

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

(10) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to—

- (a) the consumer;
- (b) the debt counsellor; and 5
- (c) the National Credit Regulator,

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

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

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

87. (1) If a debt counsellor makes a proposal to the Magistrate's Court in terms of section 86(8)(b), or a consumer applies to the Magistrate's Court in terms of section 86(9), the Magistrate's Court must conduct a hearing and, having regard to the proposal and information before it and the consumer's financial means, prospects and obligations, may— 15

- (a) reject the recommendation or application as the case may be; or
- (b) make— 20
 - (i) an order declaring any credit agreement to be reckless, and an order contemplated in section 83(2) or (3), if the Magistrate's Court concludes that the agreement is reckless;
 - (ii) an order re-arranging the consumer's obligations in any manner contemplated in section 86(7)(c)(ii); or 25
 - (iii) both orders contemplated in subparagraph (i) and (ii).

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

Effect of debt review or re-arrangement order or agreement

88. (1) A consumer who has filed an application in terms of section 86(1), or who has alleged in court that the consumer is over-indebted, must not incur any further charges under a credit facility or enter into any further credit agreement, other than a consolidation agreement, with any credit provider until one of the following events has occurred:

- (a) The debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 86(9) has expired without the consumer having so applied; 35
- (b) the court has determined that the consumer is not over-indebted, or has rejected a debt counsellor's proposal or the consumer's application; or
- (c) a court having made an order or the consumer and credit providers having made an agreement re-arranging the consumer's obligations, all the consumer's obligations under the credit agreements as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement. 40

(2) If a consumer fulfils obligations by way of a consolidation agreement as contemplated in subsection 1(c), or this subsection, the effect of subsection (1) continues until the consumer fulfils all the obligations under the consolidation agreement, unless the consumer again fulfilled the obligations by way of a consolidation agreement. 45

(3) Subject to section 86(9) and (10), a credit provider who receives notice of court proceedings contemplated in section 83 or 85, or notice in terms of section 86(4)(b)(i), may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until— 50

- (a) the consumer is in default under the credit agreement; and
- (b) one of the following has occurred:
 - (i) An event contemplated in subsection (1)(a) through (c); or
 - (ii) the consumer defaults on any obligation in terms of a re-arrangement agreed between the consumer and credit providers, or ordered by a court or the Tribunal. 5

(4) If a credit provider enters into a credit agreement, other than a consolidation agreement contemplated in this section, with a consumer who has applied for a debt re-arrangement and that re-arrangement still subsists, all or part of that new credit agreement may be declared to be reckless credit, whether or not the circumstances set out in section 80 apply. 10

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

CHAPTER 5

CONSUMER CREDIT AGREEMENTS 15

Part A

Unlawful agreements and provisions

Unlawful credit agreements

- 89.** (1) This section does not apply to a pawn transaction.
- (2) Subject to subsections (3) and (4), a credit agreement is unlawful if— 20
- (a) at the time the agreement was made the consumer was an unemancipated minor unassisted by a guardian, or was subject to—
 - (i) an order of a competent court holding that person to be mentally unfit; or
 - (ii) an administration order referred to in section 74(1) of the Magistrates' Courts Act, and the administrator concerned did not consent to the agreement, 25
 and the credit provider knew, or could reasonably have determined, that the consumer was the subject of such an order;
 - (b) the agreement results from an offer prohibited in terms of section 74(1);
 - (c) it is a supplementary agreement or document prohibited by section 91(a); 30
 - (d) at the time the agreement was made, the credit provider was unregistered and this Act requires that credit provider to be registered; or
 - (e) the credit provider was subject to a notice by the National Credit Regulator or a provincial credit regulator requiring the credit provider—
 - (i) to stop offering, making available or extending credit under any credit agreement, or agreeing to do any of those things; or 35
 - (ii) to stop offering, making available or extending credit under the particular form of credit agreement used by the credit provider, 40
 whether or not this Act requires that credit provider to be registered, and no further appeal or review is available in respect of that notice.
- (3) Subsection (2)(a) does not apply to a credit agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by an act or omission—
- (a) induced the credit provider to believe that the consumer had the legal capacity to contract; or

