

- (a) permit the National Credit Regulator or any person authorised by the National Credit Regulator to enter any premises at or from which the registrant conducts the registered activities during normal business hours, and to conduct reasonable inquiries for compliance purposes, including any act contemplated in section 154(1)(d) to (h); 5
- (b) comply with every applicable provision of—
 - (i) this Act;
 - (ii) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
 - (iii) applicable provincial legislation within any province in which the registrant conducts, engages in, or makes available the registered activities. 10

Application, registration and renewal fees

- 51.** (1) The Minister may prescribe—
- (a) an application fee to be paid in connection with any application in terms of this Chapter; 15
 - (b) an initial registration fee to be paid upon registration; and
 - (c) an annual registration renewal fee to be paid by registrants.
- (2) The Minister may prescribe different fees in terms of subsection (1) for different categories of applicants or registrants, including but not limited to group registration and registration renewal fees based on the number of locations at or from which persons carry on registered activities in their own names as contemplated in section 40(2)(c). 20

Certificate, validity and public notice of registration

- 52.** (1) Upon registering an applicant, the National Credit Regulator must—
- (a) issue a prescribed certificate of registration to the applicant, and in the case of persons contemplated in section 40(2)(c), a duplicate copy of the certificate of registration for each registered location at or from which that person conducts the registered activities; 25
 - (b) enter the registration in the register; and
 - (c) assign a unique registration number to that registrant.
- (2) A registration certificate, or duplicate registration certificate issued in terms of this section must specify— 30
- (a) the identity of the registrant;
 - (b) the activities that the registration permits the registrant to engage in, conduct or make available to the public; and
 - (c) any other prescribed information. 35
- (3) A valid certificate or duplicate certificate of registration, or a certified copy of it, is *prima facie* proof that the registrant is registered in terms of this Act.
- (4) A registration— 40
- (a) takes effect on the date on which the certificate or duplicate certificate of registration is issued; and
 - (b) subject to timely payment of the prescribed registration renewal fees, remains in effect until—
 - (i) the registrant is deregistered; or
 - (ii) the registration is cancelled in terms of this Act.
- (5) A registrant must— 45
- (a) post the certificate or duplicate registration certificate in any premises at or from which it conducts its registered activities;
 - (b) reflect its registered status and registration number, in a legible typeface, on all its credit agreements and communications with a consumer;

- (c) comply with its conditions of registration and the provisions of this Act;
- (d) pay the prescribed annual renewal fees within the prescribed time;
- (e) keep any prescribed records relating to its registered activities, in the prescribed manner and form; and
- (f) file any prescribed reports with the National Credit Regulator in the prescribed manner and form. 5

(6) In addition to the requirements of subsection (5), a registered credit bureau must submit to the National Credit Regulator an annual compliance report, certified by an independent auditor, addressing the following matters:

- (a) Accuracy of data received and reported by it; 10
- (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 15
 - (iii) that complaints are resolved; and
- (d) any other related or similar matters prescribed by regulation.

National record of registrations

53. (1) The National Credit Regulator must establish and maintain a register in the prescribed form of all persons who have been registered— 20

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

including those whose registration has been altered or cancelled. 25

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

(3) The National Credit Regulator must—

- (a) permit any person to inspect the register established in terms of subsection (1), during normal business hours, and upon payment of the prescribed fee; 30
- (b) publish and maintain the register on a website; and
- (c) provide a print copy of the register, or an extract from it, at any time to a person requesting it, upon payment of the prescribed fee.

(4) Any person may—

- (a) inspect a copy of a registration certificate issued in terms of this Act; and 35
- (b) obtain a copy of it, upon payment of the prescribed fee.

Part B

Compliance procedures and cancellation of registration

Restricted activities by unregistered persons

54. (1) Subject to subsection (2), the National Credit Regulator may issue a notice in the prescribed form to any person who, or association of persons, that— 40

- (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, 45
 requiring that person or association to stop engaging in, offering to engage in or holding themselves out as authorised to engage in, that activity.

