

- (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 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;
 - (e) a lease; or
 - (f) 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 credit transaction 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—
 - (i) section 108, that agreement must be regarded as a credit facility; or
 - (ii) section 4(1)(b) read with section 9(4), that agreement must be regarded as a large agreement if it is a mortgage agreement.

Categories of credit agreements

9. (1) For all purposes of this Act, every credit agreement is characterised as a small agreement, an intermediate agreement, or a large agreement, as described in subsections (2), (3) and (4) respectively.
- (2) A credit agreement is a small agreement if it is—
- (a) a pawn transaction;
 - (b) a credit facility, if the credit limit under that facility falls at or below the lower of the thresholds established in terms of section 7(1)(b); or
 - (c) any other credit transaction except a mortgage agreement or a credit guarantee, and the principal debt under that transaction or guarantee falls at or below the lower of the thresholds established in terms of section 7(1)(b).

- (3) A credit agreement is an intermediate agreement if it is—
- (a) a credit facility, if the credit limit under that facility falls above the lower of the thresholds established in terms of section 7(1)(b); or
 - (b) any credit transaction except a pawn transaction, a mortgage agreement or a credit guarantee, and the principal debt under that transaction or guarantee falls between the thresholds established in terms of section 7(1)(b). 5
- (4) A credit agreement is a large agreement if it is—
- (a) a mortgage agreement; or
 - (b) any other credit transaction except a pawn transaction or a credit guarantee, and the principal debt under that transaction or guarantee falls at or above the higher of the thresholds established in terms of section 7(1)(b). 10

Developmental credit agreements

- 10.** (1) A credit agreement, irrespective of its form, type or category, is a developmental credit agreement if—
- (a) at the time the agreement is entered into, the credit provider holds a supplementary registration certificate issued in terms of an application contemplated in section 41; and 15
 - (b) the credit agreement is—
 - (i) between a credit co-operative as credit provider, and a member of that credit co-operative as consumer, if profit is not the dominant purpose for entering into the agreement, and the principal debt under that agreement does not exceed the prescribed maximum amount; 20
 - (ii) an educational loan; or
 - (iii) entered into for any of the following purposes—
 - (aa) development of a small business; 25
 - (bb) the acquisition, rehabilitation, building or expansion of low income housing; or
 - (cc) any other purpose prescribed in terms of subsection (2)(a).
- (2) The Minister may prescribe—
- (a) additional purposes, as contemplated in subsection (1)(b)(iii)(cc), that are designed to promote the socio-economic development and welfare of persons contemplated in section 13(a); 30
 - (b) a maximum principal debt above which a credit agreement contemplated in subsection (1)(b)(i) does not automatically qualify as a developmental credit agreement; and 35
 - (c) criteria and standards to be applied by the National Credit Regulator in considering whether a credit provider's dominant purpose for making an agreement was profit or a purpose other than profit, including but not limited to the extent to which the credit agreement concerned contributes to the socio-economic development and welfare of persons contemplated in section 13(a). 40

Public interest credit agreements

- 11.** (1) The Minister—
- (a) by declaration in accordance with subsection (2); or
 - (b) by regulation in accordance with subsection (3), 45
- may declare that credit agreements entered into in specified circumstances, or for specified purposes, during a specific period or until the declaration or regulation is repealed, are public interest credit agreements.
- (2) The Minister, by notice in the *Gazette*, may make a declaration contemplated in subsection (1)(a)— 50
- (a) in order to promote the availability of credit in all or part of the Republic in circumstances of natural disaster or similar emergent and grave public interest; and

- (b) with or without prior notice or consultation, as the Minister may determine having regard to the circumstances.
- (3) The Minister may make a regulation contemplated in subsection (1)(b)—
- (a) in order to promote the availability of credit in all or part of the Republic in any circumstances that the Minister considers to be in the public interest; and 5
- (b) in accordance with the provisions of section 171(2).
- (4) When making a declaration or regulation contemplated in subsection (1) the Minister must prescribe the following criteria applicable to determining whether a credit agreement qualifies as a public interest credit agreement:
- (a) The public interest circumstances in which credit may be granted or made 10 available to a consumer;
- (b) the maximum permissible principal debt;
- (c) the maximum permissible duration of the credit agreement; and
- (d) the area within the Republic in which the consumer under such an agreement 15 must reside or carry on business.
- (5) A public interest credit agreement is exempt from the application of Part D of Chapter 4 to the extent that it concerns reckless credit.