- (b) attempted to obscure or suppress the fact that the consumer was subject to an order contemplated in that paragraph.
- (4) Subsection (2)(d) does not apply to a credit provider if—
- (a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application; or 5
- (b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the National Credit Regulator in terms of section 42(3)(b).
- (5) If a credit agreement is unlawful in terms of this section, despite any provision of common law, any other legislation or any provision of an agreement to the contrary, a court must order that— 10
- (a) the credit agreement is void as from the date the agreement was entered into;
- (b) the credit provider must refund to the consumer any money paid by the consumer under that agreement to the credit provider, with interest calculated— 15
- (i) at the rate set out in that agreement; and
- (ii) for the period from the date on which the consumer paid the money to the credit provider, until the date the money is refunded to the consumer; and
- (c) all the purported rights of the credit provider under that credit agreement to recover any money paid or goods delivered to, or on behalf of, the consumer in terms of that agreement are either— 20
- (i) cancelled, unless the court concludes that doing so in the circumstances would unjustly enrich the consumer; or
- (ii) forfeit to the State, if the court concludes that cancelling those rights in the circumstances would unjustly enrich the consumer. 25

Unlawful provisions of credit agreement

- 90.** (1) A credit agreement must not contain an unlawful provision.
- (2) A provision of a credit agreement is unlawful if—
- (a) its general purpose or effect is to— 30
- (i) defeat the purposes or policies of this Act;
- (ii) deceive the consumer; or
- (iii) subject the consumer to fraudulent conduct;
- (b) it directly or indirectly purports to—
- (i) waive or deprive a consumer of a right set out in this Act; 35
- (ii) avoid a credit provider's obligation or duty in terms of this Act;
- (iii) set aside or override the effect of any provision of this Act;
- (iv) authorise the credit provider to—
- (aa) do anything that is unlawful in terms of this Act; or
- (bb) fail to do anything that is required in terms of this Act; 40
- (c) it purports to waive any common law rights that—
- (i) may be applicable to the credit agreement; and
- (ii) have been prescribed in terms of subsection (5);
- (d) the provision results from an offer prohibited in terms of section 74(2) or (3);
- (e) it purports to make the agreement subject to a supplementary agreement prohibited by section 91(a); 45
- (f) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by section 91(a); or
- (g) it purports to exempt the credit provider from liability, or limit such liability, for— 50
- (i) any act, omission or representation by a person acting on behalf of the credit provider; or

- (ii) any guarantee or warranty that would, in the absence of such a provision, be implied in a credit agreement;
- (h) it expresses an acknowledgement by the consumer that—
- (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the credit provider or a person on behalf of the credit provider; or
- (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, which have or has not in fact been delivered or rendered to the consumer;
- (i) it expresses an agreement by the consumer to forfeit any money to the credit provider if the consumer—
- (i) exercises the right of rescission in terms of section 121, except to the extent contemplated in section 121(3)(b); or
- (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
- (j) it purports to appoint the credit provider, or any employee or agent of the credit provider, as an agent of the consumer for any purpose other than those contemplated in section 102 or deems such an appointment to have been made;
- (k) it expresses, on behalf of the consumer—
- (i) an authorisation for any person acting on behalf of the credit provider to enter any premises for the purposes of taking possession of goods to which the credit agreement relates; or
- (ii) a grant of a power of attorney in advance to the credit provider in respect of any matter related to the granting of credit in terms of this Act;
- (iii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed;
- (iv) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with Chapter 6;
- (v) a limitation of the credit provider's liability for an action contemplated in subparagraph (iv); or
- (vi) a consent to the jurisdiction of—
- (aa) the High Court, if the magistrates' court has concurrent jurisdiction; or
- (bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer resides or works or where the goods in question (if any) are ordinarily kept;
- (l) it expresses an agreement by the consumer to—
- (i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or
- (ii) provide a personal identification code or number to be used to access an account;
- (m) it purports to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
- (n) it purports to authorise or permit the credit provider to satisfy an obligation of the consumer by making a charge against an asset, account, or amount deposited by or for the benefit of the consumer and held by the credit provider or a third party, except by way of a standing debt arrangement, or to the extent permitted by section 124; or
- (o) it states or implies that the rate of interest is variable, except to the extent permitted by section 103(4).

(3) In any credit agreement, a provision that is unlawful in terms of this section is void as from the date that the provision purported to take effect.

(4) In any matter before it respecting a credit agreement that contains a provision contemplated in subsection (2), the court must—

- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
- (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect,

and make any further order that is just and reasonable in the circumstances to give effect to the principles of section 89(5) with respect to that unlawful provision, or entire agreement, as the case may be.

(5) The Minister may prescribe particular common law rights that may not be waived in a credit agreement on the grounds that the waiver of those rights would be inconsistent with the purposes of this Act as set out in section 3.

