

CONSUMER CREDIT BILL

To consolidate, harmonise and reform the laws regulating the provision of credit and credit agreements; to establish the Consumer Credit Regulators; to provide for the regulation of credit providers, credit bureaus and debt collectors; to provide for the regulation of credit agreements in terms of which movable and immovable goods are purchased on credit, services are rendered on credit and the borrowing of money; to provide for the limitation and disclosure of interest, costs, fees and other charges levied in respect of the provision of credit; to provide for improved standards of consumer protection; to promote responsible lending and borrowing practices and market conduct; to repeal the Usury Act, 1968, the Credit Agreements Act, 1980, and the Microlending Act, 2018; and to provide for related incidental matters.

(Introduced by the Minister of Finance)

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BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

CHAPTER 1
INTERPRETATION, PURPOSE, SCOPE AND APPLICATION OF ACT

PART A
Interpretation

Definitions

1. (1) In this Act, unless the context indicates otherwise—

“adverse consumer credit information” includes an adverse classification relating to consumer behaviour and includes a classification such as “delinquent”, “default”, “slow paying”, “absconded” or “not contactable” or an adverse classification relating to enforcement action taken by the credit provider and includes a classification such as “handed over for collection or recovery”, “legal action” or “write-off”;

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

- (a) goods to be purchased or otherwise acquired;

- (b) any available service; or
- (c) credit to be granted;

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

“appeal board” refers to either the appeal board established by section 39 of the NAMFISA Act or the appeal board established by section 73B of the Banking Institutions Act as is relevant in the circumstances;

“Bank of Namibia” means the Bank of Namibia established under the Bank of Namibia Act, 2020 (Act No. 1 of 2020);

“banking institution” means a banking institution as defined in section 1 of the Banking Institutions Act;

“Banking Institutions Act” means the Banking Institutions Act, 1998 (Act No. 2 of 1998);

“code of conduct”, except in respect of the industry code of conduct contemplated in section 62, means a code regulating the interaction between or among persons conducting business within an industry;

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

“confidential information” means personal information that belongs to a person, is shared for a designated purpose and is not generally available to or known by others;

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

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

- (e) the guarantor under a credit guarantee; or
- (f) the party to whom or at whose direction money is advanced or credit granted under any other credit agreement,

and includes a person to whom the rights or the rights and obligations of a party referred to under paragraphs (a) to (f) have passed whether by assignment, cession, delegation or otherwise;

“consumer credit information” means information concerning—

- (a) a person’s credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (b) a person’s financial history, including the person’s past and current income, assets and debts, and other matters within the scope of that person’s financial means, prospects and obligations, as defined in section 64(3), and related matters;
- (c) a person’s education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters; or
- (d) a person’s identity, including the person’s name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters;

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

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

“cooperative” means a cooperative formed and registered in terms of the Co-operatives Act, 1996

(Act No. 23 of 1996), whose predominant purpose is to offer financial services to its members;

“court” means any court or courts of Namibia having jurisdiction in the particular matter or in the particular circumstances;

“credit”, when used as a noun, means—

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

“credit agreement” means an agreement between the credit provider and the consumer that sets out the rights and obligations of the parties on the disbursements and the repayment of the credit and that meets all the criteria set out in section 8;

“credit bureau” means a person required to apply for registration as such in terms of section 15(1);

“credit facility” means a credit agreement that meets all the criteria set out in section 8(3);

“credit guarantee” means a credit agreement that meets all the criteria set out in section 8(5);

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

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

“credit life insurance” includes cover payable in the event of a consumer’s death, disability, terminal illness, unemployment, or other insurable risk that is likely to impair the consumer’s

ability to earn an income or meet the obligations under a credit agreement;

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

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

“credit report” means information issued by a credit bureau containing all or part of a consumer or prospective consumer’s credit information;

“credit score” means a numerical expression determined by the relevant Consumer Credit Regulator in consultation with credit bureaus and credit providers based on the consumer credit information of a consumer or prospective consumer that is used to determine the creditworthiness of a consumer or prospective consumer;

“credit transaction” means a credit agreement that meets the criteria set out in section 8(4);

“debt collector” means—

- (a) a person, other than a legal practitioner or an employee of the legal practitioner, or a party to a factoring arrangement, who for reward collects debts owed to another on the latter’s behalf;
- (b) a person, other than a party to a factoring arrangement, in the course of his, her or its regular business, who for reward takes over debts referred to in paragraph (a) in order to collect such debt for his, her or its own benefit;

- (c) a person, as an agent or employee of a person referred to in paragraphs (a) or (b) or as an agent or a legal practitioner, who collects the debts on behalf of such person or legal practitioner, excluding an employee whose duties are purely administrative, clerical or otherwise subservient to the actual occupation of debt collector;

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

“discount transaction” means a credit agreement, irrespective of its form, in terms of which—

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

“factoring arrangement” means an arrangement between a creditor and a financier in terms of which the creditor, in exchange for funding, either sells or offers as security, claims against his, her or its debtors: Provided that such claims are not bad or doubtful at the time they are so sold or offered as security and further that no overdue debt or a claim for which a demand has been made, is part of such a factoring arrangement;

“favourable consumer credit information” means information, other than adverse consumer credit information regarding all credit made available by a credit provider to a consumer, and includes timely payments of loans;

“financial institution” means a financial institution as defined in section 1 of the Financial Institutions and Markets Act;

“Financial Institutions and Markets Act” means the Financial Institutions and Markets Act, 2021 (Act No. 2 of 2021);

“friendly society” means—

- (a) an association of individuals established for any of the objects referred to in section 285 of the Financial Institutions and Markets Act; or
- (b) a business carried on under a scheme or arrangement for any of the objects referred to in section 285 of the Financial Institutions and Markets Act;

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

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

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

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

“instalment agreement” means a credit agreement for the sale of movable goods, in terms of which—

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

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

- (a) there are three or more individual trustees; or
- (b) the trustee is itself a juristic person;

“key responsible person” means any shareholder, director, member, owner or person with at least a five percent ownership or decision-making role in the registrant and includes the principal officer, and, if relevant, the branch manager;

“knowing” or “knowingly”, when used with respect to a person, and in relation to a particular matter, means that the person either—

- (a) had actual knowledge of the matter; or
- (b) was in a position in which the person reasonably ought to have—
 - (i) had actual knowledge;
 - (ii) investigated the matter to an extent that would have provided the person with actual knowledge; or
 - (iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;

“legal practitioner” means a legal practitioner, including a candidate legal practitioner, referred to in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);

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

“licensed premises” means the premises from where a microlender will conduct his, her or its registered activities;

“microlender” means a credit provider who conducts business in terms of microlending transactions;

“microlending transaction” means a credit agreement, irrespective of its form, in terms of which a microlender—

- (a) advances money to another party;
- (b) all or part of the loan is deferred;
- (c) interest, fees or other charges are payable to the microlender in respect of the amount that has been deferred;

- (d) the principal debt under the transaction does not exceed the amount of N\$100 000 or such other amount as may be determined by the Minister under section 7(2);
- (e) the term of the credit agreement does not exceed 60 months or such other period as may be determined by the Minister under section 7(2),

excluding a credit agreement in terms of which the interest rates do not exceed the annual interest rates prescribed by the Minister under section 87;

“Minister” means the Minister responsible for finance;

“mortgage agreement” means a credit agreement, in terms of which a person—

- (a) advances money or grants credit to another;
- (b) registers a mortgage bond over immovable property as security for all amounts due under that agreement;
- (c) all or part of the loan is deferred; and
- (d) interest, fees or other charges are payable to the credit provider in respect of the amount that has been deferred;

“NAMFISA” means the Namibia Financial Institutions Supervisory Authority referred to in section 2 of the NAMFISA Act;

“NAMFISA Act” means the Namibia Financial Institutions Supervisory Authority Act, 2021 (Act No. 3 of 2021);

“pawn transaction” means a credit agreement, irrespective of its form, in terms of which—

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

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

“payment instrument” has the meaning ascribed to it in terms of the Payment System Management Act, 2003 (Act No. 18 of 2003);

“principal debt” means the amount calculated in accordance with section 83(1)(a);

“principal office” means the main place of business of that person or entity;

“public body” means the Government of the Republic of Namibia, any Ministry, Office or Agency thereof, as well as any body created by or under any law to—

- (a) perform a regulatory function; or
- (b) perform a function for the benefit of the public or a part of the public as authorised or required by a law;

“public interest credit agreement” means a credit agreement that meets all the criteria prescribed in terms of section 9;

“reckless credit” means the credit granted to a consumer under a credit agreement entered into under circumstances described in section 66;

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

“regulated financial institution” means a banking institution or a financial institution;

“regulations” means regulations made by the Minister under this Act;

“secured loan” means a credit agreement, irrespective of its form but not including an instalment agreement or mortgage agreement, in terms of which a person—

- (a) advances money or grants credit to another;
- (b) retains, or receives a pledge to any movable property or other thing of value as security for all amounts due under that agreement;
- (c) all or part of the loan is deferred; and

- (d) interest, fees or other charges are payable to the credit provider in respect of the amount that has been deferred;

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

“settlement value” means the amount in respect of a credit agreement that is required to be paid on a particular date to satisfy all the consumer’s financial obligations to the credit provider, as calculated in accordance with section 108(2) or (3);

“sms” means a short message service provided through a telecommunication system;

“standards” means the standards issued by the Consumer Credit Regulators under this Act;

“subscriber” means a credit provider or other person that subscribes to receive consumer credit information from a credit bureau;

“temporary increase” with respect to the credit limit applicable to a credit facility, means an increase in circumstances described in section 101(2);

“this Act” includes—

- (a) regulations made, or other subordinate measures made or issued by the Minister, under this Act; and
- (b) standards and other subordinate measures issued by the Consumer Credit Regulators under this Act; and

“utility” means the supply to the public of an essential—

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

Interpretation

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

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

electronic signature as defined in the Electronic Transactions Act, 2019 (Act No. 4 of 2019), provided that the registrant must take reasonable measures to prevent the use of the consumer's electronic or advanced electronic signature for any purpose other than the signing or initialing of the particular document that the consumer intended to sign or initial.

(3) The thresholds determined by the Minister in terms of section 7 continue in effect until subsequent thresholds in terms of that section take 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;
- (b) including the day on or by which the second event is to occur; and
- (c) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraphs (a) and (b) respectively.

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

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

(6) Except as specifically set out in, or necessarily implied by, this Act, the provisions of this Act are not to be construed as—

- (a) limiting, amending, repealing or otherwise altering any provision of any other Act;
- (b) exempting any person from any duty or obligation imposed by any other Act; or
- (c) prohibiting any person from complying with any provision of another Act.

PART B

Purpose, scope and application

Purpose of the Act

3. The purpose of this Act is to promote fair, transparent and responsible market conduct in the consumer credit market, and to protect consumers of credit, by—

- (a) ensuring consistent treatment of different types of consumer credit and different credit providers;
- (b) promoting responsible market conduct by—
 - (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers of credit; and
 - (ii) discouraging reckless credit granting by credit providers;
- (c) promoting fair treatment of consumers in the consumer credit market by balancing the respective rights and obligations of credit providers and consumers;
- (d) addressing imbalances in negotiating power between consumers and credit providers by supporting consumers with—
 - (i) financial literacy and education about credit, consumer rights and obligations;
 - (ii) full disclosure of information and transparency in order to make informed choices; and
 - (iii) protection from deception and from unfair or fraudulent conduct;
- (e) improving reporting of consumer credit information;
- (f) providing for a system of resolution of disputes arising from credit agreements;
- (g) providing for a consistent and harmonised system of debt collection and enforcement;
- (h) promoting the highest standards of conduct of business by credit providers, credit bureaus and debt collectors;
- (i) regulating and supervising credit providers, credit bureaus and debt collectors; and
- (j) reducing and deterring of financial crime.

Scope of the Act

4. (1) Subject to sections 5 and 6, this Act applies to every credit agreement between

parties dealing at arm's length and made, or having an effect, within Namibia, except—

- (a) a credit agreement in terms of which the consumer is—
 - (i) a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1);
 - (ii) a public body;
- (b) a credit agreement in terms of which the credit provider is the Bank of Namibia; or
- (c) a credit agreement in respect of which the principal office of the credit provider is located outside Namibia.
- (2) For greater certainty in applying subsection (1)—
 - (a) in any of the following arrangements, the parties are not dealing at arm's length:
 - (i) a shareholder loan or other credit agreement between a juristic person, as consumer, and a person who has a controlling interest in that juristic person, as credit provider;
 - (ii) a loan to a shareholder or other credit agreement between a juristic person, as credit provider, and a person who has a controlling interest in that juristic person, as consumer;
 - (iii) a credit agreement between natural persons who are in a familial relationship and—
 - (aa) are co-dependent on each other; or
 - (bb) one is dependent upon the other;
 - (iv) a credit agreement between persons who are in an employer-employee relationship and the extension of the credit does not fall within the employer's ordinary course of business; and
 - (v) any other arrangement—
 - (aa) in which each party is not independent of the other and consequently

does not necessarily strive to obtain the utmost possible advantage out of the transaction; or

- (bb) that is of a type that has been held in law to be between parties who are not dealing at arm's length;
- (b) the asset value or annual turnover of a juristic person at the time a credit agreement is made, is the value stated as such by that juristic person at the time it applies for or enters into that agreement;
- (c) a juristic person is related to another juristic person if—
 - (i) one of them has direct or indirect control over the whole or part of the material business of the other; or
 - (ii) a person has direct or indirect control over both of them; and
- (d) this Act applies to a credit guarantee only to the extent that this Act applies to a credit facility or credit transaction in respect of which the credit guarantee is granted.
- (3) The application of this Act in terms of subsection (1) extends to a credit agreement or proposed credit agreement irrespective of whether the credit provider, subject to subsection (1)(b), is a public body.
- (4) If this Act applies to a credit agreement—
 - (a) it continues to apply to that agreement even if a party to that agreement ceases to reside or have its principal office within Namibia; and
 - (b) it applies in relation to every transaction, act or omission under that agreement, whether that transaction, act or omission occurs within or outside Namibia.
- (5) If a person sells any goods or services and accepts, as full payment for those goods or services—
 - (a) a payment instrument upon which payment is subsequently refused for any reason; or
 - (b) a charge by or on behalf of the buyer against a credit facility in terms of which a third person is the credit provider, and that credit provider subsequently refuses that charge for any reason,

the resulting debt owed to the seller by the issuer of that payment instrument or charge does not constitute a credit agreement for any purpose of this Act.

- (6) Despite any other provision of this Act—
 - (a) if a consumer pays fully or partially for goods or services through a charge against a credit facility that is provided by a third party, the person who sells the goods or services must not be regarded as having entered into a credit agreement with the consumer merely by virtue of that payment; and
 - (b) if an agreement provides that a supplier of a utility or other continuous service—
 - (i) will defer payment by the consumer until the supplier has provided a periodic statement of account for that utility or other continuous service; and
 - (ii) will not impose any charge contemplated in section 85 in respect of any amount so deferred, unless the consumer fails to pay the full amount due within at least 30 calendar days after the date on which the periodic statement is delivered to the consumer,

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

(7) In respect of an advertisement concerning credit, or in respect of a credit agreement or proposed credit agreement to which this Act applies, if there is an inconsistency between a provision of this Act read with any relevant definition or a provision of the Electronic Transactions Act, 2019 (Act No. 4 of 2019)—

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

Limited application of the Act to incidental credit agreements

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

- (a) Chapters 1, 2, 7, 8 and 9;
 - (b) from Chapter 3, sections 35 and 44;
 - (c) from Chapter 4, Parts A and B;
 - (d) from Chapter 5, Part C, subject to subsection (3)(a);
 - (e) from Chapter 5, Parts D and E, once the incidental credit agreement is deemed to have been made in terms of subsection (2); and
 - (f) from Chapter 6, Parts A and C.
- (2) The parties to an incidental credit agreement are deemed to have made that agreement on the date that—
- (a) the supplier of the goods or services that are the subject of that account, first charges a late payment fee or interest in respect of that account; or
 - (b) a predetermined higher price for full settlement of the account first becomes applicable, unless the consumer has fully paid the settlement value before that date.
- (3) A person may only charge or recover a fee, charge or interest—
- (a) in respect of a deferred amount under an incidental credit agreement as provided for in section 83(1)(d), (f) and (g) subject to any maximum rates of interest or fees imposed in terms of section 87; or
 - (b) in respect of an unpaid amount contemplated in paragraph (a) of the definition of “incidental credit agreement” only if the credit provider has disclosed, and the consumer has accepted, the amount of such a fee, charge or interest, or the basis on which it may become payable, on or before the date on which the relevant goods or services were supplied.

Limited application of the Act when consumer is juristic person

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

- (a) from Chapter 4, Parts C and D; and

- (b) from Part A of Chapter 5, section 70(1)(b).

Threshold determination and other limitations

7. (1) The Minister must, by regulation, at intervals of not more than five years, determine a monetary asset value or annual turnover threshold for the purpose of section 4(1)(a)(i).

(2) The Minister may, by regulation, determine the maximum permissible principal debt and maximum permissible duration of a microlending transaction pursuant to paragraphs (d) and (e) of the definition of “microlending transaction”.

(3) Any thresholds determined by the Minister in terms of this section takes effect on a date determined by the Minister.

(4) The Minister may, by regulation, prescribe—

(a) the maximum permissible duration of credit agreements; and

(b) the minimum portion of the cash price or other consideration which shall be paid as an initial payment in terms of specified credit agreements.

(5) The Minister may impose, for the purposes of subsection (4), in respect of different credit agreements, different categories of credit agreements and different subcategories of a specific category of credit agreements—

(a) different maximums in respect of the permissible duration of credit agreements; and

(b) different minimum amounts to be paid as initial payments in respect of such credit agreements.

PART C

Classification of credit agreements

Credit agreements

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

(a) a credit facility, as described in subsection (3);

(b) a credit transaction, as described in subsection (4);

- (c) a credit guarantee, as described in subsection (5); or
- (d) any combination of the above.
- (2) An agreement, irrespective of its form, is not a credit agreement if it is—
 - (a) a policy of insurance or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;
 - (b) a lease of immovable property; or
 - (c) a transaction between a friendly society and a member of that friendly society or a cooperative and a member of that cooperative in accordance with the rules of that friendly society or cooperative as the case may be, if profit is not the dominant purpose for entering into the agreement;
- (3) An agreement, irrespective of its form but not including an agreement contemplated in subsection (2) or section 4(6)(b), constitutes a credit facility if, in terms of that agreement—
 - (a) a credit provider undertakes—
 - (i) to supply goods or services or to pay an amount or amounts, as determined by the consumer from time to time, to the consumer or on behalf of, or at the direction of, the consumer; and
 - (ii) either to—
 - (aa) defer the consumer's obligation to pay any part of the cost of goods or services, or to repay to the credit provider any part of an amount contemplated in subparagraph (i); or
 - (bb) bill the consumer periodically for any part of the cost of goods or services, or any part of an amount, contemplated in subparagraph (i); and
 - (b) any charge, fee or interest is payable to the credit provider in respect of—
 - (i) any amount deferred as contemplated in paragraph (a)(ii)(aa); or
 - (ii) any amount billed as contemplated in paragraph (a)(ii)(bb) and not paid within the time provided in the agreement.

(4) An agreement, irrespective of its form but not including an agreement contemplated in subsection (2), constitutes a credit transaction if it is—

- (a) a microlending transaction, pawn transaction or discount transaction;
- (b) an incidental credit agreement, subject to section 5(2);
- (c) an instalment agreement;
- (d) a mortgage agreement or secured loan; or
- (e) any other agreement, other than a credit facility or credit guarantee, 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.

(5) An agreement, irrespective of its form but not including an agreement contemplated in subsection (2), constitutes a credit guarantee if, in terms of that agreement, a person undertakes or promises to satisfy upon demand any obligation of another consumer in terms of a credit facility or a credit transaction to which this Act applies.

(6) If, as contemplated in subsection (1)(d), a particular credit agreement constitutes both a credit facility as described in subsection (3) and a secured loan in terms of subsection (4)(d)—

- (a) subject to paragraph (b), that agreement is equally subject to any provision of this Act that applies specifically or exclusively to either—
 - (i) credit facilities; or
 - (ii) mortgage agreements or secured loans as the case may be; and
- (b) for the purpose of applying section 90, that agreement must be regarded as a credit facility.

Public interest credit agreements

9. (1) The Minister may, by regulation, declare that credit agreements entered into in

specified circumstances, or for specified purposes, or by specified credit providers, during a specific period or until the regulation is repealed, are public interest credit agreements.

(2) The Minister may make a regulation contemplated in subsection (1) in order to promote the availability of credit in circumstances—

- (a) of a state of emergency, natural disaster or similar emergent and grave public interest; or
- (b) that the Minister considers to be in the public interest.

(3) When making a regulation contemplated in subsection (1) the Minister must prescribe the following criteria applicable to determining whether a credit agreement qualifies as a public interest credit agreement—

- (a) the public interest circumstances in which credit may be granted or made available to a consumer;
- (b) the maximum permissible principal debt;
- (c) the maximum permissible duration of the credit agreement; and
- (d) the area in which the consumer under such an agreement must reside or carry on business.

(4) A public interest credit agreement is exempt from the application of Part D of Chapter 4 to the extent that it concerns reckless credit.

CHAPTER 2 CONSUMER CREDIT REGULATORS

Designation of Consumer Credit Regulators

10. (1) NAMFISA and the Bank of Namibia are hereby respectively designated as the Consumer Credit Regulators.