CHAPTER 2

CONSUMER CREDIT INSTITUTIONS

Part A

20

National Credit Regulator

Establishment of National Credit Regulator

- 12.** (1) There is hereby established a body to be known as the National Credit Regulator, which—
- (a) has jurisdiction throughout the Republic; 25
- (b) is a juristic person;
- (c) is independent and subject only to the Constitution and the law;
- (d) must exercise its functions in accordance with this Act;
- (e) must be impartial; and
- (f) must perform its functions— 30
- (i) in as transparent a manner as is appropriate having regard to the nature of the specific function; and
- (ii) without fear, favour, or prejudice.
- (2) Each organ of state must assist the National Credit Regulator to maintain its independence and impartiality, and to perform its functions effectively. 35
- (3) The National Credit Regulator is responsible to carry out the functions and exercise the powers—
- (a) set out in sections 12 to 18; or
- (b) assigned to it by or in terms of this Act, or any other national legislation.
- (4) In carrying out its functions, the National Credit Regulator may— 40
- (a) have regard to international developments in the field of consumer credit and consumer financing; or
- (b) consult any person, organisation or institution with regard to any matter.
- (5) In respect to a particular matter within its jurisdiction or responsibility, the National Credit Regulator may exercise its responsibility by way of an agreement 45 contemplated in section 17(4)(b).

Development of accessible credit market

- 13.** The National Credit Regulator is responsible to—
- (a) promote and support the development, where the need exists, of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry to serve the needs of— 5
 - (i) historically disadvantaged persons;
 - (ii) low income persons and communities; and
 - (iii) remote, isolated or low density populations and communities, in a manner consistent with the purposes of this Act; 10
 - (b) set appropriate conditions for the supplementary registration of credit providers wishing to enter into developmental credit agreements, in order to promote access to credit in the manner, and for the persons, contemplated in paragraph (a);
 - (c) monitor the following matters and report to the Minister annually in respect of: 15
 - (i) Credit availability, price and market conditions, conduct and trends;
 - (ii) market share, market conduct and competition within the consumer credit industry, the credit industry structure, including the extent of ownership, control and participation within the industry by historically disadvantaged persons; 20
 - (iii) access to consumer credit by small businesses or persons contemplated in paragraph (a)(i) to (iii);
 - (iv) levels of consumer indebtedness and the incidence and social effects of over-indebtedness; and
 - (v) any other matter relating to the credit industry; and 25
 - (d) conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve access to credit for persons contemplated in paragraph (a)(i) to (iii).

Registration functions of National Credit Regulator 30

- 14.** The National Credit Regulator is responsible to regulate the consumer credit industry by—
- (a) registering credit providers, credit bureaux and debt counsellors;
 - (b) suspending or cancelling any registration issued in terms of this Act, subject to section 57(2); and 35
 - (c) establishing and maintaining the registries contemplated in sections 53 and 69(1) and by making information from those registries available to—
 - (i) each provincial credit regulator; and
 - (ii) other persons in the prescribed manner and form, subject to Part B of Chapter 4. 40

Enforcement functions of National Credit Regulator

- 15.** The National Credit Regulator must enforce this Act by—
- (a) promoting informal resolution of disputes arising in terms of this Act between consumers on the one hand and a credit provider or credit bureau on the other, without intervening in or adjudicating any such dispute; 45
 - (b) receiving complaints concerning alleged contraventions of this Act;

- (c) monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted;
- (d) investigating and ensuring that national and provincial registrants comply with this Act and their respective registrations;
- (e) issuing and enforcing compliance notices; 5
- (f) investigating and evaluating alleged contraventions of this Act;
- (g) negotiating and concluding undertakings and consent orders contemplated in section 138(1)(b);
- (h) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998); 10
- (i) referring matters to the Tribunal and appearing before the Tribunal, as permitted or required by this Act; and
- (j) dealing with any other matter referred to it by the Tribunal.

Research and public information 15

16. (1) The National Credit Regulator is responsible to increase knowledge of the nature and dynamics of the consumer credit market and industry, and to promote public awareness of consumer credit matters, by—

- (a) implementing education and information measures to develop public awareness of the provisions of this Act; 20
- (b) providing guidance to the credit market and industry by—
 - (i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act; or
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; 25
- (c) monitoring socio-economic patterns of consumer credit activity within the Republic, and in particular identifying factors concerning—
 - (i) over-indebtedness; and
 - (ii) the patterns, causes and consequences of over-indebtedness;
- (d) conducting reasonable periodic audits of registered credit providers in respect of historical data relative to credit applications and credit agreements in order to— 30
 - (i) establish demographic patterns of the credit market;
 - (ii) investigate socio-economic trends in the credit market, particularly among persons contemplated in section 13(a); and 35
 - (iii) detect patterns of possible discriminatory practices;
- (e) monitoring trends in the consumer credit market and industry with respect to—
 - (i) the needs of persons contemplated in section 13(a); and
 - (ii) the promotion of black economic empowerment and ownership within the industry; 40
- (f) monitoring trends in the market—
 - (i) for credit insurance, patterns of sale of credit insurance, costs of credit insurance, performance of credit insurance in meeting the obligations of consumers, and loss ratios of insurers in respect of credit insurance; and 45
 - (ii) for alternative dispute resolution agents, the patterns and costs of services, impartiality and neutrality of such agents, and the impact of such agents on the incidence and cost of debt enforcement and consumers' access to redress in the market; and

