreement,

- (a) a credit provider undertakes—
 - (i) 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) to defer the consumer's obligation to repay to the credit provider 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) the agreement, or
 - (ii) any amount deferred as contemplated in paragraph (a)(ii).

(3) An agreement, irrespective of its form, constitutes a credit transaction if it is—

- (a) a pawn transaction or discount transaction;
- (b) an incidental credit agreement, subject to subsection (5);
- (c) an instalment agreement;
- (d) a mortgage or secured loan;
- (e) a lease of personal property; or
- (f) any other agreement in terms of which payment of an amount owed by one person to another is deferred, and any charge, fee or interest is payable to the credit provider in respect of—
 - (i) the agreement, or
 - (ii) the amount that has been deferred.

(4) An agreement, irrespective of its form, constitutes a credit guarantee if, in terms of that agreement, a person undertakes to satisfy upon demand any obligation of another consumer in terms of a credit facility or a credit transaction.

(5) In respect of any outstanding account—

- (a) the parties are deemed to have entered into an incidental credit agreement when 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; and
- (b) the provisions of this Act, other than section 72, do not apply to that account until the time determined in accordance with paragraph (a).

Categories of credit agreements

7. For all purposes of this Act, every credit agreement is characterized as follows:

- (a) A **small agreement**, being—
 - (i) A pawn agreement; or
 - (ii) any—

- (aa) other credit transaction except a mortgage, or
 - (bb) credit guarantee
 if the principal sum falls at or below the lower of the thresholds established in terms of section 5(1)(b).
- (b) An **intermediate agreement**, being— 5
 - (i) a credit facility; or
 - (ii) any—
 - (aa) credit transaction except a mortgage, or
 - (bb) credit guarantee
 if the principal sum falls between the thresholds established in terms of section 5(1)(b). 10
- (c) A **large agreement**, being—
 - (i) a mortgage agreement; or
 - (ii) any other credit transaction, or a credit guarantee, if in either case the principal sum under the agreement falls at or above the higher of the thresholds established in terms of section 5(1)(b). 15

Chapter 2—Consumer Credit Institutions

Part A—National Consumer Credit Council

Establishment of National Consumer Credit Council

- 8. (1) The National Consumer Credit Council is hereby established. 20
- (2) The National Consumer Credit Council consists of—
 - (a) The following regular members:
 - (i) the Minister; and
 - (ii) from each province, the Member of the Executive Council responsible for consumer protection in that province; and 25
 - (b) The following supplementary, non-voting members:
 - (i) the Chairperson of the National Credit Regulator; and
 - (ii) from each province, the senior official of the consumer protection authority established in terms of provincial legislation, if any.
- (3) The Minister is the Chairperson of the Council. 30

Functions of National Consumer Credit Council

- 9. (1) The Council is a body in which the national government and provincial governments consult on—
 - (a) the determination and establishment of consumer credit policy and national norms and standards for the regulation of the industry; 35
 - (b) consumer credit legislation or regulations;
 - (c) any matter concerning the management or monitoring of consumer credit in the Republic, or in any specific province or provinces; and
 - (d) other matters that may be referred to it by a member of the Council.
- (2) The Council may refer any matter within its authority to the National Credit Regulator with a request for a report or recommendation. 40

Council Meetings

- 10. (1) The Minister may convene a meeting of the Council at any time, but must convene at least two meetings in each financial year.
- (2) The Minister may designate any meeting of the Council to be a meeting of all members, or only of regular members, but must designate at least one meeting in each financial year to be a meeting of all members. 45
- (3) At a meeting of the Council to which supplementary members are called a supplementary member may be represented by an alternate, chosen by that supplementary member. 50
- (4) As a body through which the national and provincial spheres of government seek to co-operate with one another in mutual trust and in good faith, the Council must attempt to reach its decisions by consensus.
- (5) If the Council is unable to reach a consensual decision in any matter before it, the Council may resolve the matter by formal vote on a motion. 55

- (6) A motion in terms of subsection (5) passes only if it is supported by—
 (a) the Minister; and
 (b) at least 5 of the other regular members of the Council.
 (7) Subject to subsection (2) through (6), the Council may establish Rules of Procedure for its own proceedings.

5

Part B—National Consumer Credit Advisory Committee

Appointment, composition and functions of Committee

11. (1) The Minister must appoint a National Consumer Credit Advisory Committee, comprising twelve members, from among persons experienced or knowledgeable in the field of consumer credit from an industry, activist or consumer perspective. 10
- (2) A person appointed by the Minister to the National Consumer Credit Advisory Committee serves for a term of three years, and may be re-appointed to any number of consecutive terms.
- (3) The functions of the National Consumer Credit Advisory Committee are, on request by the Minister— 15
- (a) To make recommendations concerning the establishment or implementation of education or information measures contemplated in section 13(1)(b);
- (b) To review and comment on any— 20
- (i) explanatory notices or guidelines proposed to be published by the National Credit Regulator in terms of this Act;
- (ii) policy proposals made by the National Credit Regulator in terms of section 13(1)(c); or
- (iii) reports made by the National Credit Regulator in terms of section 13(1)(d) or (n); or
- (iv) advice or recommendations submitted to the Council by the National Credit Regulator in terms of section 13(2)(b), (c) or (f); and 25
- (c) To provide any further advice requested by the Minister concerning the purposes of this Act.
- (4) The Minister may make regulations concerning— 30
- (a) the process of nomination contemplated in subsection (1); and
- (b) the meetings and procedures of the National Consumer Credit Advisory Committee.

Part C—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— 35
- (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; and 40
- (e) must be impartial and must perform its functions without fear, favour, or prejudice.
- (2) Each organ of state must assist the National Credit Regulator to maintain its independence and impartiality, and to effectively carry out its powers and duties.

Objects and functions of the National Credit Regulator

45

13. (1) The National Credit Regulator is responsible to—
- (a) Register credit providers and debt counsellors, and investigate and ensure that national and provincial registrants comply with this Act and their respective registrations;
- (b) implement education and information measures to develop public awareness of the provisions of this Act; 50
- (c) conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry;

- (d) monitor and report each year to the Minister on the following matters:
 - (i) credit availability, price, market conditions, conduct and trends;
 - (ii) competition within the industry, industry structure and extent of ownership and control within the industry by historically disadvantaged persons; 5
 - (iii) access to consumer credit by historically disadvantaged persons, and by small enterprises; and
 - (iv) levels of consumer indebtedness and the incidence and social effects of over-indebtedness;
 - (e) promote informal resolution of complaints in terms of this Act; 10
 - (f) to ensure that unlawful activities related to consumer credit, are prevented, or detected and prosecuted;
 - (g) investigate and evaluate alleged contraventions of this Act;
 - (h) negotiate and conclude consent orders contemplated in section 121;
 - (i) suspend or revoke any registration issued in terms of this Act; 15
 - (j) refer matters to the Consumer Tribunal, and appear before the Tribunal, as required by this Act;
 - (k) negotiate agreements with any regulatory authority to co-ordinate and harmonise the exercise of jurisdiction over consumer credit matters within the relevant industry or sector, and to ensure the consistent application of the principles of this Act; 20
 - (l) participate in the proceedings of any regulatory authority;
 - (m) advise, and receive advice from, any regulatory authority;
 - (n) over time, review legislation and public regulations, and report to the Minister concerning matters relating to consumer credit; and 25
 - (o) deal with any other matter referred to it by the Tribunal;
 - (p) investigating, monitoring and evaluating compliance with this Act by credit providers and registrants, entering into agreements with credit providers or registrants respecting steps to be taken to correct any deficiencies, and making orders in relation to such matters, in accordance with Part C of Chapter 3; 30
 - (q) establishing and maintaining the central registries contemplated in sections 34, 44 and 52 and making information from those registries available to:
 - (i) each provincial government consumer protection authority; and
 - (ii) other persons in the prescribed manner and form;
 - (r) report bi-annually on the volume and cost of different types of consumer credit products, market practices relating to those products, and the implications for consumer choice and competition in the consumer credit market; 35
 - (s) perform any other function assigned to it in terms of this or any other Act.
- (2) In addition to the functions listed in subsection (1), the National Credit Regulator may— 40
- (a) provide guidance to the credit market and industry by—
 - (i) issuing explanatory notices outlining its procedures or interpretation of any provision of this Act; or
 - (ii) applying to the Tribunal for a declaratory order on the interpretation or application of any provision of this Act; 45
 - (b) advise the Council 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; 50
 - (c) recommend to the Council changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act;
 - (d) monitor socio-economic patterns of consumer credit activity within the Republic, and in particular identify factors relating to, and patterns, causes, and consequences of, over-indebtedness; 55
 - (e) liaise with any foreign or international authorities having any objects similar to the objects of the National Credit Regulator;
 - (f) advise the Council, through the Minister, in respect of any matter referred to it by the Council; and
 - (g) monitor market share and market conduct in the consumer credit industry and refer any concerns regarding market share, anti-competitive behaviour or possible prohibited conducts to the Competition National Credit Regulator, in terms of the Competition Act, 1998 (Act 89 of 1998); 60

- (h) enquire into and report to the Minister on any matter concerning the purpose of this Act.
- (3) The Minister must table in the National Assembly any report submitted in terms of—
 - (a) subsection (1)(d) or (n); and 5
 - (b) subsection (2) if that report deals with a substantial matter relating to the purposes of this Act.
- (4) The Minister must submit a report contemplated in subsection (3)—
 - (a) within 14 days after receiving that report from the National Credit Regulator, if Parliament is in session at that time; or 10
 - (b) if Parliament is not in session, within 14 days after the commencement of the next session.
- (5) In carrying out its functions as set out in this Act, the National Credit Regulator—
 - (a) must comply with directions issued to it by the Council relating to consumer credit; 15
 - (b) may have regard to international developments in the field of consumer credit and consumer financing;
 - (c) may consult any person, organisation or institution with regard to any matter deemed necessary by the National Credit Regulator.

Relations with provincial regulatory authorities 20

- 14. (1) At the request of the relevant Member of the Executive Council of a province, or the provincial regulatory authority, the National Credit Regulator—
 - (a) may engage with that authority in co-operative activities of research, publication, education, staff development and training; and
 - (b) in consultation with the Minister, may— 25
 - (i) engage with that authority in staff exchanges or secondments; or
 - (ii) provide technical assistance or expertise to that authority.
- (2) At the request of the applicable Provincial Executive Council member or provincial regulatory authority, the National Credit Regulator may engage with that authority in co-operative activities to detect and suppress illegal consumer credit activities, or prohibited conducts, if there are reasonable grounds to believe those activities may be occurring across provincial boundaries. 30
- (3) At the direction of the Council, the National Credit Regulator must engage with any relevant provincial regulatory authority in co-operative activities to detect and suppress illegal consumer credit activities, or prohibited conducts, occurring— 35
 - (a) across provincial boundaries; or
 - (b) entirely within a particular province, if, in the opinion of the Council, the provincial regulatory authority is unable to suppress that activity on its own.
- (4) The National Credit Regulator may liaise with provincial regulatory authorities on matters of common interest. 40
- (5) The National Credit Regulator may request any provincial regulatory authority to submit any report or information related to the activities of that regulatory authority to the National Credit Regulator.

Composition of National Credit Regulator

- 15. (1) The National Credit Regulator consists of— 45
 - (a) the following members, each appointed by the Minister for a term of no more than five years, as determined by the Minister at the time of appointment:
 - (i) a Chairperson and a Deputy Chairperson; and
 - (ii) not more than six other members, 50
 - each of whom, in the opinion of the Minister, have applicable knowledge or experience in matters connected with the objects of this Act;
 - (b) two other members, one each designated respectively by the—
 - (i) member of the cabinet responsible for finance matters; and
 - (ii) member of the cabinet responsible for social development matters 55
 - to serve until substituted by the minister who designated the member.
- (2) To be eligible for appointment or designation as a member of the National Credit Regulator, and to continue to hold that office, a person must—
 - (a) not be subject to any disqualification set out in subsection (3); and
 - (b) have submitted to the Minister a written declaration stating that—

- (i) the person is not disqualified in terms of subsection (3); and
 - (ii) the person does not have any interests referred to in subsection (3)(b).
- (3) A person may not be a member of the National Credit Regulator if that person—
- (a) is a political office-bearer;
 - (b) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a registration issued in terms of this Act, or in premises used for an activity that must be registered in terms of this Act; or
 - (ii) has or acquires an interest in a business or enterprise that may conflict or interfere with the proper performance of the duties of a member of the National Credit Regulator;
 - (c) is an unrehabilitated insolvent, or becomes insolvent and the insolvency results in the sequestration of their 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 ten 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 Corruption Act, 1992 (Act No. 94 of 1992), an offence under Chapter 2 or 3 of the Prevention of Organised Crime Act, 1998 (Act 121 of 1998), an offence under the Financial Intelligence Centre Act, 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.
- (4) The Chief Executive Officer is an ex officio member of the National Credit Regulator, but may not vote at meetings of the National Credit Regulator.
- (5) For the purpose of subsection (3)(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

16. (1) A member of the National Credit Regulator must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 15(3)(b).
- (2) A member of the National Credit Regulator 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 National Credit Regulator, if, in relation to the matter before the National Credit Regulator, that member has an interest—
 - (i) contemplated in section 15(3)(b); or
 - (ii) that precludes the member from performing the functions of a member of the National Credit Regulator in a fair, unbiased and proper manner;
 - (c) vote at any meeting of the National Credit Regulator in connection with a matter contemplated in paragraph (b);
 - (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 National Credit Regulator; 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 National Credit Regulator.
- (3) If, at any time, it appears to a member of the National Credit Regulator that a matter before the National Credit Regulator concerns an interest of that member referred to in subsection (2)(b), the 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) A disclosure by a member in terms of subsection (3)(a), and the decision by the National Credit Regulator in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting at which the disclosure is made.

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

- (a) a member failed to disclose an interest as required by subsection (3); or
- (b) a member 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

10

17. (1) A member may resign from the National Credit Regulator by giving to the Minister—

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

(2) The Minister, after taking the steps required by subsection (3), may remove a member of the National Credit Regulator, if that member has— 15

- (a) become disqualified in terms of section 15(3);
- (b) acted contrary to section 16(2); or
- (c) failed to disclose an interest or withdraw from a meeting as required by section 16(3); or
- (d) neglected to properly perform the functions of their office. 20

(3) Before removing a person from office in terms of subsection (2), the Minister must afford the person an opportunity to state a case in defence of their position.