(2) Before issuing a notice in terms of subsection (1) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution. 50

- (3) A notice contemplated in subsection (1) must set out—
- (a) the name of the person or association to whom the notice applies;
 - (b) details of the nature and extent of the activity concerned;
 - (c) the date from which the unregistered person must discontinue engaging in that activity; 5
 - (d) the basis of the opinion that the person engaging in that activity is required to be registered; and
 - (e) any penalty that may be imposed in terms of this Act if the person fails to discontinue that activity.
- (4) Subject to section 59, a notice issued in terms of this section remains in force 10 until—
- (a) a registration certificate is issued to the person to whom the notice was issued; or
 - (b) the notice is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice. 15
- (5) Failure to comply with a notice issued in terms of this section is an offence.

Compliance notices

- 55.** (1) Subject to subsection (2), the National Credit Regulator may issue a compliance notice in the prescribed form to—
- (a) a person or association of persons whom the National Credit Regulator on 20 reasonable grounds believes—
 - (i) has failed to comply with a provision of this Act; or
 - (ii) is engaging in an activity in a manner that is inconsistent with this Act; or
 - (b) a registrant whom the National Credit Regulator believes has failed to comply with a condition of its registration. 25
- (2) Before issuing a notice in terms of subsection (1)(a) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution.
- (3) A compliance notice contemplated in subsection (1) must set out—
- (a) the person or association to whom the notice applies; 30
 - (b) the provision, or condition, that has not been complied with;
 - (c) details of the nature and extent of the non-compliance;
 - (d) any steps that are required to be taken and the period within which those steps must be taken; and
 - (e) any penalty that may be imposed in terms of this Act if those steps are not 35 taken.
- (4) Subject to section 59, a compliance notice issued in terms of this section remains in force until—
- (a) it is set aside by the Tribunal, or a court upon an appeal or review of a Tribunal decision concerning the notice; or 40
 - (b) the National Credit Regulator issues a compliance certificate contemplated in subsection (5).
- (5) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the National Credit Regulator must issue a compliance certificate.
- (6) If a person fails to comply with a compliance notice as contemplated in this 45 section without raising an objection in terms of section 56, the National Credit Regulator may refer the matter—
- (a) to the National Prosecuting Authority, if the failure to comply constitutes an offence in terms of this Act; or
 - (b) otherwise, to the Tribunal for an appropriate order. 50

Objection to notices

- 56.** (1) Any person issued with a notice in terms of section 54 or 55 may apply to the Tribunal in the prescribed manner and form to review the notice within—
- (a) 15 business days after receiving that notice; or
 - (b) such longer period as may be allowed by the Tribunal on good cause shown. 5
- (2) After considering any representations by the applicant and any other relevant information, the Tribunal may confirm, modify or cancel all or part of a notice.
- (3) If the Tribunal confirms or modifies all or part of a notice, the applicant must comply with that notice as confirmed or modified, within the time period specified in it.

Cancellation of registration 10

- 57.** (1) Subject to subsection (2), a registration in terms of this Act may be cancelled by the Tribunal on request by the National Credit Regulator, if the registrant repeatedly—
- (a) fails to comply with any condition of its registration;
 - (b) fails to meet a commitment contemplated in section 48(1); or 15
 - (c) contravenes this Act.
- (2) In any circumstance contemplated in subsection (1) concerning a registrant that is a regulated financial institution, the National Credit Regulator may—
- (a) impose conditions on the registration of that person, consistent with its licence; 20
 - (b) refer the matter to the regulatory authority that licensed that regulated financial institution, with a request that the regulatory authority review that licence in the circumstances; or
 - (c) at the request, or with the consent, of the regulatory authority that licensed that regulated financial institution, request the Tribunal to cancel the registration. 25
- (3) A regulatory authority to whom a matter is or may be referred in terms of subsection (2)(b)—
- (a) must conduct a formal review of the registrant's licence;
 - (b) to the extent permitted by the legislation in terms of which the registrant is licensed, may suspend that licence pending the outcome of that review; and 30
 - (c) may request, or consent to, the National Credit Regulator filing a request with the Tribunal as contemplated in subsection (2)(c).
- (4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issues licences to regulated financial institutions, to co-ordinate the procedures to be followed in taking any action in terms of subsections (2) and (3). 35
- (5) If the Tribunal has cancelled a registration, the National Credit Regulator must notify the registrant in writing of—
- (a) the cancellation;
 - (b) the reasons for the cancellation; and 40
 - (c) the date of cancellation.
- (6) If a registration is cancelled in terms of this section or section 58, the National Credit Regulator must—
- (a) cancel the registration certificate; and
 - (b) amend the register accordingly. 45
- (7) A registration is cancelled as of—
- (a) the date on which the Tribunal issues an order, or