- (g) over time, reviewing legislation and public regulations, and reporting to the Minister concerning matters relating to consumer credit.
- (2) For the purposes of exercising its responsibilities in terms of subsection (1)(f)(i), the National Credit Regulator may—
- (a) require an insurer to provide periodic synoptic reports of aggregate information relating to credit insurance policies issued by it, in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and 5
- (b) make further reasonable requests for information from an insurer related to the information contemplated in paragraph (a). 10

Relations with other regulatory authorities

17. (1) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator—
- (a) may engage with that provincial credit regulator in co-operative activities of research, publication, education, staff development and training; and 15
- (b) in consultation with the Minister, may—
- (i) engage with that provincial credit regulator in staff exchanges or secondments; or
- (ii) provide technical assistance or expertise to that provincial credit regulator. 20
- (2) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator may engage with that provincial credit regulator in co-operative activities to detect and suppress prohibited conduct, if there are reasonable grounds to believe that any such conduct may be occurring within the province, or across its provincial boundaries. 25
- (3) At the direction of the Minister, the National Credit Regulator must engage with any relevant provincial credit regulator in co-operative activities to detect and suppress prohibited conduct occurring within the province or across its provincial boundaries.
- (4) The National Credit Regulator may— 30
- (a) liaise with any regulatory authority on matters of common interest;
- (b) negotiate agreements with any regulatory authority to—
- (i) co-ordinate and harmonise the exercise of jurisdiction over consumer credit matters within the relevant industry or sector; and
- (ii) ensure the consistent application of the principles of this Act; 35
- (c) participate in the proceedings of any regulatory authority; and
- (d) advise, or receive advice from, any regulatory authority.
- (5) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer credit matters within a particular industry or sector— 40
- (a) may negotiate agreements with the National Credit Regulator, as anticipated in subsection 4(b); and
- (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.
- (6) The National Credit Regulator may request a provincial credit regulator to submit any report or information related to the activities of that provincial credit regulator to the National Credit Regulator. 45

(7) The President may assign to the National Credit Regulator any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purpose of this Act.

(8) The National Credit Regulator may liaise with any foreign or international authorities having any objects similar to the functions and powers of the National Credit Regulator. 5

Reporting requirements of National Credit Regulator

18. (1) In addition to any other advice or reporting requirements set out in this Part, the National Credit Regulator is responsible to—

- (a) advise the Minister on matters of national policy relating to consumer credit and on the determination of national norms and standards regarding consumer protection in terms of this Act that should apply generally throughout the Republic; 10
- (b) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act; 15
- (c) report to the Minister annually on—
 - (i) the volume and cost of different types of consumer credit products, and market practices relating to those products; and
 - (ii) the implications for consumer choice and competition in the consumer credit market; 20
- (d) enquire into and report to the Minister on any matter concerning the purposes of this Act; and
- (e) advise the Minister in respect of any matter referred to it by the Minister.

(2) The Minister must table in Parliament any report submitted in terms of— 25

- (a) section 13(c) or section 16(1)(g); or
- (b) any other provision of this Part, if that report deals with a substantial matter relating to the purposes of this Act.

Governance of National Credit Regulator

19. (1) The National Credit Regulator is governed by a Board, consisting of— 30

- (a) a member designated by the Cabinet member responsible for finance, to serve until substituted by that Cabinet member;
- (b) a member designated by the Cabinet member responsible for housing matters, to serve until substituted by that Cabinet member;
- (c) a member designated by the Cabinet member responsible for social development matters, to serve until substituted by that Cabinet member; 35
- (d) a Chairperson appointed by the Minister;
- (e) a Deputy Chairperson appointed by the Minister; and
- (f) not more than six other members, at least two of whom must be knowledgeable on consumer matters, appointed by the Minister. 40

(2) The Chairperson, Deputy Chairperson and members contemplated in subsection (1)(f) each serve for a period of not longer than five years determined by the Minister in each case at the time of their appointment.

(3) The persons contemplated in subsection (2) must each have applicable knowledge or experience of matters connected with the purpose of this Act. 45

(4) The Board must—

- (a) guide the strategic development of the National Credit Regulator;

- (b) oversee and ensure the efficient and effective use of the resources of the National Credit Regulator;
 - (c) ensure that the National Credit Regulator is in compliance with all its legal requirements and reporting and financial accountability obligations; and
 - (d) provide advice to the Chief Executive Officer concerning the exercise of the functions and powers of the National Credit Regulator. 5
- (5) The Board may refer to the Minister any matter concerning the functioning of the National Credit Regulator.