(4) Upon the expiry of an appointed member's first term of office, the member may be re-appointed to a further term, subject to section 15. 25

(5) A person may not be appointed to serve for more than two terms as a member of the National Credit Regulator.

Meetings of the National Credit Regulator

18. (1) The chairperson may determine the date, time and place for the first meeting of the National Credit Regulator, and the chairperson in consultation with the National Credit Regulator may determine the date, time and place for each subsequent meeting. 30

(2) The chairperson in consultation with the National Credit Regulator may determine procedure at meetings of the National Credit Regulator, after due consideration of the principles of openness and transparency.

(3) A majority of the members of the National Credit Regulator is a quorum for a meeting of the National Credit Regulator. 35

(4) The National Credit Regulator must attempt to reach its decisions by consensus.

(5) If the National Credit Regulator is unable to reach a consensual decision in any matter before it, the National Credit Regulator may resolve the matter by simple majority vote on a motion. 40

(6) Subject to subsections (3) through (5), the National Credit Regulator may establish rules for its own proceedings.

(7) A decision taken at a meeting of the National Credit Regulator, or an act performed under the authority of such a decision, is valid despite—

- (a) a vacancy on the National Credit Regulator at the time the decision was taken, or
- (b) the fact that a person who was not a member sat as a member at the time when the decision was taken. 45

Committees of National Credit Regulator

19. (1) The National Credit Regulator may from time to time appoint one or more committees to perform any functions and exercise any powers delegated to it by the National Credit Regulator. 50

(2) A committee may comprise persons who are members of the National Credit Regulator as well as persons from outside the National Credit Regulator.

(3) The National Credit Regulator—

- (a) may designate any number of its members to sit on a committee;
- (b) must designate a member of the National Credit Regulator to chair the committee; and
- (c) may issue directives to the committee, but any such directives must be consistent with this Act. 5

(4) A committee must perform its functions and exercise its powers subject to the provisions of this Act and any directives issued by the National Credit Regulator in terms of subsection (3)(c).

(5) A decision of a committee taken in the performance or exercise of a function or power delegated to it, is a decision of the National Credit Regulator, subject to ratification by the National Credit Regulator. 10

Part C—The Consumer Tribunal

Establishment and constitution of Tribunal

20. (1) There is hereby established a body to be known as the Consumer Tribunal, which— 15

- (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. 20

(2) The Consumer Tribunal consists of a Chairperson and not less than three, or more than ten, other women or men appointed by the President, on a full or part-time basis, on the recommendation of the Minister.

(3) The President must—

- (a) appoint the Chairperson and other members of the Tribunal on the date that this Act comes into operation; and 25
- (b) appoint a person to fill any vacancy on the Tribunal.

(4) Sections 15(2), (3) and (5) and section 16, read with the changes required by the context, applies to the Consumer Tribunal.

Functions of Consumer Tribunal 30

21. Upon a matter being referred to it in terms of this Act, the Consumer 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 35
 - (ii) allegations of conduct prohibited in terms of this Act, by determining whether prohibited conduct has occurred, and if so, impose a remedy provided for in Part F of Chapter 5 or elsewhere in this Act;
- (b) grant an order for costs in terms of section 130;
- (c) make a declaratory order concerning the interpretation or application of any provision of this Act, when requested to do so by the National Credit Regulator; or 40
- (d) exercise any other power conferred on it by law.

Qualifications of members of Tribunal

22. (1) The Chairperson and other members of the Tribunal, viewed collectively— 45

- (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 25(2)(a).

(2) Each member of the Consumer Tribunal—

- (a) must be a citizen of South Africa, who is ordinarily resident in South Africa; 50
- (b) must have suitable qualifications and experience in economics, law, commerce, industry or consumer affairs; and
- (c) must be committed to the purpose enunciated in section 3.

(3) A person may not be a member of the Consumer Tribunal if that person—

- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature; 55

- (b) is an unrehabilitated insolvent;
- (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or
- (d) has been convicted of an 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. 5

Term of office of members of Tribunal

23. (1) The Chairperson and each other member of the Consumer 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. 10
- (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. 15
- (4) A member of the Tribunal other than the Chairperson may resign by giving at least one month's 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 disqualification's referred to in section 15(3); and 20
 - (b) other than as provided in paragraph (a), may remove the Chairperson or a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or 25
 - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

Deputy Chairperson of Tribunal

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

Tribunal proceedings

25. (1) The Chairperson is responsible to manage the caseload of the Tribunal, and must assign each matter referred to the Tribunal to— 35
- (a) a panel composed of any three members of the Tribunal; or
 - (b) a member of the Tribunal, to the extent this Act provides for a matter to be considered by a single member of the Tribunal.
- (2) When assigning a matter in terms of subsection (1), the Chairperson must— 40
- (a) ensure that at least one member of the panel is a person who has legal training 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 26, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must— 45
- (a) direct that the hearing of that matter proceed before any remaining member 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. 50
- (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 majority of the members of a panel is the decision of the Tribunal.

Conflicts and disclosure of interest

26. (1) A member of the Tribunal may not represent any person before a panel of the Tribunal.

(2) If, during a hearing, it appears to a member of the Consumer Tribunal that a matter concerns a financial or other interest of that member contemplated in section 15(2)(b), the member must— 5

- (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 Consumer Tribunal after expiry of term of office 10

27. If, on the expiry of the term of office of a member of the Consumer 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.

Part D—Administrative Matters**National Credit Regulator remuneration and benefits 15**

28. (1) The Minister, with the concurrence of the Minister of Finance, may determine the remuneration and allowances of any member of the National Credit Regulator, or member of a committee, who is not in the full-time service of the State.

(2) The remuneration and allowances of the persons referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them. 20

(3) The National Credit Regulator—

- (a) in consultation with the Minister, must appoint a suitably qualified and experienced person as Chief Executive Officer, who,—
 - (i) subject to the direction and control of the National Credit Regulator, will be responsible for all financial, administrative and clerical responsibilities pertaining to the functions of the National Credit Regulator; and 25
 - (ii) is accountable to the National Credit Regulator; and
- (b) may appoint any other staff as may be necessary to enable the National Credit Regulator to perform its functions. 30

(4) The National Credit Regulator, in consultation with the Minister, may determine the remuneration, allowances, employment benefits and other terms and conditions of appointment of a person appointed in terms of subsection (3).

(5) The Minister, in consultation with the Minister of Finance, may determine the remuneration paid to a person who is appointed in terms of subsection (3), but who is not in the full-time service of the National Credit Regulator. 35

(6) Subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the National Credit Regulator may delegate to any member of the staff any function or power that the National Credit Regulator may perform or exercise in terms of this Act, either generally or specially. 40

Consumer Tribunal Remuneration and benefits

29. (1) The Minister, in consultation with the Minister of Finance, may determine the remuneration, allowances, and other benefits of the Chairperson, Deputy Chairperson and other members of the Consumer Tribunal.

(2) During the term of office of a member of the Consumer Tribunal, the Minister may not reduce the member's salary, allowances or benefits. 45

(3) The Minister may determine any other conditions of appointment not provided for in this section.

Conflicting interests

30. (1) The Chief Executive Officer, and each other member of the staff of the National Credit Regulator, must not— 50

- (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 5
- (d) divulge any information referred to in paragraph 2(c) to any third party, except as required as part of that person's official functions within the National Credit Regulator.

Appointment of inspectors 10

31. (1) The Chief Executive Officer may appoint any person in the service of the National Credit Regulator, or any other suitable person, as an inspector.

(2) An inspector must be provided with a certificate of appointment signed by the Chief Executive Officer stating that the person has been appointed as an inspector in terms of this Act. 15

(3) When an inspector performs any function in terms of Chapter 6, the inspector must—

- (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (2); and
- (b) show that certificate to any person who— 20
 - (i) is affected by the exercise of the functions of the inspector; and
 - (ii) requests to see the certificate.

(4) 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. 25

Finances

32. (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 (6); and 30
- (d) other money accruing from any source.

(2) The financial year of the National Credit Regulator, and of the Tribunal, is the period from 1 April in any year to 31 March in the following year.

(3) Each year, at a time determined by the Minister, the National Credit Regulator and the Tribunal must each submit to the Minister a statement of their respective estimated income and expenditure, and requested appropriation from Parliament, in respect of the next ensuing financial year. 35

(4) The National Credit Regulator and the Tribunal must each open and maintain an account in its own name with a registered bank, or other registered financial institution, in the Republic, and— 40

- (a) any money received by it must be deposited to that account; and
- (b) every payment on behalf of it must be made from that account.

(5) Cheques drawn on the account of the National Credit Regulator or the Tribunal must be signed on its behalf by two persons authorised for that purpose by resolution. 45

(6) 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). 50

Accountability, audits and reports

33. (1) The National Credit Regulator and the Tribunal are each responsible to—

- (a) account for State and other money received or paid for or on account of the National Credit Regulator or Tribunal respectively; and 55
- (b) cause the necessary accounting and related records to be kept,

in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(2) The records referred to in subsection (1)(b) must be audited by the Auditor-General.

(3) The National Credit Regulator and the Tribunal must each report to the Minister at least once every year on its activities. 5

(4) As soon as practicable after receiving a report referred to in subsection (3), the Minister must—

- (a) transmit a copy of the report to the Premier of each Province; and
- (b) table it in Parliament.

Chapter 3—Consumer Credit Industry Regulation 10

Part A—Registration of credit agreements

National register of credit agreements

34. (1) The National Credit Regulator must establish and maintain a single national register of outstanding credit agreements based on the information provided to it in terms of this section. 15

(2) Upon entering into or amending a credit agreement, other than a pawn agreement or a prepaid account, the credit provider must report the following information to the National Credit Regulator in the prescribed manner and form:

- (a) The credit provider's name, principal business address, and registration number, if any; 20
- (b) The name and address of the consumer;
- (c) If the consumer is—
 - (i) an individual, their identity number, or in the case of a foreign person who does not have an identity number, their passport number; 25
 - (ii) a juristic person, their registration number; 25
- (d) If the agreement is a credit facility, the credit limit under that facility, and the expiry date of the agreement, if any.
- (e) If the agreement is a credit transaction or guarantee—
 - (i) the principal amount under the agreement,
 - (ii) the particulars of any outstanding credit agreement that was terminated or satisfied as a result of the payment instructions under the new agreement; 30
 - (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. 35

(3) A credit provider must report in the prescribed manner and form the particulars of the termination or satisfaction of any credit agreement reported to the National Credit Regulator in terms of subsection (2).

(4) If a person transfers to another person the rights of a credit provider under a credit agreement referred to in subsection (2)— 40

- (a) the person who transfers those rights must report the particulars of that transfer to the National Credit Regulator in the prescribed manner and form; and
- (b) the person to whom those rights are transferred must satisfy any subsequent obligations of the credit provider under this section. 45

(5) The National Credit Regulator must keep the information compiled by it in the register in confidence, and may release that information only—

- (a) to the consumer under a particular agreement, for the purpose of verification of the registered information;
- (b) with the written consent of the consumer, to a credit provider for the purpose of conducting the evaluation required by section 70; or 50
- (c) for any purpose in terms of—
 - (i) Chapter 5 of this Act; or
 - (ii) Chapter VIII of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(6) The National Credit Regulator may monitor the register to detect apparent patterns of reckless credit granting, and may use that information in exercising its mandate to investigate and enforce compliance with this Act. 55

Part B—Registration of credit providers and counsellors

Obligation to be registered

35. (1) This section does not apply in respect of an incidental credit agreement that arises from an outstanding account, as contemplated in section 6(5).
- (2) A person must apply to be registered as a credit provider if that person— 5
- (a) is the credit provider under at least 100 credit agreements; or
 - (b) the total principal value owed to that credit provider under all outstanding credit agreements exceeds the threshold prescribed in terms of section 36.
- (3) A person who is required in terms of subsection (2) 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. 10
- (4) A person must not offer or engage in the services of a debt counsellor unless that person is registered as such in terms of this Act.
- (5) A person who is required to be registered in terms of subsection (2) or (4) may apply for registration in the prescribed manner and form to— 15
- (a) a provincial regulatory authority, if—
 - (i) the applicant carries on, or intends to carry on, business as a credit provider in only one province; and
 - (ii) such an authority has been established in terms of provincial legislation in that province; or 20
 - (b) the National Credit Regulator, in any other case.

Threshold determination

36. (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine a monetary threshold of not less than R500 000, for the purpose of determining whether a credit provider is required to be registered in terms of section 35(2). 25
- (2) The 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 (2) after the effective date— 30
- (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. 35
 - (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 regulatory authority under which it was registered for a clearance certificate to release it from the obligation to be registered, and
 - (ii) until the regulatory authority makes a decision in respect of such an application, must continue to be registered, despite section 35(2). 40

Determination of application

37. (1) The regulator to whom an application for registration is made may—
- (a) require further information relevant to an application; and
 - (b) refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time. 45
- (2) If an application complies with the provisions of this Act, the regulator, after considering the application, must register the applicant, subject to section 38.

Conditions of registration

38. (1) If the regulator is required to register an applicant as in terms of section 37, the regulator must further consider the application, relating to the following criteria: 50
- (a) to the extent it is appropriate having regard to the nature of the applicant, the commitments, if any, made by the applicant in terms of black economic empowerment considering the purpose, objects and provisions of the Black Economic Empowerment Act, 2003; 55

- (b) the applicant's proposed contribution to combating over-indebtedness, including whether the applicant has subscribed to any industry code of conduct approved by the regulator; and
- (c) in the case of an application for registration as a credit counsellor, the applicant's academic and professional experience, relative to any prescribed qualifications or standards. 5

(2) The regulator, having regard to the objects and purposes of this Act, the circumstances of the application, and the criteria set out in subsection (1), may propose any reasonable and justifiable 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 reason for them. 10

(3) An applicant who has received a proposal of conditions may respond to the regulator within—

- (a) 30 days from the date on which the applicant is informed of the proposal; or
 - (b) such longer period as the regulator may permit, on good cause shown. 15
- (4) If an applicant who has received a proposal of conditions—
- (a) consents to the conditions being imposed, the regulator must register the applicant, subject only to the conditions as proposed; or
 - (b) does not respond, or responds but does not consent, to the proposed conditions, the regulator must consider any response submitted by the applicant and may finally determine the conditions to be imposed, and register the applicant. 20
- (5) The regulator must—
- (a) inform an applicant in writing of a decision in terms of subsection (4); and
 - (b) provide written reasons for that decision if the Minister has amended a previously proposed condition. 25

Variation of conditions of registration

39. (1) The regulator that registers an applicant may review, and propose new conditions on, that registration—

- (a) upon request by the registrant submitted to the regulator in the prescribed manner and form; 30
- (b) if at least five years have passed since the regulator last reviewed or varied the conditions of registration; or
- (c) if the registrant—
 - (i) has not met its commitments in terms of black economic empowerment, and cannot provide adequate reasons for failing to do so; 35
 - (ii) has not met its commitments or complied with its plans concerning combating over-indebtedness, or has breached an approved code of conduct, and cannot provide adequate reasons for failing to do so; or
 - (iii) has contravened this Act. 40

(2) Before imposing a condition in terms of subsection (1)(c) or (d), the regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.