- (b) in the case of a cancellation in terms of section 58, the date specified by the registrant in the notice of voluntary cancellation.
- (8) A registrant whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.
- (9) The obligations of— 5
- (a) a registrant under this Act, or under any credit agreement in respect of which it is the credit provider, survive any suspension or cancellation of its registration; and
- (b) a consumer under a credit agreement survive the cancellation of the credit provider's registration. 10

Voluntary cancellation of registration

- 58.** A registrant may cancel its registration by giving the National Credit Regulator written notice in the prescribed manner and form—
- (a) stating the registrant's intention to voluntarily cancel the registration; and
- (b) specifying a date, at least five business days after the date of the notice, on which the cancellation is to take effect. 15

Review or appeal of decisions

- 59.** (1) A person affected by a decision of the National Credit Regulator under this Chapter may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision in whole or in part. 20
- (2) An order contemplated in subsection (1) may include an order setting aside any condition attached to a registration if the Tribunal is not satisfied that the condition is reasonable and justifiable, having regard to the objects and purposes of this Act, the circumstances of the application or review, as the case may be, and the provisions of section 48. 25
- (3) A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148.

CHAPTER 4

CONSUMER CREDIT POLICY

Part A 30 ***Consumer rights***

Right to apply for credit

- 60.** (1) Every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.
- (2) Subject to sections 61 and 66, a credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.
- (3) Subject to sections 61 and 92(3), nothing in this Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person.

Protection against discrimination in respect of credit 40

- 61.** (1) Relative to the treatment of any other consumer or prospective consumer, a credit provider must not unfairly discriminate directly or indirectly against any natural person, juristic person or association of persons on one or more grounds set out in

section 9(3) of the Constitution, or one or more grounds set out in Chapter 2 of the Promotion of Equality and Prevention of Unfair Discrimination Act, when—

- (a) assessing the ability of the person to meet the obligations of a proposed credit agreement;
 - (b) deciding whether to refuse an application to enter into a credit agreement, or to offer or enter into a credit agreement; 5
 - (c) determining any aspect of the cost of a credit agreement to the consumer;
 - (d) proposing or agreeing the terms and conditions of a credit agreement;
 - (e) assessing or requiring compliance by the person with the terms of a credit agreement; 10
 - (f) exercising any right of the credit provider under a credit agreement, this Act or applicable provincial legislation;
 - (g) determining whether to continue, enforce, seek judgment in respect of, or terminate a credit agreement; or
 - (h) determining whether to report, or reporting, any credit information or record. 15
- (2) Subsection (1), read with the changes required by the context, applies equally to—
- (a) a credit bureau, when offering its services to the public, and when accepting, compiling, analysing, modifying or reporting any credit information or record;
 - (b) the ombud with jurisdiction or alternative dispute resolution agent, when offering or holding out the ability to resolve a dispute or assist in the resolution of a dispute between a credit provider and a consumer in terms of this Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to credit providers and consumers; 20
 - (c) a debt counsellor when offering or holding out the ability to serve as a debt counsellor in terms of this Act, or in accepting or refusing a referral of such a matter, or in delivering any such service to consumers; and 25
 - (d) an employer or trade union, when acting in terms of section 75(3) or (4).
- (3) Subsections (1) and (2) apply in respect of a consumer or prospective consumer that is an association or juristic person to prohibit unfair discrimination against that association or juristic person based on the characteristics of any natural person who is a member, associate, owner, manager, employee, client or customer of that association or juristic person. 30
- (4) It is not discrimination on the basis of age to—
- (a) refuse to receive or consider an application for credit from an unemancipated minor; or 35
 - (b) refuse to offer an unlawful credit agreement to, or enter into an unlawful credit agreement with, an unemancipated minor.
- (5) A credit provider may determine for itself any scoring or other evaluative mechanism or model to be used in managing, underwriting and pricing credit risk, provided that any such mechanism or model is not founded or structured upon a statistical or other analysis in which the basis of risk categorisation, differentiation or assessment is a ground of unfair discrimination prohibited in section 9(3) of the Constitution. 40
- (6) In respect of an alleged contravention of this section, any person contemplated in section 20(1) of the Promotion of Equality and Prevention of Unfair Discrimination Act, may either— 45
- (a) institute proceedings before an equality court, in terms of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act; or