Supplementary requirements and documents

91. A credit provider must not—

- (a) directly or indirectly require or induce a consumer to enter into a supplementary agreement, or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement;
- (b) request or demand a consumer to—
 - (i) give the credit provider temporary or permanent possession of an instrument referred to in section 90(2)(l)(i) other than for the purpose of identification, or to make a copy of the instrument;
 - (ii) reveal any personal identification code or number contemplated in section 90(2)(l)(ii); or
- (c) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the credit provider.

Part B

Disclosure, form and effect of credit agreements

Pre-agreement disclosure

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

(2) A credit provider must not enter into an intermediate or large credit agreement unless the credit provider has given the consumer—

- (a) a pre-agreement statement—
 - (i) in the form of the proposed agreement; or
 - (ii) in another form addressing all matters required in terms of section 93; and
- (b) a quotation in the prescribed form, setting out the principal debt, the proposed distribution of that amount, the interest rate and other credit costs, the total cost of the proposed agreement, and the basis of any costs that may be assessed under section 121(3) if the consumer rescinds the contract.

(3) Subject only to subsection (4), sections 81 and 101(1)(d)(ii), for a period of five business days after the date on which a quotation is presented in terms of subsection (2)(b)—

- (a) with respect to a small agreement, the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at or below the interest rate or credit cost quoted, subject only to sections 81 and 101(1)(d)(ii);

- (b) with respect to an intermediate or large agreement, the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at an interest rate or credit cost that—
- (i) is at or below the interest rate or credit cost quoted; or
 - (ii) is higher than the interest rate or credit cost quoted by a margin no greater than the difference between the respective prevailing bank rates on the date of the quote, and the date the agreement is made. 5
- (4) If credit is extended for the purchase of an item with limited availability, the credit provider may state that the quotation provided in terms of this section is subject to the continued availability of the item during the period contemplated in subsection (3). 10
- (5) The Minister may prescribe different forms to be used in terms of this section in respect of—
- (a) developmental credit agreements; and
 - (b) other credit agreements.
- (6) A statement that is required by this section to be delivered to a consumer may be transmitted to the consumer in a paper form, or in a printable electronic form. 15
- (7) This section does not apply to any offer, proposal, pre-approval statement or similar arrangement in terms of which a credit provider merely indicates to a prospective consumer a willingness to consider an application to enter into a hypothetical future credit agreement generally or up to a specified maximum value. 20

Form of credit agreements

- 93.** (1) The credit provider must deliver to the consumer, without charge, a copy of a document that records their credit agreement, transmitted to the consumer in a paper form, or in a printable electronic form.
- (2) A document that records a small credit agreement must be in the prescribed form. 25
- (3) A document that records an intermediate or large agreement—
- (a) must be in the prescribed form, if any, for the category or type of credit agreement concerned; or
 - (b) if there is no applicable prescribed form, may be in any form that—
 - (i) is determined by the credit provider; and
 - (ii) complies with any prescribed requirements for the category or type of credit agreement concerned. 30
- (4) The National Credit Regulator may publish guidelines for methods of assessing whether a statement satisfies any prescribed requirements contemplated in subsection (3). 35
- (5) The Minister may prescribe different forms to be used in terms of subsection (2) in respect of—
- (a) developmental credit agreements; and
 - (b) other credit agreements.

Liability for lost or stolen cards or other identification devices

- 94.** (1) If a credit facility provides for access to that facility by use of a card, personal identification code or number or similar identification device, the document that records that credit agreement must set out a contact telephone number at which the consumer may report the loss or theft of that card, personal identification code or number or other device. 45
- (2) A credit provider must not impose a liability on a consumer for any use of a credit facility after the time that the consumer has reported the loss or theft of the associated card, personal identification code or number or similar device, unless—

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

Changes, deferrals and waivers 5

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

Address for notice 10

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

- (a) the address of that other party as set out in the agreement, unless paragraph (b) applies; or 15
- (b) the address most recently provided by the recipient in accordance with subsection (2).

(2) A party to a credit agreement may change their address by delivering to the other party a written notice of the new address by hand, registered mail, or electronic mail, if that other party has provided an email address. 20

Consumer must disclose location of goods

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

- (a) it concerns any goods, and the consumer at any time during the agreement has or had possession of those goods; and
- (b) in terms of that agreement— 25
 - (i) the title to those goods has not passed to the consumer; or
 - (ii) the credit provider has a right to take possession of the goods irrespective of whether they are owned by the consumer or another person.