(3) The regulator may impose new or alternative conditions under subsection (1)(c), (d) or (e) only to the extent that is reasonable and justifiable in the circumstances that gave rise to the review. 45

Cancellation of registration

40. (1) A registration of a non-regulated person in terms of this Act may be cancelled by the regulator that granted it, in terms of subsection (2) or (3).

(2) The regulator may cancel a registration under subsection (1) if the registrant repeatedly— 50

- (a) fails to comply with any conditions of its registration;
- (b) fails to meet a commitment contemplated in section 38(1)(a) or (b); or
- (c) contravenes this Act.

(3) In addition to the authority set out in subsection (2), the regulator may cancel the registration in terms of subsection (1) if the registrant— 55

- (a) has been served a compliance notice in terms of section 46, and—
 - (i) has not objected to the notice in terms of section 47; and
 - (ii) has failed to comply with it; or

- (b) has objected to a compliance notice in terms of section 46; and has—
 - (i) has not succeeded in any review or appeal against an order arising from that objection; and
 - (ii) has failed to comply with the order given in terms of section 47.
- (4) In any circumstance contemplated in subsection (2) or (3), concerning a registrant that is a regulated person, the National Credit Regulator may— 5
 - (a) impose conditions on the registration of that person, consistent with its licence; or
 - (b) refer the matter to the authority that licensed that regulated person with a request that the authority review that licence. 10
- (5) An authority to whom a matter is referred in terms of subsection (4)—
 - (a) must conduct a formal review of the registrant's licence; and
 - (b) may suspend that licence pending the outcome of that review.
- (6) If the regulator has cancelled a registration, the regulator must notify the former registrant in writing of— 15
 - (a) the cancellation;
 - (b) the reasons for the cancellation; and
 - (c) the date of cancellation.
- (7) If a registration is cancelled in terms of this section or section 41, the regulator must— 20
 - (a) cancel the registration certificate; and
 - (b) amend the register accordingly.
- (8) A registration is cancelled as of the date on which the regulator notifies the former registrant of the cancellation, which, in the case of a cancellation in terms of section 41, must be on the date specified by the registrant in the notice of voluntary cancellation. 25
- (9) The obligations of a person under this Act survive any de-registration or suspension or cancellation of its licence.

Voluntary cancellation

- 41. (1) A registrant may cancel the registration by giving the regulator written notice in the prescribed manner and form— 30
 - (a) stating the person's intention to voluntarily cancel the registration and reasons for doing so; and
 - (b) specifying a date, at least seven days after the date of the notice, on which the cancellation is to take effect.
- (2) A registrant who voluntarily cancels registration in terms of this section must not offer or enter into a credit agreement after the date on which the cancellation takes effect. 35

Application, registration and renewal fees

- 42. (1) The Minister may prescribe—
 - (a) an application fee to be paid in connection with any application in terms of this Act; 40
 - (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.

Certificate, validity, and public notice of registration 45

- 43. (1) Upon registering an applicant, the regulator must—
 - (a) issue a prescribed certificate of registration to the applicant; and
 - (b) enter the registration in the register.
- (2) A registration certificate issued in terms of this Act must specify—
 - (a) the identity of the registrant; 50
 - (b) the activities that the registration permits the registrant to engage in, conduct or make available to the public; and
 - (c) the name or description of the specific premises in, on or from which the registered activity may take place.
- (3) A valid certificate of registration, or a certified copy of it, is sufficient proof that the registrant is registered in terms of this Act. 55

- (4) A registration—
 - (a) takes effect on the date on which the certificate of registration is issued; and
 - (b) remains in effect until—
 - (i) the registrant is deregistered; or
 - (ii) the registration is cancelled in terms of this Act. 5
- (5) A registrant must—
 - (a) reflect its registered status and registration number on all of its credit agreements and communications with a consumer;
 - (b) comply with its conditions of registration and the provisions of this Act;
 - (c) pay the prescribed annual renewal fees within the prescribed time; 10
 - (d) keep any prescribed records relating to credit agreements, and applications for credit agreements, in the prescribed manner and form; and
 - (e) file any prescribed reports with the regulator in the prescribed manner and form.

National record of registrations

15

44. (1) The National Credit Regulator must establish and maintain a register in the prescribed form of all persons who have been registered under this Act or applicable provincial legislation, including those whose registration has been altered or cancelled.

(2) The National Credit Regulator must—

- (a) permit any person to inspect the register established in terms of subsection (1), 20 during normal business hours, and upon payment of the prescribed fee;
- (b) publish the register on a website; and
- (c) provide a print copy of the register, or extract from it at any time to a person requesting it, upon payment of the prescribed fee.

(3) Any person may—

25

- (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.

Review or appeal of decisions

45. A person affected by a decision of a regulator under this section may apply to the Tribunal to review that decision, and the Tribunal may make an order setting aside the 30 decision in whole or in part, including 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 38.

Part C—Compliance with registration requirements

35

Compliance notices

46. (1) If an inspector believes that—

- (a) a non-registered person is engaging in an activity contrary to section 35, the inspector may issue an order to that person to cease engaging in that activity; 40 or
- (b) a registrant has failed to comply with any provision of this Act or a condition of registration, the inspector may issue a compliance notice in the prescribed form to the registrant.

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

- (a) details of the nature and extent of the activity concerned; 45
- (b) the basis of the inspector's opinion that the person engaging in those activities is required to be registered;
- (c) the date as from which the unregistered person must discontinue engaging in those activities; and
- (d) any penalty that may be imposed in terms of this Act if the person fails to 50 discontinue those activities.

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

- (a) the provision that has not been complied with;
- (b) details of the nature and extent of the non-compliance;
- (c) any steps that are required to be taken and the period within which those steps 55 must be taken; and

- (d) any penalty that may be imposed in terms of this Act if those steps are not taken.
- (4) A compliance notice issued in terms of this section remains in force until—
 - (a) it is set aside by the regulator or the Tribunal; or
 - (b) in the case of a notice in terms of subsection (1)(b), an inspector issues a compliance certificate contemplated in subsection (5). 5
- (5) If the requirements of a compliance notice in terms of subsection (1)(b) have been satisfied, the inspector must issue a compliance certificate.

Objection to compliance notice

47. (1) Any person issued with a notice in terms of section 46 may object to it by making representations to the relevant regulator within— 10
- (a) 21 days of receipt of that notice; or
 - (b) such longer period as may be allowed by the regulator on good cause shown.
- (2) After considering any representations by the objector and any other relevant information, the regulator may confirm, modify or cancel any notice or any part of that notice. 15
- (3) The regulator must serve a copy of the notice made in terms of subsection (2) on the objector.
- (4) If the regulator confirms or modifies the notice or any part of the notice, the objector must comply with that notice, within the time period specified in that notice. 20

Part D—Jurisdiction over registration

Registration authority of provincial regulatory authorities

48. If provincial legislation has established a consumer protection authority within a province, that authority has—
- (a) exclusive jurisdiction, within its province, to investigate and consider applications for, and issue registrations, in respect of any credit provider or debt counselling service operating exclusively within that province; 25
 - (b) jurisdiction, with respect to registrants operating in that province, to—
 - (i) monitor the functions of those registrants;
 - (ii) conduct annual reviews of registration conditions imposed by that regulatory authority; 30
 - (iii) make complaints to the National Credit Regulator in respect of activities of any registrant operating in that province.

Responsibilities of provincial regulatory authorities

49. (1) Within its jurisdiction, each provincial registration authority is responsible— 35
- (a) to ensure—
 - (i) that unlawful activities related to consumer credit are prevented, or detected and prosecuted;
 - (ii) that undertakings, made by registrants operating within that province are carried out; 40
 - (iii) complete and timely collection and remittance of taxes, levies and fees.
 - (b) to review registrants activities in that province, in accordance with this Act and applicable provincial legislation;
 - (c) to suspend or revoke any registration issued by that authority; and
 - (d) request the National Credit Regulator to suspend or revoke any registration issued by it for a cause arising within that province. 45
- (2) Subject to any requirements set out in applicable provincial legislation, a provincial regulatory authority, by agreement with the National Credit Regulator, or with another provincial regulatory authority, may delegate to the National Credit Regulator or to that other provincial regulatory authority any power or function that is to be exercised by the provincial regulatory authority in terms of this Act, or applicable provincial legislation, in the manner contemplated in section 238 of the Constitution. 50

Registration authority of National Credit Regulator

50. (1) The National Credit Regulator has jurisdiction to investigate and consider applications for, and issue any registration required in terms of this Act, except to the extent that a provincial regulatory authority—

- (a) has jurisdiction in terms of this Act to issue that registration; and 5
- (b) has the capacity to carry out its jurisdiction to issue that registration.

(2) The National Credit Regulator has jurisdiction, with respect to all registrations issued in terms of this Act, to—

- (a) monitor the functions of those registrants;
- (b) conduct inspections to ensure compliance with this Act, and with the 10 conditions of registration;
- (c) issue certificates of non-compliance and compliance certificates contemplated in section 46 and 47;
- (d) initiate investigations in respect of activities of any such registrant; and
- (e) apply to the Tribunal for an order requiring any person or firm to cease 15 conducting activities relating to consumer credit, in accordance with section 35.

Authority of national registration

51. (1) A registration issued by the National Credit Regulator in terms of this Act is valid throughout the Republic and authorises the registrant to conduct, engage in, or 20 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 comply with every applicable provision of—

- (a) this Act; and
- (b) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001) to the extent 25 that it is applicable; and
- (c) applicable provincial legislation within any province in which the registrant conducts, engages in, or makes available the registered activities.

Information sharing

52. (1) A provincial regulatory authority must keep a register of each person to whom 30 it grants a registration, including in the register the following information:

- (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.

(2) Each provincial regulatory authority must report to the National Credit Regulator, 35 at the prescribed intervals, the information kept by that regulatory authority in terms of subsection (1).

(3) The National Credit Regulator must make available to a provincial regulatory authority, upon request, any information reported to the National Credit Regulator in terms of subsection (2). 40

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

(5) The Minister, by regulation in accordance with section 153, may prescribe the timing, manner and form, and content of information to be provided in terms of this 45 section.

Conflicting exercise of concurrent jurisdiction

53. (1) As contemplated in section 41(2) of the Constitution, the Council may facilitate the settlement of any dispute between the National Credit Regulator, and one or more provincial regulatory authorities, concerning the functions to be performed by 50 them relating to consumer credit.

(2) If this Act requires the several provincial regulatory authorities to perform a particular function within their respective provinces, and

- (a) within a particular province, no provincial regulatory authority has been 55 established; or

- (b) the Council concludes that the provincial regulatory authority within a particular province is unable to perform that function effectively; the Council may make a recommendation to the Minister advising that steps be taken pursuant to section 100 of the Constitution to ensure the fulfilment of that statutory obligation.

5

Chapter 4—Consumer Credit Policy

Part A—Consumer Rights

Protection against discrimination in access to credit

54. (1) Relative to the treatment of any other consumer, a credit provider must not unfairly discriminate directly or indirectly against any person 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, 2000 (Act No. 4 of 2000), when—

- (a) assessing the ability of the person to meet the obligations of a proposed credit agreement; 15
- (b) deciding to offer or enter into a credit agreement;
- (c) proposing or agreeing the terms and conditions of a credit agreement;
- (d) assessing or requiring compliance by the person with the terms of a credit agreement;
- (e) exercising any right of the credit provider under a credit agreement; or 20
- (f) determining whether to continue or terminate a credit agreement.

(2) Subsection (1) applies in respect of—

- (a) an individual, to prohibit discrimination based on the individual's characteristics; or
- (b) an association or juristic person, to prohibit discrimination based on the characteristics of any individual who is a member, associate, owner, manager, employee or client or customer of that association or juristic person. 25

(3) Despite subsection (1) and (2), discrimination of the basis of age is fair to the extent that it is the dominant reason for denying credit to an unemancipated minor.

(4) The provisions of Chapter 3 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) apply to any proceedings arising out of an alleged contravention of subsection (1). 30

Protection of consumer credit rights

55. (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— 35

- (a) discriminate directly or indirectly against that consumer, compared to the credit provider's treatment of any other consumer who has not asserted 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 that consumer, or 40
- (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, determined to be of no legal force or effect, the credit provider who is a party to that agreement must not, in response to that determination— 45

- (a) directly or indirectly penalise another party to that agreement when taking any action contemplated in section 54(1)(a)-(f);
- (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 50
- (c) take any action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

Right to confidential treatment

56. (1) A credit provider, a credit bureau or a credit counsellor must keep confidential all personal and financial information pertaining to an applicant for credit, or a consumer, and—

- (a) use that information only for—
 - (i) the purpose of evaluating the person's application for credit, or amendment to a credit agreement, or enforcement of a credit agreement, in the case of a credit provider; or
 - (ii) a purpose relating to the registrant's functions under this Act, in any other case; and
- (b) report that information only to—
 - (i) The National Credit Regulator or a credit bureau, in accordance with this Act; or
 - (ii) any person as directed by—
 - (aa) the written instructions of the applicant or consumer; or
 - (bb) order of a court or the Tribunal.

(2) A credit provider, credit bureau or credit counsellor must disclose information contemplated in subsection (1) in accordance with any written direction from the consumer.

Right to reasons for credit being refused

57. (1) On request from a consumer, a credit provider must advise that consumer in writing of the reason, or 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;
- (c) refusing to increase a credit limit under an existing credit facility available to that consumer; 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 plain and understandable language

58. (1) Every document that is required to be delivered to a consumer in terms of this Act must be available in 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; and—

- (a) must be in the prescribed form, if any, for that document; or
- (b) if no form has been prescribed for that document, must be in a form and style, and must use language in such a manner, that the ordinary consumer, having average literacy skills and minimal credit experience, could reasonably be expected to understand the significance, import and content of the document without undue effort.