Qualifications for Board membership

20. (1) To be eligible for appointment or designation as a member of the Board, and to continue to hold that office, a person must— 10
- (a) not be subject to any disqualification set out in subsection (2); and
 - (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (2); and
 - (ii) does not have any interests referred to in subsection (2)(b). 15
- (2) A person may not be a member of the Board if that person—
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
 - (b) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a registrant; or 20
 - (ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Board;
 - (c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate; 25
 - (d) has ever been, or is, removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
 - (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (f) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or 30
 - (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 35
- (3) For the purpose of subsection (2)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment. 40

Conflicting interests of members of Board

- 21.** (1) A member of the Board must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 20(2)(b).
- (2) A member of the Board must not— 5
- (a) engage in any activity that may undermine the integrity of the National Credit Regulator;
 - (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member has an interest— 10
 - (i) contemplated in section 20(2)(b); or
 - (ii) that precludes that member from performing the functions of a member of the Board in a fair, unbiased and proper manner;
 - (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b); 15
 - (d) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Board; or
 - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.
- (3) If, at any time, it appears to a member of the Board that a matter being considered by the Board at a meeting concerns an interest of that member referred to in subsection 20(2)(b), that member must— 20
- (a) immediately and fully disclose the nature of that interest to the meeting; and
 - (b) withdraw from the meeting to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 25
- (4) The disclosure by a member of the Board in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting in question.
- (5) Proceedings of the Board, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that— 30
- (a) a member of the Board failed to disclose an interest as required by subsection (3); or
 - (b) a member of the Board who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings. 35

Resignation, removal from office and vacancies

- 22.** (1) A member of the Board appointed in terms of section 19(1)(d), (e) and (f) may resign by giving to the Minister— 40
- (a) one month written notice; or
 - (b) less than one month written notice, with the approval of the Minister.
- (2) A member of the Board designated in terms of section 19(1)(a), (b) and (c) may resign by giving written notice jointly to the Minister and the relevant member of the Cabinet responsible for the designation of that member.
- (3) The Minister, after taking the steps required by subsection (4), may remove a member of the Board appointed in terms of section 19(1)(d), (e) and (f), only if that member has— 45
- (a) become disqualified in terms of section 20(2);
 - (b) acted contrary to section 21(2);
 - (c) failed to disclose an interest or withdraw from a meeting as required by section 21(3); or 50
 - (d) neglected to properly perform the functions of their office.
- (4) Before removing a person from office in terms of subsection (3), the Minister must afford the person an opportunity to state a case in defence of their position.

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

(6) A person may not be appointed in terms of section 19(1)(d), (e) and (f), to serve for more than two terms as a member of the Board. 5

Appointment of Chief Executive Officer

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

(a) with the advice, and subject to the oversight, of the Board, is responsible for all responsibilities pertaining to the functions of the National Credit Regulator; and 10

(b) is accountable to the Board.

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

Conflicting interests 15

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

(a) engage in any activity that may undermine the integrity of the National Credit Regulator;

(b) participate in any investigation, hearing, or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest; 20

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the National Credit Regulator; or 25

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

Appointment of inspectors and investigators

25. (1) The Chief Executive Officer— 30

(a) may appoint any suitable employee of the National Credit Regulator, or any other suitable person employed by the State, as an inspector; and

(b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act.

(2) When an inspector performs any function in terms of section 139 or Chapter 8, the inspector must— 35

(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— 40

(i) is affected by the inspector's actions in terms of this Act; and

(ii) requests to see the certificate.

(3) When exercising powers in terms of this Act, an inspector is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(4) The Chief Executive Officer may appoint or contract with any suitably qualified person to conduct research, audits, inquiries or other investigations on behalf of the National Credit Regulator. 45

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

Part B
National Consumer Tribunal

Establishment and constitution of Tribunal

- 26.** (1) There is hereby established a body to be known as the National Consumer Tribunal, which— 5
- (a) has jurisdiction throughout the Republic;
 - (b) is a juristic person;
 - (c) is a tribunal of record; and
 - (d) must exercise its functions in accordance with this Act or any other applicable legislation. 10
- (2) The Tribunal consists of a Chairperson and not less than 10 other women or men appointed by the President, on a full or part-time basis.
- (3) The President must—
- (a) appoint the Chairperson and other members of the Tribunal no later than the date on which this Act comes into operation; and 15
 - (b) appoint a person to fill any vacancy on the Tribunal.
- (4) Sections 20 and 21, each read with the changes required by the context, apply to the Tribunal and each of its members.