(2) Until the termination of an agreement to which this section applies, the consumer must inform the credit provider, in the prescribed time, manner and form, of any change concerning— 30

- (a) the consumer's residential or business address;
- (b) the address of the premises in which any goods that are subject to the agreement are ordinarily kept; and
- (c) the name and address of any other person to whom possession of the goods has been transferred. 35

(3) On request by the credit provider, a deputy sheriff or messenger of the court, the consumer must inform that person, in the prescribed manner and form, of the address of the premises where the goods are ordinarily kept and the name and address of the landlord, if any, of those premises. 40

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

(5) A consumer who knowingly—

- (a) provides false or misleading information to a credit provider, deputy sheriff or messenger of the court under this section; or 45
- (b) acts in a manner contrary to this section with intent to frustrate or impede a credit provider exercising rights under this Act or a credit agreement,

is guilty of an offence.

Agreement attaches to substituted goods

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

- (a) from the date of delivery of the substituted goods, the credit agreement applies to the substituted goods rather than the goods originally described; and 5
- (b) the credit provider must prepare and deliver to the consumer an amended credit agreement describing the substituted goods, but without making any other changes to the original agreement. 5

Obligations of pawn brokers 10

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

- (a) must specify in the credit agreement a date on which the agreement ends; 15
- (b) must retain until the end of the credit agreement, and at the risk of the credit provider, any property of the consumer that is delivered to the credit provider as security under the credit agreement; and 15
- (c) must deliver any property referred to in paragraph (b) to the consumer if the consumer pays, or tenders the money required to pay, the settlement value under the agreement at any time up to and including the date on which the agreement ends. 15

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

- (a) the fair market value of the property, less the settlement value at the time of failure to deliver that property, as determined by the Tribunal, if the reason for the failure to return the property is that it has been damaged or destroyed by an intervening cause outside the control of the credit provider; or 25
- (b) double the fair market value of the property, less the settlement value at the time of failure to deliver that property, as determined by the Tribunal, if the reason for the failure to return the property is other than as contemplated in paragraph (a). 30

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

Part C***Consumer's liability, interest, charges and fees*** 35**Prohibited charges**

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

- (a) a credit fee or charge prohibited by this Act; 40
- (b) an amount of a fee or charge exceeding the amount that may be charged consistent with this Act; 40

- (c) an interest charge under a credit agreement exceeding the amount that may be charged consistent with this Act; or
- (d) any fee, charge, commission, expense or other amount payable by the credit provider to any third party in respect of a credit agreement, except as contemplated in section 102 or elsewhere in this Act. 5

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

Cost of credit 10

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

- (a) the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 102;
- (b) an initiation fee, which— 15
 - (i) may not exceed the prescribed amount relative to the principal debt; and
 - (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;
- (c) a service fee, which—
 - (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or 20
 - (ii) in any other case, may be payable monthly or annually; and
 - (iii) must not exceed the prescribed amount relative to the principal debt;
- (d) interest, which—
 - (i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and 25
 - (ii) must not exceed the applicable maximum prescribed rate determined in terms of section 105;
- (e) cost of any credit insurance provided in accordance with section 106;
- (f) default administration charges, which— 30
 - (i) may not exceed the prescribed maximum for the category of credit agreement concerned; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement, and only to the extent permitted by Part C of Chapter 6; and 35
- (g) collection costs, which may not exceed the prescribed maximum for the category of credit agreement concerned and may be imposed only to the extent permitted by Part C of Chapter 6.

(2) A credit provider who is a party to a credit agreement with a consumer and enters into a new credit agreement with the same consumer that replaces the earlier agreement in whole or in part may charge that consumer an initiation fee contemplated in subsection (1)(b) in respect of that second credit agreement, only to the extent permitted by regulation, having regard to the nature of the transaction and the character of the relationship between the credit provider and consumer. 40

(3) If a credit facility is attached to a financial services account, or is maintained in association with such an account, any service charge in terms of that account— 45

- (a) if that charge would not have been levied if there were no credit facility attached to the account, is subject to the prescribed maximum contemplated in subsection (1)(c); and
- (b) otherwise, is exempt from the prescribed maximum contemplated in subsection (1)(c). 50

Fees or charges

- 102.** (1) If a credit agreement is an instalment agreement, a mortgage agreement, a secured loan or a lease, the credit provider may include in the principal debt deferred under the agreement any of the following items to the extent that they are applicable in respect of any goods that are the subject of the agreement— 5
- (a) an initiation fee as contemplated in section 101(1)(b), if the consumer has been offered and declined the option of paying that fee separately;
 - (b) the cost of an extended warranty agreement;
 - (c) delivery, installation and initial fuelling charges;
 - (d) connection fees, levies or charges; 10
 - (e) taxes, licence or registration fees; or
 - (f) subject to section 106, the premiums of any credit insurance payable in respect of that credit agreement.
- (2) A credit provider must not—
- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the consumer's agent in arranging for the service concerned; 15
 - (b) require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1); or
 - (c) charge the consumer an amount under subsection (1) in excess of— 20
 - (i) the actual amount payable by the credit provider for the service, as determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider; or
 - (ii) the fair market value of a service contemplated in subsection (1), if the credit provider delivers that service directly without paying a charge to a third party. 25
- (3) If the actual amount paid by a credit provider to another person is not ascertainable when the consumer pays an amount to the credit provider for a fee or charge contemplated in subsection (1) and if, when it is ascertained, it is less than the amount paid by the consumer, the credit provider must refund or credit the difference to the consumer. 30