(2) The Minister must, in consultation with the Consumer Credit Regulators, by regulation, demarcate the categories or types of credit providers and other registrants to be regulated and supervised by each respective Consumer Credit Regulator.

(3) The Consumer Credit Regulators are responsible to carry out the functions and exercise the powers—

- (a) set out in this Act; and
 - (b) assigned to them by, or in terms of, this Act.
- (4) In carrying out its functions, the Consumer Credit Regulators may—
- (a) have regard to international developments in the field of provision of credit and consumer financing; and
 - (b) consult any person, organisation or institution with regard to any matter.
- (5) In respect to a particular matter within its jurisdiction or responsibility, the Consumer Credit Regulators may exercise their responsibility by way of an agreement contemplated in section 12(3)(b).

Functions of Consumer Credit Regulators

- 11.** (1) The Consumer Credit Regulators are responsible to regulate the consumer credit market by—
- (a) registering credit providers, credit bureaus and debt collectors;
 - (b) cancelling any registration issued in terms of this Act; and
 - (c) establishing and maintaining registers of registrations contemplated in section 24.
- (2) The Consumer Credit Regulators must enforce this Act by—
- (a) receiving and resolving complaints concerning alleged contraventions of this Act;
 - (b) monitoring the consumer credit market to ensure that prohibited conduct is identified, assessed and prevented;
 - (c) investigating and ensuring that registrants comply with this Act and their respective conditions of registration;
 - (d) undertaking compliance inspections, and issuing and enforcing of directives and administrative sanctions;
 - (e) investigating and evaluating alleged contraventions of this Act; and

- (f) referring to a relevant authority, any concerns regarding the behaviour or conduct of a registrant that may be prohibited.
- (3) The Consumer Credit Regulators are responsible to promote public awareness of consumer credit market conduct matters, by—
 - (a) supporting consumer education measures and collaborating on financial literacy initiatives;
 - (b) providing guidance to the credit market by—
 - (i) issuing explanatory notices on the interpretation of any provision of this Act; or
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; and
 - (c) monitoring consumer credit activities and trends in the consumer credit market.
- (4) The Consumer Credit Regulators are responsible to—
 - (a) advise the Minister on matters of policy relating to consumer credit and standards regarding consumer protection in terms of this Act;
 - (b) report to the Minister annually on—
 - (i) the volume and cost of different types of consumer credit, and related market conduct practices;
 - (ii) the implications on consumer choice in the consumer credit market;
 - (iii) credit availability, price and market conditions, conduct and trends;
 - (iv) market share and market conduct within the consumer credit market;
 - (v) access to consumer credit by consumers;
 - (vi) levels of consumer indebtedness; and
 - (vii) any other matter relating to the consumer credit market;
 - (c) enquire into and report to the Minister on any matter concerning the purposes of

this Act; and

- (d) advise the Minister in respect of any matter referred to it by the Minister.

Relations with other regulatory authorities

12. (1) The Consumer Credit Regulators may engage public bodies and other regulatory authorities in co-operative activities of research, publication, education and on matters of common interest.

(2) The Consumer Credit Regulators may enter into agreements with relevant public bodies and other regulatory authorities that, in terms of any law exercise jurisdiction over consumer credit matters within a relevant industry or sector, to—

- (a) coordinate and harmonise the exercise of jurisdiction over consumer credit matters;
- (b) ensure the consistent application of the principles of this Act; and
- (c) notify the relevant public body and other regulatory authority as the case may be, within the agreed time frame, of the intention to—
 - (i) investigate non-compliance of this Act;
 - (ii) investigate complaints received;
 - (iii) undertake compliance inspections;
 - (iv) issuing and enforcing of directives and administrative sanctions, regarding or involving a person under its jurisdiction.

(3) Public bodies and other regulatory authorities that, in terms of any law exercises jurisdiction over consumer credit matters within a relevant industry or sector—

- (a) must enter into an agreement with the relevant Consumer Credit Regulator pursuant to subsection (2); and
- (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.

(4) The Consumer Credit Regulators may request the public bodies and other regulatory authorities referred to in subsection (2) to submit reports or information related to their

activities to such Consumer Credit Regulator.

(5) The Consumer Credit Regulators may exchange information with similar foreign or international agencies or authorities in terms of international agreements relating to the purpose of this Act.

(6) The Consumer Credit Regulators may liaise with foreign or international agencies or authorities having any objects similar to the functions and powers of the Consumer Credit Regulators.

Appointment of inspectors

13. (1) The accounting officers or an employee duly authorised by the respective accounting officer—

- (a) may appoint suitable employees of NAMFISA or the Bank of Namibia respectively as inspectors; and
- (b) must issue each inspector with a certificate stating that the person has been appointed as an inspector in terms of this Act.

(2) When an inspector performs any function in terms of section 124 or Chapter 8, the inspector must—

- (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (1); and
- (b) show that certificate to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; and
 - (ii) requests to see the certificate.

(3) The accounting officers may appoint or contract with suitably qualified persons to conduct research, audits, inquiries or other investigations on behalf of such Consumer Credit Regulator.

(4) A person appointed in terms of subsection (3) is not an inspector within the meaning of this Act.

CHAPTER 3 CONSUMER CREDIT INDUSTRY REGULATION

PART A

Registration requirements, criteria and procedures

Registration of credit providers

14. (1) Subject to subsections (5), (6) and sections 18 and 19, a person who conducts, or intends to conduct, business in respect of credit agreements to which this Act applies, must apply to be registered as a credit provider.

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

(3) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not registered as such is an unlawful agreement and void to the extent provided for in section 70.

(4) Subject to subsections (5), (6) and sections 18 and 19, the relevant Consumer Credit Regulator must not register a person as a credit provider unless satisfied on reasonable grounds that—

- (a) the registration of the credit provider would not be contrary to this Act or the public interest;
- (b) where the applicant is a natural person, the applicant and other relevant key responsible persons satisfy any qualification, experience, competency and other fit and proper requirements as may be provided for in a standard;
- (c) where the applicant is a juristic person—
 - (i) such juristic person and other relevant key responsible persons satisfy any qualification, experience, competency and other fit and proper requirements as may be provided for in a standard;
 - (ii) the memorandum of association and articles or other foundation documents of the applicant are not inconsistent with this Act;
 - (iii) the direct or indirect control of the entity is not likely to be contrary to the interest of consumers; and
 - (iv) the applicant will be in a position to ensure that its organisational or group

structure will not be such as to hinder effective supervision;

- (d) the applicant has the human, financial and operational resources as may be provided for in a standard to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those resources;
 - (e) the applicant has adopted procedures to ensure that questions, concerns and complaints of consumers are treated fairly and consistently in a timely, efficient and courteous manner, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those procedures;
 - (f) the name of the applicant, the translation of the name, the shortened form or derivative of that name will not be offensive to the community it will serve, or is not similar to, or may be confused with, the name of any business conducted in terms of any existing certificate of registration;
 - (g) in the case of an application for registration as a microlender, each premises on which the intended business is to be conducted, meets the requirements set out in the standards in respect of a licensed premises and will not be in contravention of the applicable town planning requirements in respect of the usage of each such premises;
 - (h) the applicant is registered with the relevant tax authority of Namibia as a taxpayer; and
 - (i) the applicant is in a position to satisfy, within a reasonable time, such requirements as the Consumer Credit Regulator may determine as a condition of the applicant's registration.
- (5) A person may not be registered as a credit provider if that person is engaged in, employed by or acting as an agent for a person that is engaged in—
- (a) the operation of a credit bureau; or
 - (b) debt collection.
- (6) Where a banking institution or building society registered in terms of the Building Societies Act, 1986 (Act No. 82 of 1986) intends to conduct business as a microlender, that banking institution or building society must establish a legal entity separate from the operations of such banking institution or building society to conduct business as a microlender.

(7) Subject to section 30, a credit provider that conducts business in its own name at or from more than one location is required to register only once.

Registration of credit bureaus

15. (1) Subject to subsection (4) and sections 18 and 19, a person must apply to be registered as a credit bureau if that person engages for payment, other than as a credit provider or an employee of a credit provider, in the business of—

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

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

(3) Subject to subsection (4) and sections 18 and 19, the relevant Consumer Credit Regulator must not register a person as a credit bureau unless satisfied on reasonable grounds that—

- (a) the registration of the credit bureau would not be contrary to this Act or the public interest;
- (b) the applicant and all relevant key responsible persons satisfy any qualification, experience, competency and other fit and proper requirements as may be provided for in a standard;
- (c) the memorandum of association and articles or other foundation documents of the

applicant are not inconsistent with this Act;

- (d) the direct or indirect control of the applicant is not likely to be contrary to the interest of consumers;
- (e) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision;
- (f) the applicant has the human, financial and operational resources as may be provided for in a standard to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those resources;
- (g) the applicant has adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated fairly and consistently in a timely, efficient and courteous manner, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those procedures;
- (h) the applicant has a system to enable it to consolidate consumer credit information from credit providers and other sources of consumer credit information and disseminate such information to subscribers;
- (i) the applicant has management processes, covering among other things, the following aspects:
 - (i) operational manuals that ensure the accuracy of the consumer credit information contained in its database, as well as the timely updating of such information;
 - (ii) the software required for operation;
 - (iii) procedure manuals;
 - (iv) proposed security and control measures aimed at preventing misuse or improper management of consumer credit information;
 - (v) an overview of operations including the description of systems, design of the data collection and dissemination including the unique identification system for natural and juristic persons that is adequate to ease the collection of data and handling of the database;
 - (vi) a description of the premises of the applicant and its suitability for customer

- services and the description of the security measures to be adopted;
- (vii) sample formats of consumer credit information and credit reports that a credit bureau may supply to subscribers; and
 - (viii) a prototype of the final product that demonstrates the principal features and functions of the system;
- (j) the name of the applicant, the translation of the name, the shortened form or derivative of that name will not be offensive to the community it will serve, or is not similar to, or may be confused with, the name of any business conducted in terms of any existing certificate of registration;
 - (k) the applicant is registered with the relevant tax authority of Namibia as a taxpayer; and
 - (l) the applicant is in a position to satisfy, within a reasonable time, such requirements as the Consumer Credit Regulator may determine as a condition of the applicant's registration.
- (4) A person may not be registered as a credit bureau if any person who has a controlling interest in the applicant is—
- (a) a credit provider;
 - (b) a debt collector; or
 - (c) a person who conducts any disqualified business prescribed in terms of subsection (5).
- (5) The Minister may, by regulation, declare any business activity disqualified as contemplated in subsection (4)(c) if that business activity is inconsistent with the function of operating an independent and objective credit bureau.
- (6) A credit bureau may not, apart from its own business of selling credit reports—
- (a) sell;
 - (b) lease;
 - (c) transfer title of its consumer credit information; or

- (d) transfer any file,

unless such sale, lease or transfer is done to another credit bureau with the approval of the relevant Consumer Credit Regulator.

(7) Nothing contained in this Act may prevent a credit bureau from doing market segmentation and sell aggregated consumer credit information, but personal information of consumers or prospective consumers may not be disclosed.

(8) Subject to section 30, a credit bureau that conducts business in its own name at or from more than one location is required to register only once.

Registration of debt collectors

16. (1) Subject to subsections (5), (6) and sections 18 and 19, a person who conducts, or intends to conduct, business as a debt collector must apply to be registered.

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

(3) Subject to subsections (5), (6) and sections 18 and 19, the relevant Consumer Credit Regulator must not register a person as a debt collector unless satisfied on reasonable grounds that—

- (a) the registration of the debt collector would not be contrary to this Act or the public interest;
- (b) the applicant and all relevant key responsible persons satisfy any qualification, experience, competency and other fit and proper requirements as may be provided for in a standard;
- (c) the memorandum of association and articles or other foundation documents of the applicant are not inconsistent with this Act;
- (d) the direct or indirect control of the applicant is not likely to be contrary to the interest of consumers; and
- (e) the applicant will be in a position to ensure that its organisational or group structure will not be such as to hinder effective supervision;
- (f) the applicant has the human, financial and operational resources as may be provided

for in a standard to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those resources;

- (g) the applicant has adopted procedures to ensure that questions, concerns and complaints of consumers are treated fairly and consistently in a timely, efficient and courteous manner, or presents to the Consumer Credit Regulator a credible plan to acquire or develop those procedures;
 - (h) the name of the applicant, the translation of the name, the shortened form or derivative of that name will not be offensive to the community it will serve, or is not similar to, or may be confused with, the name of any business conducted in terms of any existing certificate of registration;
 - (i) the applicant is registered with the relevant tax authority of Namibia as a taxpayer; and
 - (j) the applicant is in a position to satisfy, within a reasonable time, such requirements as the relevant Consumer Credit Regulator may determine as a condition of the applicant's registration.
- (4) Debt collectors must—
- (a) maintain appropriate fidelity insurance; and
 - (b) maintain a trust account pursuant to section 31.
- (5) A person may not be registered as a debt collector if that person is engaged in, employed by or acting as an agent for a person that is engaged in—
- (a) the operation of a credit bureau; or
 - (b) credit provision.
- (6) No credit provider shall have any direct or indirect interest, which is inconsistent with the purpose of this Act, in the management or control of the business operations of a debt collector.
- (7) Subject to section 30, a debt collector that conducts business in its own name at or from more than one location is required to register only once.

Application for registration

17. (1) A person who is required to be registered in terms of this Act must submit an application for registration, the form, content and manner thereof, and the application fee payable, as provided for in a standard, to the relevant Consumer Credit Regulator.

(2) The application referred to under subsection (1) must be signed by the person authorised to represent the applicant as well as the principal officer of the applicant and be accompanied by:

- (a) proof of payment of the prescribed non-refundable application fee;
 - (b) such information and documents as required by the standards regarding the nature of the business, the organisational structure and internal procedures covering among other things, the following aspects:
 - (i) ownership, governance and management structure;
 - (ii) characteristics of the consumer credit or services to be provided;
 - (iii) procedures for the handling of questions, concerns and complaints of consumers; and
 - (iv) the proposed fee or cost structure of the applicant; and
 - (c) in the case of an application for registration as a credit provider, such information and documents as required by the standards pertaining to the requirements of section 14(4)(a) – (h); or
 - (d) in the case of an application for registration as a credit bureau, such information and documents as required by the standards pertaining to the requirements of section 15(3)(a) – (k); or
 - (e) in the case of an application for registration as a debt collector, such information and documents as required by the standards pertaining to the requirements of section 16(3)(a) – (i).
- (3) The relevant Consumer Credit Regulator may—
- (a) issue different standards in terms of subsection (2) for different applicants, different categories of applicants and different subcategories of a specific category of applicants;

- (b) reasonably require further information relevant to an application contemplated in subsection (1) and (2); and
- (c) refuse an application if the applicant has not supplied any information required in terms of paragraph (b) within the specified period or such longer period as the Consumer Credit Regulator may permit on good cause shown.

(4) If an application complies with the provisions of this Act and the applicant and relevant key responsible persons meet the criteria set out in this Act for registration, the Consumer Credit Regulator must register the applicant subject to section 20.

Disqualification of natural persons

- 18.** (1) A natural person may not be registered as a credit bureau or debt collector.
- (2) A natural person may not be registered as a credit provider if that person—
- (a) is an unrehabilitated insolvent;
 - (b) is under the age of 18 years;
 - (c) as a result of a court order, is listed on the register of excluded persons in terms of section 77 of the Gaming and Entertainment Control Act, 2018 (Act No. 13 of 2018);
 - (d) is subject to an order of a court holding that person to be mentally unfit or disordered; or
 - (e) does not satisfy the qualification, experience, competency and other fit and proper requirements as required by the standards.
- (3) A natural person may not be registered as a credit provider if such person—
- (a) is not a Namibian citizen; or
 - (b) is not lawfully admitted to Namibia for permanent residence,

and is not resident in Namibia.

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

Disqualification of juristic persons

19. (1) A juristic person may not be registered as a credit provider, credit bureau or debt collector if any key responsible person would be disqualified from individual registration in terms of section 18(2) and (3).

(2) If a key responsible person contemplated in subsection (1) becomes disqualified from individual registration in terms of section 18(2) and (3) after the business concerned was registered in terms of this Act—

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

(3) The provisions of subsection (2), read with the changes required by the context, apply to a natural person who—

- (a) acquires a financial interest in a registrant; or
- (b) assumes the position of a key responsible person with a registrant.

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

(5) A juristic person may not be registered as a credit provider, credit bureau or debt collector if—

- (a) that person has been provisionally or finally been liquidated or wound-up;
- (b) the applicant and all relevant key responsible persons do not satisfy any qualification, experience, competency and other fit and proper requirements as required by the standards; or

- (c) that person is not registered in Namibia in terms of the relevant laws, and such minimum percentage of the member's interest or shareholding as may be prescribed by the Minister, by regulation, is not owned by Namibian citizens or persons lawfully admitted to Namibia for permanent residence.

Conditions of registration

20. (1) The Consumer Credit Regulators, having regard to the purposes of this Act, the circumstances of the application and the applicable criteria, may propose any conditions on the registration of an applicant by delivering a written notice, setting out the proposed conditions and the reasons for them.

- (2) Conditions contemplated in subsection (1) must be—
 - (a) reasonable and justifiable in the circumstances; and
 - (b) in the case of a regulated financial institution, consistent with its licence; or
 - (c) in the case of a public body, consistent with any law applicable to it.

(3) Without limiting the generality of subsections (1) and (2), in the case of an application for registration of a microlender, the Consumer Credit Regulator may impose conditions which—

- (a) prohibit or restrict the conduct of the registered activities on the licensed premises or certain parts of the licensed premises concerned;
- (b) require the applicant to effect alterations or improvements to the licensed premises or parts of the premises relating to the standard of confidentiality of transactions taking place on the licensed premises concerned; and
- (c) pertain to the conducting of other business not related to the microlender's registered activities from the licensed premises or parts of the licensed premises.

(4) An applicant who has received a proposal of conditions must respond to such Consumer Credit Regulator within 20 business days after the date on which the applicant received the proposal, or such longer period as the Consumer Credit Regulator may permit, on good cause shown.

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

- (a) consents to the conditions being imposed, the relevant Consumer Credit 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 relevant Consumer Credit Regulator must consider any response submitted by the applicant and may finally determine the conditions to be imposed, and register the applicant.
- (6) The relevant Consumer Credit Regulator must—
 - (a) inform an applicant in writing of a decision in terms of subsection (5); and
 - (b) provide written reasons for that decision if it has amended a previously proposed condition.

Variation of conditions of registration

21. (1) The relevant Consumer Credit Regulator may review and propose new conditions on any registration—

- (a) upon request by the registrant;
- (b) if at least five years have passed since the Consumer Credit Regulator last reviewed or varied the conditions of registration;
- (c) if the registrant has contravened this Act;
- (d) if the registrant—
 - (i) has not satisfied any conditions attached to its registration;
 - (ii) has not met any commitment or undertaking it made in connection with its registration; or
 - (iii) has breached any prescribed code of conduct applicable to it, and cannot provide adequate reasons for doing so; or
- (e) if the Consumer Credit Regulator, on compelling grounds, deems it necessary for the attainment of the purposes of this Act and efficient enforcement of its functions.

(2) Before imposing a condition in terms of subsection (1)(c) or (d), the Consumer Credit Regulator must provide the registrant with a reasonable opportunity to remedy the

shortcoming in its conduct.

- (3) The Consumer Credit Regulator may impose new or alternative conditions—
 - (a) in the case of a regulated financial institution, only to the extent that the conditions are consistent with its licence; or
 - (b) in the case of a public body, only to the extent that the conditions are consistent with laws applicable to it; and
 - (c) if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review.

Authority and standard conditions of registration

22. (1) A registration issued in terms of this Act authorises the registrant to conduct, engage in, or make available the registered activities.

- (2) It is a condition of every registration issued in terms of this Act that the registrant must—
 - (a) permit the relevant Consumer Credit Regulator or any person authorised by such Consumer Credit Regulator to enter any location or premises at or from which the registrant conducts the registered activities during normal business hours, and to conduct reasonable inquiries for compliance purposes, including any act contemplated in section 128; and
 - (b) comply with every applicable provision of—
 - (i) this Act; and
 - (ii) the Financial Intelligence Act, 2012 (Act No. 13 of 2012).

Certificate, validity and public notice of registration

- 23.** (1) Upon registering an applicant, the relevant Consumer Credit Regulator must—
- (a) issue a certificate of registration to the applicant, and in the case of persons contemplated in sections 14(7), 15(8) and 16(7), duplicate copies of the certificate of registration for each location at or from which that person conducts the registered activities;

- (b) enter the registration in the register pursuant to section 24; and
 - (c) assign a unique registration number to that registrant.
- (2) A registration certificate, or duplicate registration certificate issued in terms of this section must specify—
- (a) the identity of the registrant;
 - (b) the trade name, if any, of the registrant;
 - (c) the activities that the registration permits the registrant to engage in, conduct or make available to the public;
 - (d) any conditions or restrictions imposed in terms of section 20 which—
 - (i) are to be complied with before or within a specified period of time; or
 - (ii) apply for the duration of the registration of the registrant;
 - (e) the term of registration and the expiry date;
 - (f) in the case of a microlender, the licensed premises at or from which that person may conduct the registered activities;
 - (g) in the case of a credit bureau or debt collector, the location at or form which that person may conduct the registered activities; and
 - (h) any other relevant information.
- (3) A valid certificate or duplicate certificate of registration, or a certified copy of it, is *prima facie* proof that the registrant is registered in terms of this Act.
- (4) The term of registration of each registrant expires on March 31 of each year or on such other date as the relevant Consumer Credit Regulator may specify on the certificate of registration, but if the prescribed renewal fee is paid to the relevant Consumer Credit Regulator in the manner set out in the standards, the registration must be renewed for a period of 12 months as from the expiry date.
- (5) If the prescribed renewal fee is not received within the period contemplated in subsection (4), the Consumer Credit Regulators may not renew the registration and must remove the name of the person whose renewal fee was not paid from the register referred to in section 24.