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

Right to receive documents

59. (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, or otherwise—

- (a) in person or by ordinary mail;
- (b) by fax;
- (c) by email; or

- (d) by printable web-page
at the option of the consumer.
- (2) A statement of account required to be delivered to a consumer by a credit provider may be delivered as follows:
 - (a) the credit provider must notify the consumer of the availability of the document, by notice delivered by any method listed in subsection (1), at the option of the consumer; and 5
 - (b) upon request by the consumer in response to a notice under paragraph (a), the credit provider must deliver the document to the consumer by any method listed in subsection (1), at the option of the consumer. 10
- (3) A consumer who does not respond within 30 days to a notice under subsection (2)(a) will be regarded as having waived the right to receive the relevant statement of account.
- (4) 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. 15
- (5) On written request from the consumer, the credit provider must provide the consumer—
 - (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 20
 - (b) any other replacement copy, subject to any search and production fees permitted by regulation.
- (6) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of subsection (5) if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious. 25

Right to access records and information

- 60. (1) Every person has a right to—
 - (a) be advised by a credit bureau whenever prescribed adverse information concerning the person is reported to it, and to receive a copy of that information upon request; 30
 - (b) inspect without charge any credit bureau file of information concerning that person;
 - (c) challenge the accuracy of any information concerning that person held by a credit bureau, and require the credit bureau to investigate the accuracy of any challenged information, without charge to the consumer; and 35
 - (d) be compensated, by the person who reported incorrect information, for the cost of correcting that information.
- (2) If a person has challenged the accuracy of information held by a credit bureau, the credit bureau must take reasonable steps to seek evidence in support of the challenged information, and within 30 days after the filing of the challenge— 40
 - (a) provide of a copy of any such credible evidence to the person who filed 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.
- (3) Within 30 days after receiving a copy of evidence in terms of subsection (2)(a), the person who challenged the information held by a credit bureau may apply in the prescribed manner and form to the National Credit Regulator to investigate the disputed information as a complaint under section 118. 45
- (4) On application by a credit bureau, the Tribunal may make an order limiting the credit bureau's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests or requirements are frivolous or vexatious. 50

Part B—Credit Marketing Practices

Limited application of this Part

- 61. Section 67 does not apply in respect of a person who is a credit provider only as a consequence of being a party to an outstanding bill transaction. 55

Negative option marketing

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

(2) 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. 5

(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. 10

Marketing and sales of credit at home or work

63. (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 private dwelling except— 15

- (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 20
- (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— 25

- (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 30
 - (ii) a voluntary, non-prompted invitation by the person being visited.

(4) An employer or representative trade union that enters into a formal 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 the arrangement, or as a consequence of any credit agreements entered into during or as a result of such an arrangement. 35

Advertising practices

64. (1) 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 under an instalment agreement. 40

(2) Any 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— 45
 - (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 any applicable law or industry code of conduct, but any such statement must— 50
 - (i) show costs for each alternative being compared;
 - (ii) show rates of interest and all other costs of credit for each alternative;
 - (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. 55

(3) In addition to the requirements of subsection (2), any advertisement of the availability of credit, or of goods or services to be purchased under an instalment

agreement, must clearly state the following information, in the prescribed manner and form:

- (a) The name and business address of the credit provider.
 - (b) The nature of the proposed credit agreement.
 - (c) The credit provider's current interest rate and other costs of credit. 5
 - (d) Whether any deposit or security is required.
 - (e) Whether any residual payment will be required.
 - (f) Whether any goods advertised will remain the property of the seller until the consumer's obligations under the credit agreement have been satisfied.
- (4) This section applies to the provider of credit being advertised, or the seller of any goods or services being advertised for purchase on credit. 10

Required marketing information

65. (1) Any written solicitation for the purpose of inducing a person to apply for or obtain credit must include a clear statement of the following information:
- (a) The name, business address and registration number, if any, of the credit provider. 15
 - (b) The nature of the proposed credit agreement.
 - (c) The credit provider's current interest rate and other costs of credit.
 - (d) Whether any deposit or security required.
 - (e) Whether any residual payment will be required. 20
 - (f) If a credit broker is involved, the name and address of that broker, and the amount or basis for calculating any commission payable to that broker.
- (2) Any person making an in-person oral solicitation for the purpose of inducing a person to apply for or obtain credit must provide a written statement containing the information set out in subsection (1). 25
- (3) A credit provider must—
- (a) provide an identification card in the prescribed form to any person who is an agent of the credit provider for the purpose of entering into a credit agreement; and
 - (b) ensure that agents of the credit provider show their identification cards to any person with whom the agent interacts in promoting, soliciting or concluding a credit agreement. 30

Notice of interest rates

66. (1) A credit provider must prominently display a statement of its current interest rate and other credit costs— 35
- (a) in any premises at which it enters into credit agreements; or
 - (b) on any web page on which it enters into credit agreements.
- (2) In any advertisement concerning the granting of credit, a credit provider must state or set out the effective rate of interest and other credit costs in the prescribed manner and form. 40

Part C—Consumer Credit Agreements

Unlawful credit agreements

67. (1) A credit agreement is unlawful if—
- (a) at the time the agreement was entered into, any party to the agreement— 45
 - (i) other than the credit provider was an unemancipated minor; or
 - (ii) was subject to an order of a competent court holding that person to be mentally unfit or disordered; or
 - (iii) was the subject of an administration order referred to in section 74(1) of the Magistrates' Court Act, 1944 (Act No. of 1944), and the administrator concerned has not consented to the agreement; 50
 - (b) any provision of the agreement is unlawful in terms of section 68, or the credit provider has contravened section 69;
 - (c) the agreement results from an offer prohibited in terms of section 62;
 - (d) the credit provider has not complied fully with section 65 or 71;
 - (e) at the time the agreement was made, the credit provider was unregistered, and this Act requires that credit provider to be registered; or 55

- (f) before the agreement was made, the Tribunal had ordered 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, 5
 whether or not this Act requires that person or firm to be registered as a credit provider.

(2) Subsection (1)(e) does not apply to any person or firm if, 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 36(3)(b). 10

(3) If a court or the Tribunal has declared that a credit agreement is unlawful in terms of this section, despite any provision of common law or any other legislation, or any provision of an agreement, to the contrary—

- (a) that credit agreement is of no legal force or effect as from the date the agreement was entered into; 15
 - (b) the credit provider must refund to the consumer any money paid by the consumer under that agreement, 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 20
 - (c) the credit provider is not entitled to recover any money paid, or goods delivered to, or on behalf of, the consumer in terms of that agreement.
- (4) This section does not apply to—
- (a) a pawn transaction; or 25
 - (b) a prepaid transaction in terms of which the consumer has fully paid the price fixed for the goods or services to be provided.

Unlawful provisions of credit agreement

68. (1) A credit agreement must not contain a provision—
- (a) that directly or indirectly purports to— 30
 - (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; or
 - (iii) set aside or over ride the effect of any provision of this Act;
 - (b) that purports to waive any common law rights that may be applicable to the credit agreement; 35
 - (c) that 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; 40
 - (d) in which the consumer acknowledges that, 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;
 - (e) in which the consumer acknowledges receiving goods or services that have not in fact been delivered or rendered to the consumer; 45
 - (f) in which the consumer agrees to forfeit any money to the credit provider if the consumer—
 - (i) exercises the right of rescission in terms of section 103; or
 - (ii) fails to comply with a term of the agreement before the consumer receives any goods or services in terms of the agreement; 50
 - (g) that purports to appoint the credit provider, or any employee or agent of the credit provider, as an agent of the consumer, or deems such an appointment to have been made; 55
 - (h) in which the consumer—
 - (i) authorises 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;
 - (ii) grants a power of attorney in advance to the credit provider;

- (iii) requires the consumer to sign in advance any documentation relating to enforcement of the agreement, irrespective whether such documentation is complete or incomplete at the time it is signed;
 - (iv) purports to authorise the credit provider to—
 - (aa) do anything that is unlawful in terms of this Act; or 5
 - (bb) fail to do anything that is required in terms of this Act;
 - (v) consents to a pre-determined value of costs relating to enforcement of the agreement; or
 - (vi) limits the credit provider's liability for an action contemplated in sub-paragraph (i); 10
 - (i) in which the consumer agrees to 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 ATM access card, or any similar identifying document or device or to provide an personal identification code or number to be used to access an account; 15
 - (j) purports to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other person.
- (2) In addition to the provisions of subsection (1), a credit agreement must not contain a provision that states or implies that the rate of interest is variable, except to the extent that the variation is by fixed relationship to a reference rate stipulated in the agreement. 20
- (3) Subsection (2) does not apply to a credit agreement in which the consumer is not an individual.

Supplementary requirements and documents

69. 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; 25
 - (b) request or demand a consumer to—
 - (i) reveal any personal identification number contemplated in section 68(1)(j); or 30
 - (ii) give the credit provider temporary or permanent possession of an instrument referred to in section 68(1)(j); or
 - (c) direct or permit any other person to do anything referred to in this section on behalf, or for the benefit, of the credit provider.

Assessment of consumer's credit ability 35

70. (1) Before entering into a credit agreement, a credit provider must—
- (a) take reasonable steps to determine the proposed consumer's existing financial means, prospects and obligations, and
 - (b) having regard to that information, objectively assess the financial ability of the consumer to meet all the obligations under the proposed credit agreement in a timely manner. 40
- (2) If, as a result of an assessment conducted in terms of subsection (1), an objective credit provider could not reasonably conclude that the consumer would be able to meet all the proposed obligations in a timely manner, the credit provider must not enter into the proposed credit agreement. 45
- (3) The National Credit Regulator may publish guidelines for methods of assessing the financial ability of the consumer to meet all the proposed debt service obligations in a timely manner, sufficient to satisfy the requirements of subsection (1).
- (4) This section does not apply to—
- (a) a pawn transaction or an incidental credit agreement; or 50
 - (b) a temporary increase in the credit limit under a credit facility.

Pre-agreement disclosure

71. (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. 55
- (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, in the form of the proposed agreement, or in another form, addressing all matters required in terms of 30;
 - (b) a quotation in the prescribed form, setting out the amount to be borrowed, 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 103(3) if the consumer rescinds the contract; and 5
 - (c) an information statement setting out the consumer's statutory rights and agreement obligations.
- (3) For a period of 7 days after the date on which a quotation is presented—
- (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; 10
 - (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 does vary from the prevailing bank rate by an amount different than the corresponding variation as quoted. 15
- (4) This section does not apply to an incidental credit agreement, but a person who issues a statement for the later payment of goods or services must at the same time provide a quotation in the prescribed form, if that statement could give rise to an incidental credit agreement in the manner contemplated in section 6(5). 20

Form of credit agreements

72. (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. 25
 - (3) A document that records 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. 30
 - (4) The National Credit Regulator may publish guidelines for methods of assessing whether a statement satisfies any prescribed requirements contemplated in subsection (3).
 - (5) This section does not apply to an outstanding account transaction. 35

Deferrals, waivers and changes

73. (1) The provision of credit as a result of a change to an existing credit agreement, or 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. 40
- (2) This section does not apply to a temporary increase in the credit limit under a credit facility.

Address for notice

74. (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— 45
- (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). 50
- (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 or registered mail.

Consumer must disclose location of goods

75. (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 ownership of those goods has not passed to the consumer, or
 - (ii) the credit provider has a right to take possession of the goods irrespective whether they are owned by the consumer or another person.
- (2) During the life of an agreement to which this section applies, the consumer must inform the credit provider, in the prescribed manner and form, of any change of—
- (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 are 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, or 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 the consumer transferred possession of those goods.
- (5) A consumer who knowingly—
- (a) provides false or misleading information to a credit provider 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
- is guilty of an offence.

Consumer maximum liability is limited

76. Despite any other provision of law or a credit agreement, the maximum liability of a consumer under a credit agreement to the credit provider, irrespective whether the consumer fulfils all of the obligations under that agreement, or defaults on any such obligation, must not exceed the total of—
- (a) the principal amount deferred under the agreement;
 - (b) any applicable amounts permitted in terms of—
 - (i) sections 79(b), (c) and (e); and
 - (ii) this Act to be charged to the consumer in the event of prepayment, collection or enforcement; and
 - (c) interest as calculated in accordance with section 79, subject to a maximum aggregate interest not exceeding the principal amount deferred under the agreement.

Agreement attaches to substituted goods

77. If, after delivery to the consumer of goods that are described in 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.

Part D—Interest and Fees

Limitation on consumer's liability

78. (1) A credit agreement must not impose a monetary liability on the consumer—
- (a) in respect of a credit fee or charge prohibited by this Act;
 - (b) in respect of an amount of a fee or charge exceeding the amount that may be charged consistently with this Act; or
 - (c) in respect of an interest charge under the agreement exceeding the amount that may be charged consistently with this Act.
- (2) A credit provider must not charge any amount to a consumer in respect of—
- (a) an application fee for credit or a credit inquiry fee unless that application or inquiry results in the establishment of a credit agreement with that consumer; or
 - (b) fees, charges, commissions, expenses or other amounts payable by the credit provider to any third party in respect of the credit agreement, except as contemplated in section 83.
- (3) 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 application fee contemplated in section 79(1)(b) 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.

Cost of Credit

79. (1) A credit agreement must not require payment by the consumer of any money or other consideration except—
- (a) the principal amount deferred in terms of the agreement, together with the value of any item contemplated in section 83;
 - (b) an application fee, which may not exceed the prescribed amount relative to the principal amount;
 - (c) a service fee, which—
 - (i) in the case of—
 - (aa) a credit facility, may be payable monthly, annually, on a per transaction basis, or on a combination of periodic and transaction basis; or
 - (bb) in any other case, may be payable monthly, annually; and
 - (ii) must not exceed the prescribed amount relative to the principal amount; and
 - (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 maximum prescribed rate determined in terms of section 80; and
 - (e) cost of insurance, calculated in accordance with section 82.
- (2) A reference in this section to a “service fee” does not include any fee for the maintenance or operation of a financial services account to which a credit facility is attached, or in association with which a credit facility is maintained.
- (3) When establishing regulations contemplated in this section, the Minister may establish different maximums for different categories of credit agreements.
- (a) prescribe the method 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.

Maximum rates of interest and fees

80. (1) The Minister, by regulation made after consulting the National Credit Regulator, may prescribe a method for calculating—
- (a) a maximum rate of effective interest; and
 - (b) the maximum fees contemplated in section 79

applicable to the consumer credit market as a whole, or to any sub-sector of that market.