Interest

- 103.** (1) Subject to subsection (5), the interest rate applicable to an amount in default or an overdue payment under a credit agreement may not exceed the highest interest rate applicable to any part of the principal debt under that agreement. 35
- (2) A credit agreement may provide for an interest charge to become payable or be debited at any time after the day to which it applies.
- (3) A credit provider must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.
- (4) A credit agreement may provide for the interest rate to vary during the term of the agreement only if the variation is by fixed relationship to a reference rate stipulated in the agreement, which reference rate must be the same as that used by that credit provider in respect of any similar credit agreements currently being issued by it. 40
- (5) Despite any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 101(1)(b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs. 45

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

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

Changes to interest, credit fees or charges 5

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

- (a) the periodic or incidental service fees, or the method of calculating such fees, that may be charged under the credit agreement; or
- (b) the rate of interest applicable to a credit agreement, except with respect to a credit agreement with a variable interest rate. 10

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

- (a) the rate of interest;
- (b) the amount of a credit fee or charge; or 15
- (c) a change in the frequency or time for payment of a credit fee or charge.

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

- (a) the new rate and any further prescribed information; or 20
- (b) if a rate is determined by referring to a reference rate as contemplated in section 103(4), the new reference rate.

Maximum rates of interest, fees and charges

105. (1) The Minister, after consulting the National Credit Regulator, may prescribe a method for calculating— 25

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

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

(2) When prescribing a matter contemplated in subsection (1), the Minister must consider, among other things— 30

- (a) the need to make credit available to persons contemplated in section 13(a);
- (b) conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market; and
- (c) the social impact on low income consumers. 35

(3) When establishing regulations contemplated in this section, the Minister—

- (a) must establish different maximums for credit agreements within each subsector of the consumer credit market; and
- (b) may prescribe the method, consistent with section 101(3), for allocating service fees between the provision of credit and the provision of related financial services, in circumstances in which a credit provider offers multiple financial services under a single agreement. 40

Credit insurance

106. (1) A credit provider may require a consumer to maintain during the term of their credit agreement— 45

- (a) credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement; and
- (b) either—

- (i) in the case of a mortgage agreement, insurance cover in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
- (ii) in any other case, insurance cover against damage or loss of any property other than property referred to in sub-paragraph (i), not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement. 5
- (2) Despite subsection (1), a credit provider must not offer or demand that the consumer purchase or maintain insurance that is—
- (a) unreasonable; or 10
- (b) at an unreasonable cost to the consumer, having regard to the actual risk and liabilities involved in the credit agreement.
- (3) In addition to insurance that may be required in terms of subsection (1), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement. 15
- (4) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1) or (3)—
- (a) the consumer must be given, and be informed of, the right to waive that proposed policy and substitute a policy of the consumer's own choice, subject to subsection (6); 20
- (b) such policy must provide for payment of premiums by the consumer—
- (i) on a monthly basis in the case of small and intermediate agreements; or
- (ii) on a monthly or annual basis in the case of large agreements, 25
- for the duration of the credit agreement; and
- (c) in the case of an annual premium the premium must be recovered from the consumer within the applicable year.
- (5) With respect to any policy of insurance arranged by a credit provider as contemplated in subsection (4), the credit provider must—
- (a) not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider; 30
- (b) disclose to the consumer in the prescribed manner and form—
- (i) the cost to the consumer of any insurance supplied; and
- (ii) the amount of any fee, commission, remuneration or benefit receivable by the credit provider, in relation to that insurance; 35
- (c) explain the terms and conditions of the insurance policy to the consumer and provide the consumer with a copy of that policy; and
- (d) be a loss payee under the policy up to the settlement value at the occurrence of an insured contingency only and any remaining proceeds of the policy must be paid to the consumer. 40
- (6) If the consumer exercises the right under subsection 4(a) to substitute an insurance policy of the consumer's own choice, the credit provider may require the consumer to provide the credit provider with the following written directions—
- (a) a valid direction in the prescribed manner and form requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums; 45
- (i) on a monthly basis for small and intermediate agreements; and