Functions of Tribunal

- 27.** The Tribunal or a member of the Tribunal acting alone in accordance with this Act may— 20
- (a) adjudicate in relation to any—
 - (i) application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application; or 25
 - (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in this Act;
 - (b) grant an order for costs in terms of section 147; and
 - (c) exercise any other power conferred on it by law.

Qualifications of members of Tribunal 30

- 28.** (1) The members of the Tribunal, viewed collectively—
- (a) must represent a broad cross-section of the population of the Republic; and
 - (b) must comprise sufficient persons with legal training and experience to satisfy the requirements of section 31(2)(a). 35
- (2) Each member of the Tribunal must—
- (a) be a citizen of South Africa, who is ordinarily resident in the Republic;
 - (b) have suitable qualifications and experience in economics, law, commerce, industry or consumer affairs; and
 - (c) be committed to the purposes of this Act.

Term of office of members of Tribunal 40

- 29.** (1) Each member of the Tribunal serves for a term of five years.
- (2) The President may re-appoint a member of the Tribunal at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.
- (3) The Chairperson, on one month written notice addressed to the Minister, may— 45
- (a) resign from the Tribunal; or
 - (b) resign as Chairperson, but remain as a member of the Tribunal.

- (4) A member of the Tribunal other than the Chairperson may resign by giving at least one month written notice to the Minister.
- (5) The President, on the recommendation of the Minister—
- (a) must remove the Chairperson or any other member of the Tribunal from office if that person becomes subject to any of the disqualifications referred to in section 20(2); and 5
 - (b) other than as provided for in paragraph (a), may remove the Chairperson or a member from office only for—
 - (i) serious misconduct;
 - (ii) permanent incapacity; or 10
 - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

Deputy Chairperson of Tribunal

- 30.** (1) The President must designate a member of the Tribunal as Deputy Chairperson of the Tribunal.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever— 15
- (a) the office of Chairperson is vacant; or
 - (b) the Chairperson is for any other reason temporarily unable to perform those functions.

Tribunal proceedings

- 31.** (1) The Chairperson is responsible to manage the caseload of the Tribunal, and must assign each matter referred to the Tribunal to— 20
- (a) a member of the Tribunal, to the extent that this Act provides for a matter to be considered by a single member of the Tribunal; or
 - (b) a panel composed of any three members of the Tribunal, in any other case.
- (2) When assigning a matter to a panel in terms of subsection (1)(b), the Chairperson must— 25
- (a) ensure that at least one member of the panel is a person who has suitable legal qualifications and experience; and
 - (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of resignation, illness, death, or withdrawal from a hearing in terms of section 29, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must— 30
- (a) direct that the hearing of that matter proceed before the remaining members of the panel, subject to the requirements of subsection (2)(a); or
 - (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing. 35
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) A decision of a single member of the Tribunal hearing a matter as contemplated in subsection (1)(a), or of a majority of the members of a panel in any other case, is the decision of the Tribunal. 40

Conflicts and disclosure of interest

- 32.** (1) A member of the Tribunal may not represent any person before the Tribunal.
- (2) If, during a hearing in which a member of the Tribunal is participating, it appears to that member that the matter concerns a financial or other interest of that member contemplated in section 20(2)(b), that member must— 45
- (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
 - (b) withdraw from any further involvement in that hearing. 50

Acting by member of Tribunal after expiry of term of office

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

Remuneration and benefits

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

Part C
Administrative Matters

Finances

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35. (1) The National Credit Regulator and the Tribunal are each financed from—

- (a) money appropriated by Parliament;
- (b) any fees payable in terms of this Act;
- (c) income derived from their respective investment and deposit of surplus money in terms of subsection (2); and
- (d) other money accruing from any source.

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(2) The National Credit Regulator or the Tribunal may invest or deposit money that is not immediately required for contingencies or to meet current expenditures—

- (a) on a call or short-term fixed deposit with any registered bank or financial institution in the Republic; or
- (b) in an investment account with the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984).

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Reviews and reports to Minister

36. (1) At least once every five years, the Minister must conduct an audit review of the exercise of the functions and powers of the National Credit Regulator, and the Tribunal. 25

(2) In addition to any other reporting requirement set out in this Act, the National Credit Regulator and the Tribunal must each report to the Minister annually on its activities, as required by the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) As soon as practicable after receiving a report of a review contemplated in subsection (1), or after receiving a report contemplated in subsection (2), the Minister must— 30

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

Part D

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National and provincial co-operation

Co-operative exercise of concurrent jurisdiction

37. (1) The Minister must consult with the responsible MEC of any province concerned—

- (a) to co-ordinate and harmonise the functions relating to consumer credit to be performed by the National Credit Regulator and one or more provincial credit regulators; and

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- (b) to facilitate the settlement of any dispute between the National Credit Regulator and one or more provincial credit regulators.
- (2) If this Act requires the provincial credit regulators to perform a particular function within their respective provinces, and—
- (a) within a particular province, no provincial credit regulator has been established; or
- (b) the Minister concludes on reasonable grounds that the provincial credit regulator within a particular province is unable to perform that function effectively,
- the Minister must consult with the responsible MEC of that province to determine the steps to be taken to ensure the fulfilment of that statutory obligation.