(6) A person who continues to operate, or to engage in, the business of a credit provider, a credit bureau or a debt collector as the case may be, after the non-renewal of registration under subsection (5), commits an offence and is liable on conviction to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and imprisonment.

(7) A registrant must—

- (a) visibly display the certificate or duplicate certificate at each location or licensed premises at or from which the registrant conducts its registered activities;
- (b) reflect its registered status and registration number, in a legible typeface, on all its credit agreements and communications with a consumer or the public; and
- (c) comply with its conditions of registration and the provisions of this Act.

Register of registrations

24. (1) The Consumer Credit Regulators must each establish and maintain a register of all persons who have been registered under this Act, including those whose registration has been altered, cancelled or not renewed.

(2) The Consumer Credit Regulators must make the information contemplated in subsection (1) available to other regulatory authorities and prosecuting or law enforcement authorities upon request.

(3) The Consumer Credit Regulators must—

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

(4) Any person may, at the office of the relevant Consumer Credit Regulator, inspect a copy of a registration certificate issued in terms of this Act upon payment of the prescribed fee.

PART B Administration

Principal office and principal officer

25. (1) Every registrant must have a principal office in Namibia and must appoint a principal officer.

(2) The principal officer—

- (a) must be a natural person who satisfies any qualification, experience, competency and other fit and proper requirements as required by the standards;
- (b) must be a Namibian citizen, or lawfully admitted to Namibia for permanent residence, and is resident in Namibia;
- (c) is, subject to the direction and control of the registrant, primarily responsible for the day-to-day conducting of the registered activities; and
- (d) is responsible for the compliance of the registrant with this Act.

(3) The Consumer Credit Regulators may address any enquiry in relation to a matter connected with the activities of the registrant to the principal officer and the principal officer must reply in writing not later than the date specified by the Consumer Credit Regulator in the communication, or such longer period as the Consumer Credit Regulator may permit on good cause shown.

(4) The Consumer Credit Regulators must, on request and without charge, inform any person of the address of the principal office of a registrant and the name of its principal officer.

(5) Where it becomes necessary, after registration, to change the address of the principal office, the registrant must within 14 calendar days of such change of address, notify the relevant Consumer Credit Regulator in writing.

(6) Should the registrant be necessitated to, at any time, appoint a new principal officer, such appointment must be made within 30 calendar days after the previous appointment came to an end, or such longer period as the Consumer Credit Regulator may permit on good cause shown, and the registrant must, within seven calendar days of the new appointment, in writing, notify the relevant Consumer Credit Regulator.

(7) If a registrant fails to appoint a principal officer or notify the relevant Consumer Credit Regulator on or before the dates determined in subsections (5) and (6), the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(8) An administrative penalty imposed in terms of subsection (7) may provide for interest at a rate not exceeding the rates prescribed by the Minister by regulation, payable from a date determined by the relevant Consumer Credit Regulator.

(9) The administrative penalty payable in terms of subsection (7), and any interest, is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

(10) The principal officer appointed in terms of subsection (6) must, within 30 calendar days of his or her appointment, complete and submit to the relevant Consumer Credit Regulator the required documentation pertaining to the qualification, experience, competency and other fit and proper requirements as required by the standards.

(11) A person disqualified in terms of section 18 may not be appointed as a principal officer under subsections (1) and (6).

Submission of returns

26. (1) A registrant must keep such records relating to its registered activities in the manner and form as may be provided for in a standard.

(2) A registrant must submit to the relevant Consumer Credit Regulator periodical and other returns, statements and reports as required by the standards.

(3) In addition to the requirements of subsection (2), a registered credit bureau must submit to the relevant Consumer Credit Regulator an annual compliance report, certified by an independent auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), addressing the following matters—

- (a) accuracy of data received and reported by it;
- (b) incidence of complaints and complaint resolution;
- (c) adequacy of procedures employed by it to ensure—
 - (i) the accuracy of data received and reported by it;
 - (ii) that confidentiality of data is maintained and all relevant legislation concerning the privacy and confidentiality of information is complied with; and
 - (iii) that complaints are resolved.

(4) If a registrant fails to submit the required return, statement or report referred to in subsections (2) or (3), the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(5) An administrative penalty imposed in terms of subsection (4) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the Consumer Credit Regulator.

(6) The administrative penalty payable in terms of subsection (4), and any interest, is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

Use of name and change of name

27. (1) Every registrant must for all purposes, and in every document issued by the registrant, use the name under which the registrant is registered.

(2) A registrant may not, without prior written approval from the relevant Consumer Credit Regulator—

- (a) change the name under which he, she or it is registered;
- (b) use or refer to him-, her- or itself by a name other than the name under which he, she or it is registered; or
- (c) use or refer to him-, her- or itself by a shortened form or derivative of the name under which he, she or it is registered.

(3) An application for approval of a change of name, use of another name or use of a shortened form or derivative of a name in terms of subsection (2) must be made to the relevant Consumer Credit Regulator, the form and manner of the application and the fee payable as provided for in a standard.

(4) On receipt of an application referred to in subsection (2), and if the relevant Consumer Credit Regulator is satisfied on reasonable grounds that the proposed name does not contravene the requirements of sections 14(4)(f), 15(3)(j) or 16(3)(h) as the case may be, and that the applicant is in compliance with the provisions of any other law applicable to a change of name, the Consumer Credit Regulator must register the applicant under its new name and issue to such applicant a new certificate of registration under that name.

Purchase, amalgamation or transfer of business

28. (1) Any person who wishes to purchase the beneficial ownership of a registrant, or any registrant who intends to amalgamate his, her or its business with that of another registrant, or any registrant who intends to transfer any part of his, her or its business to another person or a registrant, must apply to the relevant Consumer Credit Regulator, the form and manner of the application and the fee payable as provided for in a standard, for written approval prior to conducting such purchase, amalgamation or transfer.

(2) The relevant Consumer Credit Regulator may, if it is of the opinion that it is reasonable to do so and not against the public interest, approve the application but subject to such conditions as the Consumer Credit Regulator may impose under section 20.

Conducting of other business on licensed premises

29. (1) A microlender who intends to conduct any other business not related to the microlender's registered activities from the licensed premises or parts of the licensed premises, must apply for prior written approval from the relevant Consumer Credit Regulator to conduct such other business on the licensed premises or parts of the licensed premises.

(2) An application for approval referred to in subsection (1) must be made to the relevant Consumer Credit Regulator, the form and manner of the application and the fee payable as provided for in a standard.

(3) On receipt of an application referred to in subsection (2), and if the relevant Consumer Credit Regulator is satisfied on reasonable grounds that the proposed other business will not contravene the provisions of this Act or be contrary to the public interest, the Consumer Credit Regulator may approve such application subject to such conditions as the Consumer Credit Regulator may impose on the registration of the registrant in terms of section 20.

(4) A microlender must keep—

- (a) a separate bank account for the microlender's registered activities when conducting other business not related to the microlender's registered activities from the licensed premises or parts of the licensed premises; and
- (b) the banking records of the microlender's registered activities separate from that of the other business.

Opening of additional branches

30. (1) A registrant may not, without the prior written approval from the relevant Consumer Credit Regulator, open additional branches.

(2) An application for approval referred to in subsection (1) must be made to the relevant Consumer Credit Regulator, the form and manner of the application and the fee payable as provided for in a standard.

(3) On receipt of an application referred to in subsection (2), and if the Consumer Credit Regulator is satisfied on reasonable grounds that—

- (a) in the case of an application by a microlender, the premises upon which the intended additional branch is to be conducted meets the requirements set in the standards in respect of a licensed premises and will not be in contravention of the applicable town planning requirements in respect of the usage of the premises;
- (b) the registrant is in full compliance with the provisions of this Act; and
- (c) the intended additional branch is not contrary to public interest,

the Consumer Credit Regulator may approve such application subject to such conditions as the Consumer Credit Regulator may impose on the registration of the registrant in terms of section 20.

(4) If the Consumer Credit Regulator approves the opening of an additional branch in terms of subsection (3), the registrant must appoint a branch manager within 30 calendar days from the date of approval or such longer period as the Consumer Credit Regulator may permit on good cause shown, and the registrant must, within seven calendar days of the appointment, in writing, notify the Consumer Credit Regulator.

(5) Should the registrant be necessitated to, at any time, appoint a new branch manager, such appointment must be made within 30 calendar days after the previous appointment came to an end or such longer period as the Consumer Credit Regulator may permit on good cause shown, and the registrant must, within seven calendar days of the new appointment, in writing, notify the Consumer Credit Regulator.

(6) If a registrant fails to appoint a branch manager or notify the Consumer Credit Regulator on or before the dates determined in subsection (4) or (5), the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(7) An administrative penalty imposed in terms of subsection (6) may provide for interest at a rate not exceeding the rates prescribed by the Minister by regulation, payable from a date determined by the relevant Consumer Credit Regulator.

(8) The administrative penalty payable in terms of subsection (6), and any interest, is a

debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

(9) The branch manager must be a natural person who meets the qualification, experience, competency and other fit and proper requirements as required by the standards.

(10) The appointed branch manager must, within 30 calendar days of his or her appointment, complete and submit to the relevant Consumer Credit Regulator the required documentation pertaining to the fit and proper criteria as required by the standards.

(11) A person disqualified in terms of section 18 may not be appointed as a branch manager under subsections (4) and (5).

Trust accounts to be kept by debt collectors

31. (1) A debt collector must open and maintain a separate trust account at a banking institution and must deposit therein, as soon as is possible after receipt thereof, the money received or held by the debt collector on behalf of any person.

(2) The money deposited in terms of subsection (1) must be paid within a reasonable or agreed time to the person on whose behalf the money is received or held: Provided that a statement, containing a complete exposition of all credits and debits reflected in the said account, must be delivered to that person at least once a month.

(3) All interest, if any, on money deposited in terms of subsection (1) must be paid to the relevant Consumer Credit Regulator at such intervals and in the manner as may be prescribed by the Minister by regulation.

(4) A debt collector must keep proper accounting records in respect of all money received, held or paid by the debt collector on behalf of or to any other person.

(5) A debt collector must cause the trust account and accounting records in respect of all money received, held or paid by the debt collector on behalf of or to any other person to be audited annually by an independent auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and report to the Consumer Credit Regulator thereon.

(6) No amount standing to the credit of a trust account contemplated in subsection (1) shall form part of the assets of the debt collector or may be attached on behalf of any creditor of such debt collector.

(7) If a debt collector is liquidated, placed under judicial management, whether provisionally or finally, has its registration cancelled or ceases to practice, the Consumer Credit

Regulator—

- (a) must take control over, administer and finalise the trust account contemplated in subsection (1); or
- (b) may make an application to the Master of the High Court to appoint a curator bonis to control, administer and finalise that account.

Data management and quality control by credit bureaus

32. (1) A credit bureau must take all reasonable precautions to ensure that all consumer credit information received or collected is—

- (a) properly and accurately recorded, maintained, collected and classified, processed, updated and consolidated in order to provide a comprehensive representation on a consumer or prospective consumer;
- (b) protected against loss by ensuring availability of data back up and disaster recovery facilities; and
- (c) protected against unauthorised access, use, modification or disclosure.

(2) A credit bureau must—

- (a) implement strict quality control procedures to ensure the maximum accuracy of its database and the continuity of its services;
- (b) utilise the information collected solely for the purposes set out in this Act;
- (c) take all necessary steps to ensure that consumer credit information maintained is—
 - (i) current;
 - (ii) authentic;
 - (iii) legitimate;
 - (iv) reliable;
 - (v) accurate; and
 - (vi) truthful;

- (d) take measures necessary to correct consumer credit information in its database that is contrary to provisions of this Act or are inaccurate or no longer valid;
 - (e) maintain rigorous standards of security and reliability; and
 - (f) protect data against any loss, corruption, destruction, misuse, undue access or disclosure.
- (3) Credit providers and any other sources of consumer credit information must—
- (a) enter into agreements with credit bureaus that stipulate the conditions for supplying, obtaining and using consumer credit information, which agreement may not be inconsistent with this Act; and
 - (b) undertake to provide complete, accurate and timely consumer credit information.

Codes of Conduct

33. (1) The Consumer Credit Regulators may, in a standard, determine minimum requirements in respect of codes of conduct applicable to registrants only after the relevant Consumer Credit Regulator has—

- (a) published the draft proposed requirements for comment; and
- (b) considered any submissions made during the comment period.

(2) The Consumer Credit Regulators may determine different minimum requirements in respect of the codes of conduct in terms of subsection (1) for different registrants, different categories of registrants and different subcategories of a specific category of registrants.

(3) A code of conduct must be consistent with the purposes of this Act.

(4) The relevant Consumer Credit Regulator—

- (a) must monitor the effectiveness of any code of conduct; and
- (b) may reasonably require persons conducting business within the relevant industry to provide information necessary for the purposes of—
 - (i) monitoring in terms of paragraph (a); or

- (ii) reviewing the effectiveness of a code of conduct relative to the purposes of this Act.

(5) A registrant must not, in the ordinary course of business, contravene an applicable code of conduct.

Agents

34. (1) A credit provider, debt collector or credit bureau must ensure that their managers, employees or agents are trained in respect of the matters to which this Act applies.

(2) The Consumer Credit Regulators may provide, in a standard, for the minimum requirements and standards for the training contemplated in subsection (1).

(3) The Consumer Credit Regulators may prescribe different minimum requirements and standards in terms of subsection (2) for different registrants, different categories of registrants and different subcategories of a specific category of registrants.

(4) Until a standard envisaged in subsection (2) has been issued, credit providers, debt collectors and credit bureaus must ensure that their managers, employees or agents are trained to such an extent that they can comply with the objectives of this Act.

(5) If a credit provider makes use of agents for solicitation, completion or conclusion of credit agreements—

(a) the agents must show an identification card to any person with whom the agent interacts in the solicitation, completion or conclusion of credit agreements; and

(b) the credit provider must maintain a register of all agents.

(6) If a person who is not a manager, employee or agent of a credit provider, solicits, completes or enters into a credit agreement for, or on behalf of, a credit provider—

(a) that person must be identified by name and identity number in the credit agreement;

(b) that person must disclose to the consumer in writing the amount of any fee, commission or other amount that will be paid by the credit provider to such person; and

(c) any fee, commission or other amount to be charged to the consumer must not exceed the prescribed amount in respect of an initiation fee.

PART C

Regulation and supervision

Restricted activities by unregistered persons

35. (1) Subject to subsection (2), the relevant Consumer Credit Regulator may issue a notice to any person who, or association of persons that—

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

requiring that person or association to stop engaging in, offering to engage in or holding themselves out as authorised to engage in, that activity.

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

- (3) A notice contemplated in subsection (1) must set out—
 - (a) the name of the person or association to whom the notice applies;
 - (b) details of the nature and extent of the activity concerned;
 - (c) the date from which the unregistered person or association must discontinue engaging in that activity;
 - (d) the basis of the opinion that the person or association engaging in that activity is required to be registered; and
 - (e) any penalty that may be imposed in terms of this Act if the person fails to discontinue that activity.
- (4) Subject to section 44, a notice issued in terms of this section remains in force until—
 - (a) a registration certificate is issued to the person to whom the notice was issued; or
 - (b) the notice is set aside by the relevant appeal board or a court upon an appeal or review of that appeal board's decision concerning the notice.

- (5) A person who, or association of persons that—
 - (a) engages in an activity that, in terms of this Act, requires registration, or offers to engage in such an activity, or holds themselves out as authorised to engage in such an activity; and
 - (b) is not registered in terms of this Act to engage in that activity,

commits an offence and is liable, on conviction, to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and imprisonment.

Power of Consumer Credit Regulators to remove key responsible persons

36. (1) If a key responsible person of a registrant is not in compliance with this Act, or no longer satisfies the qualification, experience, competency or other fit and proper requirements as required by the standards, the Consumer Credit Regulators may, after giving the registrant and the person concerned an opportunity to be heard, direct the removal of that person from office and the appointment of another person in his or her place.

(2) Before taking action pursuant to subsection (1) in respect of a regulated financial institution or public body, the Consumer Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution or with the public body.

(3) The Consumer Credit Regulators may, upon receipt of a written request made by a registrant before the date determined in terms of subsection (1) and on good cause shown, in writing grant an extension of time to the registrant for the removal of that person from office, subject to such conditions as the Consumer Credit Regulators may impose.

(4) If a registrant fails to comply with the directive of the relevant Consumer Credit Regulator in terms of subsection (1) or within the extended period of time, if any, granted under subsection (3), the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(5) An administrative penalty imposed under subsection (4) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the Consumer Credit Regulator.

(6) The administrative penalty payable in terms of subsection (4) and any interest, is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

Declaration of practices as irregular or undesirable

37. (1) The Consumer Credit Regulator may, by notice in the *Gazette*, declare a specific practice or method of conducting business as irregular or undesirable.

(2) Before issuing a notice in terms of subsection (1) that will have an effect on a regulated financial institution or public body, the Consumer Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution or with the public body.

(3) In determining whether to issue the declaration referred to subsection (1), the Consumer Credit Regulator must consider whether the practice concerned, directly or indirectly, has or is likely to have the following effects:

- (a) harming the relations between registrants, consumers or prospective consumers;
- (b) unreasonably prejudicing a consumer or prospective consumer;
- (c) deceiving or unfairly affecting a consumer or prospective consumer; or
- (d) if the practice is allowed to continue, whether one or more of the purposes of this Act will, or is likely to be, defeated.

(4) A registrant may not, on or after the issue of the notice referred to in subsection (1), carry on a business practice or method of conducting business that has been declared as irregular or undesirable.

(5) The Consumer Credit Regulators may by notice to the registrant concerned, direct a registrant which carries on an irregular or undesirable practice or an undesirable method of conducting business practice or method of conducting business after the issue of the notice referred to in subsection (1), to rectify or repay, to the satisfaction of the Consumer Credit Regulator, any damage or other undesirable consequence which was caused by, or arose out of, that business practice or method of conducting business.

(6) A registrant who is directed to rectify or repay any damage or undesirable consequence in terms of subsection (5) must do so within 60 calendar days after the registrant is so directed.

(7) If a registrant fails to comply with the notice issued in terms of subsection (1) or with a directive issued in terms of subsection (5) the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(8) An administrative penalty imposed under subsection (7) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the relevant Consumer Credit Regulator.

(9) The administrative penalty payable in terms of subsection (7) and any interest is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

Power of the Consumer Credit Regulators to verify information

38. The Consumer Credit Regulators may verify any information at the disposal of the Consumer Credit Regulators by making enquiries from any public body, credit bureau or any other source of information, or by obtaining evidence from such other person.

Directives

39. (1) The relevant Consumer Credit Regulator may issue a written directive to a registrant, when satisfied on reasonable grounds, that the registrant—

- (a) is contravening, or has contravened, a provision of this Act;
- (b) is engaging, or has engaged, in an activity in a manner that is inconsistent with this Act;
- (c) is undertaking, or has undertaken, an act or cause of action, or is about to undertake an act or cause of action, that may prejudice consumers or prospective consumers; or
- (d) has failed to comply with a condition of his, her or its registration.

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

(3) Without limiting the generality of subsection (1), the Consumer Credit Regulators may issue a directive with respect to—

- (a) the furnishing to the Consumer Credit Regulators of any information or documents in the possession or under the control of the registrant or any key responsible person within the period specified in the directive;
- (b) the removal of a key responsible person from office and the appointment of another

person;

- (c) the prohibition or restriction of a key responsible person from performing specified activities;
- (d) requiring the registrant to undertake a specified act, or to refrain from undertaking a specified act in order to remedy the effects of a contravention of this Act and to ensure that the registrant does not commit any further contraventions of this Act; and
- (e) any other matter which under this Act is required or permitted to be determined by directive.

(4) The Consumer Credit Regulators may revoke a directive at any time by notice to the registrant concerned.

(5) If a registrant fails to comply with a directive of the relevant Consumer Credit Regulator in terms of subsection (1), the registrant is liable to pay a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.

(6) A administrative penalty imposed in terms of subsection (5) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by Consumer Credit Regulator.

(7) The administrative penalty payable in terms of subsection (5) and any interest is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

Administrative sanctions

40. (1) The relevant Consumer Credit Regulator may impose administrative sanctions referred to in subsection (5) on any registrant, when satisfied on reasonable grounds, that the registrant—

- (a) is contravening, or has contravened, a provision of this Act;
- (b) is engaging, or has engaged, in an activity in a manner that is inconsistent with this Act;
- (c) is undertaking, or has undertaken, an act or cause of action that may prejudice consumers or prospective consumers; or

(d) has failed to comply with a condition of registration.

(2) Before imposing an administrative sanction on a regulated financial institution or public body, the Consumer Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution or with the public body.