- (ii) on a monthly or annual basis for large agreements; and
- (b) a valid direction to the insurer in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the consumer's obligation under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement. 5
- (7) If the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final year's premium. 10

Part D
Statements of account

Limited application of this Part

- 107.** (1) This Part does not apply in respect of a credit guarantee, until the time that the credit provider first calls on the guarantor to satisfy an obligation in respect of that guarantee. 15
- (2) Sections 108, 109 and 110 do not apply in respect of—
- (a) a pawn transaction; or
- (b) a discounted transaction or an incidental credit agreement, until the time that interest is first charged on the principal debt owed to the credit provider. 20
- (3) In the case of joint consumers or guarantors, a statement required under this section need only be given to one of them, but a joint consumer or guarantor who does not receive such statement may require the credit provider to deliver a duplicate of that statement without charge.
- (4) Sections 108 to 114 do not apply to a developmental credit agreement to the extent that— 25
- (a) the National Credit Regulator has pre-approved the form of all documents and the procedures to be used by the credit provider for such credit agreements in terms of this Part; and
- (b) the credit provider has used only those pre-approved forms and followed those pre-approved procedures in dealing with the particular consumer. 30
- (5) When pre-approving any form of documents or procedures as contemplated in subsection (4), the National Credit Regulator must balance the need for efficiency of the credit provider with the principles of this Part.

Statement of account 35

- 108.** (1) A credit provider must offer to deliver to each consumer periodic statements of account in accordance with this section.
- (2) The maximum period between issuing statements of account is—
- (a) one month, except as otherwise provided for in this subsection;
- (b) two months, in respect of an instalment agreement, lease or secured loan; or 40
- (c) six months in respect of a mortgage agreement.
- (3) Despite subsection (2)—
- (a) a consumer and credit provider may agree to reduce the frequency of statements of account referred to in subsection (2)(a) or (b), but no such agreement may provide for more than three months between delivery of successive statements of account; and 45
- (b) a statement of account need not be delivered in respect of a credit facility if no amount has been debited or credited to the account during the statement period.

Form and content of statement of account

- 109.** (1) The opening balance shown in each successive statement of account must be the same as the closing balance shown in the immediately preceding statement of account.
- (2) A statement of account in respect of a small credit agreement must be in the prescribed form. 5
- (3) A statement of account in respect of an intermediate or large agreement may be in—
- (a) the prescribed form, if any, for the category or type of credit agreement concerned; or
 - (b) a form determined by the credit provider, and which complies with any prescribed requirements for the category or type of credit agreement concerned. 10
- (4) The National Credit Regulator may publish guidelines for methods of assessing whether a statement satisfies any prescribed requirements contemplated in subsection (3). 15

Statement of amount owing and related matters

- 110.** (1) At the request of a consumer, a credit provider must deliver without charge to the consumer a statement of all or any of the following—
- (a) the current balance of the consumer's account;
 - (b) any amounts credited or debited during a period specified in the request; 20
 - (c) any amounts currently overdue and when each such amount became due; and
 - (d) any amount currently payable and the date it became due.
- (2) A statement requested in terms of subsection (1) must be delivered—
- (a) within 10 business days, if all the requested information relates to a period of one year or less before the request was made; or 25
 - (b) within 20 business days, if any of the requested information relates to a period of more than one year before the request was made.
- (3) A statement under this section may be delivered—
- (a) orally, in person or by telephone; or
 - (b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, 30
- as directed by the consumer when making the request.
- (4) A credit provider is not required to provide—
- (a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; 35
 - or
 - (b) information in a statement under this section more than three years after the account was closed.
- (5) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious. 40

Disputed entries in accounts

- 111.** (1) A consumer may dispute all or part of any particular credit or debit entered under a credit agreement, by delivering a written notice to the credit provider.
- (2) A credit provider who receives a notice of dispute in terms of subsection (1)—
- (a) must give the consumer a written notice either— 5
 - (i) explaining the entry in reasonable detail; or
 - (ii) confirming that the statement was in error either in whole or in part, and setting out the revised entry; and
 - (b) must not begin enforcement proceedings on the basis of a default arising from the disputed entry— 10
 - (i) until the credit provider has complied with paragraph (a); or
 - (ii) at any time that the matter is under alternative dispute resolution procedures, or before the Tribunal in terms of section 115.