Information sharing

- 38.** (1) A provincial credit regulator must keep a register of each person whom it registers in terms of applicable provincial legislation.
- (2) The register must include prescribed information relating to—
- (a) the activities permitted under each such registration;
- (b) the address of any premises in, on or from which registered activities may be engaged in, conducted or made available under registrations issued by it; and
- (c) any other prescribed information.
- (3) Each provincial credit regulator must report to the National Credit Regulator, at the prescribed intervals, the information kept by that provincial credit regulator in terms of subsection (1).
- (4) A credit regulator must, on request from another credit regulator, provide a copy of all prescribed information in its possession concerning a registrant or applicant for registration.
- (5) The Minister, by regulation in accordance with section 171, may prescribe the timing, manner and form, and content of information to be provided in terms of this section.

CHAPTER 3

CONSUMER CREDIT INDUSTRY REGULATION

Part A

Registration requirements, criteria and procedures

Limited application of this Part

- 39.** (1) Sections 40, 42, 45, 48, 49 and 51 do not apply to a credit provider who—
- (a) operates only within one province; and
- (b) is registered as a credit provider in terms of applicable provincial legislation, if the Minister has declared that the registration requirements in terms of that provincial legislation are comparable to or exceed the registration requirements in terms of this Act.
- (2) The Minister may make a declaration contemplated in subsection (1) by notice in the *Gazette* after consulting the relevant MEC of the province concerned.

Registration of credit providers

- 40.** (1) A person must apply to be registered as a credit provider if—
- (a) that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or

- (b) the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42(1).
- (2) In determining whether a person is required to register as a credit provider—
- (a) the provisions of subsection (1) apply to the total number and aggregate principal debt of credit agreements in respect of which that person, or any associated person, is the credit provider; 5
- (b) each associated person that is a credit provider in its own name and falls within the requirements of subsection (1) must apply for registration in its own name; 10
- (c) a credit provider that conducts business in its own name at or from more than one location or premises is required to register only once with respect to all of such locations or premises; and
- (d) “associated person”—
- (i) with respect to a credit provider who is a natural person, includes the credit provider’s spouse or business partners; and 15
- (ii) with respect to a credit provider that is a juristic person, includes—
- (aa) any person that directly or indirectly has a controlling interest in the credit provider, or is directly or indirectly controlled by the credit provider; 20
- (bb) any person that has a direct or indirect controlling interest in, or is directly or indirectly controlled by, a person contemplated in clause (aa); or
- (cc) any credit provider that is a joint venture partner of a person contemplated in this subparagraph. 25
- (3) A person who is required in terms of subsection (1) to be registered as a credit provider, but who is not so registered, must not offer, make available or extend credit, enter into a credit agreement or agree to do any of those things.
- (4) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not so registered is an unlawful agreement and void to the extent provided for in section 89. 30
- (5) A person to whom this section does not apply in terms of section 39, or who is not required to be registered as a credit provider in terms of this section, may voluntarily apply to the National Credit Regulator at any time to be registered as a credit provider.
- (6) When determining whether, in terms of subsection (1), a credit provider is required to register— 35
- (a) the value of any credit facility issued by that credit provider is the credit limit under that credit facility; and
- (b) any credit guarantee to which a credit provider is a party is to be disregarded.

Supplementary registration to provide developmental credit 40

- 41.** (1) A registered credit provider, or a credit provider who has applied to be registered in terms of section 40, may apply for supplementary registration as a credit provider in respect of developmental credit agreements if the credit provider—
- (a) is a close corporation, company, credit co-operative, trust, statutory entity, mutual bank or bank; 45
- (b) is registered with the South African Revenue Service; and
- (c) does not employ any person in a controlling or managerial capacity who would be disqualified from individual registration in terms of section 46(3).