(3) Before imposing an administrative sanction referred to in subsection (5), the Consumer Credit Regulator must give the registrant notice in writing—

- (a) of the nature of the alleged non-compliance;
- (b) of the intention to impose an administrative sanction;
- (c) of the amount or particulars of the intended administrative sanction; and
- (d) advise that the registrant may, in writing, within a period specified in the notice, make representations as to why the administrative sanction should not be imposed.

(4) In determining an appropriate administrative sanction, the Consumer Credit Regulator must consider the following factors—

- (a) the nature, duration, seriousness and extent of the relevant non-compliance;
- (b) whether the registrant has previously failed to comply with any law;
- (c) any remedial steps taken by the registrant to prevent a recurrence of the non-compliance;
- (d) any loss or damage suffered as a result of the contravention or the level of profit derived from the contravention; and
- (e) any other relevant factor, including mitigating factors.

(5) After considering any representations and the factors referred to in subsection (4), the Consumer Credit Regulator may—

- (a) give the registrant a written warning;
- (b) issue a directive to the registrant requiring the registrant to undertake a specified act or to refrain from undertaking a specified act in order to—
 - (i) remedy the effects of the contravention and;

- (ii) ensure that the registrant does not commit any further contraventions of the Act;
- (c) require the registrant to establish compliance programs, corrective advertising or changes in the management practices of the registrant;
- (d) vary the conditions of the registrant's registration, inclusive of the imposition of new or additional conditions pursuant to section 20;
- (e) impose a financial penalty not exceeding N\$10 000 000, payable by that registrant to the Consumer Credit Regulator in the manner as may be specified; or
- (f) subject to section 41, cancel the registration of the registrant.
- (6) The Consumer Credit Regulator may—
 - (a) direct that a financial penalty must be paid by a natural person or person for whose actions the registrant is accountable in law, if that person or persons was or were personally responsible for the non-compliance; and
 - (b) suspend any part of any administrative sanction on any conditions the Consumer Credit Regulator considers appropriate for a period not exceeding five years.
- (7) On imposing the administrative sanctions the Consumer Credit Regulator must, in writing, notify the registrant of—
 - (a) the decision and the reasons therefor;
 - (b) in the case of a financial penalty, the amount payable and the period within which the penalty must be paid to the Consumer Credit Regulator; and
 - (c) the right to appeal against the decision in accordance with section 44.
- (8) A financial penalty imposed in terms of subsection (5)(e) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the Consumer Credit Regulator.
- (9) The financial penalty in terms of subsection (5)(e), and any interest, is a debt due to the relevant Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 43.

(10) Unless the Consumer Credit Regulator is of the opinion that there are exceptional circumstances present that justify the preservation of the confidentiality of any decision, the Consumer Credit Regulator must make public the decision and the nature of any sanction imposed if—

- (a) the registrant does not appeal against a decision of the Consumer Credit Regulator within the required period; or
- (b) the appeal board confirms the decision of the Consumer Credit Regulator.

Cancellation of registration

41. (1) A registration in terms of this Act may be cancelled by the relevant Consumer Credit Regulator, if the registrant—

- (a) fails to comply with any condition of its registration; or
- (b) contravenes this Act.

(2) Before taking action pursuant to subsection (1) in respect of a regulated financial institution or public body, the Consumer Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution or with the public body.

(3) If a registrant's registration is cancelled, the relevant Consumer Credit Regulator must notify the registrant in writing of—

- (a) the cancellation;
- (b) the reasons for the cancellation;
- (c) the right to appeal against the decision in accordance with section 44; and
- (d) the effective date of cancellation.

(4) Subject to such conditions as the Consumer Credit Regulator may impose, the Consumer Credit Regulator may provisionally suspend the registration or a registrant without giving notice and an opportunity to be heard if the Consumer Credit Regulator is satisfied on reasonable grounds that it is urgently necessary to do so in order to prevent or mitigate damage to the interests of consumers, but the Consumer Credit Regulator must—

- (a) give the registrant notice and an opportunity to be heard and make representations as soon as reasonably possible; and

- (b) having considered any representations received, determine whether the provisional suspension should be continued until further conditions can be imposed or registration cancelled.
- (5) If a registration is cancelled in terms of this section or section 42, the relevant Consumer Credit Regulator must—
 - (a) cancel the registration certificate; and
 - (b) amend the register referred to in section 24 accordingly.
- (6) A registrant whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.
- (7) The obligations of—
 - (a) a registrant under this Act, or under any credit agreement in respect of which it is the credit provider, survive any suspension or cancellation of its registration; and
 - (b) a consumer under a credit agreement survive the suspension or cancellation of the credit provider's registration.
- (8) A person who continues to operate, or engage in, the business of a registrant after the cancellation of registration under subsection (4), commits an offence and is liable, on conviction, to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and imprisonment.

Voluntary cancellation of registration

- 42.** (1) A registrant may voluntarily request that his, her or its registration be cancelled by—
- (a) submitting an application to the relevant Consumer Credit regulator—
 - (i) stating the registrant's intention to voluntarily cancel his, her or its registration;
 - (ii) specifying the reasons for such cancellation;
 - (iii) confirming that the registered activities have ceased or will cease at a specified date; and

- (iv) the date, at least 30 calendar days after the date of the notice, on which the cancellation shall take effect;
 - (b) attaching to the said application proof that all the affected persons have been notified about the intended cancellation; and
 - (c) attaching to the said application the original registration certificate and any duplicate copies of registration certificates issued to that registrant by the Consumer Credit Regulator.
- (2) Where a credit bureau ceases to operate for any reason, the data, provided to the credit bureau by credit providers or other sources of consumer credit information, stored in the database of the credit bureau must be surrendered to the relevant Consumer Credit Regulator without any compensation.
- (3) The Consumer Credit Regulator may make information in the database referred to in subsection (2) available to another registered credit bureau.

Debts due to the Consumer Credit Regulators

- 43.** (1) Any administrative penalty, levy, financial penalty or interest payable under this Act is, when it becomes due and payable, a debt due to the relevant Consumer Credit Regulator and may be recovered by such Consumer Credit Regulator in the manner provided for in this section.
- (2) Subject to subsection (4), if a registrant fails to pay any administrative penalty, levy, financial penalty or interest in accordance with the provisions of this Act when it becomes due and payable, the relevant Consumer Credit Regulator may file with the clerk or registrar of a court of competent jurisdiction a statement certified by it as correct stating—
- (a) the amount of the administrative penalty, levy or financial penalty as the case may be, and any interest that has accrued to the Consumer Credit Regulator, as well as any payments made by the registrant, if any;
 - (b) the date on which the debt was due;
 - (c) the amount still outstanding; and
 - (d) the name and address of the registrant.
- (3) A statement filed under subsection (2) must be registered by the clerk or registrar

of the court and has, for all purposes, the effect of, and any proceedings may be taken thereon as if it were, a civil judgment of the court at which that statement had been so filed, in favour of the Consumer Credit Regulator for a liquid debt in the amount specified in that statement.

(4) The Consumer Credit Regulator must before filing a statement in terms of subsection (2), serve a notice accompanied by a copy of that statement on the registrant concerned, informing the registrant of its intention to file such a statement after a lapse of 30 calendar days after having served such notice and must give the registrant an opportunity to be heard by making representations to such Consumer Credit Regulator about the matter before the expiry of the 30 calendar days.

(5) The Consumer Credit Regulators may by notice in writing, addressed to the clerk or registrar of the relevant court, withdraw any statement filed with that clerk or registrar and that statement ceases to have any effect.

(6) The Consumer Credit Regulators may institute proceedings afresh under subsection (2) in respect of any administrative penalties, levies, financial penalties or interest to which a statement withdrawn under subsection (5) relates.

Appeal of decisions

44. (1) A person affected by a decision of an administrative or enforcement nature made by a Consumer Credit Regulator in terms of a power conferred or a duty imposed on it by or under this Act, may appeal to the relevant appeal board, which appeal board have primary jurisdiction to hear and determine appeals brought under this Act.

(2) The relevant appeal board may make an order confirming or setting aside the decision in whole or in part.

(3) An appeal must be lodged with the relevant appeal board referred to in subsection (1) within the period, in the manner and on payment of the fees as provided for in the applicable legislation.

CHAPTER 4 CONSUMER CREDIT POLICY

PART A Consumer rights

Right to apply for credit

45. (1) Save as is provided in this Act, every adult natural person, aged 18 years and above,

and every juristic person or association of persons, has a right to apply to a credit provider for credit.

(2) Subject to section 67, a credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on the basis of commercial grounds that are consistent with its risk management and underwriting practices.

(3) Subject to section 74(2), nothing in this Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person.

Right to reasons for credit being refused

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

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

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

Right to information in official, plain and understandable language

47. (1) A consumer has a right to receive any document that is required in terms of this Act in the official language.

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

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

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

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

(4) The Consumer Credit Regulators may provide guidelines, in a standard, for methods of assessing whether a document satisfies the plain language requirements.

Right to receive documents

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

(2) The Consumer Credit Regulators may provide, in a standard, for the manner in which a particular document must be delivered to a consumer.

(3) If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must make the document available to the consumer through one or more of the following mechanisms—

- (a) in person at the business premises of the registrant, or at any other location designated by the consumer but at the consumer's expense, or by ordinary mail;
- (b) by fax;
- (c) by email; or
- (d) by printable web-page or web-link.

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

- (5) On request from the consumer the registrant must provide the consumer with—
 - (a) a single replacement copy of a document required in terms of this Act, without charge to the consumer, at any time within a year after the date for original delivery of that document; and
 - (b) any other replacement copy, subject to any search and production fees which may be prescribed by the Minister by regulation.

Protection of consumer credit rights

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

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

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

- (a) 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
- (b) take any action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement.

(3) In addition to the provisions of this Act on the protection of consumers, the Consumer Credit Regulators may make provision for further principles on treating consumers or prospective consumer fairly, in a standard.

Prohibited conduct by credit provider

50. (1) A credit provider must not—
- (a) require a consumer or prospective consumer to sign any blank or incomplete documents, inclusive of an acknowledgment of debt or a consent to judgment or any document in terms of which the consumer or prospective consumer waives any legal rights during the application process or at the time of entering into the credit agreement;
 - (b) solicit or accept deposits from the public in contravention of the Banking Institutions Act;
 - (c) retain or keep in his, her or its possession, or request or demand to retain or keep in his, her or its possession, the consumer or prospective consumer's identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device;
 - (d) require disclosure by the consumer of his, her or its personal identification code or number to be used to access any credit or debit card, bank account or automatic teller machine access card or any similar device; or
 - (e) use a consumer's personal identification code or number to access any credit or debit card, bank account or automatic teller machine access card or any similar device.
- (2) No person shall be a party to a credit agreement or any other agreement or document in terms of which or which has the effect that—
- (a) an earlier credit agreement is cancelled and substituted by a later credit agreement and the goods or service, or any part thereof, to which that earlier agreement relates; or
 - (b) any money or other consideration paid or delivered in terms of that earlier credit agreement,

serves as an initial payment in respect of the goods or service to which that later credit agreement relates.

(3) A credit agreement shall not be binding until the consumer has paid at least the prescribed initial payment, if any.

(4) For the purpose of subsection (3)—

- (a) payment of the initial payment may be affected wholly or partly in goods;
 - (b) payment in goods to the extent that the value placed thereon for the purposes of such payment exceeds a reasonable price for those goods, shall not be regarded as payment; and
 - (c) no credit provider shall make any money available or cause any money to be made available by any other person to a consumer for the purpose of making the initial payment out of such money in respect of a credit agreement, and no consumer shall receive or make any initial payment out of money obtained directly or indirectly from or through the credit provider or any other person whose business or part of whose business it is, by arrangement with a credit provider, to make money available for the initial payment in terms of a credit agreement: Provided that the provisions of this paragraph shall not be so construed as to prohibit any initial payment in terms of a credit agreement by a consumer out of money paid or owing to the consumer by the credit provider as emoluments.
- (5) No credit provider shall accept any post-dated payment instrument as an initial payment in terms of a credit agreement.
- (6) No person shall be a party to a credit agreement in terms of which the term of the credit agreement exceeds the maximum permissible duration of such credit agreement.

Obligations of credit providers

- 51.** (1) A credit provider must, at every location from which the credit provider conducts the registered activities—
- (a) keep available a copy of this Act, the regulations and the standards issued under this Act which must, on request, be made available to the consumer or prospective consumer for perusal;
 - (b) keep available a copy of his, her or its complaint procedures, which must, on request, be made available to the consumer or prospective consumer;
 - (c) keep available copies of his, her or its complaint intake forms, which must, on request, be made available to the consumer or prospective consumer;
 - (d) display prominently, in the form of an A3 poster, his, her or its complaint procedures; and

- (e) display prominently, in the form of an A3 poster, the maximum rates of interest, default interest or fees, charges and costs imposed in terms of this Act in respect of all the different credit agreements that the credit provider conducts business in.
- (2) A credit provider must subscribe to a registered credit bureau.
- (3) A credit provider must, before entering into a credit agreement with a consumer or prospective consumer—
 - (a) obtain a credit report regarding that consumer or prospective consumer from a registered credit bureau;
 - (b) conduct an affordability assessment as required by section 67(2);
 - (c) allow the consumer or prospective consumer an opportunity to read the proposed credit agreement or have it read to the prospective consumer if he or she is illiterate; and
 - (d) explain to the consumer or prospective consumer the terms and conditions of a credit agreement in a language which the consumer or prospective consumer understands, if necessary with the assistance of an interpreter provided by the consumer or prospective consumer, so as to ensure that the meaning and consequences of the credit agreement are understood.
- (4) A credit provider must keep and maintain proper accounting records reflecting full details of all monies advanced, interest, fees, costs and other charges raised, repayments received and all amounts outstanding, in the manner and form and for the prescribed time as may be provided for by the Consumer Credit Regulators in a standard.
- (5) A credit provider must keep and maintain records of all applications for credit and credit agreements, in the manner and form and for the prescribed time as may be provided for by the Consumer Credit Regulators in a standard.

PART B

Confidentiality, personal information and consumer credit records

Right to confidential treatment

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

- (a) use that information only for a purpose permitted or required in terms of this Act or applicable legislation; and
 - (b) report or release that information only to the consumer or prospective consumer or to another person—
 - (i) to the extent permitted or required by this Act or applicable legislation; or
 - (ii) as directed by—
 - (aa) the instructions of the consumer or prospective consumer; or
 - (bb) an order of a court; and
 - (c) observe through its shareholders, directors, officers, employees or agents, a perpetual duty of confidentiality with regard to the information divulged to them in terms of this Act.
- (2) A credit bureau must release consumer credit information to a subscriber or prosecuting or law enforcement authority—
- (a) for the purpose of—
 - (i) an investigation into, or detection and prevention services regarding, fraud, corruption, theft, forgery or money laundering, provided that a relevant prosecuting or law enforcement authority conducts such an investigation or requests information;
 - (ii) screening a candidate for employment in a position that requires trust and honesty and entails the handling of cash or finances;
 - (iii) an assessment of the debtors' book of a business for the purpose of—
 - (aa) the sale of the business or debtors' book of the business; or
 - (bb) any other transaction that is dependent upon determining the value of the business or the debtors' book of the business;
 - (iv) assessing the appropriateness of an application for credit;
 - (v) setting a credit limit in respect of the supply of goods, services or utilities to a consumer or prospective consumer;

- (vi) assessing the appropriateness of an application for insurance services;
 - (vii) obtaining consumer credit information to distribute unclaimed funds, including pension funds and insurance claims;
 - (viii) tracing of a consumer by a credit provider or debt collector in respect of a credit agreement entered into between the consumer and the credit provider; and
 - (ix) developing a credit score on request;
- (b) that has certified to the credit bureau that the subscriber uses the consumer credit information for the purpose as set out in this Act and for no other purpose; and
- (c) that has agreed to properly dispose of consumer credit information so that such information cannot reasonably be read or reconstructed.
- (3) Where a credit report is required in terms of subsection (2)(a)(ii), (iv), (v) or (vi), a written consent of the consumer or prospective consumer is required.
- (4) In addition to the consumer credit information in this Act, a credit bureau may receive, compile and report the following information in respect of a consumer or prospective consumer:
- (a) payments made in respect of a debt, where the debt has been ceded or sold by the credit provider to another party; and
 - (b) information that is not related or intended for the purpose of providing credit, provided that the consent of the consumer or prospective consumer has been obtained to use the information for such purpose and to submit, compile and report such information.
- (5) A subscriber may use consumer credit information received from a credit bureau only for purposes of reaching decision on the business of the subscriber in the ordinary course of such business.
- (6) A subscriber may not release consumer credit information to a third party, other than the appointed agent of the subscriber, for the purpose of assisting the subscriber in the recovery of any of its debts.
- (7) A credit bureau must have procedures to deal with all requests and enquiries made

by the consumer or prospective consumer on consumer credit information stored in the credit bureau database and must display such procedure at a place and in a manner accessible and available to consumers or prospective consumers.

Register of credit agreements

53. (1) The relevant Consumer Credit Regulator may require credit bureaus to establish and maintain, in the form and manner as provided for in a standard, a register of credit agreements based on the information provided to it in terms of this section.

(2) Upon entering into or amending a credit agreement, other than an incidental credit agreement, the credit provider must report to all registered credit bureaus, in the prescribed manner and form, and within the prescribed time the following information:

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

(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, to all registered credit bureaus.

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

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

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

(6) The relevant Consumer Credit Regulator may provide for the manner and form, and applicable timelines, pursuant to subsections (2), (3), (4) and (5), in a standard.

Credit bureau information

54. (1) A credit bureau must—
- (a) accept the filing of consumer credit information from any credit provider and other sources of consumer credit information, on payment of the credit bureau's filing fee, if any;
 - (b) accept, without charge, the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;
 - (c) take reasonable steps to verify the accuracy of any consumer credit information reported to it;
 - (d) retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
 - (e) maintain its records of consumer credit information in a manner that satisfies the prescribed standards;

- (f) promptly expunge from its records any consumer credit information that, in terms of this Act, is not permitted to be entered in its records or is required to be removed from its records;
- (g) issue a credit report to any person who requires it for a purpose contemplated in this Act, upon payment of the credit bureau's fee, except where the Act explicitly provides that no fee be charged;
- (h) not draw a negative inference about, or issue a negative assessment of, a person's creditworthiness merely on the basis that the credit bureau has no consumer credit information concerning that person; and
- (i) not knowingly or negligently provide a report to any person containing inaccurate information.

(2) The relevant Consumer Credit Regulator may prescribe, by way of a standard, standards for the filing, retention and reporting of consumer credit information by credit bureaus, in addition to, or in furtherance of the requirements set out in this section.

(3) The Minister may prescribe, by regulation, maximum fees that may be charged by a credit bureau for access to consumer credit information.

(4) For the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act, the Consumer Credit Regulators may—

- (a) require any credit bureau to provide periodic synoptic reports of aggregate consumer credit information to the Consumer Credit Regulators, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported;
- (b) make further reasonable requests for information from a credit bureau related to the information contemplated in paragraph (a); and
- (c) analyse information provided to it under this section or section 53.

Credit reports

55. (1) A credit bureau must implement the following measures in relation to credit reports—

- (a) establish controls and procedures to be applied when subscribers request credit reports from the credit bureau;
 - (b) maintain automated system to retrieve consumer credit information and a system to trace each entry made in the consumer credit information of a consumer or prospective consumer and to trace all accessed consumer credit information by subscribers;
 - (c) maintain a system to trace proven or suspected breaches of security that include details of consumer credit information affected, details of the breach, and any action taken as a result of an investigation;
 - (d) review on a regular basis of password controls of all credit bureau personnel and subscribers; and
 - (e) create operational guidelines to ensure adequate protection to minimise the risk of unauthorised access of credit bureau database.
- (2) A credit bureau must issue a credit report in a paper form or in a printable, but uneditable, electronic form.
- (3) A credit bureau must furnish a credit report requested within five business days of the date of request.
- (4) A credit bureau may not include any information relating to the race, colour, ethnic origin, religion or social status of a consumer or prospective consumer in a credit report.

Search enquiries

- 56.** (1) A credit bureau must maintain a record of all search enquiries made on the consumer credit information of a consumer or prospective consumer.
- (2) The record referred to in subsection (1), includes the date of the search enquiry and name of the person who conducted the search.
- (3) Where the results of a search enquiry show that there is no consumer credit information of the consumer or prospective consumer, a record must be created and maintained on the subject of the search enquiry including the—
- (a) date of the search enquiry;

- (b) name of the subscriber user; and
- (c) purpose of the search enquiry.

(4) A record of both favourable and adverse consumer credit information is made available to credit providers for affordability assessment purposes.

Reporting of settlement of obligation classified as adverse consumer credit information

57. (1) The credit provider must submit to all registered credit bureaus within seven business days after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was classified as adverse consumer credit information.

(2) The credit bureau must incorporate the information of the settlement reported to it in terms of subsection (1) in the consumer credit information kept regarding the person within seven business days after receipt of such information from the credit provider.

(3) If the credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the relevant Consumer Credit Regulator in terms of section 122.

Right to access and challenge credit records and information

58. (1) Every person has a right to—
- (a) be advised by a credit provider within 20 business days before any adverse consumer credit information concerning the person is reported by him, her or it to a credit bureau, and to receive a copy of that information, at no charge, upon request;
 - (b) at a credit bureau, inspect any file or information concerning that person—
 - (i) without charge—
 - (aa) once within any period of twelve months; and
 - (bb) once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and
 - (ii) at any other time, upon payment of the inspection fee of the credit bureau,

if any;

(c) challenge the accuracy of any information concerning that person—

(i) that is the subject of a proposed report contemplated in paragraph (a); or

(ii) that is held by the credit bureau,

and require the credit bureau to investigate the accuracy of any challenged information, without charge to the consumer.