Dating and adjustment of debits and credits in accounts

- 112.** (1) A debit to a consumer's account takes effect as of the date on which the consumer incurred that debit. 15
- (2) A credit to a consumer's account takes effect on the date the consumer makes a payment to the credit provider, or otherwise earns the right to have the account credited.
- (3) A credit provider may subsequently adjust debits or credits to a consumer's account, and the account balances, so as to accurately reflect the legal obligations of the consumer and the credit provider. 20

Statement of settlement amount

- 113.** (1) At the request of a consumer or guarantor, a credit provider must deliver without charge to the consumer a statement of the amount required to settle a credit agreement, as calculated in accordance with section 125, as of a date specified in the request. 25
- (2) A statement requested in terms of subsection (1)—
- (a) must be delivered within five business days;
 - (b) may be delivered— 30
 - (i) orally, in person or by telephone; or
 - (ii) in writing, either to the consumer in person or by sms, mail, fax or email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facilities, as directed by the consumer when making the request; and
 - (c) is binding for a period of five business days after delivery, subject to subsection (3). 35
- (3) A statement delivered in respect of a credit facility is not binding to the extent of any credits to that account, or charges made to that account by or on behalf of the consumer, after the date on which the statement was prepared.
- (4) On application by a credit provider, the Tribunal may make an order limiting the credit provider's obligations to a consumer in terms of this section if the Tribunal is satisfied that the consumer's requests are frivolous or vexatious. 40

Tribunal may order statement to be provided

- 114.** If a statement is not offered or delivered within the time required by this Part, the Tribunal, on application by the consumer, may— 45
- (a) order the credit provider to provide the statement; or
 - (b) determine the amounts in relation to which the statement was sought.

Disputes concerning statements

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

- (a) a disputed entry shown on a statement of account; or 5
- (b) a dispute concerning a statement of the settlement amount.

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

Part E**Alteration of credit agreement**

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Alteration of original or amended agreement document

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

- (a) the change reduces the consumer's liabilities under the agreement; 15
- (b) after the change is made, unless the change is effected in terms of section 119(1)(c), the consumer signs or initials in the margin opposite the change;
- (c) the change is recorded in writing and signed by the parties; or
- (d) any oral change is recorded electromagnetically and subsequently reduced to writing. 20

Changes by agreement

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

- (a) reflects their amended agreement; and 25
- (b) complies with the requirements set out in section 93.

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

Reductions to credit limit under credit facility

30

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

- (a) require the credit provider to reduce the credit limit under that credit facility; and
- (b) stipulate a maximum credit limit that the consumer is prepared to accept. 35

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

- (a) the new credit limit, which must not exceed the maximum limit stipulated by the consumer, if any; and
- (b) the date on which the new credit limit is to take effect, which may not be more than 30 business days after the date of the notice from the consumer. 40

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

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

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

Increases in credit limit under credit facility

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

(a) temporarily, as contemplated in subsection (2);

(b) by agreement with the consumer, subject to subsection (3)—

(i) in response to a written or oral request initiated by the consumer at any time; or

(ii) with the written consent of the consumer in response to a written proposal by the credit provider, which may be delivered to the consumer at any time; or

(c) unilaterally, in accordance with, and subject to the limitations set out in, subsection (4). 15

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

(a) the credit provider honours an instrument issued by the consumer, despite the fact that it results in a debt that exceeds the established credit limit; or

(b) the credit provider agrees to raise the credit limit in response to a request from the consumer in order to accommodate a particular transaction, on condition that the preceding credit limit will again apply within a specified period, or after a specified occurrence has taken place. 20

(3) Before increasing a credit limit in terms of subsection (1)(b), the credit provider must complete a fresh assessment of the consumer's ability to meet the obligations that could arise under that credit facility, as required by section 81. 25

(4) If the consumer, at the time of applying for the credit facility or at any later time, in writing has specifically requested the option of having the credit limit automatically increased from time to time, a credit provider may unilaterally increase the credit limit under that credit facility— 30

(a) once during each year, as measured from the later of—

(i) the date that the credit facility was established; or

(ii) the date on which the credit limit was most recently altered in accordance with subsection (1)(b); and

(b) by an amount not exceeding the lesser of— 35

(i) the average monthly purchases or cash advances charged to the credit facility by the consumer; or

(ii) the average monthly payments made by the consumer, during the 12 months immediately preceding the date on which the credit limit is increased. 40

(5) For the purposes of subsection (4), a specific request—

(a) does not include—

(i) an oral request or assent by the consumer; or

(ii) a standard provision of an agreement, the whole of which is accepted by the consumer; but 45

(b) does include—

(i) a written request in any form authored and signed by the consumer and delivered to the credit provider at any time; or

(ii) a standard form option—

(aa) authored by the credit provider and presented for consideration by the consumer alongside the alternative of having credit limits increased only as contemplated in subsection (1)(b); and

(bb) assented to by being initialled or signed by the consumer. 50

(6) If, when increasing the credit limit under a credit facility, the credit provider alters any other term of the credit agreement, the credit provider must comply with the requirements set out in sections 93 and 117. 55

(7) An increase in a credit limit in terms of subsection (4) is not unlawful in terms of section 74(2).