- (2) The National Credit Regulator may grant supplementary registration to a credit provider only if it concludes that the credit provider has—
- (a) sufficient human, financial and operational resources to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources; and 5
 - (b) adequate administrative procedures and safeguards to justify the application of statutory exceptions from this Act, or presents to the National Credit Regulator a credible plan to develop those procedures and safeguards before entering into any developmental credit agreement. 10

Thresholds applicable to credit providers

- 42.** (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine a threshold of not less than R 500 000, for the purpose of determining whether a credit provider is required to be registered in terms of section 40(1). 15
- (2) An initial threshold determined by the Minister in terms of this section takes effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.
- (3) If, as a result of a determination made by the Minister in terms of subsection (1) after the effective date— 20
- (a) a credit provider is required to be registered for the first time, that credit provider must apply for registration by the time the threshold takes effect, and may thereafter continue to provide credit until the time that the National Credit Regulator makes a decision in respect of its application;
 - (b) a credit provider who previously was required to be registered falls below the newly determined threshold, that credit provider— 25
 - (i) may apply to the National Credit Regulator for a clearance certificate to release it from the obligation to be registered; and
 - (ii) until the National Credit Regulator makes a decision in respect of such an application, must continue to be registered, despite section 40(1). 30

Registration of credit bureaux

- 43.** (1) A person must apply to be registered as a credit bureau if that person engages for payment, other than as a credit provider or an employee of a credit provider, in the business of—
- (a) receiving reports of, or investigating— 35
 - (i) credit applications;
 - (ii) credit agreements;
 - (iii) payment history or patterns; or
 - (iv) consumer credit information as defined in section 70(1), relating to consumers or prospective consumers, other than reports of court orders or reasons for judgment or similar information that is in the public domain; 40
 - (b) compiling and maintaining data from reports contemplated in subparagraph (i); and
 - (c) issuing reports concerning consumers or other natural persons based on information or data referred to in this paragraph. 45
- (2) A person must not offer or conduct business as a credit bureau, or hold themselves out to the public as being authorised to offer any service customarily offered by a credit bureau, unless that person is registered as a credit bureau in terms of this Chapter.
- (3) The National Credit Regulator must not register a person as a credit bureau unless that person— 50

- (a) maintains and imposes appropriate qualification, competence, knowledge and experience requirements for its employees or contractors who will have authority to represent it in any function under this Act;
 - (b) has, in the opinion of the National Credit Regulator, sufficient human, financial and operational resources to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources; 5
 - (c) has adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated equitably and consistently in a timely, efficient and courteous manner, or presents to the National Credit Regulator a credible plan to acquire or develop those procedures; and 10
 - (d) is registered with the South African Revenue Services.
- (4) In addition to the requirements of section 46, a person may not be registered as a credit bureau if any person who has a controlling interest in the applicant is— 15
- (a) a credit provider;
 - (b) a debt collection agency; or
 - (c) a person who conducts any disqualified business prescribed in terms of subsection (5).
- (5) The Minister may, by regulation, declare any business activity disqualified as contemplated in subsection (4)(c) if that business activity is inconsistent with the function of operating an independent and objective credit bureau. 20

Registration of debt counsellors

44. (1) A natural person may apply to be registered as a debt counsellor.
- (2) A person must not offer or engage in the services of a debt counsellor in terms of this Act, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as such in terms of this Chapter. 25
- (3) In addition to the requirements of section 46, an applicant for registration as a debt counsellor must—
- (a) satisfy any prescribed education, experience or competency requirements, or 30
 - (b) be in a position to satisfy within a reasonable time such requirements as the National Credit Regulator may determine as a condition of the applicant's registration.

Application for registration

45. (1) A person who wishes to be registered in terms of this Act must apply for registration in the prescribed manner and form to the National Credit Regulator. 35
- (2) The National Credit Regulator may—
- (a) require further information relevant to an application contemplated in subsection (1); and
 - (b) refuse an application if the applicant has not supplied any information 40 required in terms of paragraph (a) within the prescribed time.
- (3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant, subject to section 48.

Disqualification of natural persons

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

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

(3) A natural person may not be registered as a credit provider or debt counsellor if that person— 5

- (a) is under the age of 18 years;
- (b) as a result of a court order, is listed on the register of excluded persons in terms of section 14 of the National Gambling Act, 2004 (Act No. 7 of 2004);
- (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; 10
- (d) has ever been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money, whether in the Republic or elsewhere;
- (e) has ever been a director or member of a governing body of an entity at the time that such an entity has— 15
 - (i) been involuntarily deregistered in terms of a public regulation;
 - (ii) brought the consumer credit industry into disrepute; or
 - (iii) acted with disregard for consumer rights generally; or
- (f) has been convicted during the previous 10 years, in the Republic or elsewhere, 20
 - (i) theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or comparable legislation of another jurisdiction;
 - (ii) a crime involving violence against another natural person; or 25
 - (iii) an offence in terms of this Act, a repealed law or comparable provincial legislation,

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

(4) In addition to the disqualifications set out in subsection (3), a natural person may not be registered as a debt counsellor if that person is— 30

- (a) subject to an administration order as contemplated in section 74 of the Magistrates' Court Act, 1944 (Act No. 32 of 1944);
- (b) subject to debt re-arrangement as contemplated in sections 86 and 87; or
- (c) engaged in, employed by or acting as an agent for a person that is engaged 35
 - in—
 - (i) debt collection;
 - (ii) the operation of a credit bureau;
 - (iii) credit provision; or
 - (iv) any other activity prescribed by the Minister on the grounds that there is 40
 - an inherent conflict of interest between that activity and debt counselling.