- (b) make a complaint to the National Credit Regulator in terms of section 136, which must refer the complaint to the equality court, if the complaint appears to be valid.

(7) A court may draw an inference that a credit provider has discriminated unfairly against a consumer or prospective consumer if that credit provider— 5

- (a) knew or reasonably could have known that the consumer or prospective consumer, or a natural person contemplated in subsection (3), was a historically disadvantaged person; 5
 (b) has made a decision contemplated in section 62(1)(a) through (d), with respect to that consumer or prospective consumer; and 10
 (c) has refused, or failed without reasonable cause, to respond to a request made in terms of section 62 in respect of that decision.

Right to reasons for credit being refused

62. (1) On request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for— 15

- (a) refusing to enter into a credit agreement with that consumer; 15
 (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; 15
 (c) refusing a request from the consumer to increase a credit limit under an existing credit facility; or 20
 (d) refusing to renew an expiring credit card or similar renewable credit facility with that consumer.

(2) When responding to a request in terms of subsection (1), a credit provider who has based its decision on an adverse credit report received from a credit bureau must advise the consumer in writing of the name, address and other contact particulars of that credit bureau. 25

(3) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of this section if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious. 30

Right to information in official language

63. (1) A consumer has a right to receive any document that is required in terms of this Act in an official language that the consumer reads or understands, to the extent that is reasonable having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person required to deliver that document. 35

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

- (a) make a submission to the National Credit Regulator proposing to make such documents available in at least two official languages; and 40
 (b) offer each consumer an opportunity to choose an official language in which to receive any document, from among at least two official languages as determined in accordance with a proposal that has been approved by the National Credit Regulator.

(3) A proposal in terms of subsection (2) may propose— 45

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

- (4) The National Credit Regulator must—
- (a) consider each proposal in terms of subsection (2) having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by the person making the proposal; and 5
 - (b) either—
 - (i) approve the proposal; or
 - (ii) require the person making the proposal to submit a fresh proposal, if the National Credit Regulator concludes that the proposal does not adequately provide for the maximum practicable enjoyment of the right set out in subsection (1). 10

(5) The person who made a proposal that is the subject of a decision of the National Credit Regulator in terms of subsection (4)(b)(ii) may apply to the Tribunal to review that decision, and the Tribunal may make an order confirming or setting aside the decision. 15

(6) If the producer of a document that is required to be delivered to a consumer in terms of this Act is not a registrant, and not required to register, that person must offer the consumer an opportunity to choose an official language in which to receive that document from among at least two official languages selected by the producer of the document, having regard to usage, practicality, expense, regional circumstances and the balance of the needs and preferences of the population ordinarily served by that person. 20

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

(8) The Minister may prescribe at least two official languages to be used by the National Credit Regulator in any documents it is required to deliver in terms of this Act, for all or particular parts of the Republic, so as to give maximum effect to the right set out in subsection (1). 25

Right to information in plain and understandable language

64. (1) The producer of a document that is required to be delivered to a consumer in terms of this Act must provide that document— 30

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

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to— 35

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document; 40
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.