(2) A credit provider must not require or induce a prospective consumer to obtain or request a credit report from a credit bureau in connection with an application for credit or an affordability assessment under section 67.

(3) A credit bureau must inform a consumer or prospective consumer of his, her or its right to challenge the information maintained in the credit bureau database at the time the consumer or prospective consumer requests a copy of his, her or its credit report.

(4) If a person has challenged the accuracy of information proposed to be reported to a credit bureau, or held by a credit bureau, the credit provider or credit bureau as the case may be, must take reasonable steps to seek evidence in support of the challenged information, and within 20 business days after the filing of the challenge must—

(a) provide 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.

(5) Within 20 business days after receiving a copy of evidence in terms of subsection (4)(a), the person who challenged the information held by a credit provider or credit bureau may apply to the relevant Consumer Credit Regulator to investigate the disputed information as a complaint under section 122.

(6) A credit provider or credit bureau may not include in a credit report information that is challenged until the challenge has been resolved in terms of subsection (4)(a) or (b).

(7) A credit bureau and a credit provider must—

(a) maintain a record of all challenged information and its status;

- (b) document the manner in which it was resolved; and
 - (c) submit such information to the relevant Consumer Credit Regulator as may be required.
- (8) Where a credit provider fails to respond or conclude the necessary investigations within 20 business days in terms of subsection (4), the credit bureau must—
- (a) suspend access by the credit provider to consumer credit information until the failure to respond or the conclusion of necessary investigations is rectified; and
 - (b) report such incidence to the relevant Consumer Credit Regulator.

Verification, review and removal of consumer credit information

59. The relevant Consumer Credit Regulator may, by way of a standard, provide for—
- (a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaus must be reviewed, verified, corrected or removed; and
 - (b) the manner in which an independent auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) may confirm that the consumer credit information referred to in paragraph (a) has been reviewed, verified, corrected or removed.

PART C

Credit marketing practices

Negative option marketing and opting out requirements

60. (1) A credit provider must not make an offer to enter into a credit agreement, or induce a person to enter into a credit agreement, on the basis that the agreement will automatically come into existence unless the consumer declines the offer.
- (2) Subject to section 101(4), a credit provider must not make an offer to increase the credit limit under a credit facility, or induce a person to accept such an increase, on the basis that the limit will automatically be increased unless the consumer declines the offer.
- (3) A credit provider must not make a proposal to alter or amend a credit agreement, or induce a person to accept such an alteration or amendment, on the basis that the alteration or amendment will automatically take effect unless the consumer rejects the proposal, except to the extent contemplated in section 86, 98(a), 100(3) or 101(4).

(4) A credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (1), is an unlawful agreement and void to the extent provided for in section 70.

(5) A provision of a credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (2) or (3) is an unlawful provision and void to the extent provided for in section 71.

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

- (a) to decline the option of pre-approved annual credit limit increases as provided for in section 101(4), if the agreement is a credit facility; and
- (b) to be excluded from any—
 - (i) telemarketing campaign that may be conducted by or on behalf of the credit provider;
 - (ii) marketing or customer list that may be sold or distributed by the credit provider, other than as required by this Act; or
 - (iii) any mass distribution of email or sms messages.

(7) A credit provider—

- (a) must maintain a register, in the form and manner as may be provided for in a standard, of all options selected by consumers in terms of subsection (6); and
- (b) must not act in a manner contrary to an option selected by a consumer in terms of subsection (6).

Marketing and sales of credit at home or work

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

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

- (a) during a visit pre-arranged by the consumer or prospective consumer for that purpose; or
 - (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.
- (3) A credit provider must not visit a person's place of employment for the purpose of inducing the person to apply for or obtain credit, or enter into a credit agreement at such a place, except—
- (a) to enter into a credit agreement with the employer; or
 - (b) if the visit results from—
 - (i) a formal arrangement between the credit provider, on the one hand, and the employer and any representative trade union or employee, on the other; or
 - (ii) a non-prompted invitation by the person being visited.
- (4) An employer who, or representative trade union that, enters into an arrangement with a credit provider as contemplated in subsection (3)(b)(i) must not receive any fee, commission, payment, consideration or other monetary benefit in exchange for making that arrangement, or as a consequence of a credit agreement entered into during or as a result of that arrangement.

Advertising practices

- 62.** (1) This section does not apply to an advertisement—
- (a) that does not make reference to a specific credit product or credit provider, and of which the dominant purpose is to promote—
 - (i) responsible credit practices; or
 - (ii) the use of credit generally;
 - (b) that generally promotes a specific credit provider, brand or type of credit agreement, but does not make specific reference to product price, cost or availability of credit; or
 - (c) by the seller of goods or services, or on the premises of such a person, if that notice

or advertisement indicates only that the person is prepared to accept payment through a credit facility in respect of which another person is the credit provider.

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

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

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

- (a) must comply with this section;
- (b) must contain any prescribed statement;
- (c) must not—
 - (i) advertise a form of credit that is unlawful;
 - (ii) be misleading, fraudulent or deceptive; or
 - (iii) contain any prohibited statement as may be prescribed; 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—
 - (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.

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

(6) The Consumer Credit Regulators may issue a standard pursuant to subsections (4)(b), (c), (d) and (5).

Required marketing information

- 63.** (1) Any solicitation by or on behalf of a credit provider for the purpose of inducing a person to apply for or obtain credit must include a statement with the prescribed information for the particular type of solicitation.
- (2) The Consumer Credit Regulators may issue a standard pursuant to subsection (1).

PART D

Over-indebtedness and reckless credit

Application and interpretation of this Part

- 64.** (1) This Part does not apply to a credit agreement in respect of which the consumer is a juristic person.
- (2) Sections 67 to 69, and any other provisions of this Part to the extent that they relate to reckless credit, do not apply to—
- (a) a public interest credit agreement;
 - (b) an incidental credit agreement; or
 - (c) a temporary increase in the credit limit under a credit facility.
- (3) In this Part, “financial means, prospects and obligations”, with respect to a consumer or prospective consumer, includes—
- (a) income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer or prospective consumer receives, has a right to receive, or holds in trust for another person;
 - (b) the financial means, prospects and obligations of any other adult person within the consumer’s immediate family or household, to the extent that the consumer, or prospective consumer, and that other person customarily—
 - (i) share their respective financial means; and
 - (ii) mutually bear their respective financial obligations; and
 - (c) if the consumer has or had a commercial purpose for applying for or entering into

a particular credit agreement, the reasonably estimated future revenue flow from that business purpose.

Over-indebtedness

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

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

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

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

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

(4) The Minister may, by regulation, prescribe the factor referred to in subsection (3)(b)(ii)

Reckless credit

66. (1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 101(4)—

- (a) the credit provider failed to conduct an affordability assessment as required by

section 67(2), irrespective of what the outcome of such an affordability assessment might have concluded at the time; or

- (b) the credit provider, having conducted an affordability assessment as required by section 67(2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that—
 - (i) the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or
 - (ii) entering into that credit agreement would make the consumer over-indebted.

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

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

at the time the determination is being made.

- (3) When making a determination in terms of this section, the value of—
 - (a) any credit facility is the credit limit at that time under that credit facility;
 - (b) any pre-existing credit guarantee is—
 - (i) the settlement value of the credit agreement that it guarantees, if the guarantor has been called upon to honour that guarantee; or
 - (ii) the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor; and
 - (c) any new credit guarantee is the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.
- (4) The Minister may, by regulation, prescribe the factor referred to in subsection

(3)(b)(ii) and (c).

Prevention of reckless credit

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

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

(a) the proposed consumer's—

- (i) general understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
- (ii) debt re-payment history as a consumer under credit agreements; and
- (iii) existing financial means, prospects and obligations; and

(b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.

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

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

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

Affordability assessment mechanisms and procedures

68. A credit provider may determine for itself the evaluative mechanisms or models

and procedures to be used in meeting its affordability assessment obligations under section 67, provided that any such mechanism, model or procedure results in a fair, transparent and objective assessment and must not be inconsistent with any affordability assessment requirements as may be prescribed by the Consumer Credit Regulators in a standard.

Declaration of reckless credit agreement

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

(2) If a court declares that a credit agreement is reckless in terms of section 66(1)(a) or (b), the court may make an order setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances.

CHAPTER 5 CONSUMER CREDIT AGREEMENTS

PART A Unlawful agreements and provisions

Unlawful credit agreements

- 70.** (1) Subject to subsection (2), a credit agreement is unlawful if—
- (a) at the time the agreement was made the consumer was an unemancipated minor unassisted by a guardian, or was subject to—
 - (i) an order of a competent court holding that person to be mentally unfit; or
 - (ii) an administration order referred to in section 74 of the Magistrates' Courts Act, 1944 (Act 32 of 1944) and the administrator concerned did not consent to the agreement,and the credit provider knew, or could reasonably have determined, that the consumer was the subject of such an order;
 - (b) the agreement results from an offer prohibited in terms of section 60(1);
 - (c) it is a supplementary agreement or document prohibited by section 72; or
 - (d) at the time the agreement was made, the person was unregistered and this Act

requires that person to be registered.

(2) Subsection (1)(a) does not apply to a credit agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by an act or omission—

- (a) induced the credit provider to believe that the consumer had the legal capacity to contract; or
- (b) attempted to obscure or suppress the fact that the consumer was subject to an order contemplated in that paragraph.

(3) A credit agreement or a provision of a credit agreement that, in terms of this Act, is prohibited or may be declared unlawful, is not void unless a court declares that agreement or provision to be unlawful.

(4) If a credit agreement is unlawful in terms of this section, despite any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that the credit agreement is void as from the date the agreement was entered into.

Unlawful provisions of credit agreement

71. (1) A credit agreement must not contain an unlawful provision.

(2) A provision of a credit agreement is unlawful if—

(a) its general purpose or effect is to—

- (i) defeat the purposes of this Act;
- (ii) deceive the consumer; or
- (iii) subject the consumer to fraudulent conduct;

(b) it directly or indirectly purports to—

- (i) waive or deprive a consumer of a right set out in this Act;
- (ii) avoid a credit provider's obligation or duty in terms of this Act;
- (iii) set aside or override the effect of any provision of this Act;

- (iv) authorise the credit provider to—
 - (aa) do anything that is unlawful in terms of this Act; or
 - (bb) fail to do anything that is required in terms of this Act;
- (c) it purports to waive any common law rights that—
 - (i) may be applicable to the credit agreement; and
 - (ii) have been prescribed in terms of subsection (6);
- (d) the provision results from an offer prohibited in terms of section 60(2) or (3);
- (e) it purports to make the agreement subject to a supplementary agreement prohibited by section 72;
- (f) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by section 72;
- (g) it purports to exempt the credit provider from liability, or limit such liability, for—
 - (i) any act, omission or representation by a person acting on behalf of the credit provider; or
 - (ii) any guarantee or warranty that would, in the absence of such a provision, be implied in a credit agreement;
- (h) it expresses an acknowledgement by the consumer that—
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the credit provider or a person on behalf of the credit provider; or
 - (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, which have or has not in fact been delivered or rendered to the consumer;
- (i) it expresses an agreement by the consumer to forfeit any money to the credit provider if the consumer—
 - (i) exercises a right in terms of sections 103 or 104, except to the extent

contemplated in section 104(3)(b); or

- (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
- (j) it purports to appoint the credit provider, or any employee or agent of the credit provider, as an agent of the consumer for any purpose other than those contemplated in section 84 or deems such an appointment to have been made;
- (k) it expresses, on behalf of the consumer—
 - (i) an authorisation for any person acting on behalf of the credit provider to enter any premises for the purposes of taking possession of goods to which the credit agreement relates; or
 - (ii) a grant of a power of attorney in advance to the credit provider in respect of any matter related to the granting of credit in terms of this Act;
 - (iii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed;
 - (iv) a consent to a pre-determined value of costs relating to enforcement of the agreement, except to the extent that is consistent with Chapter 6;
 - (v) a limitation of the credit provider's liability for an action contemplated in subparagraph (iv); or
 - (vi) a consent to the jurisdiction of—
 - (aa) the High Court of Namibia, if a Magistrates' Court has concurrent jurisdiction; or
 - (bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer resides or works or where the goods in question, if any, are ordinarily kept;
- (l) it expresses an agreement by the consumer to—
 - (i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying

document or device; or

- (ii) provide a personal identification code or number to be used to access an account;
 - (m) it purports to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
 - (n) it purports to authorise or permit the credit provider to satisfy an obligation of the consumer by making a charge against an asset, account, or amount deposited by or for the benefit of the consumer and held by the credit provider or a third party, except by way of a standing debt arrangement, or to the extent permitted by section 107; or
 - (o) it states or implies that the rate of interest is variable, except to the extent permitted by section 85(4);
 - (p) the consumer is prohibited from resiling from the credit agreement and from claiming repayment of any amount paid by him, her or it in terms of the credit agreement if, without any reluctance of his, her or its part to accept performance in accordance with such credit agreement, the goods in question have not been delivered or the service in question has not been rendered to him, her or it within 30 calendar days after the date of the credit agreement;
 - (q) the consumer guarantees and warrants that the credit agreement was signed on the business premises of the credit provider; or
 - (r) the consumer acknowledges that he, she or it has inspected any goods to which such credit agreement relates.
- (3) The provisions of subsection (2)(h)(i), (i), (p) and (r) shall not apply to any credit agreement providing for the goods in question to be imported into Namibia as per order of, or be manufactured according to the requirements of, the prospective consumer.
- (4) Subject to subsection (5), in any credit agreement, a provision that is unlawful in terms of this section is void as from the date that the provision purported to take effect.
- (5) In any matter before it regarding a credit agreement that contains a provision contemplated in subsection (2), a court must—
- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a

whole; or

- (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect,

and make any further order that is just and reasonable in the circumstances to give effect to the principles of section 70(4) with respect to that unlawful provision, or entire agreement as the case may be.

(6) The Minister may prescribe, by regulation, particular common law rights that may not be waived in a credit agreement on the grounds that the waiver of those rights would be inconsistent with the purposes of this Act.

Prohibition of unlawful provisions in credit agreements and supplementary agreements

72. (1) A credit provider must not directly or indirectly, by false pretences or with the intent to defraud, offer, require or induce a consumer to enter into or sign a credit agreement that contains an unlawful provision as contemplated in section 71.

(2) Any prospective credit provider or his manager, agent, or employee shall not, as an inducement to enter into any credit agreement, directly or indirectly offer, give or promise any benefit to any prospective consumer unless such benefit, in the ordinary course of events, will constitute a condition of the credit agreement.

(3) A credit provider must not 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.

Limitation of cession by consumer of certain periodical amounts

73. (1) Any amount exceeding 25% of a periodical amount payable in terms of a service contract or towards the maintenance of any person, shall not be subject to any cession or hypothecation to secure any payment in terms of one or more than one credit agreement, and any such cession or hypothecation shall be invalid to the extent to which it exceeds the said 25%.

(2) Any person entitled to any periodical amount referred to in subsection (1) who, to secure any payment in terms of any credit agreement, has granted to any other person authority to receive or to collect such payment or any portion thereof, may at any time revoke such authority.

PART B

Disclosure, form and effect of credit agreements

Pre-agreement disclosure

74. (1) A credit provider must not enter into a credit agreement unless the credit provider has given the consumer—

- (a) a pre-agreement statement—
 - (i) in the form of the proposed agreement; or
 - (ii) in another form addressing all matters required in terms of section 75; and
- (b) a quotation setting out—
 - (i) the principal debt, and the proposed distribution of the principal debt over the repayment period;
 - (ii) the interest and the proposed distribution of the interest over the repayment period;
 - (iii) the amount to be paid as initial payment, if any;
 - (iv) the fees, charges and costs over the repayment period;
 - (v) the total cost of the proposed agreement;
 - (vi) the instalment amount and the number of instalments over the repayment period; and
 - (vii) the basis of any costs that may be assessed under section 104(3) if the consumer rescinds the contract.

(2) Subject only to subsection (3), sections 67 and 83(1)(d)(ii), for a period of five business days after the date on which a quotation is presented in terms of subsection (1)(b), the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at an interest rate or credit cost that—

- (a) is at or below the interest rate or credit cost quoted; or
- (b) is higher than the interest rate or credit cost quoted by a margin no greater than the difference between the respective prevailing bank rates on the date of the quote, and the date the agreement is made.

(3) If credit is extended for the purchase of an item with limited availability, the credit provider may state that the quotation provided in terms of this section is subject to the continued availability of the item during the period contemplated in subsection (2).

(4) The pre-agreement statement or quotation that are required by this section to be delivered to a consumer may be transmitted to the consumer in paper form or in a printable, but uneditable, electronic form.

(5) This section does not apply to any offer, proposal, pre-approval statement or similar arrangement in terms of which a credit provider merely indicates to a prospective consumer a willingness to consider an application to enter into a hypothetical future credit agreement generally or up to a specified maximum value.

Form of credit agreements

75. (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 paper form or in a printable, but uneditable, electronic form.

- (2) Subject to subsection (3), a document that records a credit agreement—
 - (a) must be in the prescribed form, if any, for the type of credit agreement concerned; or
 - (b) if there is no applicable prescribed form, may be in any form that—
 - (i) is determined by the credit provider; and
 - (ii) complies with any prescribed requirements for the type of credit agreement concerned.
- (3) A document that records a credit agreement must, at a minimum—
 - (a) state the names of the credit provider and the consumer and their business or residential addresses;
 - (b) state the amount paid, or to be paid, as initial payment, if any;
 - (c) state the type of credit agreement or credit transaction entered into;
 - (d) contain all the terms and conditions of the agreement, clearly reflecting the rights

and obligations of both parties;

- (e) if applicable, contain a description whereby the goods or service to which that credit agreement relates, and any goods delivered to the credit provider as payment, may be readily identified;
- (f) if it is an instalment agreement, state the conditions, if any, as to the reservation and passing of ownership of the goods to which that credit agreement relates;
- (g) if it is an instalment agreement, state the conditions, if any, as to the right of the credit provider to the return of the goods to which that credit agreement relates; and
- (h) contain a reference to the provisions of sections 103 or 104 as may be relevant.

(4) The Consumer Credit Regulators may provide, in a standard, for the forms that a document that records a credit agreement must take, for purposes of subsection (2).

(5) The Consumer Credit Regulators may, for purposes of subsection (4), provide for different forms in respect of different credit agreements or credit providers, different categories of credit agreements or credit providers and different subcategories of a specific category of credit agreements or credit providers.

Liability for lost or stolen cards or other identification devices

76. (1) If a credit facility provides for access to that facility by use of a card, personal identification code or number or similar identification device, the document that records that credit agreement must set out a contact telephone number or email address at which the consumer may report the loss or theft of that card, personal identification code or number or other device.

(2) A credit provider must block access to the credit facility immediately after receipt of a report made to the contact telephone number or email address referred to in subsection (1) regarding—

- (a) the loss or theft of the associated card, personal identification code or number or similar device; or
- (b) any other fraudulent activity or unauthorised access to, or use of, the credit facility.

(3) A block imposed in terms of subsection (2) may only be lifted upon receipt of the consumer's written consent to that effect.

(4) A credit provider must not impose a liability on a consumer for any use of a credit

facility after receipt of a report in terms of subsection (2), unless—

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

Changes, deferrals and waivers

77. 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.

Address for notice

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

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

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

Consumer must disclose location of goods

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

- (a) it concerns any goods, and the consumer at any time during the agreement has or had possession of those goods; and
- (b) in terms of that agreement—
 - (i) the title to those goods has not passed to the consumer; or

- (ii) the credit provider has a right to take possession of the goods irrespective of whether they are owned by the consumer or another person.

(2) Until the termination of an agreement to which this section applies, the consumer must inform the credit provider, by way of a written notice transmitted or delivered to the credit provider at the address referred to in section 78, of any change concerning—

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

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

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

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

is guilty of an offence.

Agreement attaches to substituted goods

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

- (a) from the date of delivery of the substituted goods, the credit agreement applies to the substituted goods rather than the goods originally described; and

- (b) the credit provider must prepare and deliver to the consumer an amended credit agreement describing the substituted goods, but without making any other changes to the original agreement.

Obligations of pawn brokers

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

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

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

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

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

PART C

Consumer's liability, interest, charges and fees

Prohibited charges

82. (1) A registrant must not charge an amount to, or impose a monetary liability on, the

consumer in respect of—

- (a) a fee or charge prohibited by this Act;
- (b) a fee or charge exceeding the amount that may be charged consistent with this Act;
- (c) an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act; or
- (d) any fee, charge, commission, expense or other amount payable by the credit provider to any third party in respect of a credit agreement, except as contemplated in section 84 or elsewhere in this Act.

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

(3) A credit provider may not charge any fee to be paid by the consumer or prospective consumer in circumstances where a credit agreement is not entered into.