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

Disqualification of juristic persons and associations

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

(2) Subject to subsection (4), a juristic person or an association of persons may not be registered as a credit provider or credit bureau if any natural person who would be disqualified from individual registration in terms of section 46(3) exercises general management or control of that person or association, alone or in conjunction with others. 5

(3) Subject to subsection (4), if a natural person contemplated in subsection (2) becomes disqualified from individual registration in terms of section 46(3) after the business concerned was registered in terms of this Act— 10

(a) that natural person must advise the registrant, and the National Credit Regulator, in the prescribed manner and form; and

(b) if that natural person—

(i) holds an interest in that business, it must be disposed of within a reasonable period of not more than three years, determined by the National Credit Regulator after considering the circumstances and the nature of the disqualification; or 15

(ii) is a manager or controller of the business, the National Credit Regulator may impose reasonable conditions on the continuation of the registration with the object of ensuring continuing compliance with the principles of this Act. 20

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

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

(a) acquires a financial interest in a registrant; or 25

(b) assumes a management or control function with a registrant.

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

Conditions of registration

48. (1) If a person qualifies to be registered as a credit provider, the National Credit Regulator must further consider the application, relating to the following criteria: 30

(a) to the extent it is appropriate having regard to the nature of the applicant, the commitments, if any, made by the applicant or any associated person in terms of black economic empowerment considering the purpose, objects and provisions of the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); 35

(b) the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority; and 40

(c) registration with the South African Revenue Services.

(2) If the National Credit Regulator has determined that an applicant qualifies for registration as a debt counsellor, the National Credit Regulator must further consider the application, relating to the applicant's education, experience and competence relative to any prescribed standards. 45

(3) The National Credit Regulator, having regard to the objects and purposes of this Act, the circumstances of the application and the applicable criteria set out in subsections (1) and (2), may propose any conditions on the registration of an applicant by delivering a written notice in the prescribed manner and form setting out the proposed conditions, and the reasons for them. 50

- (4) Conditions contemplated in subsection (3) may extend to an associated person, and in any case must be—
- (a) reasonable and justifiable in the circumstances; and
 - (b) in the case of a regulated financial institution, consistent with its licence.
- (5) An applicant who has received a proposal of conditions must respond to the National Credit Regulator within— 5
- (a) 20 business days after the date on which the applicant received the proposal; or
 - (b) such longer period as the National Credit Regulator may permit, on good cause shown. 10
- (6) If an applicant who has received a proposal of conditions—
- (a) consents to the conditions being imposed, the National Credit Regulator must register the applicant, subject only to the conditions as proposed; or
 - (b) does not respond, or responds but does not consent to the proposed conditions, the National Credit Regulator must consider any response submitted by the applicant and may finally determine the conditions to be imposed and register the applicant. 15
- (7) The National Credit Regulator must—
- (a) inform an applicant in writing of a decision in terms of subsection (6); and
 - (b) provide written reasons for that decision if the National Credit Regulator has amended a previously proposed condition. 20

Variation of conditions of registration

- 49.** (1) The National Credit Regulator may review, and propose new conditions on, any registration—
- (a) upon request by the registrant submitted to the National Credit Regulator in the prescribed manner and form; 25
 - (b) if at least five years have passed since the National Credit Regulator last reviewed or varied the conditions of registration;
 - (c) if the registrant has contravened this Act; or
 - (d) if the registrant— 30
 - (i) has not satisfied any conditions attached to its registration;
 - (ii) has not met any commitment or undertaking it made in connection with its registration; or
 - (iii) has breached any approved code of conduct applicable to it, and cannot provide adequate reasons for doing so. 35
- (2) Before imposing a condition in terms of subsection (1)(c) or (d), the National Credit Regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.
- (3) The National Credit Regulator may impose new or alternative conditions—
- (a) in the case of a regulated financial institution— 40
 - (i) only to the extent that the conditions are consistent with its licence; and
 - (ii) if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review; or
 - (b) in the case of any other registrant, if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review. 45

Authority and standard conditions of registration

- 50.** (1) A registration issued in terms of this Act is valid throughout the Republic and authorises the registrant to conduct, engage in, or make available the registered activities at any place within the Republic. 50
- (2) It is a condition of every registration issued in terms of this Act that the registrant must—