(3) The National Credit Regulator may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (1)(b). 45

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

- (a) the National Credit Regulator has pre-approved the form of all documents to be used by the credit provider for such credit agreements in terms of this Act; and
- (b) the credit provider has used only those pre-approved forms in dealing with the particular consumer. 50

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

Right to receive documents

- 65.** (1) Every document that is required to be delivered to a consumer in terms of this Act must be delivered in the prescribed manner, if any.
- (2) If no method has been prescribed for the delivery of a particular document to a consumer, the person required to deliver that document must— 5
- (a) make the document available to the consumer through one or more of the following mechanisms—
- (i) in person at the business premises of the credit provider, or at any other location designated by the consumer but at the consumer's expense, or by ordinary mail; 10
- (ii) by fax;
- (iii) by email; or
- (iv) by printable web-page; and
- (b) deliver it to the consumer in the manner chosen by the consumer from the options made available in terms of paragraph (a). 15
- (3) A credit provider must not charge a fee for the original copy of any document required to be delivered to a consumer in terms of this Act.
- (4) On written request from the consumer the credit provider must provide the consumer with—
- (a) a single replacement copy of a document required in terms of this Act, without charge to the consumer, at any time within a year after the date for original delivery of that document; and 20
- (b) any other replacement copy, subject to any search and production fees permitted by regulation.
- (5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligation in terms of subsection (4) if the Tribunal is satisfied that the consumer's requests for information are frivolous or vexatious. 25
- (6) Subsections (3), (4) and (5) do not apply to a developmental credit agreement if—
- (a) the National Credit Regulator has pre-approved procedures to be followed by the credit provider in the delivery of documents with respect to such credit agreements in terms of this Act; and 30
- (b) the credit provider has complied with those pre-approved procedures in dealing with the particular consumer.
- (7) When pre-approving any procedure as contemplated in subsection (6), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of subsections (1) to (5). 35

Protection of consumer credit rights

- 66.** (1) A credit provider must not, in response to a consumer exercising, asserting or seeking to uphold any right set out in this Act or in a credit agreement—
- (a) discriminate directly or indirectly against the consumer, compared to the credit provider's treatment of any other consumer who has not exercised, asserted or sought to uphold such a right; 40
- (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 45
- (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— 50
- (a) directly or indirectly penalise another party to that agreement when taking any action contemplated in section 61(1);

- (b) alter the terms or conditions of any other credit agreement with another party to the impugned agreement, except to the extent necessary to correct a similarly unlawful provision; or
- (c) take any action to accelerate, enforce, suspend or terminate another credit agreement with another party to the impugned agreement. 5

Part B

Confidentiality, personal information and consumer credit records

Conflicting legislation

67. In the case of an inconsistency between a provision of this Part read with any relevant definition in section 1, and a provision of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), the provisions of this Part and that Act apply concurrently, to the extent that the provisions of this Part are not excluded in terms of section 5 of that Act. 10

Right to confidential treatment

68. (1) Any person who, in terms of this Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer must protect the confidentiality of that information, and in particular, must— 15

- (a) use that information only for a purpose permitted or required in terms of this Act, other national legislation or applicable provincial legislation; and
- (b) report or release that information only to the consumer or prospective consumer, or to another person— 20
 - (i) to the extent permitted or required by this Act, other national legislation or applicable provincial legislation; or
 - (ii) as directed by—
 - (aa) the instructions of the consumer or prospective consumer; or 25
 - (bb) an order of a court or the Tribunal.

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

National register of credit agreements

69. (1) The Minister may require the National Credit Regulator to establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the information provided to it in terms of this section. 30

(2) Upon entering into or amending a credit agreement, other than a pawn transaction or an incidental credit agreement, the credit provider must report either directly to the national register established in terms of this section, or to a credit bureau, in the prescribed manner and form, and within the prescribed time the following information, subject to subsection (6): 35

- (a) The credit provider's name, principal business address, and registration number, if any;
- (b) the name and address of the consumer; 40
- (c) if the consumer is—
 - (i) a natural person, their identity number, or in the case of a person who is not a South African citizen and who does not have an identity number, their passport number; or
 - (ii) a juristic person, its registration number; 45
- (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; 5
 - (iii) the amount and schedule of each payment due under the agreement; and
 - (iv) the date on which the consumer's obligations will be fully satisfied if the agreement is fully complied with.