Cost of credit

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

- (a) the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 84;
- (b) an initiation fee, which—
 - (i) may not exceed the prescribed amount relative to the principal debt; and
 - (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;
- (c) a service fee, which—
 - (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or
 - (ii) in any other case, may be payable monthly or annually; and

- (iii) must not exceed the prescribed amount relative to the principal debt;
- (d) interest, which—
 - (i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and
 - (ii) must not exceed the applicable maximum prescribed rate determined in terms of section 87;
- (e) cost of any credit insurance provided in accordance with section 88;
- (f) default administration charges, which—
 - (i) may not exceed the prescribed maximum; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement, and only to the extent permitted by Part C of Chapter 6; and
- (g) collection costs, which may not exceed the prescribed maximum and may be imposed only to the extent permitted by Part C of Chapter 6.

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

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

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

Fees or charges

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

- (a) an initiation fee as contemplated in section 83(1)(b), if the consumer has been offered and declined the option of paying that fee separately;
- (b) the cost of an extended warranty agreement;
- (c) delivery, installation and initial fuelling charges;
- (d) connection fees, levies or charges;
- (e) taxes, licence or registration fees;
- (f) subject to section 88, the premiums of any credit insurance payable in respect of that credit agreement; or
- (g) costs of the preparation, execution and registration of a mortgage bond.

(2) A credit provider must not—

- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the consumer's agent in arranging for the service concerned;
- (b) require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1); or
- (c) charge the consumer an amount under subsection (1) in excess of—
 - (i) the actual amount payable by the credit provider for the service, as determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider; or
 - (ii) the fair market value of a service contemplated in subsection (1), if the credit provider delivers that service directly without paying a charge to a third party.

(3) If the actual amount paid by a credit provider to another person is not ascertainable

when the consumer pays an amount to the credit provider for a fee or charge contemplated in subsection (1) and if, when it is ascertained, it is less than the amount paid by the consumer, the credit provider must refund or credit the difference to the consumer.

Interest

85. (1) Subject to subsection (5) and (6), the interest rate applicable to an amount in default or an overdue payment under a credit agreement must not exceed the highest interest rate applicable to any part of the principal debt under that agreement.

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

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

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

(5) Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 83(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.

(6) In respect of a microlending transaction, the interest rate applicable to an amount in default or an overdue payment may not exceed such interest rate as may be prescribed by the Minister by regulation.

Changes to interest, credit fees or charges

86. (1) A credit provider must not unilaterally increase—

(a) the periodic or incidental service fees, or the method of calculating such fees, that may be charged under the credit agreement; or

(b) the rate of interest applicable to a credit agreement, except with respect to a credit agreement with a variable interest rate.

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

concerning—

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

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

- (a) the new rate; or
- (b) if a rate is determined by referring to a reference rate as contemplated in section 85(4), the new reference rate.

Maximum rates of interest, fees and charges

87. (1) The Minister must prescribe, by regulation—

- (a) maximum amounts in respect of initiation and service fees relative to the principal debt, for purposes of section 83(1)(b) and (c);
- (b) maximum rates or limits, and methods of calculation, in respect of interest, for purposes of section 83(1)(d) and section 85(6);
- (c) maximum amounts or limits in respect of default administration charges and collection costs, for purposes of section 83(1)(f) and (g);
- (d) the extent to which an initiation fee may be charged for purposes of section 83(2); and
- (e) the method, consistent with section 83(3), for allocating service fees between the provision of credit and the provision of related financial services, in circumstances in which a credit provider offers multiple financial services under a single agreement.

(2) When prescribing a matter contemplated in subsection (1), the Minister must consider, among other things, conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market, as well as other relevant domestic economic and financial conditions.

(3) The Minister may, for purposes of this section, prescribe different maximums, limits or rates, or different methods of calculating, in respect of different credit agreements or credit providers, different categories of credit agreements or credit providers and different subcategories of a specific category of credit agreements or credit providers.

Credit insurance

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

- (a) where subsection (2) is not applicable to the credit agreement, credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement; and
- (b) credit insurance, other than credit life insurance—
 - (i) in the case of a mortgage agreement, in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
 - (ii) in the case of a credit agreement that deals with movable property, against damage or loss of the property that forms the subject matter of the credit agreement, not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement.

(2) The Minister may, by regulation, prescribe requirements for credit providers to require consumers to maintain credit life insurance for the duration of credit agreements not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of that credit agreement.

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

- (a) the cover of which is unreasonably high; or
- (b) at an unreasonable cost to the consumer,

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

(4) In addition to insurance that may be required in terms of subsections (1) and (2), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement.

(5) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1), (2) or (4)—

- (a) the consumer must be given, and be informed of, the right to waive that proposed policy and substitute a policy of the consumer's own choice, subject to subsection (7); and
- (b) in the case of an annual premium, the premium must be recovered from the consumer within the applicable year.

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

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

(7) If the consumer exercises the right under subsection (5)(a) to substitute an insurance policy of the consumer's own choice, the credit provider may require the consumer to provide the credit provider with the following written directions—

- (a) a valid direction, in the prescribed manner and form, requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer

for the amount of such premiums; and

- (b) a valid direction to the insurer, in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the consumer's obligation under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement.

(8) If the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final year's premium.

(9) The Minister may prescribe, by regulation, the limit in respect of the cost of credit insurance that a credit provider may charge a consumer.

(10) Where the requirement contemplated in subsection (2) is prescribed, the Minister must prescribe the limit in respect of the cost of credit life insurance contemplated in subsection (2).

(11) The Consumer Credit Regulators may issue a standard to provide for the manner and form of—

- (a) a disclosure to the consumer pursuant to subsection (6)(b); and
- (b) the directions pursuant to subsection (7).

PART D

Statements of account

Limited application of this Part

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

(2) Sections 90, 91 and 92 do not apply in respect of a discounted transaction or an incidental credit agreement, until the time that interest is first charged on the principal debt owed to the credit provider.

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

Statement of account

- 90.** (1) A credit provider must offer to deliver to each consumer periodic statements of account in accordance with this section.
- (2) The maximum period between issuing statements of account is—
- (a) one month, except as otherwise provided for in this subsection;
 - (b) two months, in respect of an instalment agreement or secured loan; or
 - (c) six months in respect of a mortgage agreement.
- (3) Despite subsection (2)—
- (a) a consumer and credit provider may agree to reduce the frequency of statements of account referred to in subsection (2)(a) or (b), but no such agreement may provide for more than three months between delivery of successive statements of account; and
 - (b) a statement of account need not be delivered in respect of a credit facility if no amount has been debited or credited to the account during the statement period.

Form and content of statement of account

- 91.** (1) The opening balance shown in each successive statement of account must be the same as the closing balance shown in the immediately preceding statement of account.
- (2) A statement of account in respect of a credit agreement must be in—
- (a) the prescribed form, if any, for the type of credit agreement concerned; or
 - (b) a form determined by the credit provider, and which complies with any prescribed requirements for the type of credit agreement concerned.
- (3) The Consumer Credit Regulators may provide, in a standard, for different forms to be used in terms of subsection (2).
- (4) The Consumer Credit Regulators may, for purposes of subsection (3), provide for different forms in respect of different credit agreements or credit providers, different categories of credit agreements or credit providers and different subcategories of a specific category of credit agreements or credit providers.

Statement of amount owing and related matters

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

- (a) the current balance of the consumer's account;
 - (b) any amounts credited or debited during a period specified in the request;
 - (c) any amounts currently overdue and when each such amount became due; and
 - (d) any amount currently payable and the date it became due.
- (2) A statement requested in terms of subsection (1) must be delivered—
- (a) within three business days, if all the requested information relates to a period of one year or less before the request was made; or
 - (b) within five business days, if any of the requested information relates to a period of more than one year before the request was made.
- (3) A statement under this section may be delivered—
- (a) orally, in person or by telephone; or
 - (b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities,

as directed by the consumer when making the request.

- (4) A credit provider is not required to provide—
- (a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; or
 - (b) information in a statement under this section more than three years after the account was closed.

Disputed entries in accounts

- 93.** (1) A consumer may dispute all or part of any particular credit or debit entered under a credit agreement, by delivering a written notice to the credit provider.
- (2) A credit provider who receives a notice of dispute in terms of subsection (1)—
- (a) must give the consumer a written notice either—
- (i) explaining the entry in reasonable detail; or
- (ii) confirming that the statement was in error either in whole or in part, and setting out the revised entry; and
- (b) must not begin enforcement proceedings on the basis of a default arising from the disputed entry until the credit provider has complied with paragraph (a).

Dating and adjustment of debits and credits in accounts

- 94.** (1) A debit to a consumer's account takes effect as of the date on which the consumer incurred that debit.
- (2) A credit to a consumer's account takes effect on the date the consumer makes a payment to the credit provider, or otherwise earns the right to have the account credited.
- (3) A credit provider may subsequently adjust debits or credits to a consumer's account, and the account balances, so as to accurately reflect the legal obligations of the consumer and the credit provider.

Statement of settlement amount

- 95.** (1) At the request of a consumer or guarantor, a credit provider must deliver, without charge, to the consumer or guarantor a statement of the amount required to settle a credit agreement, as calculated in accordance with section 108, as of a date specified in the request.
- (2) A statement requested in terms of subsection (1)—
- (a) must be delivered within three business days;
- (b) may be delivered—
- (i) orally, in person or by telephone; or
- (ii) in writing, either to the consumer in person or by sms, mail, fax or email or

other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities,

as directed by the consumer when making the request; and

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

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

Consumer Credit Regulators may direct statement to be provided

96. If a statement is not offered or delivered within the time required by this Part, the Consumer Credit Regulators may direct the credit provider to provide the statement.

Disputes concerning statements

97. (1) A consumer who has unsuccessfully attempted to resolve a disputed entry directly with the credit provider in terms of section 93, may apply to the court to resolve—

- (a) a disputed entry shown on a statement of account;
- (b) the amounts in relation to which the statement was sought; or
- (c) a dispute concerning a statement of the settlement amount.

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

PART E

Alteration of credit agreement

Alteration of original or amended agreement document

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

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

- (b) after the change is made, unless the change is effected in terms of section 101(1)(c), the consumer signs or initials in the margin opposite the change;
- (c) the change is recorded in writing and signed by the parties; or
- (d) the change is recorded electromagnetically and subsequently reduced to writing.

Changes by agreement

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

- (a) reflects their amended agreement; and
- (b) complies with the requirements set out in section 75.

(2) This section does not apply in respect of an increase or decrease to the credit limit under a credit facility, subject to section 101(6).

Reductions to credit limit under credit facility

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

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

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

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

(3) Subject to section 49, the credit provider under a credit facility, by written notice to the consumer, may reduce the credit limit under that credit facility to take effect on delivery of the notice.

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

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

Increases in credit limit under credit facility

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

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

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

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

(3) Before increasing a credit limit in terms of subsection (1)(b), the credit provider must complete a fresh affordability assessment of the consumer's ability to meet the obligations that could arise under that credit facility, as required by section 67.

(4) If the consumer, at the time of applying for the credit facility or at any later time, in writing has specifically requested the option of having the credit limit automatically increased

from time to time, a credit provider may unilaterally increase the credit limit under that credit facility—

- (a) once during each year, as measured from the later of—
 - (i) the date that the credit facility was established; or
 - (ii) the date on which the credit limit was most recently altered in accordance with subsection (1)(b); and
- (b) by an amount not exceeding the lesser of—
 - (i) the average monthly purchases or cash advances charged to the credit facility by the consumer; or
 - (ii) the average monthly payments made by the consumer,
during the 12 months immediately preceding the date on which the credit limit is increased.
- (5) For the purposes of subsection (4), a specific request—
 - (a) does not include—
 - (i) an oral request or assent by the consumer; or
 - (ii) a standard provision of an agreement, the whole of which is accepted by the consumer; but
 - (b) does include—
 - (i) a written request in any form authored and signed by the consumer and delivered to the credit provider at any time; or
 - (ii) a standard form option—
 - (aa) authored by the credit provider and presented for consideration by the consumer alongside the alternative of having credit limits increased only as contemplated in subsection (1)(b); and
 - (bb) assented to by being initialled or signed by the consumer.

(6) If, when increasing the credit limit under a credit facility, the credit provider alters any other term of the credit agreement, the credit provider must comply with the requirements set out in sections 75 and 99.

(7) An increase in a credit limit in terms of subsection (4) is not unlawful in terms of section 60(2).

Unilateral changes by credit provider

102. (1) Despite any provision to the contrary in a credit agreement, a credit provider may not unilaterally change—

- (a) the period for repayment of the principal debt; or
- (b) the manner of calculating the minimum payment due periodically under a credit facility, subject to section 100(4).

PART F

Rescission and termination of credit agreements

Cooling-off period

103. (1) A microlender must allow a consumer to terminate the microlending transaction within a period of five business days after the date of the credit agreement, and if the loan amount has been advanced to the consumer, to simultaneously repay the loan amount so advanced to the microlender.

(2) If the consumer terminates the microlending transaction within the period referred to in subsection (1) and simultaneously repays the loan amount to the microlender, the microlender may only stipulate for, demand or receive from the consumer *pro rata* interest at the rate applicable to that microlending transaction.

Consumer's right to rescind credit agreement

104. (1) This section applies only in respect of an instalment agreement entered into at any location other than the business premises of the credit provider.

(2) A consumer may terminate a credit agreement within five business days after the date of the agreement, by—

- (a) delivering a written notice to the credit provider; and

- (b) tendering the return of any money or goods, or paying in full for any services, received by the consumer in respect of the agreement.
- (3) When a credit agreement is terminated in terms of this section, the credit provider—
 - (a) must refund any money the consumer has paid under the agreement within seven business days after the delivery of the notice to terminate; and
 - (b) may require payment from the consumer for—
 - (i) the reasonable cost of having any goods returned to the credit provider and restored to saleable condition; and
 - (ii) a reasonable rent for the use of those goods for the time that the goods were in the consumer’s possession, unless those goods are in their original packaging and it is apparent that they have remained unused.
- (4) A credit provider to whom property has been returned in terms of this section, and who has unsuccessfully attempted to resolve any dispute over depreciation of that property directly with the consumer, may apply to a court for an order in terms of subsection (5).
- (5) If, on an application in terms of subsection (4), a court concludes that the actual fair market value of the goods depreciated during the time that they were in the consumer’s possession, the court may order the consumer to pay to the credit provider a further amount not greater than the difference between—
 - (a) the depreciation in actual fair market value, as determined by the court; and
 - (b) the amount that the credit provider is entitled to charge the consumer in terms of subsection (3)(b).

When consumer may terminate agreement

- 105.** (1) A consumer may terminate a credit agreement at any time by paying the settlement amount to the credit provider, in accordance with section 108.
- (2) In addition to subsection (1), a consumer may terminate an instalment agreement or secured loan, by—
 - (a) surrendering to the credit provider the goods that are the subject of that agreement in accordance with section 112; and

- (b) paying to the credit provider any remaining amount demanded in accordance with section 112(7).

Termination of agreement by credit provider

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

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

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

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

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

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

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

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

CHAPTER 6 COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

PART A

Collection and repayment practices

Charges to other accounts

107. (1) It is lawful for a consumer to provide, a credit provider to request or a credit agreement to include an authorisation to the credit provider to make a charge or series of charges contemplated in section 71(2)(n), if such authorisation meets all the following conditions—

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

subsequently reduced to writing.

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

(3) If there is a conflict between a provision of this section and a provision of the Payment System Management Act, 2003 (Act No. 18 of 2003), the provisions of that Act prevail.

Consumer's or guarantor's right to settle agreement

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

(2) Subject to subsection (3), the amount required to settle a credit agreement is the total of the following amounts—

- (a) the unpaid balance of the principal debt at that time; and
- (b) the unpaid interest charges and all other fees and charges payable by the consumer to the credit provider up to the settlement date.

(3) In respect of a mortgage agreement, or other credit transaction of which the principal debt under that transaction equals or exceeds the threshold value determined by the Minister by regulation, the amount required to settle the credit agreement is the total of the following amounts—

- (a) at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with paragraph (b); or
- (b) other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between—
 - (i) three months; and
 - (ii) the period of notice of settlement if any, given by the consumer.

(4) The Minister may, by regulation, prescribe the maximum early termination charge, pursuant to subsection (3)(a).

Early payments and crediting of payments

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

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

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

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

Restrictions on certain practices relating to credit agreements

110. (1) A person must not promote, offer to supply, supply or induce any person to accept the supply of any service that has as its dominant function—

- (a) the breaching of a credit agreement; or
- (b) the unauthorised transfer of any right of a credit provider under a credit agreement to a third person.

(2) Subsection (1)(b) does not apply in respect of—

- (a) any negotiation, by a legal practitioner on behalf of a consumer, with the credit provider concerned; or
- (b) any action carried out by, on behalf of or with the permission of the credit provider concerned.

(3) A person who offers to supply, or supplies, any service for the express or implied purpose of—

- (a) improving a consumer's credit record, credit history or credit rating; or
- (b) causing a credit bureau to remove consumer credit information from its records

concerning that consumer,

may not charge a consumer, or receive any payment from the consumer, for the credit repair service until that service has been fully performed, and must provide a consumer with a disclosure statement, the manner and form of which may be provided for by the Consumer Credit Regulators in a standard.

(4) Subsection (3) does not apply in respect of any credit repair service rendered by a legal practitioner or a registered credit bureau.

(5) A person who offers to supply, or supplies—

(a) any service for the express or implied purpose of investigating fees, charges or interest charged on a credit agreement; or

(b) a computer software programme which is programmed to calculate fees, charges, or interest charged on a credit agreement, for valuable consideration,

must provide a consumer of the service or software as the case may be, with a disclosure statement, the manner and form of which may be provided for by the Consumer Credit Regulators in a standard.

Application of prescription on debt

111. (1) No person may sell a debt under a credit agreement to which this Act applies and that has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969).

(2) No person may continue the collection of, or re-activate a debt under a credit agreement to which this Act applies—

(a) which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969); and

(b) where the consumer raises the defence of prescription, or would reasonably have raised the defence of prescription had the consumer been aware of such a defence, in response to a demand, whether as part of legal proceedings or otherwise.

PART B Surrender of goods

Surrender of goods

- 112.** (1) A consumer under an instalment agreement or secured loan—
- (a) may give written notice to the credit provider to terminate the agreement; and
 - (b) if—
 - (i) the goods are in the credit provider’s possession, require the credit provider to sell the goods; or
 - (ii) otherwise, return the goods that are the subject of that agreement to the credit provider’s place of business during ordinary business hours within three business days after the date of the notice or within such other period or at such other time or place as may be agreed with the credit provider.
- (2) Within ten business days after the later of—
- (a) receiving a notice in terms of subsection (1)(b)(i); or
 - (b) receiving goods tendered in terms of subsection (1)(b)(ii),

a credit provider must give the consumer written notice setting out the estimated value of the goods.

(3) Within ten business days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1)(a), and resume possession of any goods that are in the credit provider’s possession, unless the consumer is in default under the credit agreement.

- (4) If the consumer—
- (a) responds to a notice as contemplated in subsection (3), the credit provider must return the goods to the consumer unless the consumer is in default under the credit agreement; or
 - (b) does not respond to a notice as contemplated in subsection (3), the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable.
- (5) After selling any goods in terms of this section, a credit provider must—
- (a) credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale, less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and

- (b) give the consumer a written notice stating the following—
 - (i) the settlement value of the agreement immediately before the sale;
 - (ii) the gross amount realised on the sale;
 - (iii) the net proceeds of the sale after deducting the credit provider's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and
 - (iv) the amount credited or debited to the consumer's account.

(6) If an amount is credited to the consumer's account and it exceeds the settlement value immediately before the sale, the credit provider must remit that amount to the consumer with the notice required by subsection (5)(b), and the agreement is terminated upon remittance of that amount.

(7) If an amount is credited to the consumer's account and it is less than the settlement value immediately before the sale, or an amount is debited to the consumer's account, the credit provider may demand payment from the consumer of the remaining settlement value, when issuing the notice required by subsection (5)(b).

- (8) If a consumer—
 - (a) fails to pay an amount demanded in terms of subsection (7) within ten business days after receiving a demand notice, the credit provider may commence proceedings in a court for judgment enforcing the credit agreement; or
 - (b) pays the amount demanded after receiving a demand notice at any time before judgment is obtained under paragraph (a), the agreement is terminated upon remittance of that amount.

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

Compensation for consumer

113. (1) A consumer who has unsuccessfully attempted to resolve a disputed sale of goods in terms of section 112 directly with the credit provider may apply to the court to review the sale.

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

PART C

Debt enforcement by repossession or judgment

Required procedures before debt enforcement

114. (1) Subject to subsection (2), if the consumer is in default under a credit agreement, the credit provider—

- (a) must draw the default to the notice of the consumer in writing and propose that the consumer discuss the default with the credit provider, within a period of at least ten business days, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) subject to section 115(2), may not commence any legal proceedings to enforce the agreement before—
 - (i) first providing notice to the consumer, as contemplated in paragraph (a); and
 - (ii) meeting any further requirements set out in section 115.

(2) In the event of the consumer being in default under a credit agreement on two or more occasions, the period referred to under paragraph (a) of subsection (1) is reduced to five business days.

(3) Subsection (1) does not apply to a credit agreement that is subject to proceedings in a court.

(4) Subject to subsection (5), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.

- (5) A credit provider may not re-instate or revive a credit agreement after—

- (a) the sale of any property pursuant to—
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 112;
- (b) the execution of any other court order enforcing that agreement;
- (c) the termination thereof in accordance with section 106; or
- (d) the court ordered that the debt that underlies a credit agreement is extinguished: Provided that where only a portion of the debt due under a credit agreement was extinguished, this subsection applies only in respect of the portion so extinguished.
- (6) The notice contemplated in subsection (1)(a) must be delivered to the consumer in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities.
- (7) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (6).
- (8) The credit provider must retain proof of the delivery contemplated in subsection (6).