(2) Before consulting with the Minister in terms of subsection (1), the National Credit Regulator must research economic conditions and trends within the credit market, including but not limited to trends of access to credit across various sectors of the population, and must propose to the Minister a formula that the regulator considers will avoid distorting the credit market or preventing it from operating optimally. 5

Interest

81. (1) The interest rate applicable under a credit agreement applies equally to any part of the unpaid balance and any overdue payments under that agreement. 10

(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) No later than the day on which a change in the annual percentage rate or rates payable under a mortgage, or under any other credit agreement that has a variable interest rate credit agreement takes effect the credit provider must give to the consumer a written notice setting out— 15

(a) the new rate or rates; or

(b) if a rate is determined by referring to a reference rate, the new reference rate. 20

Credit Insurance

82. (1) A credit provider may require that a consumer maintain credit life insurance for the duration of the credit agreement.

(2) If a credit agreement is an instalment transaction, a mortgage, a secured loan or a lease, the credit provider may require that the consumer maintain insurance cover against any damage to or loss of the property that is the subject of the agreement. 25

(3) Despite subsections (1) and (2), a credit provider must not demand the purchase or maintenance of insurance that is—

(a) unreasonable, having regard to the actual risk involved in the credit agreement; or 30

(b) contrary to prescribed standards applicable to the particular credit agreement.

(4) If the credit provider proposes to the consumer a particular policy of credit insurance to satisfy a requirement in terms of subsection (1) or (2)—

(a) that policy must comply with the requirements of subsection (5); and

(b) the consumer must be given, and be informed of, the right to waive that policy and substitute a policy of the consumer's choice, provided that the credit provider may require the consumer to give the credit provider a valid direction, in the prescribed manner and form— 35

(i) to require and permit 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 on a monthly basis for— 40

(aa) the amount of such premiums; and

(bb) an administration fee in respect of such payments not exceeding the prescribed amount; and 45

(ii) to require and permit the insurer to pay out 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.

(5) A policy of credit insurance proposed by a credit provider must provide coverage on a monthly basis equivalent to the outstanding balance at the beginning of the month, subject to subsection (6); and— 50

(a) with respect to a credit facility, must provide for premiums to be charged to the consumer on a monthly basis, at a fixed rate per R1 000 of outstanding balance, as set out in the credit agreement; or

(b) with respect to any other credit transaction must provide that the cost of the insurance, irrespective whether it is purchased by the credit provider for a single premium in advance or otherwise, may be billed to the consumer only by way of equal monthly premiums over the term of the agreement, calculated in the prescribed manner at an interest rate no higher than the rate applicable 55

to the credit agreement itself, and subject to the provision that in the event of an early retirement of the debt, no further monthly premiums will be payable.

(6) At the written request of a consumer, a credit provider who arranges for a policy of insurance contemplated in subsection (5), may also arrange for a further policy of comparable insurance providing coverage for the difference between the principal value under the credit agreement, and the declining balance coverage arranged in accordance with subsection (5). 5

(7) A credit provider—

- (a) must not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider with respect to a particular credit agreement; or 10
- (b) must not receive a fee, commission, or other remuneration or benefit in excess of the prescribed amount from an insurer in exchange for offering that insurer's policies to a consumer; and
- (c) must disclose to the consumer in the prescribed manner and form— 15
 - (i) the cost to the credit provider of any insurance supplied; and
 - (ii) the amount of any fee, commission, remuneration or benefit receivable by the credit provider, as contemplated in paragraph (b).

(8) If a credit provider self-insures a policy of credit insurance provided to a consumer, the credit provider must not charge the consumer a premium in excess of the fair market value for that insurance, calculated in the prescribed manner. 20

Fees or charges

83. (1) If a credit agreement is an instalment transaction, a mortgage, a secured loan or a lease, the credit provider may include in the principal amount deferred under the agreement any of the following items to the extent they are applicable in respect of the goods that are the subject of the agreement: 25

- (a) The cost of an extended warranty agreement.
- (b) Delivery, installation and initial fueling charges.
- (c) Connection fees, levies or charges.
- (d) Taxes, license or registration fees. 30

(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 35
- (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 40
 - (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 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. 45

Changes to Credit fees or charges

84. Not later than 20 days before a change concerning the rate of interest or the amount of a credit fee or charge, or a change in the frequency or time for payment of a credit fee or charge, provided for in a credit agreement, the credit provider must give to the consumer written notice setting out particulars of the change. 50

Part E— Statements of Account and Repayment Practices**Limited application of this Part**

85. (1) This Part does not apply—
- (a) in respect of a prepaid transaction; or
 - (b) 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. 5
- (2) Sections 86, 87 and 88 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 amount owed to the credit provider. 10
- (3) In the case of joint consumers or guarantors—
- (a) a statement required under this section need only be given to one of them; but
 - (b) a joint consumer or guarantor who does not receive a statement in terms of paragraph (a) may require the credit provider to deliver a duplicate of that statement without charge. 15

Statements of account

86. (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 in this subsection; 20
 - (b) two months, in respect of an instalment account, lease or secured loan; or
 - (c) six months in respect of a mortgage.
- (3) Despite subsection (2), a statement of account need not be delivered in respect of—
- (a) a credit facility if no amount has been debited or credited to the account during the statement period; or 25
 - (b) any credit agreement if the consumer waives, or is deemed to have waived, delivery of that statement, in accordance with section 59.

Form and content of statements of account

87. (1) The opening balance shown in each successive statement of account must not exceed the closing balance shown in the last statement of account. 30
- (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 35
 - (b) a form determined by the credit provider, and which complies with any prescribed requirements for the category or type of credit agreement concerned. 40
- (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 other matters

88. (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— 45
- (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;
 - (d) any amount currently payable and the date it became due. 50
- (2) A statement requested in terms of subsection (1) must be delivered—
- (a) within 14 days, if all the requested information relates to a period 1 year or less before the request was made; or
 - (b) within 30 days, if any of the requested information relates to a period more than 1 year before the request was made. 55

- (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 or email as directed by the consumer when making the request.
- (4) A credit provider is not required to provide— 5
 - (a) a further written statement under this section if it has, within the 3 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 3 years after the account was closed. 10
- (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 accounts

- 89. (1) A consumer may dispute a particular liability entered against the consumer under a credit agreement, by delivering a written notice to the credit provider within 30 days after receiving the statement of account in which the amount, or part of that amount, was first shown. 15
- (2) A credit provider who receives a notice of dispute in terms of subsection (1)—
 - (a) must give the consumer a written notice either— 20
 - (i) explaining in reasonable detail how the liability arose; or
 - (ii) confirming that the statement was in error either in whole or in part, and setting out the revised liability; and
 - (b) must not begin enforcement proceedings on the basis of a default arising from the disputed liability— 25
 - (i) until at least 30 days after complying with paragraph (a); or
 - (ii) at any time that the matter is before the Tribunal in terms of section 93.

Dating and adjustment of debits and credits in accounts

- 90. (1) A debit to a consumer's account takes effect as of the date the credit provider enters it on the account. 30
- (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. 35

Statement of pay out amount

- 91. (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 pay out a credit agreement as of a date specified in the request.
- (2) A statement requested in terms of subsection (1)— 40
 - (a) must be delivered within 7 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 as directed by the consumer when making the request; and 45
 - (c) is binding for a period of 7 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 or debits to that account after the date on which the request was made for a statement.
- (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. 50

Tribunal may order statement to be provided

92. If a statement is not offered or delivered within the time required by this Part, the Tribunal, on the 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. 5

Disputes concerning statements

93. (1) A consumer or credit provider may apply to the Tribunal to resolve—

- (a) a disputed liability shown on a statement of account, after taking the steps set out in section 89; or
- (b) a dispute concerning a statement of pay-out amount. 10

(2) If the Tribunal is satisfied that a consumer's liability as shown on a statement is in error, the Tribunal may determine the matters in dispute and make any appropriate order to correct the statement that gave rise to the dispute.

Consumer's or guarantor's right to pay out agreement

94. (1) A consumer or guarantor is entitled to pay out the credit agreement at any time, 15 with or without advance notice to the credit provider.

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

- (a) the amount of credit;
- (b) the interest charges and all other fees and charges payable by the consumer to 20 the credit provider up to the pay out date; and
- (c) in the case of a large agreement, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period of the difference between—
 - (i) three months; and 25
 - (ii) the period of notice of pay-out, if any, given by the consumer.

Early payments and crediting of payments

95. (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 30 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.

Repayment changes

96. (1) Not later than 20 days before a change concerning the amount or frequency or 35 time for payment of, or a change in the method of calculation of, instalments or minimum repayments, takes effect in the manner provided for in a credit agreement, the credit provider must give to the consumer written notice setting out the particulars of the change.

(2) If the amount or frequency or time for payment of instalments or minimum 40 repayments is not specified in the credit agreement but is determined by a method of calculation so specified, this section requires the credit provider to give particulars only of any change in that method of calculation.

Payroll deduction provisions

97. (1) If an employee signs a written direction to an employer to deduct an amount 45 from the employee's income for payment to a credit provider, including the employer,—

- (a) the employee may cancel the direction at any time by written notice to the employer; and
- (b) the employer—
 - (i) must make any deduction required in accordance with that direction until 50 it is cancelled or expires, subject to subsections (2) and (3); and
 - (ii) must not charge a fee to the employee for complying with this section.

(2) No amount may be deducted from an employee's income in terms of a direction contemplated in subsection (1), or an amount owed by an employee to the employer, until the employer has first deducted any amounts required in terms of any pension or provident fund, collective agreement, legislation, or court order.

(3) If the total of all amounts to be deducted from an employee's income in terms of directions contemplated in subsection (1), together with amounts owed by the employee to the employer and any amount required to be deducted by court order, exceed—

- (a) 60% of the employee's net income, the employer must—
 - (i) notify the National Credit Regulator in the prescribed manner and form; and
 - (ii) counsel the employee to consult with a registered debt counsellor; or
- (b) the employee's net income, the employer must pay each credit provider, including the employer if applicable, in the order in which the debt was incurred.

(4) An employer must remit every amount deducted from an employee's income in terms of this section to the relevant credit provider on the same date that the income was payable to the employee.

(5) For the purpose of this section—

- (a) "net income" means the employee's remuneration, minus all amounts that are required to be deducted in terms of any pension or provident fund, collective agreement, or legislation; and
- (b) a reference to "amounts required in terms of any pension or provident fund, (or) collective agreement", does not include any amount that an employee, as consumer, is required to pay in terms of a credit agreement—
 - (i) in respect of which the pension or provident fund, or a party to the collective agreement, is the credit provider; or
 - (ii) that is established in terms of such a collective agreement.

Payment processing practices

98. (1) Any person providing payment processing or clearance facilities for instruments by which a consumer pays, or directs payment to, a credit provider in respect of an obligation under a credit agreement—

- (a) must not deny any person access to the use of such a facility for that purpose, or discriminate in granting priority of access, to the use of such a facility;
- (b) must process each such instrument in the sequence in which it is received for processing; and
- (c) must not—
 - (i) give priority to one credit provider over another in accepting such instruments for processing; or
 - (ii) assign any such instrument, or collection, group, batch or subset of such instruments for priority processing over any other, except as required by paragraph (a)

(2) A person who contravenes this section commits an offence.

Part F—Alteration of Credit Agreement

Alteration of original or amended agreement document

99. 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 invalid unless—

- (a) the change reduces the consumer's liabilities under the agreement; or
- (b) after the change is made, the consumer signs or initials in the margin opposite the change.

Changes by agreement

100. (1) If the parties to a credit agreement agree to change its terms, the credit provider must, not later than 30 days after the date of the agreement, give to the other party under the a document that—

- (a) reflects their amended agreement; and
- (b) complies with the requirements of section 72.

(2) This section does not apply in respect of an increase to the credit limit under a credit facility, subject to section 101(2).

Increased credit limits under credit facility

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

- (a) in response to a written or oral request initiated by the consumer; or 5
- (b) with the written consent of the consumer in response to a written proposal by the credit provider.

(2) An increase in the credit limit under a credit facility may be either temporary or permanent. An increase is temporary in any of the following circumstances:

- (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, but the credit provider does not propose an increase in the credit limit. 10
- (b) The credit provider agrees to raise the credit limit in response to a request from the consumer in order to accommodate a particular purchase, on condition that the preceding credit limit will again apply within a specified period. 15

(3) 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 again comply with the requirements set out in sections 72 and 100.

(4) A credit provider may not close or terminate a credit facility on the grounds alone that— 20

- (a) the credit provider has declined a consumer's request to increase the credit limit; or
- (b) the consumer has declined the credit provider's offer to increase the credit limit. 25

Unilateral changes by credit provider

102. A credit provider must not exercise a power under a credit agreement to unilaterally change its terms without giving to the other party written notice at least 20 days before the change takes effect, setting out the particulars of the change.

Part G—Rescission and Termination of Credit Agreements 30

Consumers right to rescind credit agreement

103. (1) This section applies only in respect of a lease or an instalment account.

(2) A consumer may terminate a credit agreement within 5 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 35
- (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 10 days after the delivery of the notice to terminate; and 40
- (b) except in the case of a credit agreement entered into as contemplated in section 63(3), 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; or 45
 - (ii) a reasonable daily rent for the use of those goods for time they were in the consumer's possession, unless the goods are in their original packaging and it is apparent that the goods have remained unused.

When consumer may terminate agreement

104. (1) A consumer may terminate a credit agreement at any time by paying out the credit provider, in accordance with section 94. 50

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

- (a) surrendering to the credit provider the goods that are the subject of that agreement in accordance with section 105; and
- (b) paying to the credit provider any remaining amount demanded in accordance with section 105(7).