(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, either directly to the national register established in terms of this section, or to a credit bureau. 10

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

- (a) the person who transfers those rights must report the particulars of that transfer, in the prescribed manner and form, to the national register established in terms of this section; and 15
- (b) the person to whom those rights are transferred must satisfy any subsequent obligations of the credit provider under this section.

(5) A credit bureau must transmit to the national register established in terms of this section, in the prescribed manner and form, any information reported to it by a credit provider in terms of this section. 20

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

Credit bureau information

25

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

- (a) a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters; 30
- (b) a person's financial history, including the person's past and current income, assets and debts, and other matters within the scope of that person's financial means, prospects and obligations, as defined in section 78(3), and related matters; 35
- (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 40
- (d) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters.

(2) A registered credit bureau must—

- (a) accept the filing of consumer credit information from any credit provider on payment of the credit bureau's filing fee, if any; 45
- (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; 50

- (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; 5
- (f) promptly expunge from its records any prescribed consumer credit information that, in terms of the regulations, is not permitted to be entered in its records or is required to be removed from its records;
- (g) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in this Act, upon payment of the credit bureau's fee except where the Act explicitly provides that no fee be charged; 10
- (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. 15
- (3) In addition to—
- (a) the consumer credit information contemplated in subsection (2), a credit bureau may receive, compile and report only other prescribed information in respect of a consumer; and 20
- (b) the sources of consumer credit information contemplated in subsection (2), a credit bureau may receive consumer credit information in respect of a consumer only from other prescribed persons.
- (4) The Minister may prescribe—
- (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and 25
- (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person.
- (5) For the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit by persons contemplated in section 13(a), and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act, the National Credit Regulator may— 30
- (a) require any credit bureau to provide periodic synoptic reports of aggregate consumer credit information in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and 35
- (b) make further reasonable requests for information from a credit bureau related to the information contemplated in paragraph (a); and 40
- (c) analyse information provided to it under this section or section 69.
- (6) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

Removal of record of debt adjustment or judgment

- 71.** (1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter, may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement. 45
- (2) A debt counsellor who receives an application in terms of subsection (1), must—
- (a) investigate the circumstances of the debt re-arrangement; and
- (b) either— 50

- (i) issue a clearance certificate in the prescribed form if the consumer has fully satisfied all the obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement; or
- (ii) refuse to issue a clearance certificate, in any other case. 5
- (3) If a debt counsellor refuses to issue a clearance certificate contemplated in subsection (2)(b)(i) the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection (2)(b)(i), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer. 10
- (4) A consumer to whom a clearance certificate is issued in terms of this section may file a certified copy of that certificate with the national register established in terms of section 69 or any credit bureau.
- (5) Upon receiving a copy of a clearance certificate, a credit bureau, or the national credit register, must expunge from its records— 15
- (a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;
- (b) any information relating to any default by the consumer that may have—
- (i) precipitated the debt re-arrangement; or
- (ii) been considered in making the debt re-arrangement order or agreement; 20
and
- (c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.
- (6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau must expunge from its records all information relating to that judgment. 25
- (7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

Right to access and challenge credit records and information

- 72.** (1) Every person has a right to—
- (a) be advised by a credit provider within the prescribed time before any prescribed adverse information concerning the person is reported by it to a credit bureau, and to receive a copy of that information upon request; 30
- (b) inspect any credit bureau, or national credit register, file or information concerning that person—
- (i) without charge— 35
- (aa) as of right once within any period of twelve months;
- (bb) if so ordered by a court or the Tribunal; and
- (cc) once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and 40
- (ii) at any other time, upon payment of the inspection fee of the credit bureau or national credit register, if any;
- (c) challenge the accuracy of any information concerning that person—
- (i) that is the subject of a proposed report contemplated in paragraph (a); or
- (ii) that is held by the credit bureau or national credit register, as the case may be, 45
- and require the credit bureau or National Credit Regulator, as the case may be, to investigate the accuracy of any challenged information, without charge to the consumer; and
- (d) be compensated by any person who reported incorrect information to a registered credit bureau or to the National Credit Register for the cost of correcting that information. 50

(2) A credit provider must not require or induce a prospective consumer to obtain or request a report from a credit bureau in connection with an application for credit or an assessment under section 81.