Debt procedures in a court

- 115.** (1) Despite any provision of law or contract to the contrary and subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and—
- (a) at least ten business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 114(1);
 - (b) in the case of a notice contemplated in section 114(1), the consumer has—
 - (i) not responded to that notice; or
 - (ii) responded to the notice by rejecting the credit provider’s proposals; and
 - (c) in the case of an instalment agreement or secured loan, the consumer has not

surrendered the relevant property to the credit provider as contemplated in section 112.

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

- (a) all relevant property has been sold pursuant to—
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 112; and
- (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.

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

- (a) in the case of proceedings to which sections 112, 114 or 116 apply, the procedures required by those sections have been complied with; and
- (b) the credit provider has not approached the court despite the consumer having—
 - (i) surrendered property to the credit provider, and before that property has been sold;
 - (ii) agreed to a proposal made in terms of section 114(1)(a) and acted in good faith in fulfilment of that agreement;
 - (iii) complied with an agreed plan as contemplated in section 114(1)(a); or
 - (iv) brought the payments under the credit agreement up to date, as contemplated in section 114(1)(a).

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

- (a) the credit agreement was reckless as described in section 66, the court must make an order contemplated in section 69;
- (b) the credit provider has not complied with the relevant provisions of this Act, as

contemplated in subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(b) the court must—

- (i) adjourn the matter before it; and
- (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.

(5) In any proceedings instituted by a credit provider for the return of goods to which a credit agreement which is an instalment transaction or secured loan relates, the court may, without derogating from any other power, make an order providing for the return of such goods, or any part thereof, to the credit provider on condition that—

- (a) the amount still owing by the consumer in terms of that credit agreement be reduced by an amount equal to the value of the goods to be so returned to the credit provider; or
- (b) if such value exceeds the amount then still owing as aforesaid, the credit provider shall pay to the consumer an amount equal to the difference between such value and the amount then still owing as aforesaid.

(6) The court shall, in addition to any other power, have the power, after the institution of any proceedings referred to in subsection (5) and pending the termination thereof, upon application of the credit provider, to make such orders as the court may deem just in order to have the goods in question valued or protected from damage or depreciation, including orders restricting or prohibiting the use of such goods or as to the custody thereof.

Repossession of goods

116. If a court makes an attachment order with respect to property that is the subject of a credit agreement, section 112(2) to (9) and section 113, read with the changes required by the context, apply with respect to any goods attached in terms of that order.

Compensation for credit provider

117. (1) A credit provider who has unsuccessfully attempted to resolve a dispute over the costs of attachment of property in terms of sections 114 to 116 directly with the consumer may apply to the court for compensation from the consumer in respect of any costs of repossession of property in excess of those permitted under section 116.

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

- (a) the consumer knowingly—
 - (i) provided false or misleading information to the credit provider in terms of section 79; or
 - (ii) engaged in a pattern of behaviour that was reasonably likely to frustrate or impede the exercise of the credit provider’s right to repossess property under sections 114 to 116; and
- (b) as a result, the credit provider experienced unreasonable delay or incurred exceptional costs in the exercise of those rights.

Automatic interdict against removal or use of goods

118. (1) When summons is issued by a credit provider in proceedings in connection with, or arising from, a credit agreement that is an instalment agreement or a secured loan, he, she or it may include in such summons a notice whereby any person is prohibited from using the goods in question or removing them from the place where they are when the summons is served, or allowing them to be used or removed from such place, by any person other than the plaintiff or a deputy sheriff or a messenger of court.

(2) A notice referred to in subsection (1) shall have the effect of an interdict restraining any person having knowledge thereof, from using or removing such goods or allowing them to be used or removed.

(3) A person affected by a notice referred to in subsection (1) may apply to the court to have it set aside.

(4) No person shall ignore or fail to comply with any notice referred to in subsection (1).

Orders as to committal for contempt of court and emolument attachment and garnishee orders

119. No court shall make—

- (a) an emoluments attachment order;
- (b) a garnishee order; or
- (c) an order referred to in section 65A(1) of the Magistrates’ Court Act,

for the purpose of enforcing compliance with any judgement or order of court for payment by any consumer of any amount payable in terms of, or as a result of the termination or rescission of, or as damages for the breach of, a credit agreement which is an instalment agreement or secured loan, or in terms of any novation of any claim for such amount, unless the credit provider concerned has satisfied the court that—

- (i) the goods in question cannot be recovered by him, her or it by reason of the fact that without any fault on his, her or its part those goods have been destroyed or become lost;
- (ii) the consumer is no longer in possession of those goods and the credit provider cannot locate the whereabouts thereof; or
- (iii) those goods have been seized under another law or by order of court, and that it is unlikely that the credit provider will obtain possession thereof.

Prohibited collection and enforcement practices

- 120.** (1) A credit provider or debt collector must not—
- (a) make use of any document, number or instrument referred to in section 71(2)(1) 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 or debt collector.
- (2) When collecting money owed by a consumer under a credit agreement or when seeking to enforce a credit agreement, a credit provider or debt collector or his, her or its manager, agent, or employee must not use or rely on, or permit any person to use or rely on, any document, instrument or contract provision referred to in section 71(2)(1).
- (3) A credit provider or debt collector or his, her or its manager, agent, or employee must not—
- (a) use force or threaten to use force against a consumer or debtor or any other person with whom the consumer or debtor has family ties or a familial or personal relationship;
 - (b) act towards a consumer or debtor or any other person with whom the consumer or debtor has family ties or a familial or personal relationship, in an excessive or intimidating manner;

- (c) make use of fraudulent or misleading representations, including—
 - (i) the simulation of legal proceedings;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer, deputy sheriff of court, messenger of court, or other officer of court or any similar person; or
 - (iv) the making of unjustified threats to enforce rights;
- (d) spread or threaten to spread false information concerning the creditworthiness of a consumer or debtor;
- (e) contravene or fail to comply with a provision of a code of conduct;
- (f) contravene or fail to comply with any provision of this Act; or
- (g) behave or act in any manner amounting to conduct, other than that mentioned in this section, which is improper.

Recovery of debt

121. (1) A credit provider or debt collector must not recover from a consumer or debtor any amount other than—

- (a) the unpaid balance of the principal debt, the unpaid interest charges and all other fees and charges payable by the consumer or debtor to the credit provider limited to the prescribed amounts pursuant to section 83; and
- (b) any permitted collection costs, which may not exceed the prescribed maximum, and only to the extent permitted by this Part.

(2) A credit provider or debt collector must deliver to a consumer or debtor, upon request and against payment of a prescribed fee, a settlement account containing a complete exposition of all debits and credits in connection with a specific collection: Provided that a consumer or debtor shall be entitled to request a settlement account free of charge once in every six months.

- (3) The Minister may, by regulation, prescribe the fee pursuant to subsection (2).

CHAPTER 7

DISPUTE SETTLEMENT OTHER THAN DEBT ENFORCEMENT

PART A Initiating complaints

Initiating a complaint to Consumer Credit Regulators

122. (1) Subject to subsection (2), any person may, after exhausting the registrant's internal complaint resolution mechanisms, submit a complaint concerning an alleged contravention of this Act to the relevant Consumer Credit Regulator, in the form and manner as may be provided for in a standard.

- (2) Complaints concerning disputes arising from—
 - (a) Part D of Chapter 4;
 - (b) Part A of Chapter 5;
 - (c) section 81;
 - (d) section 93, read with section 97;
 - (e) section 104;
 - (f) section 112, read with section 113;
 - (g) sections 114, 115, 116, read with section 117;
 - (h) section 118,

must be directed to a court of competent jurisdiction in terms of the applicable rules and procedures of that court.

(3) The Consumer Credit Regulators may initiate a complaint on behalf of a consumer.

(4) The Consumer Credit Regulators may apply to a court on behalf of a consumer concerning any matter arising from this Act.

Court orders to enforce Act

123. (1) Where a registrant or former registrant has contravened any provision of this Act, the court may at the instance of the Consumer Credit Regulators, make any order considered

appropriate for the purposes of enforcing this Act or protecting the interests of consumers.

(2) Without limiting the generality of subsection (1), orders of the court under that subsection may—

- (a) direct the person to undertake a specified act, or refrain from undertaking a specified act, in order to—
 - (i) remedy the effects of the contravention;
 - (ii) compensate persons who have suffered loss because of the contravention;
 - (iii) ensure that the registrant or former registrant does not commit further contraventions of this Act; or
 - (iv) prevent the disposal of evidence; and
- (b) include an order for the attachment of assets to prevent their concealment, removal, dissipation or destruction.

(3) The court may in appropriate circumstances issue an interim order pending the final determination of the matter.

(4) The Consumer Credit Regulators are considered to have the necessary *locus standi* or other procedural requirement for an applicant or plaintiff for the purposes of launching proceedings in a court.

PART B

Resolution or investigation of complaints

Investigation by Consumer Credit Regulators

124. (1) Upon initiating or accepting a complaint in terms of section 122, the relevant Consumer Credit Regulator may—

- (a) issue a notice of no-merit to the complainant, if the complaint appears to be frivolous or vexatious, does not allege any facts which, if true, would constitute grounds for a remedy under this Act, or is misdirected pursuant to section 122(2); or
- (b) cause the complaint to be investigated, in any other case.

(2) Before investigating a complaint in terms of subsection (1)(b) involving a regulated financial institution or public body, the Consumer Credit Regulator must notify the regulatory authority that issued a licence to that regulated financial institution or the public body.

(3) At any time during an investigation, the Consumer Credit Regulators may authorise an inspector appointed under section 13 to assist in conducting the investigation contemplated in subsection (1).

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

- (a) to appear before the Consumer Credit Regulator to be interrogated; or
- (b) to deliver or produce to the Consumer Credit Regulator such book, document or other object, at a time and place specified in the summons.

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

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

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

Outcome of complaint

125. After completing an investigation into a complaint, the Consumer Credit Regulator may—

- (a) issue a notice of no-merit to the complainant;
- (b) refer the matter to the relevant prosecuting or law enforcement authority, if the complaint concerns an offence in terms of this Act;

- (c) issue a directive to the registrant in terms of section 39; or
- (d) impose an administrative sanction on the registrant pursuant to section 40.

Consumer to approach court

126. If a Consumer Credit Regulator issues a notice of no-merit in response to a complaint in terms of this Act, the complainant concerned may approach a court of competent jurisdiction in terms of the applicable rules and procedures of that court.

CHAPTER 8 ENFORCEMENT OF ACT

PART A Inspections and searches

Authority to enter and search

127. (1) The Consumer Credit Regulators may, without prior notification to the registrant concerned, authorise an inspector appointed under section 13 to conduct an on-site inspection of the business and affairs of the registrant.

(2) Before conducting an on-site inspection of the business and affairs of a regulated financial institution or public body, the Consumer Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution or with the public body.

(3) A person conducting an on-site inspection pursuant to subsection (1) may, at any time during business hours enter and search the premises of the registrant.

(4) Following an inspection under subsection (1), if the Consumer Credit Regulator considers that the registrant is contravening or failing to comply with, or has contravened or failed to comply with, any provision of this Act or a condition of its registration, the Consumer Credit Regulator may—

- (a) issue a directive to the registrant in terms of section 39;
- (b) impose an administrative sanction on the registrant pursuant to section 40.

(5) The relevant Consumer Credit Regulators may, by means of any other appropriate public statement, make known the status, outcome and details of an on-site inspection if such

disclosure is in the public interest.

Powers to enter and search

- 128.** (1) A person who is authorised under section 127 to enter and search premises may—
- (a) enter upon or into those premises and require the production of the accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection;
 - (b) search those premises for the accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection;
 - (c) open, or cause to be opened any strong room, safe or other container in which the inspector suspects the accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection are kept;
 - (d) search any person on those premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the investigation;
 - (e) examine any accounts, accounting and other records, books, documents or other items on or in those premises that has a bearing on the investigation;
 - (f) request information or explanations about any accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection 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;
 - (g) take extracts from, or make copies of, any accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection on or in the premises that has a bearing on the investigation;
 - (h) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
 - (i) seize any output from that computer for examination and copying;

- (j) attach and, if necessary against issue of a receipt, remove from the premises for examination and safekeeping anything that has a bearing on the investigation; and
 - (k) require the registrant to produce, at a specific time and place, the accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection.
- (2) Section 124(6) applies to an answer given or statement made to an inspector in terms of this section.
- (3) An inspector may, with the written authority of the relevant Consumer Credit Regulator, also inspect the accounts, accounting and other records, books, documents or other items of any person or corporate entity if the Consumer Credit Regulator—
- (a) has reason to believe that the registrant has or had a direct or indirect interest in the business of that person or corporate entity;
 - (b) has reason to believe that such person or corporate entity has or had a direct or indirect interest in the business of the registrant; or
 - (c) considers it necessary for a proper inspection of the affairs of the registrant that those accounts, accounting and other records, books, documents or other items be inspected, and the provisions of subsection (1) apply with the necessary changes in respect of such an inspection.
- (4) For the purposes of subsection (3)(b), a person who holds shares as a nominee or in trust on behalf of another person in a registrant, is deemed to have an interest in the registrant, and must on request of the inspector disclose the name of that other person.
- (5) The registrant whose accounts, accounting and other records, books, documents or items have been seized under subsection (1)(j) or its lawful representative is entitled to examine, make entries in and make extracts from them during office hours under such supervision as the relevant Consumer Credit Regulator or an inspector may determine.
- (6) On completion of an inspection in terms of this Act, or at such intervals as the relevant Consumer Credit Regulator may determine, the inspector must prepare a report which must be submitted to the Consumer Credit Regulator, and the Consumer Credit Regulator must transmit a copy of such report to the registrant.
- (7) An inspector authorised to conduct an entry and search in terms of section 127 may be accompanied and assisted by a police officer.

Conduct of entry and search

129. (1) A person who enters and searches any premises under section 128 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 128(1)(d), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who enters and searches premises under section 128, before questioning any person—

(a) must advise that person of the right to be assisted at the time by an advocate or attorney; and

(b) allow that person to exercise that right.

(4) A person who removes anything from premises being searched must—

(a) issue a receipt for it to the owner of, or person in control of, the premises; and

(b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) An inspector may take any action referred to in section 128 in respect of a premises or part of a premises that is a private dwelling or is being used as a private dwelling only if—

(a) authorised to do so by a warrant issued by a judge or a magistrate;

(b) without a warrant if there are reasonable grounds for the inspector to believe that—

(i) a warrant will be issued under subsection (6) if the inspector applies for such warrant; and

(ii) the delay in obtaining a warrant would prejudice the object of the inspection, or failure to act immediately may prejudice securing the accounts, accounting and other records, books, documents or other items for supervisory or enforcement action by the relevant Consumer Credit Regulator.

(c) consent to such actions have been given by the owner or person in physical control

of the premises after that owner or person was informed that there is no obligation to admit the inspector in the absence of a warrant.

(6) On application by an inspector, a judge or a magistrate having jurisdiction in the area where the premises in question are located may issue a warrant referred to in subsection (5).

(7) A judge or a magistrate may only issue a warrant referred to in subsection (5) on written application by an inspector setting out under oath or affirmation the grounds why it is necessary for the inspector to gain access to the relevant premises.

(8) In the event that during an entry or search of any premises, a person claims that—

(a) any accounts, accounting and other records, books, documents or other items contains privileged information; and

(b) for that reason refuses the inspection or removal of accounts, accounting and other records, books, documents or items, and the inspector is reasonably satisfied that the accounts, accounting and other records, books, documents or items contains information relevant to the inspection, the inspector may request a police officer to seize and remove such accounts, accounting and other records, books, documents or items for safe custody until a court has made a ruling on the question of privilege.

(9) In so far as this section provides for a limitation of the fundamental rights contemplated in Article 13(1) of the Namibian Constitution, in that it authorises interference with the privacy of the home of a person, correspondence or communications, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

(10) A police officer who is assisting an inspector who is authorised to enter and search premises under section 128, 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.

(11) Before using force in terms of subsection (10), 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.

Costs of inspection

130. If the relevant Consumer Credit Regulator, after considering the results of an inspection in terms of this Act, is satisfied that it is reasonable to do so, the expenses incurred by and the remuneration of, an inspector appointed under section 15 may be recovered from the registrant.

Disclosure to certain parties

131. If, in the opinion of the Consumer Credit Regulators, it is necessary or desirable to do so on the basis of this Act or other applicable laws, the Consumer Credit Regulators may convey any information obtained during an inspection to—

- (a) a public body;
- (b) a competent court;
- (c) another regulatory authority;
- (d) a director, member of a board, principal officer, auditor, shareholder or other owner, partner, liquidator, curator or executor or trustee of a registrant; or
- (e) prosecuting or law enforcement authorities.

PART B Offences

Breach of confidence

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

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

(2) Subsection (1) does not apply to information disclosed—

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the administration of justice; or
- (c) at the request of a person referred to in section 131.

Hindering administration of Act

133. 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.

Offences related to credit agreements generally

- 134.** (1) A credit provider who intentionally—
- (a) participates in an unlawful credit marketing practice contemplated in section 60(2) and (3), section 61(1) or section 72;
 - (b) does not comply with the limitations to entering into a credit agreement at a private dwelling contemplated in section 61(2);
 - (c) does not comply with the limitations related to visiting or entering into a credit agreement at a person’s place of employment contemplated in section 61(3);
 - (d) enters into an unlawful agreement contemplated in section 70(1) with a prospective consumer;
 - (e) includes an unlawful provision contemplated in section 71 in a credit agreement with a prospective consumer; or
 - (f) offers or demands that a consumer purchases or maintains insurance the cover of which is unreasonably high or is unreasonably priced as contemplated in section 88(3)(a) or (b) respectively,

is guilty of an offence.

(2) Any person who intentionally sells a debt under a credit agreement to which this Act applies and which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969), as contemplated by section 111(1), is guilty of an offence.

(3) Any person who intentionally continues the collection of, or attempts to re-activate a debt under a credit agreement to which this Act applies under the circumstances contemplated in section 111(2), is guilty of an offence.

Offences related to registration

- 135.** (1) Any person who intentionally gives him-, her- or itself out to be—
- (a) a credit provider, without having been registered under section 14;

- (b) a credit bureau, without having been registered under section 15;
- (c) a debt collector, without having been registered under section 16,

is guilty of an offence.

(2) Subsection (1) does not apply if the act in question was a once-off transaction or incidental to the main business of the person contemplated in subsection (1): Provided that the main business of that person may not be the provision of credit or debt collection, as contemplated in this Act, nor may it be the retention of credit information as contemplated in this Act.

Offence by non-natural person

136. Where the person who committed an offence in terms of this Act is not a natural person, every director or officer of that person who knowingly was a party to the contravention, is, subject to the provisions of this Act and any other law, guilty of an offence and subject to the same penalties as if such director or officer committed the offence in person.

Offences relating to Consumer Credit Regulators

- 137.** A person commits an offence who—
- (a) does anything calculated to improperly influence a Consumer Credit Regulator concerning any matter connected with an investigation;
 - (b) anticipates any findings of a Consumer Credit Regulator concerning an investigation in a way that is calculated to influence the findings;
 - (c) knowingly provides false information to a Consumer Credit Regulator; or
 - (d) without authority, but claiming to have authority in terms of section 127—
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Penalties

- 138.** (1) Any person convicted of an offence in terms of this Act, is liable—
- (a) in the case of a contravention of section 137, to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and

imprisonment;

- (b) in the case of a contravention contemplated in sections 134 or 135, to a fine not exceeding N\$5 000 000 or to imprisonment not exceeding ten years, or to both a fine and imprisonment, or if the convicted person is not a natural person as contemplated in section 136, to a fine not exceeding ten per cent of its annual turnover or N\$1 000 000, whichever amount is the greater; or
- (c) in any other case not listed in paragraphs (a) or (b), to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

(2) When determining an appropriate penalty, the following factors must be considered:

- (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 person convicted of an offence in terms of this Act;
- (d) the market circumstances in which the contravention took place;
- (e) the value of the credit agreement that formed the basis for the commission of the offence;
- (f) the degree to which the person convicted of an offence in terms of this Act has co-operated with the relevant Consumer Credit Regulator; and
- (g) whether the person convicted of an offence in terms of this Act has previously been found in contravention of this Act.

(3) For purposes of determining the appropriate penalty contemplated in subsection (1)(b), annual turnover must be calculated with reference to the total income of that credit provider during the immediately preceding year under all credit agreements to which this Act applies, less the amount of that income that represents the repayment of principal debt under those credit agreements.

Magistrates' Court's jurisdiction to impose penalties

139. Despite anything to the contrary contained in any other law, a Magistrates' Court has jurisdiction to impose any penalty provided for in section 138.

PART C

Miscellaneous matters

Limitations of bringing action

140. A complaint in terms of this Act may not be made to the relevant Consumer Credit Regulator or a court more than three years after—

- (a) the act or omission that is the cause of the complaint; or
- (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

Serving documents

141. Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person will have been properly served when it has been either—

- (a) delivered to that person; or
- (b) sent by registered mail to that person's last known address.

Proof of facts

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

(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.

CHAPTER 9

GENERAL PROVISIONS

Power to issue standards

143. (1) The Consumer Credit Regulators may, by notice in the *Gazette*, issue such standards that may be considered necessary or advisable for the due carrying out of the provisions

of this Act and to achieve the purpose and intent of this Act.