Unilateral changes by credit provider

120. (1) Despite any provision to the contrary in a credit agreement, a credit provider may not unilaterally change— 5

- (a) the period for repayment of the principal debt, except to lengthen it; or
- (b) the manner of calculating the minimum payment due periodically under a credit facility, subject to section 118(4).

(2) Except as otherwise provided for in section 104, a credit provider must give the consumer written notice of at least five business days of a unilateral change to a credit agreement and in that notice must set out the particulars of the change. 10

Part F

Rescission and termination of credit agreements

Consumer's right to rescind credit agreement

121. (1) This section applies only in respect of a lease or an instalment agreement entered into at any location other than the registered business premises of the credit provider. 15

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

- (a) delivering a notice in the prescribed manner to the credit provider; and 20
- (b) tendering the return of any money or goods, or paying in full for any services, received by the consumer in respect of the agreement.

(3) When a credit agreement is terminated in terms of this section, the credit provider—

- (a) must refund any money the consumer has paid under the agreement within seven business days after the delivery of the notice to terminate; and 25
- (b) may require payment from the consumer for—
 - (i) the reasonable cost of having any goods returned to the credit provider and restored to saleable condition; and
 - (ii) a reasonable rent for the use of those goods for the time that the goods were in the consumer's possession, unless those goods are in their original packaging and it is apparent that they have remained unused. 30

(4) A credit provider to whom property has been returned in terms of this section, and who has unsuccessfully attempted to resolve any dispute over depreciation of that property directly with the consumer and through alternative dispute resolution under Part A of Chapter 7, may apply to a court for an order in terms of subsection (5). 35

(5) If, on an application in terms of subsection (4), a court concludes that the actual fair market value of the goods depreciated during the time that they were in the consumer's possession, a court may order the consumer to pay to the credit provider a further amount not greater than the difference between— 40

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

When consumer may terminate agreement

122. (1) A consumer may terminate a credit agreement at any time by paying the settlement amount to the credit provider, in accordance with section 125. 45

- (2) In addition to subsection (1), a consumer may terminate an instalment agreement, secured loan or lease of movable property, by—
- (a) surrendering to the credit provider the goods that are the subject of that agreement in accordance with section 127; and
 - (b) paying to the credit provider any remaining amount demanded in accordance with section 127(7). 5

Termination of agreement by credit provider

- 123.** (1) A credit provider may terminate a credit agreement before the time provided in that agreement only in accordance with this section.
- (2) If a consumer is in default under a credit agreement, the credit provider may take the steps set out in Part C of Chapter 6 to enforce and terminate that agreement. 10
- (3) A credit provider in respect of a credit facility may—
- (a) suspend that credit facility at any time the consumer is in default under the agreement; or
 - (b) close that credit facility by giving written notice to the consumer at least ten business days before the credit facility will be closed. 15
- (4) A credit agreement referred to in subsection (3) remains in effect to the extent necessary until the consumer has paid all amounts lawfully charged to that account.
- (5) A credit provider may not close or terminate a credit facility solely on the grounds that— 20
- (a) the credit provider has declined a consumer's request to increase the credit limit;
 - (b) the consumer has declined the credit provider's offer to increase the credit limit;
 - (c) the consumer has requested a reduction in the credit limit, unless that reduction would reduce the credit limit to a level at which the credit provider does not customarily offer or establish credit facilities; or 25
 - (d) the card, personal identification code or number or other identification device used to access that facility has expired.
- (6) The unilateral termination of a credit agreement by a credit provider as contemplated in this section does not suspend or terminate any residual obligations of the credit provider to the consumer under that agreement or this Act. 30

CHAPTER 6

COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

Part A

Collection and repayment practices

Charges to other accounts

- 124.** (1) It is lawful for a consumer to provide, a credit provider to request or a credit agreement to include an authorisation to the credit provider to make a charge or series of charges contemplated in section 90(2)(n), if such authorisation meets all the following conditions— 40
- (a) the charge or series of charges may be made only against an asset, account, or amount that has been—
 - (i) deposited by or for the benefit of the consumer and held by that credit provider or that third party; and 45
 - (ii) specifically named by the consumer in the authorisation;