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

- (a) provide a copy of any such credible evidence to the person who 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,

subject to subsection (6).

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

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

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

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

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

Verification, review and removal of consumer credit information

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

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

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

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

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

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

Part C
Credit marketing practices

Negative option marketing and opting out requirements

74. (1) A credit provider must not make an offer to enter into a credit agreement, or induce a person to enter into a credit agreement, on the basis that the agreement will automatically come into existence unless the consumer declines the offer. 5

(2) Subject to section 119(4), a credit provider must not make an offer to increase the credit limit under a credit facility, or induce a person to accept such an increase, on the basis that the limit will automatically be increased unless the consumer declines the offer. 10

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

(4) A credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (1), is an unlawful agreement and void to the extent provided for in section 89. 15

(5) A provision of a credit agreement purportedly entered into as a result of an offer or proposal contemplated in subsection (2) or (3) is an unlawful provision and void to the extent provided for in section 90. 20

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

(a) To decline the option of pre-approved annual credit limit increases as provided for in section 119(4), if the agreement is a credit facility; and 25

(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 30

(iii) any mass distribution of email or sms messages.

(7) A credit provider—

(a) must maintain a register in the prescribed manner and form of all options selected by consumers in terms of subsection (6); and

(b) must not act in a manner contrary to an option selected by a consumer in terms of subsection (6). 35

Marketing and sales of credit at home or work

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

(2) A credit provider must not enter into a credit agreement at a private dwelling except— 40

(a) during a visit pre-arranged by the consumer for that purpose;

(b) if a credit provider visited the private dwelling for the purpose of offering goods or services for sale, and incidentally offered to provide or arrange credit to finance the purchase of those goods or services; or 45

(c) if the credit agreement is of a prescribed category that is permitted to be entered into during a visit to a private dwelling.

(3) A credit provider must not visit a person's place of employment for the purpose of inducing the person to apply for or obtain credit, or enter into a credit agreement at such a place, except— 50

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

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

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

Advertising practices

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

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

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

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

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

- (a) must comply with this section;
- (b) must contain any statement required by regulation;
- (c) must not—
 - (i) advertise a form of credit that is unlawful;
 - (ii) be misleading, fraudulent or deceptive; or
 - (iii) contain any statement prohibited by regulation; and
- (d) may contain a statement of comparative credit costs to the extent permitted by 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) This section does not apply to developmental credit agreements if—

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

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

Required marketing information

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

Part D
Over-indebtedness and reckless credit

5

Application and interpretation of this Part

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

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

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

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

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

- (a) income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer or prospective consumer receives, has a right to receive, or holds in trust for another person;
- (b) the financial means, prospects and obligations of any other adult person within the consumer’s immediate family or household, to the extent that the consumer, or prospective consumer, and that other person customarily—
 - (i) share their respective financial means; and
 - (ii) mutually bear their respective financial obligations; and
- (c) if the consumer has or had a commercial purpose for applying for or entering into a particular credit agreement, the reasonably estimated future revenue flow from that business purpose.

Over-indebtedness

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

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

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

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

- (a) any credit facility is the settlement value at that time under that credit facility; and
- (b) any credit guarantee is—
 - (i) the settlement value of the credit agreement that it guarantees, if the guarantor has been called upon to honour that guarantee; or 5
 - (ii) the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.

Reckless credit

80. (1) A credit agreement is reckless if, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in terms of section 119(4)— 10

- (a) the credit provider failed to conduct an assessment as required by section 81(2), irrespective of what the outcome of such an assessment might have concluded at the time; or
- (b) the credit provider, having conducted an assessment as required by section 81(2), entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that—
 - (i) the consumer did not generally understand or appreciate the consumer's risks, costs or obligations under the proposed credit agreement; or 15
 - (ii) entering into that credit agreement would make the consumer over-indebted. 20

(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— 25

- (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. 30

(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 35
 - (ii) the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor; and
- (c) any new credit guarantee is the settlement value of the credit agreement that it guarantees, discounted by a prescribed factor.