Surrender of goods

5

105. (1) A consumer under an instalment transaction, secured loan or lease of personal property—

- (a) may give written notice to the credit provider to—
 - (i) terminate the agreement; and
 - (ii) return the goods that are the subject of that agreement to the credit provider or, if the goods are in the credit provider's possession, require the credit provider to sell the goods; and
- (b) after giving notice in terms of paragraph (a), must deliver the goods to the credit provider at the credit provider's place of business during ordinary business hours within 7 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. 15
- (2) Within 14 days after receiving goods, or a notice to sell goods, under subsection (1), a credit provider must give the consumer a written notice setting out the estimated value of the goods and any other prescribed information.
- (3) Within 14 day after receiving a notice under subsection (3), the consumer may— 20
 - (a) unconditionally withdraw the notice to terminate the agreement in terms of subsection (1), if applicable, and resume possession of any goods that had been returned to the credit provider; or
 - (b) nominate in writing a person who is prepared to purchase the goods from the credit provider at or above the estimated value. 25
- (4) If the consumer—
 - (a) responds to a notice as contemplated in subsection (3)(a), the credit provider must return the goods to the consumer;
 - (b) responds to a notice as contemplated in subsection (3)(b), the credit provider must offer to sell the goods to a person nominated in terms of subsection (3)(b) for or above the estimated value; or 30
 - (c) does not respond to a notice as contemplated in subsection (3), or if no nominated buyer purchases the goods when they are offered, the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable. 35
- (5) After selling any goods in terms of this section,—
 - (a) a credit provider must—
 - (b) 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 40
 - (c) give the consumer a written notice stating the following:
 - (i) the pay-out 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 reasonable costs allowed under paragraph (a); and 45
 - (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 pay-out 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 50
 - (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)(c), and the agreement is terminated upon remittance of that amount. 55
- (7) If an amount is credited to the consumer's account, and it is less the pay-out 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 new payout value, when issuing the notice required by subsection (5)(c). 60
- (8) If a consumer—

- (a) fails to pay an amount demanded in terms of subsection (7) with 14 days after receiving a demand notice, the credit provider may seek judgement against the consumer for the amount set out in the demand notice; or
 - (b) pays the amount demanded after receiving a demand notice at any time before judgement is obtained under paragraph (a), the agreement is terminated upon remittance of that amount. 5
- (9) A credit provider who acts in a manner contrary to this section is guilty of an offence.

Compensation for consumer

106. A consumer may apply to the Tribunal to review a sale in terms of section 105, 10 and if the Tribunal is not satisfied that the credit provider sold the goods as soon as reasonably practicable, or for the best possible price, the Tribunal may order the credit provider to credit the consumer with an additional amount, exceeding the net proceeds of sale.

Termination of agreement by credit provider 15

107. (1) A credit provider may terminate a credit agreement before the time provided in that agreement only in accordance with this section.
- (2) A credit provider may unilaterally terminate a credit agreement at any time by—
 - (a) waiving all of the credit provider's rights and cancelling all of the consumer's obligations under that agreement; and 20
 - (b) giving the consumer written notice of the termination.
 - (3) If a consumer is in default under—
 - (a) an instalment agreement, secured loan or lease of personal property, the credit provider may take any steps set out section 108 to enforce and terminate that agreement; or 25
 - (b) any other credit agreement, the credit provider may take any steps set out in the agreement and permitted by law to enforce and terminate that agreement.
 - (4) 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 30
 - (b) close that credit facility by giving written notice to the consumer at least 10 business days before the credit facility will be closed.
 - (5) A credit agreement referred to in subsection (4) remains in effect to the extent necessary until the consumer has paid out the account.
 - (6) The unilateral termination of a credit agreement by a credit provider as 35 contemplated in this section does not suspend or terminate any continuing or remaining obligations of the credit provider to the consumer under that agreement.

Chapter 5—Debt enforcement, Complaints, Applications and Remedies

Part A—Debt enforcement

Repossession of goods 40

108. (1) If a consumer is at least 2 months in default under an instalment agreement, secured loan or lease of personal property—
- (a) the credit provider—
 - (i) may take possession of the goods that are the subject of the agreement; and 45
 - (ii) may not seek judgement or commence any other legal proceedings in respect of the agreement until exhausting the procedures under this section; and
 - (b) the consumer may—
 - (i) at any time before the goods are sold in accordance with this section, re-instate the agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's reasonable costs of taking possession of the goods; and 50
 - (ii) after complying with paragraph (a), may resume possession of the goods that had been repossessed by the credit provider. 55

(2) Sections 105(2)-(8) and section 106, each read with the changes required by the context, applies to any goods re-possessed in terms of this section.

(3) A consumer may apply to the Tribunal to review the seizure of any goods in terms of this section, and if the Tribunal is satisfied that the credit provider acted precipitously or unreasonably in seizing the goods, despite the consumer being in default for at least the period set out in subsection (1), the Tribunal may order the credit provider to credit the consumer with an additional amount, exceeding the net proceeds of sale.

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

Compensation for credit provider

109. A credit provider may apply to the Tribunal for compensation from the consumer in respect of costs of repossession of property in excess of those permitted under section 108, and the Tribunal may grant such an order if it is satisfied that—

- (a) the consumer knowingly—
 - (i) provided false or misleading information to the credit provider in terms of section 75; or
 - (ii) engaged in a pattern of behaviour that was reasonably probable to frustrate or impede the exercise of the credit provider's right to repossess property under section 108; 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

110. (1) A credit provider must not—

- (a) make use of any document, number or instrument referred to in paragraph (a) 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 permit any person to use or rely on any document, instrument or contract provision referred to in section 68(1)(h), (i) or (j).

(3) A person who contravenes this section commits an offence.

Deferral of debt enforcement procedures

111. (1) In any proceedings in terms of Chapter VIII of the Magistrates' Court Act, 1944 (Act No 34 of 1944) in respect of a credit agreement to which this Act applies, the court must adjourn the proceedings, and order that a debt counsellor review the consumer's obligations and prepare a report as contemplated in section 114 for the court.

(2) Despite subsection (1), the court may continue proceedings contemplated in that subsection if the court is satisfied that the credit agreement before it was not reckless, as described in section 115(b)(i), and

- (a) the consumer is not a party to any other registered credit agreements; or
- (b) there is no reasonable probability that the consumer can satisfy all outstanding obligations by way of debt re-structuring under Part C of this Chapter.

(3) If, upon receiving a report ordered in terms of subsection (1), the court is satisfied that there is a reasonable probability that the consumer can satisfy all outstanding obligations by way of debt re-structuring under Part C of this Chapter, the court must further adjourn the proceedings and order the debt counsellor to make a recommendation to the Tribunal under section 114(3)(b).

Court may suspend reckless credit agreement

112. (1) Despite any provision of law or agreement to the contrary, in any court proceedings in terms of a credit agreement, the court may declare all or part of the agreement to be suspended if the court concludes—

- (a) that the credit provider failed to fulfil its responsibilities in terms of section 70; and

- (b) that the borrower fully and truthfully answered any requests for financial information made by the credit provider before entering into that credit agreement.
- (2) section 116, read with the changes required by the context, applies to a suspension of a credit agreement under this section.

5

Part B—Over-indebtedness and reckless credit

Over-indebtedness

113. A consumer is over-indebted if, having regard to the consumer's financial means, prospects and obligations, the consumer cannot reasonably satisfy in a timely manner all of the obligations under all the credit agreements to which the consumer is a party.

10

Application for debt re-structuring

114. (1) A consumer may apply to a debt counsellor in the prescribed manner and form to—

- (a) rearrange obligations under one or more credit agreements; or
 - (b) have one or more credit agreements declared to be reckless credit.
- (2) 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;
 - (ii) the Credit Bureaux;
 - (c) take reasonable steps to determine—
 - (i) the consumer's existing financial means, prospects and obligations, and
 - (ii) if the consumer seeks a declaration of reckless credit, the consumer's financial means, prospects and obligations at the time the relevant credit agreement was entered into;
 - (d) having regard to information contemplated in paragraph (c), objectively assess—
 - (i) the financial ability of the consumer to meet the consumer's debt service obligations in a timely manner; and
 - (ii) whether any credit agreement constitutes reckless credit.
- (3) If, as a result of an assessment conducted in terms of subsection (2), a debt counsellor reasonably concludes—
- (a) that the consumer can meet the debt service obligations in a timely manner, 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; or
 - (b) that the consumer cannot meet the debt service obligations in a timely manner, the debt counsellor may recommend to the Tribunal, in the prescribed manner and form, that—
 - (i) one or more credit agreements be declared to be reckless credit; or
 - (ii) one or more of the debt service obligations be restructured 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 that are due under the agreement;
 - (cc) extending the period of the agreement and postponing during the specified period the dates on which payments that are due under the agreement;
 - (dd) recalculating the consumer's obligations because of contraventions of Part D or E of Chapter 4.
- (4) If a debt counsellor rejects an application as contemplated in subsection (3)(a), the consumer, with leave of the Tribunal, may apply directly to the Tribunal, in the prescribed manner and form, for an order contemplated in subsection (3)(b).

Tribunal may restructure consumer's obligations

115. If a debt counsellor makes a recommendation to the Tribunal in terms of section 114(3)(b), or a consumer applies to the Tribunal in terms of section 114(4), the Tribunal must conduct a hearing and, having regard to the recommendation and information before it and the consumer's financial means, prospects and obligations, may— 5

- (a) reject the recommendation or application as the case may be; or
- (b) make an order—
 - (i) declaring any credit agreement to be reckless, and suspending all or part of the agreement, if the Tribunal concludes—
 - (aa) that the credit provider failed to fulfil its responsibilities in terms of section 70; and 10
 - (bb) that the borrower fully and truthfully answered any requests for financial information made by the credit provider before entering into that credit agreement; or
 - (ii) re-structuring the consumer's obligations in any manner contemplated in section 114(3)(b). 15

Effect of suspension of credit agreement

116. (1) A suspension of a credit agreement declared in terms of section 111 or 115 continues until a date determined by the Court or Tribunal when making the order of suspension, after considering— 20

- (a) the consumer's financial obligations that existed at the time the agreement was made;
 - (b) the consumer's current means and ability to pay those obligations; and
 - (c) 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 that agreement. 25
- (2) During the period that a credit agreement is suspended in terms of this section—
- (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 30
 - (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.

Effect of debt rearrangement

117. (1) A consumer who has filed an application in terms of section 114(1) must not enter into any further credit agreement, other than a consolidation agreement, with any credit provider until one of the following events has occurred: 35

- (a) The debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 114(4) has expired without the consumer having so applied. 40
- (b) The Tribunal rejects the application.
- (c) The Tribunal having allowed the application, all the consumer's obligations under the credit agreements as rearranged 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. 45

(3) A credit provider who receives notice in terms of section 114(2)(b)(i), may not exercise or enforce by litigation or other judicial process, any right or security under that credit agreement until the consumer is in default of the credit agreement and one of the following has occurred: 50

- (a) the debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 114(4) has expired without the consumer having so applied; 55
- (b) the Tribunal rejects the application in terms of section 115(1)(b); or
- (c) the duration of the rearrangement scheme in terms of section 114(3)(b) is completed; or

- (d) the consumer defaults on any obligation in terms of the rearrangement scheme.

(4) If a credit provider enters into a credit agreement with a consumer who has applied for a debt rearrangement and that rearrangement still subsists, all or part of that credit agreement may be declared to be reckless credit.

5

Part C—Initiating Complaints or applications

Initiating a complaint to National Credit Regulator

118. (1) Any person may file a complaint with the National Credit Regulator in the prescribed manner and form, alleging any of the following conduct:

- (a) a person has infringed a consumer right set out in Part A of Chapter 4; 10
- (b) a credit provider has contravened a provision of section 71 or 72, or of Part B, D, E or F of Chapter 4;
- (c) an unregistered person has advertised credit in contravention of section 64(1);
or
- (d) an employer has not complied with a direction in terms of section 97. 15

(2) A complaint may be initiated by the Chief Executive Officer on behalf of the National Credit Regulator, or submitted to the National Credit Regulator by any person in the prescribed manner and form.

Initiating applications to Tribunal

119. A consumer or a regulator may apply to the Tribunal in the prescribed manner and form— 20

- (a) for an order resolving a dispute over information held by a credit bureau, in terms of section 60(3);
- (b) for a declaration that all or part of a credit agreement is unlawful in terms of section 67, 68 or 69; 25
- (c) for an order compelling the delivery of a statement of account in terms of section 92;
- (d) to review a statement of account or pay out statement in terms of section 93;
- (e) to review the conduct of a sale of goods in terms of section 106 or 108, or the distribution of funds from such a sale; 30
- (f) for leave to bring a complaint or a debt re-structuring application directly before the Tribunal; or
- (g) for an order of condonation for late filing.

Alternative complaint procedures

120. (1) As an alternative to filing a complaint with the National Credit Regulator in terms of section 118, or applying directly to the Tribunal in terms of section 119, a person may refer a matter to an accredited agency for resolution by conciliation, mediation or arbitration in accordance with the agency's terms of accreditation. 35

(2) The National Credit Regulator must evaluate and accredit as a agency for the purpose of this section, any— 40

- (a) ombuds or similar complaint handling entity established by a credit provider or association of credit providers;
 - (b) debt counsellor; or
 - (c) other person or association 45
- that satisfies the prescribed standards for conciliation, mediation or arbitration in terms of this Act.

Consent orders

121. (1) If a matter has been—

- (a) resolved through an accredited agency in terms of section 120; or
 - (b) investigated by the National Credit Regulator, and the National Credit 50
- Regulator and the respondent agrees to the proposed terms of an appropriate order;
- the Consumer Tribunal, 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 that complainant.

Part D—Informal Resolution or Investigation of complaints

Investigation by National Credit Regulator

122. (1) Upon initiating or accepting a complaint in terms of section 118, the Chief Executive Officer may either— 5

- (a) refer the complaint to a debt counsellor or an accredited agency for the purposes of assisting the parties to resolve the dispute informally; or
- (b) direct an inspector to investigate the complaint as quickly as practicable.

(2) At any time during an investigation, the Chief Executive Officer may designate one or more persons to assist the inspector conducting the investigation. 10

(3) At any time during an investigation, the Chief Executive Officer 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— 15

- (a) to appear before the Chief Executive Officer or a person authorised by the National Credit Regulator, to be interrogated at a time and place specified in the summons; or
- (b) to deliver or produce to the Chief Executive Officer, or a person authorised by the Chief Executive Officer, any book, document or other object referred to in paragraph (a) at a time and place specified in the summons. 20

(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) a person is not obliged to answer any question if the answer is self-incriminating; and 25
- (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 powers in terms of this section will be admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 142, and then only to the extent that the answer or statement is relevant to prove the offence charged. 30

Outcome of complaint

123. After completing an investigation into a complaint, the National Credit Regulator must either— 35

- (a) refer the matter to the Consumer Tribunal, if the National Credit Regulator determines that—
 - (i) a prohibited conduct has been established;
 - (ii) a registrant has breached a condition of its registration; 40
 - (iii) a registrant has failed to comply with a requirement of this Act; or
- (b) in any other case, issue a notice of non-referral to the complainant in the prescribed form.