(2) The notice referred to in subsection (1) must state the date on which the standard will come into effect.

(3) Before issuing a standard, the relevant Consumer Credit Regulator must—

- (a) obtain the approval of its board;
- (b) publish the proposed standard in the *Gazette* for public comment;
- (c) give the public not less than 30 calendar days after the date of publication of the proposed standard to make representations in writing to the relevant Consumer Credit Regulator with respect to the proposed standard; and
- (d) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(4) If the Consumer Credit Regulators consider it necessary on an urgent basis, the relevant Consumer Credit Regulator may issue a standard without following the procedure set out in subsection (3), but any such standard ceases to have effect at the end of 90 calendar days after it has been issued, unless the procedure referred to in subsection (3) has been followed.

(5) The Consumer Credit Regulators may, by notice in the *Gazette*, revoke or modify a standard, subject to the procedure referred to in subsection (3).

Standards

144. (1) Without derogating from the generality of section 143(1), the Consumer Credit Regulators may issue the standards referred to in subsection (2).

(2) For the purposes of this Act, the Consumer Credit Regulators may issue standards relating to—

- (a) the qualification, experience, competency and other fit and proper requirements for applicants and key responsible persons for purposes of sections 14(4)(b), 14(4)(c)(i), 15(3)(b) and 16(3)(b) and the documents and information which must be submitted to the Consumer Credit Regulators;
- (b) the suitability requirements in respect of a licensed premises, pursuant to section 14(4)(g);

- (c) the human, financial and operational resources as may be required for applicants to function efficiently and to carry out effectively its functions in terms of this Act, pursuant to sections 14(4)(d), 15(3)(f) and 16(3)(f);
- (d) the form, content and manner of the application for registration, and the application fee payable, in terms of section 17(1), and the documents and information that must be submitted to the Consumer Credit Regulators;
- (e) the records relating to a registrant's registered activities that must be kept, as well as the form and manner in which it must be kept pursuant to section 26(1);
- (f) the periodical and other returns, statements and reports, as well as the dates, intervals and manner of submission thereof, pursuant to section 26(2);
- (g) the form, content and manner of an application for approval of a change of name, use of another name or use of a shortened form or derivative of a name, and the application fee payable, in terms of section 27(3), and the documents and information that must be submitted to the Consumer Credit Regulators;
- (h) the form, content and manner of an application for approval of a purchase, amalgamation or transfer of a registrant's business, and the application fee payable, in terms of section 28(1), and the documents and information that must be submitted to the Consumer Credit Regulators;
- (i) the form, content and manner of an application for approval to conduct any other business not related to the microlender's registered activities from the licensed premises or parts of the licensed premises, and the application fee payable, in terms of section 29(2), and the documents and information that must be submitted to the Consumer Credit Regulator;
- (j) the form, content and manner of an application for approval to open an additional branch, and the application fee payable, in terms of section 30(2), and the documents and information that must be submitted to the Consumer Credit Regulators;
- (k) minimum requirements in respect of codes of conduct, pursuant to section 33(1);
- (l) the minimum requirements and standards for the training of registrants' managers, employees or agents, pursuant to section 34(2);
- (m) guidelines for methods of assessing whether a document satisfies the requirements of plain language, in respect of section 47;

- (n) the manner in which a particular document must be delivered in respect of section 48;
- (o) further principles on treating consumers or prospective consumer fairly, pursuant to section 49(3);
- (p) the form, content and manner of the accounting records, applications for credit and credit agreements that must be kept and maintained by a credit provider, and the applicable timelines, pursuant to section 51(4) and (5);
- (q) pursuant to section 53(1), the form and manner of the register of credit agreements to be established and maintained by credit bureaus;
- (r) the manner and form, as well as the applicable timelines for purposes of section 53(2), (3), (4) and (5);
- (s) the period of retention of any consumer credit information reported to a credit bureau in respect of section 54(1)(d);
- (t) standards for the maintenance of records of consumer credit information by a credit bureau in respect of section 54(1)(e);
- (u) standards for the filing and reporting of consumer credit information by credit bureaus, pursuant to section 54(2);
- (v) for purposes of section 59(a), the nature of, time frame, form and manner in which consumer credit information held by credit bureaus must be reviewed, verified, corrected or removed;
- (w) for purposes of section 59(b), the manner in which an independent auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) may confirm that the consumer credit information referred to in section 59(a) has been reviewed, verified, corrected or removed;
- (x) the form and manner of the register to be maintained in respect of section 60(7)(a);
- (y) pursuant to section 62(4)—
 - (i) the statements that must be contained in an advertisement;
 - (ii) the statements that are prohibited in an advertisement;

- (iii) the manner and form of a statement of comparative costs in an advertisement; and
 - (iv) the cautions or warnings concerning the use of comparative statements;
 - (z) the manner and form of specifying the interest rate and other costs in respect of section 62(5);
 - (aa) the statements to be included for particular types of solicitation for purposes of section 63;
 - (bb) the affordability assessment requirements in respect of section 68;
 - (cc) the different forms that different credit agreements may take pursuant to section 75(2) and (5);
 - (dd) the manner and form of the disclosures to be made to the consumer in terms of section 88(6)(b);
 - (ee) the form and manner of the directions pursuant to section 88(7);
 - (ff) the different forms that a statement of account may take in respect of any credit agreement, pursuant to section 91(2);
 - (gg) the form and manner of the disclosure statement, pursuant to section 110(3) and (5);
 - (hh) the form and manner of a complaint concerning an alleged contravention of the Act, pursuant to section 122(1); and
 - (ii) any other matter which under this Act is required or permitted to be determined by a standard.
- (3) A standard issued under this section may, in respect of a contravention or a failure to comply with the standard, provide for a daily administrative penalty, as prescribed by the Minister by regulation, for as long as the non-compliance exists.
- (4) An administrative penalty imposed in terms of subsection (3) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the relevant Consumer Credit Regulator.

(5) The administrative penalty payable in terms of subsection (3) and any interest thereon is a debt due to the relevant Consumer Credit Regulator by the registrant and such Consumer Credit Regulator may recover such debt in terms of section 43.

Regulations

- 145.** (1) The Minister may make any regulations—
- (a) expressly authorised or contemplated elsewhere in this Act; and
 - (b) regarding any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Without derogating from the generality of subsection (1), the Minister may make regulations relating to—
- (a) the monetary asset value or annual turnover for purposes of section 4(1)(a)(i);
 - (b) the maximum permissible principal debt and maximum permissible duration of a microlending transaction pursuant to paragraphs (d) and (e) of the definition of “microlending transaction”, pursuant to section 7(2);
 - (c) the maximum permissible duration of credit agreements, pursuant to section 7(4)(a);
 - (d) the minimum initial payments to be paid in terms of credit agreements, pursuant to section 7(4)(b);
 - (e) public interest credit agreements for purposes of section 9;
 - (f) demarcate the categories or types of credit providers and other registrants to be regulated and supervised by each respective Consumer Credit Regulator for purposes of section 10(2);
 - (g) the disqualification of any business activity pursuant to section 15(5);
 - (h) the minimum percentage of the member’s interest or shareholding in a juristic person that must be owned by Namibian citizens or persons lawfully admitted to Namibia for permanent residence for purposes of section 19(5)(c);
 - (i) pursuant to section 25(7), the administrative penalty per day in respect of a failure to appoint a principal officer or to notify the relevant Consumer Credit Regulator

on or before the dates pursuant to section 25(5) and (6);

- (j) pursuant to section 26(4), the administrative penalty per day in respect of a failure to submit periodical and other returns, statements and reports;
- (k) pursuant to section 30(6), the administrative penalty per day in respect of a failure to appoint a branch manager or to notify the relevant Consumer Credit Regulator on or before the dates pursuant to section 30(4) and (5);
- (l) the intervals and the manner in which interest on money deposited by a debt collector in a trust account must be paid to the relevant Consumer Credit Regulator, pursuant to section 31(3);
- (m) pursuant to section 36(4), the administrative penalty per day in respect of a failure to comply with a directive issued in terms of section 36(1);
- (n) pursuant to section 37(7), the administrative penalty per day in respect of a failure to comply with a notice issued in terms of section 37(1) or a directive issued in terms of section 37(5);
- (o) pursuant to section 39(5), the administrative penalty per day in respect of a failure to comply with a directive issued in terms of section 39(1);
- (p) search and production fees in respect of section 48(5)(b);
- (q) maximum fees that may be charged to a consumer for accessing consumer credit information for purposes of section 54(3);
- (r) for purposes of sections 65(3)(b)(ii) and 66(3)(b)(ii) and (c), the factors with which the value of the credit agreement that it guarantees must be discounted;
- (s) for purposes of section 71(6), the common law rights that may not be waived in a credit agreement on the grounds that the waiver of those rights would be inconsistent with the purposes of the Act;
- (t) maximum amounts in respect of initiation and service fees relative to the principal debt, for purposes of section 83(1)(b) and (c);
- (u) maximum rates or limits, and methods of calculation, in respect of interest, for purposes of section 83(1)(d) and section 85(6);
- (v) maximum amounts or limits in respect of default administration charges and

collection costs, for purposes of section 83(1)(f) and (g);

- (w) the extent to which an initiation fee may be charged for purposes of section 83(2);
 - (x) pursuant to section 87(1)(e), 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;
 - (y) for purposes of section 88(2), the requirements for credit providers to require consumers to enter into and maintain credit life insurance;
 - (z) the limit in respect of the cost of credit insurance that a credit provider may charge a consumer for purposes of section 88(9);
 - (aa) pursuant to section 88(10) and where requirements contemplated in section 88(2) is prescribed, the limit in respect of the cost of credit life insurance contemplated in section 88(2);
 - (bb) the minimum threshold of the principal debt, for purposes of section 108(3);
 - (cc) the maximum early termination charge for purposes of section 108(3)(a);
 - (dd) the fee in respect of the settlement account referred to in section 121(2);
 - (ee) pursuant to section 144(3) and 145(5), the administrative penalty per day in respect of a failure to comply with a standard issued or regulation made;
 - (ff) the rate of interest payable on overdue and outstanding administrative penalties imposed;
 - (gg) any matter or aspect considered necessary for the protection of present and future consumers or prospective consumers;
 - (hh) any matter or aspect considered necessary for the protection and furtherance of the integrity and stability of the credit market in Namibia; and
 - (ii) the promotion of generally accepted principles of sound and ethical business practices and public regulation.
- (3) Different regulations may be made under subsection (2) in respect of different registrants or credit agreements, different categories of registrants or credit agreements and

different subcategories of a specific category of registrants or credit agreements, different kinds of credit agreements, goods, services, classes or groups of goods or services or consumers or categories of consumers.

- (4) The Minister may—
 - (a) publish the proposed regulations for public comment; and
 - (b) consult the Consumer Credit Regulators and other regulatory authorities.

(5) A regulation made under this section may, in respect of a contravention or a failure to comply with the regulation, prescribe a daily administrative penalty, for as long as the non-compliance exists.

(6) An administrative penalty imposed in terms of subsection (5) may provide for interest at a rate not exceeding the rate prescribed by the Minister by regulation, payable from a date determined by the relevant Consumer Credit Regulator.

(7) The administrative penalty payable in terms of subsection (5) and any interest thereon is a debt due to the relevant Consumer Credit Regulator by the registrant and such Consumer Credit Regulator may recover such debt in terms of section 43.

(8) A regulation made under this section may, in respect of a contravention or a failure to comply with the regulation, prescribe a penalty not exceeding a fine of N\$5 000 000 or imprisonment for a period not exceeding ten years, or both a fine and imprisonment.

- (9) A regulation in terms of this Act must be made by notice in the *Gazette*.

Exemptions

- 146.** (1) The Minister may, on reasonable grounds, and—
- (a) on the Minister’s own initiative but after consultation with the relevant Consumer Credit Regulator; or
 - (b) on the recommendation of the Consumer Credit Regulator after an application has been made to the Consumer Credit Regulator,

by notice in the *Gazette*, exempt any person or category of persons, from any provision of this Act and if the Minister is satisfied on reasonable grounds that granting the exemption will not—

- (i) conflict with the public interest;

- (ii) prejudice the interests of consumers; and
- (iii) frustrate the achievement of the purpose of this Act.

(2) A recommendation of the Consumer Credit Regulator given under subsection (1)(b) is not binding on the Minister.

(3) With respect to any exemption granted under subsection (1), the Minister may impose any requirements or conditions that the Minister considers to be necessary or desirable in the circumstances.

(4) Where a person who has been granted an exemption to which is attached requirements or conditions, contravenes or fails to comply with those requirements and conditions, the Minister may withdraw the exemption.

Indemnification

147. (1) The Consumer Credit Regulators or its employees or representatives or any person performing a function or exercising the power in terms of this Act, is not liable for damage caused by any action taken or report presented in good faith to further the objects of this Act, unless the damage is attributable to the gross negligence of the employee, representative or person.

(2) A credit provider and other sources of consumer credit information must indemnify a credit bureau for any type of action or damage awards that may result from inaccurate consumer credit information reported to it, if the credit bureau takes all reasonable measures to ensure the information is correct when processed by the credit bureau.

Conflicting legislation, consequential amendments, repeal of laws and transitional arrangements

148. (1) If there is a conflict between a provision of this Act mentioned in the first column of the table set out in Schedule 1, and a provision of another Act set out in the second column of that table, the conflict must be resolved in accordance with the rule set out in the third column of that table.

(2) The laws referred to in Schedule 2 are hereby amended in the manner set out in that Schedule.

(3) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 3.

(4) Subject to subsection (3) and the provisions of Schedule 3, the following Acts are hereby repealed—

- (a) the Usury Act, 1968 (Act No. 73 of 1968);
- (b) the Credit Agreements Act, 1980 (Act No. 75 of 1980); and
- (c) the Microlending Act, 2018 (Act No. 7 of 2018).

Short title and commencement

149. This Act is called the Consumer Credit Act, 20..., and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

DRAFT

SCHEDULE 1

Rules concerning conflicting legislation

(Section 148(1))

(This Schedule must still be aligned to the Namibian landscape, with the assistance of the legislative drafters at the Ministry of Justice.)

| Provisions of this Act | Conflicting Legislation | Conflict Resolution Rule |
|-------------------------------|--------------------------------|---------------------------------|
| | | |
| | | |
| | | |

SCHEDULE 2

Amendment of laws

(Section 148(2))

(This Schedule must still be aligned to the Namibian landscape, with the assistance of the legislative drafters at the Ministry of Justice.)

| No. and year of Act | Short title | Extent of amendment |
|---------------------|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>The Electronic Transactions Act, 4 of 2019, must be amended. The definition of “excluded laws” in this Act provides: “excluded laws” means -</p> <p>(a) the Wills Act, 1953 (Act No. 7 of 1953);</p> <p>(b) the Alienation of Land Act, 1981 (Act No. 68 of 1981);</p> <p>(c) the Stamp Duties Act, 1993 (Act No. 15 of 1993);</p> <p>(d) the Bills of Exchange Act, 2003 (Act No. 22 of 2003);</p> <p>and</p> <p>(e) any law which requires that a person that borrows money or to whom credit is provided, must conclude a written contract or must sign such contract or another document;</p> <p>For purposes of this Act, not every credit agreement will have to be signed, but some of them will definitely have to be signed for it to be validly entered into.</p> |
| | | <p>Both the NAMFISA Act, 2021, and the Bank of Namibia Act, 2020, must probably be amended to make reference to this Act and to the functions to be performed by NAMFISA and BoN as Consumer Credit Regulators. The powers of both NAMFISA and BoN to deal with complaints of consumers under this Act must also be broadened.</p> |
| | | |

SCHEDULE 3

Transitional provisions Definitions

(Transitional provisions still to be considered and finalised)

Definitions

1. (1) In this Schedule—

"effective date" means the date on which this Act, or any relevant provision of it, came into operation in terms of section 149;

"pre-existing credit agreement" means an agreement that was made before the effective date, and to which this Act applies; and

"previous Act" means a law repealed by section 148.

- (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.

Delayed application of required registration

2. Despite sections 14, 15 and 16, the requirement in terms of this Act for a credit provider, a credit bureau or a debt collector to be registered—

- (a) takes effect 40 business days after the effective date; and
- (b) during the first year after the effective date, that requirement is temporarily satisfied from the time that a person applies for registration as a credit provider, credit bureau or debt collector until the relevant Consumer Credit Regulator has made a final decision with respect to that application.

Register of credit agreements

3. (1) Despite section 53, the requirements of section 53(2), (3), (4) and (5) remain inoperative until a date declared by the Minister by notice in the *Gazette* after—

- (a) the credit bureaus have established the register of credit agreements as required by section 53(1); and
- (b) the Minister has received advice from an independent auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) that the credit bureaus have established reasonable and effective means to receive and compile information to be reported to it in terms of section 64.

(2) The Minister may prescribe the information to be registered by a credit provider in respect of a pre-existing credit agreement, in lieu of the information required by section 53(2).

Application of Act to pre-existing agreements

4. (1) This Act applies to a credit agreement that was made before the effective date, if that credit agreement would have fallen within the application of this Act in terms of Chapter 1 if this Act had been in effect when the agreement was made, subject to sub-items (2) to (5).

(2) The provisions of this Act referred to in the first column of the following table apply to a pre-existing credit agreement only to the extent indicated in the second column of the table.

| Provisions of the Act | Extent to which the provisions apply to a pre-existing credit agreement |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Chapter 1 Chapter 2 Chapter 3 Section 37 Sections 39 to 41 Sections 58 to 61 Chapter 5, Part E Sections 85 and 86 Chapters 6 to 9 Schedules 1 and 2 | Apply fully to a pre-existing credit agreement from the effective date, except that section 5(3) does not apply in respect of a pre-existing incidental credit agreement. |
| Chapter 4, Part A Section 54 | Apply to a pre-existing credit agreement only with respect to actions or omissions that occur on or after the effective date. |
| Sections 52 and 53 | Apply to a pre-existing credit agreement only to the extent that common law or legislation applied, to similar effect, to such an agreement or provision as at the date the agreement was made. |
| Section 56 Chapter 5, Part D | Apply to a pre-existing credit agreement from the effective date, subject to sub-item (3). |
| Chapter 4, Part C Sections 55, 57, 62 and 84 Chapter 5, Part C | Do not apply to pre-existing credit agreements, subject to sub-item (3). |

(3) With respect to any credit agreement made within one year before the effective date, the credit provider must within six months after the effective date—

- (a) provide the consumer with—
 - (i) a statement that meets the requirements of section 74; and
 - (ii) a document that meets the requirements of section 75,
to the extent that a document or statement contemplated in terms of subparagraphs (i) or (ii) above has not already been provided to the consumer by the credit provider prior to the effective date; and
- (b) introduce a form of periodic statement that meets the requirements of section 90.
- (4) On application by a credit provider to the relevant Consumer Credit Regulator, if it is satisfied on reasonable grounds that it is impracticable for the credit provider making best efforts in good faith to comply with all or part of sub-item (3), may—
 - (a) extend the time within which the credit provider must comply with the obligations of sub-item (3); or
 - (b) enter into a compliance agreement with the credit provider establishing a plan and schedule for meeting the requirements of sub-item (3).
- (5) Despite section 77, for the purposes of this item, a change after the effective date to any credit agreement that was made before the effective date constitutes the making of a new credit agreement, unless it is a change to—
 - (a) the interest rate under a variable rate agreement; or
 - (b) the interest rate or the credit limit under a credit facility.

Maximum interest rate

5. The maximum annual finance charge rates set in terms of the Usury Act, 1968 (Act No. 73 of 1968), and in effect immediately before the effective date continues in force despite the repeal of that Act, as the maximum interest rate, until the Minister first prescribes a maximum rate of interest in terms of section 87.

Specific preservation of rights

6. Despite the repeal of the Credit Agreements Act, 1980 (Act No. 75 of 1980), the provisions of section 24 of the Income Tax Act, 1962 (Act No. 58 of 1962), apply to a credit

agreement to which this Act applies, to the extent that those provisions would have applied to such a credit agreement if the Credit Agreements Act, 1980 (Act No. 75 of 1980), had not been repealed.

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

7. (1) A registration that had been issued in terms of section 15A of the Usury Act, 1968 (Act No. 73 of 1968), by an authority administering exemptions under that section, for an indefinite term and in force immediately before the effective date, has a duration, as from the effective date, of the period determined by regulation for that category of registration.

(2) Any other right or entitlement enjoyed by, or obligation imposed on, any person in terms of any provision of the previous Act, which had not been spent or fulfilled immediately before the effective date must be considered to be a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(3) A notice given by any person to another person in terms of any provision of a previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act.

(4) A document that, before the effective date, had been served in accordance with a previous Act must be regarded as having been satisfactorily served for any comparable purpose of this Act.

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

Continued enforcement of repealed laws

8. Despite the repeal of the previous Acts, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date the Consumer Credit Regulators may exercise any power of the Minister in terms of any such previous Act to investigate and prosecute any breach of that Act, as if they were proceeding with a complaint in terms of this Act.

Standards and Regulations

9. On the effective date, and for a period of 60 business days after the effective date, the Consumer Credit Regulators and the Minister may issue or make any standard or regulation contemplated in the Act without meeting the procedural requirements set out in sections 143, 145 or elsewhere in this Act, provided the Consumer Credit Regulators or the Minister has

published such proposed regulations in the *Gazette*, allowing a period of at least 30 business days for comment.

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