Prevention of reckless credit 40

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

(2) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess— 45

- (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; 50
 - (ii) debt re-payment history as a consumer under credit agreements;

- (iii) existing financial means, prospects and obligations; and
 - (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.
- (3) A credit provider must not enter into a reckless credit agreement with a prospective consumer. 5
- (4) For all purposes of this Act, it is a complete defence to an allegation that a credit agreement is reckless if—
- (a) the credit provider establishes that the consumer failed to fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section; and 10
 - (b) a court or the Tribunal determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper assessment.

Assessment mechanisms and procedures 15

- 82.** (1) Subject to subsections (2)(a) and (3), a credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 81, provided that any such mechanism, model or procedure results in a fair and objective assessment.
- (2) The National Credit Regulator may— 20
- (a) pre-approve the evaluative mechanisms, models and procedures to be used in terms of section 81 in respect of proposed developmental credit agreements; and
 - (b) publish guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 81, applicable to other credit agreements. 25
- (3) Subject to subsections (2)(a) and (4), a guideline published by the National Credit Regulator is not binding on a credit provider.
- (4) If the Tribunal finds that a credit provider has repeatedly failed to meet its obligations under section 81, or customarily uses evaluative mechanisms, models or procedures that do not result in a fair and objective assessment, the Tribunal, on application by the National Credit Regulator, may require that credit provider to— 30
- (a) apply any guidelines published by the National Credit Regulator in terms of subsection (2)(b); or
 - (b) apply any alternative guidelines consistent with prevailing industry practice, as determined by the Tribunal. 35

Court may suspend reckless credit agreement

- 83.** (1) Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, the court may declare that the credit agreement is reckless, as determined in accordance with this Part.
- (2) If a court declares that a credit agreement is reckless in terms of section 80(1)(a) 40 or 80(1)(b)(i), the court may make an order—
- (a) setting aside all or part of the consumer's rights and obligations under that agreement, as the court determines just and reasonable in the circumstances; or
 - (b) suspending the force and effect of that credit agreement in accordance with subsection (3)(b)(i). 45
- (3) If a court declares that a credit agreement is reckless in terms of section 80(1)(b)(ii), the court—
- (a) must further consider whether the consumer is over-indebted at the time of those court proceedings; and 50
 - (b) if the court concludes that the consumer is over-indebted, the court may make an order—

- (i) suspending the force and effect of that credit agreement until a date determined by the Court when making the order of suspension; and
 - (ii) restructuring the consumer's obligations under any other credit agreements, in accordance with section 87.
- (4) Before making an order in terms of subsection (3), the court must consider— 5
- (a) the consumer's current means and ability to pay the consumer's current financial obligations that existed at the time the agreement was made; and
 - (b) the expected date when any such obligation under a credit agreement will be fully satisfied, assuming the consumer makes all required payments in accordance with any proposed order. 10

Effect of suspension of credit agreement

- 84.** (1) During the period that the force and effect of a credit agreement is suspended in terms of this Act—
- (a) the consumer is not required to make any payment required under the agreement; 15
 - (b) no interest, fee or other charge under the agreement may be charged to the consumer; and
 - (c) the credit provider's rights under the agreement, or under any law in respect of that agreement, are unenforceable, despite any law to the contrary. 20
- (2) After a suspension of the force and effect of a credit agreement ends— 20
- (a) all the respective rights and obligations of the credit provider and the consumer under that agreement—
 - (i) are revived; and
 - (ii) are fully enforceable except to the extent that a court may order otherwise; and 25
 - (b) for greater certainty, no amount may be charged to the consumer by the credit provider with respect to any interest, fee or other charge that were unable to be charged during the suspension in terms of subsection (1)(b). 25

Court may declare and relieve over-indebtedness

- 85.** Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court may—
- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86(7); or 35
 - (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness. 35

Application for debt review

- 86.** (1) A consumer may apply to a debt counsellor in the prescribed manner and form 40 to have the consumer declared over-indebted.
- (2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 129 to enforce that agreement. 45
- (3) A debt counsellor—
- (a) may require the consumer to pay an application fee, not exceeding the prescribed amount, before accepting an application in terms of subsection (1); and