Referral to Consumer Tribunal

124. (1) If the National Credit Regulator issues a notice of non-referral in response to a complaint, the complainant concerned, with leave of the Tribunal, may refer the matter directly to the Consumer Tribunal. 45

(2) A referral to the Consumer Tribunal, whether by the National Credit Regulator in terms of section 123(a), or by a complainant in terms of subsection (1), must be in the prescribed form. 50

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

Part E—Tribunal consideration of complaints, applications and referrals

Hearings before Consumer Tribunal

125. (1) The Consumer Tribunal must conduct its hearings in public—
- (a) in an inquisitorial manner;
 - (b) as expeditiously as possible; 5
 - (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— 10
- (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. 15
- (3) The Chairperson of the Tribunal may assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:
- (a) Review of requests for additional information, in terms of section 37;
 - (b) Review of an order to cease engaging in an activity, in terms of sections 46(1)(a) and 47; 20
 - (c) Applications for an order limiting consumer requests in terms of section 57, 59, 60, 88 or 91;
 - (d) Applications for an order for delivery of a statement of account or pay-out statement, in terms of section 92;
 - (e) Applications for an order concerning the remittance of proceeds of sale, in terms of section 105 or 108; 25
 - (f) Applications for leave to bring a matter directly before the Tribunal in terms of section 114(4) or 124(1);
 - (g) Consent Orders in terms of section 121; and
 - (h) Applications for condonation of late filing. 30
- (4) At the conclusion of a hearing, the Consumer Tribunal must make any order permitted in the circumstances in terms this Act and must issue written reasons for its decision.
- (5) The Consumer Tribunal must provide the participants and other 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). 35

Right to participate in hearing

126. 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: 40
- (a) the Chief Executive Officer, or any person appointed by the Chief Executive Officer;
 - (b) the complainant;
 - (c) the person whose conduct forms the basis of the hearing; and
 - (d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Consumer Tribunal, that interest is adequately represented by another participant. 45

Powers of member presiding at hearing

127. The member of the Consumer Tribunal presiding at a hearing may—
- (a) direct or summon any person to appear at any specified time and place; 50
 - (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 55
 - (d) give directions prohibiting or restricting the publication of any evidence given to the Consumer Tribunal.

Rules of procedure

128. Subject to the Consumer Tribunal's rules of procedure, the Tribunal member 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 sections 25, 26 and 125(1) and (2).

5

Witnesses

129. (1) Every person giving evidence at a hearing of the Consumer 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.

10

(3) The Consumer 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 122(5) applies to evidence given by a witness in terms of this section.

Costs

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

15

(2) If the Consumer Tribunal—

(a) has not made a finding against a respondent, the Tribunal member presiding at a hearing may award costs to the respondent, and against a complainant who referred the complaint in terms of section 124(1); or

20

(b) has made a finding against a respondent, the Tribunal member presiding at a hearing may award costs against the respondent, and to a complainant who referred the complaint in terms of section 124(1).

Appeals and reviews

131. (1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member—

25

(a) to a full panel of the Tribunal to the extent permitted by the Rules of the Tribunal; or

(b) to the High Court in accordance with subsection (2), if no appeal is permitted to a full panel of the Tribunal.

30

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

(a) apply to the High Court to review a decision of the Consumer Tribunal; or

(b) appeal against any decision of the Consumer Tribunal, other than a decision in terms of section 121, to the High Court.

35

Part F—Tribunal Orders

Interim relief

132. (1) At any time, whether or not a hearing has commenced into a complaint, a person referred to in section 124 may apply to the Consumer Tribunal for an interim order in respect of that alleged practice, and the Tribunal may grant such an order if—

40

(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) to prevent the purposes of this Act being frustrated;

(c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and

45

(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 alleged prohibited conduct; or

(b) the date that is six months after the date of issue of the interim order.

50

(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 Consumer Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

Orders of Consumer Tribunal

133. (1) In addition to its other powers in terms of this Act, the Consumer Tribunal may—

- (a) declare the whole or any part of an unlawful agreement to be void;
- (b) make an appropriate order in relation to a prohibited conduct, including— 5
 - (i) declaring conduct to be a prohibited conduct in terms of this Act;
 - (ii) interdicting any prohibited conduct;
 - (iii) imposing an administrative fine, in terms of section 134, with or without the addition of any other order in terms of this section;
- (c) confirm a consent agreement in terms of section 121 as an order of the Tribunal; 10
- (d) condone any non-compliance of its rules and procedures on good cause shown; or
- (e) confirm a order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act. 15

(2) If the Tribunal determines that a registrant has infringed a right set out in Part A of Chapter 4, the Tribunal may make any of the following orders:

- (a) An order to alter the business practices of the registrant so as to avoid future similar contraventions.
- (b) An administrative fine, subject to section 134. 20
- (c) Suspension or cancellation of the registrant's registration.

(3) In addition to, or in substitution for, an order contemplated in subsection (2), the Tribunal may—

- (a) if a credit provider has infringed a right set out in section 54, make— 25
 - (i) any order contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
 - (ii) an order cancelling or suspending any obligation of the consumer under the credit agreement for a period that the Tribunal determines to be reasonable and just in the circumstances; or
 - (iii) both orders contemplated in this paragraph; 30
- (b) If the credit provider has infringed a right set out in section 55 or 56, make an order cancelling or suspending any obligation of the consumer under the agreement for a period that the Tribunal determines to be reasonable and just in the circumstances;
- (c) If the credit provider has infringed a right set out in section 57 or 58, make an order cancelling or suspending all of the obligations of the consumer under the agreement until the Tribunal is satisfied that the credit provider has provided the required information to the consumer in the manner and form and to the standards required by this Act; and 35
- (d) If a registrant has infringed a right set out in section 60, make an order requiring the registrant to grant the required access to the consumer. 40

(4) If the Tribunal determines that a credit provider has contravened a provision of Part B of Chapter 4, the Tribunal may make any of the following orders:

- (a) An order to alter the business practices of the credit provider so as to avoid future similar contraventions. 45
- (b) An administrative fine, subject to section 134.
- (c) Suspension or cancellation of the registration.

(5) In addition to, or in substitution for, an order contemplated in subsection (4), the Tribunal—

- (a) if the credit provider has contravened section 62, must declare the agreement unlawful; 50
- (b) if the credit provider has contravened section 64, 65, or 66, may make an order—
 - (i) cancelling the agreement subject to any terms and conditions that the Tribunal determines to be reasonable and just in the circumstances; or 55
 - (ii) cancelling or suspending all of the obligations of the consumer under the agreement until the Tribunal is satisfied that the credit provider has provided the required information to the consumer in the manner and form and to the standards required by this Act.

(6) If the Tribunal determines that a credit provider or employer has contravened a section referred to in section 68, the Tribunal may make any of the following orders: 60

- (a) Severance or revision of the provision that contravenes this Act.

- (b) Repayment to the consumer of any excess amount charged, together with interest at the rate set out in the agreement.
- (c) An order to alter the business practices of the credit provider so as to avoid future similar contraventions.
- (d) An administrative fine, subject to section 134. 5
- (e) Suspension or cancellation of the credit provider's registration.

Administrative fines

- 134.** (1) The Consumer Tribunal may impose an administrative penalty only—
- (a) in the circumstances expressly provided for in this Act; or
 - (b) for a failure by a credit provider to comply with a requirement of this Act. 10
- (2) An administrative fine imposed in terms of subsection (1) may not exceed 10% of the respondent's annual turnover in the Republic and its exports from the Republic during the preceding financial year.
- (3) When determining an appropriate fine, the Consumer Tribunal must consider the following factors: 15
- (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; 20
 - (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) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution. 25

Status and enforcement of orders

- 135.** (1) Any decision, judgment or order of the Consumer Tribunal may be served, executed and enforced as if it were an order of the High Court.
- (2) The National Credit Regulator may institute proceedings in the High Court on its own behalf for recovery of an administrative penalty imposed by the Consumer Tribunal. 30
- (3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative penalty.

Chapter 6—Enforcement of Act 35

Part A—Searches

Authority to enter and search under warrant

- 136.** (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— 40
- (a) a prohibited conduct has taken place, is taking place, or is likely to take place on or in those premises; or
 - (b) that anything connected with an investigation into that prohibited conduct is in the possession of, or under the control of, a person who is on or in those premises. 45
- (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 137. 50
- (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 issuing it has lapsed; or 55

- (d) the expiry of one month 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 warrant issued in terms of subsection (2) may enter and search premises named in that warrant. 5
- (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;
 - (b) provide identification to that person and explain to that person the authority by which the warrant is being executed; and 10
 - (c) hand a copy of the warrant to that person or to the person named in it; or
 - (d) 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

15

137. (1) A person who is authorised under section 136 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 for believing that the person has personal possession of an article or document that has a bearing on the investigation; 20
 - (d) examine any article or document that is 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; 25
 - (f) take extracts from, or make copies of, any book or document that is 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; 30
 - (h) search any data contained in or available to that computer system;
 - (i) reproduce any record from that data; and
 - (j) seize any output from that computer for examination and copying; and
 - (k) attach, and, if necessary, remove from the premises for examination and safekeeping, anything that has a bearing on the investigation. 35
- (2) Section 122(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 136 may be accompanied and assisted by a police officer. 40

Conduct of entry and search

- 138.** (1) A person who enters and searches any premises under section 138 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 137(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. 45
- (3) A person who enters and searches premises under section 137, before questioning anyone—
- (a) must advise that person of the right to be assisted at the time by an advocate or attorney; and 50
 - (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. 55
- (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. 5

(7) A police officer who is authorised to enter and search premises under section 136, or who is assisting an inspector who is authorised to enter and search premises under section 136 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. 10

(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. 15

Part B—Offences

Breach of confidence

139. (1) It is an offence to disclose any confidential information concerning the affairs of any person or firm obtained— 20

- (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; 25
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector, regulator or Consumer Tribunal member entitled to receive the information.

Hindering administration of Act

140. 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. 30

Failure to attend when summoned

141. A person commits an offence who, having been directed or summoned to attend a hearing— 35

- (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. 40

Failure to answer fully or truthfully

142. A person commits an offence who, having been sworn in or having made an affirmation—

- (a) subject to section 122, fails to answer any question fully and to the best of that person's ability; or 45
- (b) gives false evidence, knowing or believing it to be false.

Failure to comply with Act

143. (1) A person commits an offence who—

- (a) continues to engage in an activity after receiving an order to cease that activity, in terms of this Act; or 50
- (b) contravenes, or fails to comply with an order of the Consumer Tribunal.

- (2) A person commits an offence who—
- (a) does anything calculated to improperly influence the Consumer 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; 5
 - (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 Consumer Tribunal, or a member the Tribunal, in their respective official capacities; 10
 - (f) wilfully interrupts the proceedings or misbehaves in the place where a hearing is being conducted;
 - (g) acts contrary to a warrant to enter and search;
 - (h) without authority, but claiming to have authority in terms of section 136 or 139— 15
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Penalties

- 144.** (1) Any person convicted of an offence in terms of this Act, is liable— 20
- (a) in the case of a contravention of section 143(1), to a fine not exceeding R500 000,00 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 not exceeding R2 000,00 or to imprisonment for a period not exceeding six months, or to both a fine and imprisonment. 25

Magistrate's Court jurisdiction to impose penalties

145. Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 144.

Part C—Miscellaneous matters

Agents and brokers 30

- 146.** (1) A credit provider—
- (a) must not enter into a credit agreement unless it is solicited, completed and concluded by the credit provider directly or through an employee or a person with whom the credit provider has entered into a written agreement— 35
 - (i) appointing the person as an agent of the credit provider;
 - (ii) requiring the agent to comply with this Act; and
 - (iii) entitling the credit provider to terminate the agreement for contravention of this Act;
 - (b) must ensure that all of its employees or agents who solicit, conclude or administer credit agreements on its behalf are adequately trained in respect of the matters to which this Act applies; 40
 - (c) must maintain a register in the prescribed manner and form of every person acting as its agent or broker in any transaction to which this Act applies; and
 - (d) is responsible for any action or omission by an employee or agent in contravention of this Act. 45
- (2) Subsection (1)(b) does not apply with respect to credit providers who enter into credit agreements only as a pawn agreement or as an outstanding account that may give rise to a credit agreement.

Civil actions and jurisdiction

147. (1) Nothing in this Act renders void a provision of an agreement that, in terms of this Act, is prohibited or may be declared void, unless the Consumer Tribunal or a court declares that provision to be void.

(2) If, in any action in a civil court, a party raises an issue concerning conduct that is prohibited in terms of this Act, that court must not consider that issue on its merits, and—

- (a) if the issue raised is one in respect of which the Consumer Tribunal has made an order which has not been set aside by a court, the court must apply the determination of the Tribunal to the issue; or
- (b) otherwise, the court must refer that issue to the Tribunal to be considered on its merits, if the court is satisfied that—
 - (i) the issue has not been raised in a frivolous or vexatious manner; and
 - (ii) the resolution of that issue is required to determine the final outcome of the action.

(3) A person who has suffered loss or damage as a result of a prohibited 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 been awarded damages in a consent order confirmed in terms of section 121; 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 Consumer Tribunal in the prescribed form—
 - (i) certifying that the conduct constituting the basis for the action has been found to be a prohibited conduct in terms of this Act;
 - (ii) stating the date of the Tribunal finding; and
 - (iii) setting out the 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 Consumer Tribunal in terms of section 131 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 a prohibited conduct comes into existence—

- (a) on the date that the Consumer Tribunal made 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 (6).

Variation of order

148. (1) The Consumer Tribunal, acting of its own accord or on application of 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 of the parties to the proceeding.

Limitations of bringing action

149. (1) A complaint in terms of this Act may not be referred to the Tribunal 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 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

150. In any proceedings before the Tribunal, the standard of proof is on a balance of probabilities.

Serving documents

151. 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— 5

- (a) delivered to that person;
- (b) sent by registered post to that person's last known address; or
- (c) published in the Gazette. 10

Proof of facts

152. (1) In any criminal proceedings in terms of this Act—

- (a) if it is alleged that a person is or was an employee of an employer, that person must be presumed to be an employee of that employer, unless the contrary is proved; 15
- (b) 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
- (c) an order certified by the Chairperson of the Consumer Tribunal is conclusive proof of the contents of the order of the Tribunal. 20

(2) 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. 25

Chapter 7—General Provisions**Regulations**

153. (1) The Minister—

- (a) may make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2); 30
- (b) in consultation with the National Credit Regulator, and by notice in the Gazette, may make regulations for matters relating to the functions of the National Credit Regulator, including—
 - (i) forms;
 - (ii) time periods; 35
 - (iii) information required;
 - (iv) additional definitions applicable to those regulations;
 - (v) filing fees;
 - (vi) access to confidential information;
 - (vii) manner and form of participation in National Credit Regulator procedures; and
 - (viii) procedures; and
- (c) may make regulations regarding—
 - (i) any forms required to be used for the purposes of this Act; and
 - (ii) in general, any incidental matter that may be considered necessary or expedient to prescribe in order to achieve the objects of this Act. 45

(2) Before making any regulations in terms of subsection (1)(a), the Minister—

- (a) must—
 - (i) consult the Council, and
 - (ii) publish the proposed regulations for comment; and 50
- (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.

Repeal of laws and transitional arrangements

154. (1) Subject to subsection (2) and the provisions of Schedule 1, the following Acts are hereby repealed:

- (a) the Usury Act, 1968 (Act No. 73 of 1968); and
- (b) the Credit Agreements Act, 1980 (Act No. 75 of 1980).

5

(2) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 1.

Short title and commencement

155. (1) This Act is called the Consumer Credit Act, 2004, and comes into operation on a date fixed by the President by proclamation in the Gazette.

10

(2) The President may set different dates for different provisions of this Act to come into operation.

(3) Unless the context otherwise indicates, a reference in a section of this Act to a time when this Act came into operation must be construed as a reference to the time when that section came into operation.

15

Schedule 1—Transitional Provisions

Definition

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 155; and

“**previous Act**” means a law repealed by section 154.

(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 sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

Application of Act to existing agreements

2. (1) Subject to sub-items (2)–(5), this Act applies to a credit agreement, irrespective whether the agreement was made before or after the effective date.

(2) A complaint concerning an act or omission in terms of a credit agreement may be made only if that act or omission occurred on or after the effective date.

(3) The following provisions concerning over-indebtedness do not apply to a credit agreement made before the effective date:

(a) section 112;

(b) section 114(1)(b), 114(3)(b)(i), 114(3)(b)(ii)(dd) to the extent it concerns reckless credit; and 114(4); and

(c) section 115(1)(b)(i).

(4) With respect to any credit agreement other than a pawn agreement made within 1 year before the effective date, the Credit Provider must within 6 months after the effective date—

(a) provide the consumer with—

(i) a statement that meets the requirements of section 71; and

(ii) a document that meets the requirements of section 72; and

(b) introduce a form of periodic statement that meets the requirements of section 86.

(5) On application by a Credit Provider, the National Credit Regulator—

(a) 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 sub-item (4), may

(i) extend the time within which the Credit Provider must comply with the obligations of sub-item (4); or

(ii) enter into a compliance agreement with the Credit Provider establishing a plan and schedule for meeting the requirements of sub-item (4).

(6) Despite section 73, 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.

General preservation of regulations, rights, duties, notices and other instruments

3. (1) A registration that had been issued in terms of section 15A of the Usury Act 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, that 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 the 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 the previous Act must be regarded as having been satisfactorily served for the purposes of this Act.

(5) An order given by an inspector, in terms of any provision of the previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

National Credit Regulator

4. As of the effective date, the assets, liabilities and employees of—
- (a) any organ of state established to administer categories of exemptions provided for in terms of section 15A of the Usury Act; or
 - (b) any person contracted in terms of the Usury Act for a purpose contemplated in paragraph (a), to the extent that those assets, liabilities and employees relate to such purposes
- are transferred to, and are assets and liabilities respectively of, the National Credit Regulator.

Provincial regulatory capacity

5. Until provincial legislation has been enacted in a province establishing for that province a provincial regulatory authority as contemplated in section 49, the Minister, by notice in the Gazette, may delegate to the relevant member of the Executive Council of that province any or all 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

6. (1) Despite the repeal of the Acts mentioned in section 154, for a period of five years after the effective date—

- (a) the National Credit Regulator may exercise any power of the Minister in terms of any such Act to investigate and prosecute any breach of that Act that occurred at any time during the period of 3 years immediately before the effective date; and
- (b) the Tribunal may make any order that could have been made in the circumstances by a court under that Act.

(2) In exercising authority under subsection (1), the National Credit Regulator and Tribunal respectively must conduct the investigation, prosecution and hearing as if it were proceeding with a complaint in terms of this Act.

Regulations

7. On the effective date, and for a period of 90 days after the effective date, the Minister may make any regulation contemplated in the Act without meeting the procedural requirements set out in section 153 or elsewhere in this Act, provided the Minister has published such proposed regulations in the Gazette for comment for at least 45 days.

EXPLANATORY MEMORANDUM

PART 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 over-indebtedness, lack of progress in SME finance and, lately, abuses related to administration orders. The perception is that regulatory weaknesses are part of the problem, and that the current regulatory framework is fragmented, outdated and 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;
- (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, Dr Ruiters, appointed a Technical Committee to conduct 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, Credit Agreements Act and 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 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.

Consumers expressed a high level of dissatisfaction with the level of disclosure. They felt that the actual cost of credit was frequently much higher than disclosed, and that the mechanisms for complaints and redress were inadequate. Amongst the industry and consumer representatives there was a surprising level of agreement on the need for legislative reform. Areas of mutual concern were the inconsistent treatment of different types of credit (and credit providers), the need for better enforcement, and improved disclosure of the cost of credit.

The research indicated serious weaknesses in allocation of credit, and very high cost of credit in a number of market segments. Most of the R361bn market consists of mortgages, overdrafts or personal loans and vehicle finance at moderate rates. However, the majority of consumers do not have access to these products. The majority of consumers only have access to products such as micro-loans, hire purchase and store cards—at much higher interest rates. Significant weaknesses in the legislative framework within which the consumer credit market operates contributes to inefficiency and dysfunctionality. The Usury Act segments the market to the detriment of everyone except prime clients; there are weaknesses in debt collection and in access to court orders; collateral mechanisms are inefficient and difficult to enforce. Inaccurate and incomplete credit bureau information undermines credit providers' ability to assess risk and have a detrimental impact upon consumers. The review also highlighted that unequal access to the payment systems undermines competition.

The report of the Committee assesses these weaknesses in the consumer credit market and the regulatory framework and observes that the net result is that the market is divided into a prime market, which is well serviced at moderate rates, and a "marginal market" which is rationed, inefficient and vulnerable to predatory practices, with effective interest rates much higher than the Usury Act cap. The "marginal market" consists of the majority of the population, who thus have limited access to credit, for which they pay a very high cost.

The Committee's report recommends new legislation and changes in the enforcement framework.

The Committee's primary recommendation is that the Usury Act, Credit Agreements Act and Usury Act Exemption Notice be replaced with an overarching Consumer 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 Department of Trade and Industry's direct mandate, such problems related to the application of debit orders by banks and problems related to the Magistrates' Court Act, and that these also have to be addressed in order to improve access to credit.

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 has prepared a draft Policy Framework for Consumer Credit and a preliminary draft of a proposed Consumer Credit Bill, for possible introduction in Parliament late in 2004. Broad consultation on the Bill is anticipated from July to September 2004.

PART 2—SUMMARY OF THE PRELIMINARY DRAFT

Overview

Under existing law, consumer credit is regulated by the Usury Act, the Credit Agreements Act, the Magistrates' Court Act and common law. This Bill proposes to repeal the Usury Act and the Credit Agreements Act, replacing both with a single Consumer Credit Act, which will also give priority to its own procedures for enforcement over those of the Magistrates' Court Act (while leaving the latter unchanged), and will modify the common law in several respects.

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 arms' length. Thus, loans between family members, partners and friends on an informal basis will not be regulated.
- (b) 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.
- (c) It will not apply to real property mortgages, 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 (b). The dti believes that while such small business 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.
- (d) It will not apply to policies of insurance, or to real property leases. 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.

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 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 again subdivides into several sub-species of agreement—
 - (i) Mortgage (of real 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, *e.g. a prepaid transaction or outstanding account.*
 - (viii) Other similar transaction, *e.g. unsecured loan.*
- (c) A credit guarantee.

In establishing the framework for effective regulation, the Bill finally provides for the use of thresholds to subdivide 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.

Regulatory institutions

The Bill proposes the establishment of four 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 Consumer Credit Council will be established as an inter-governmental forum comprising the Minister and the several provincial MECs, who will manage the development of policy and co-ordinate legislation in this area of concurrent jurisdiction.
- (b) A National Consumer Credit Advisory Committee, to be appointed by the Minister, will provide commentary and advice on request with respect to matters of concern from the perspective of stakeholder groups, including consumers.
- (c) A National Credit Regulator will be established as the primary administrative body 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, or choose not to establish self-standing provincial entities.
- (d) A 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 Act requires the Regulator to accredit alternative dispute agencies on the basis of prescribed standards. Parties to credit agreements will be able, and encouraged, to seek resolution of disputes through mediation, conciliation or arbitration in either provincial consumer courts or accredited 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.

Registration requirements

To properly address the problem of over-indebtedness and reckless credit granting, the bill provides for the creation of 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.

Although registration of credit providers is a right, 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.

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 restructuring and suspension of apparently reckless credit agreements. The Minister is to prescribe standards for their experience and training requirements to qualify for registration.

Registration of credit providers and debt counsellors is to be provincial, if the applicant seeks to operate in one province only, and national in any other case. In either case, the registration norms and standards are to be common across the Republic, as determined by the Bill and regulations under it.

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) Protection against punitive or retaliatory measures brought against a consumer who seeks to uphold or enforce his or her rights under the Act.
- (c) Right to confidential treatment.
- (d) Right to be given reasons for credit being refused, or discontinued.
- (e) Right to information relating to the agreement, including disclosure, the contract, and account statements, in plain and understandable language, and the right to choose whether to receive certain documents electronically or in paper copy.
- (f) Right to access information held by credit bureaux, to be notified when an adverse report is made, to demand investigation of disputed information, and correction of erroneous information, and a right to compensation for economic loss resulting from negligently incorrect information.

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.
- (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.
- (f) Every credit provider must prominently post a statement of its current interest rates at its places of business.

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 administrator has not consented.
- (b) If the agreement contains an unlawful provision, as determined by the Act.
- (c) If the agreement results from negative option marketing.
- (d) If credit provider has not complied with pre-agreement disclosure requirements.
- (e) If credit provider was unregistered and Act required registration, or was subject to a suspension or cease trading order.
- (f) If the agreement was formed by prohibited use of split documentation such that the unlawful provisions are set out in a separate "agreement".

If the Tribunal or a court declares a credit agreement to be unlawful, all of its provisions are unenforceable, the credit provider must return all money received from the consumer under the agreement, and the consumer is not required to return any goods or money received from the credit provider under the agreement. The DTI believes that the remedy serves to balance the relative inequality of control in the design of such contracts as 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, any one of which renders the entire agreement unlawful. A provision is unlawful if it purports to—

- (a) "contract out" of the Consumer Credit Act, set aside or override any provision of the Act, waive a consumer's right under the Act, or avoid a credit provider's obligation under the Act.
- (b) Waive a common law rights 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, 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 Act, 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.
- (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.

Pre-agreement requirements

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 7 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 ability to meet the obligations of the agreement.

The Credit Provider must refuse the agreement if "an objective credit provider could not reasonably conclude that the consumer would be able to meet all the obligations of

the proposed agreement in a timely manner". The National Credit Regulator is to publish guidelines for the conduct of such an evaluation.

If a Court or the Tribunal later hold that the circumstances do not satisfy the test it may declare the agreement reckless, and suspend it. 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.

Cost of Credit

The Bill regulates the cost of credit in the following manner:

- (a) Allowing for the Minister to establish an interest cap if it is considered necessary, and prohibiting interest in excess of that prescribed rate.
- (b) Prohibiting any costs other than the principal sum borrowed, interest, an application 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. 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) Codification of the *in duplum* rule, limiting the aggregate interest to not more than the principal sum borrowed.

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.

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 3 months interest, only in the case of a large agreement.

In addition, the Bill regulates various payment practices, including the use of pay-roll deduction (section 97), and payment clearing (section 98), and prohibited practices (section 110). In the case of payroll deduction—

- (a) The Employer must deduct and remit promptly and without charge on direction by consumer, and must stop on direction of consumer.
- (b) Directed deductions are subject to priority claims for pension or provident fund, collective agreement, legislation or court order.
- (c) Amounts owed to employer are equal in priority to other credit agreements.
- (d) The Employer must advise National Credit Regulator if all directed deductions, plus court ordered deductions, exceed 60% of net income.
- (e) If total of all deductions exceed net income, deductions for employer loans or credit agreements take priority in order of date agreement concluded.

Section 110 prohibits a credit provider, or anyone as his or her agent from using prohibited pre-authorisations or other enforcement documents, or the consumer's PIN, bankcard, or identity document.

Termination of Agreement

The Bill allows the consumer to rescind an instalment contract or lease of goods within 5 business days after concluding agreement.

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 goods, may surrender the goods with notice to terminate the agreement. Section 105 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 payout value of the agreement.

Similarly, if the consumer under an instalment contract or lease of goods is in default for more than two months, the credit provider may repossess the goods, subject to provisions parallel to those that apply in the case of surrender. A credit provider—

- (a) must refund to the consumer the excess, if any, between the value of the goods, and the payout value of the credit agreement,
- (b) may not seek judgement in respect of goods before employing either the surrender or repossession provisions of the Bill, and
- (c) may seek judgement only for the shortfall, if any, between the value of the goods, and the payout value of the credit agreement.

At any time during repossession procedures, until the goods are sold, the consumer may re-instate the agreement, and resume possession of the goods, by bring the account up-to-date.

Other debt enforcement provisions

The Magistrates' Court Act continues to apply as the predominant law governing debt enforcement, but the Bill modifies that in two respects:

- (a) The court must adjourn any proceedings to get a debt counsellors report on possibility of debt restructuring; and
- (b) unless debt restructuring appears unlikely to be effective, the court must further adjourn any enforcement matter and defer to the debt restructuring provisions of this Bill.

Over-indebtedness and restructuring

In addition to the provisions concerning reckless credit, discussed above, the Bill allows for debt restructuring 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 debt counsellor for review of debt, and the debt counsellor makes recommendation to Tribunal which 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 process is complete—

- (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 new credit agreement, during that time, that new agreement may be declared reckless.

Miscellaneous matters

Finally, the Bill provides for hearings before the Tribunal to be impartial and generally open to the public, for the Tribunal to impose administrative fines, for offences and penalties, which will fall within the jurisdiction of the Magistrates' Courts, for the Minister to make regulations, and for the necessary transitional matters. In particular, Schedule 1, dealing with Transition, extends the effect of the Bill, in so far as practicable and reasonable, to existing agreements at the time the Bill comes into force.