

- (b) the charge or series of charges may be made only to satisfy—
 - (i) a single obligation under the credit agreement; or
 - (ii) a series of recurring obligations under the credit agreement, specifically set out in the authorisation;
- (c) the charge or series of charges may be made only for an amount that is— 5
 - (i) calculated by reference to the obligation it is intended to satisfy under the credit agreement, and
 - (ii) specifically set out in the authorisation;
- (d) the charge or series of charges may be made only on or after a specified date, or series of specified dates— 10
 - (i) corresponding to the date on which an obligation arises, or the dates on which a series of recurring obligations arise, under the credit agreement; and
 - (ii) specifically set out in the authorisation; and
- (e) any authorisation not given in writing, must be recorded electromagnetically and subsequently reduced to writing. 15

(2) Before making a single charge, or the initial charge of a series of charges, to be made under a particular authorisation, the credit provider must give the consumer notice in the prescribed manner and form, setting out the particulars as required by this subsection, of the charge or charges to be made under that authorisation. 20

(3) If there is a conflict between a provision of this section and a provision of the National Payment Systems Act, 1998 (Act No. 78 of 1998), the provisions of that Act prevail.

Consumer's or guarantor's right to settle agreement

125. (1) A consumer or guarantor is entitled to settle the credit agreement at any time, with or without advance notice to the credit provider. 25

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

- (a) The unpaid balance of the principal debt at that time;
- (b) the unpaid interest charges and all other fees and charges payable by the consumer to the credit provider up to the settlement date; and 30
- (c) in the case of a large agreement—
 - (i) at a fixed rate of interest, an early termination charge no more than a prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with sub-paragraph (ii); or 35
 - (ii) other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between—
 - (aa) three months; and
 - (bb) the period of notice of settlement if any, given by the consumer. 40

Early payments and crediting of payments

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

(2) A credit provider must accept any payment under a credit agreement when it is tendered, even if that is before the date on which the payment is due. 45

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

- (a) Firstly, to satisfy any due or unpaid interest charges;
- (b) secondly, to satisfy any due or unpaid fees or charges; and
- (c) thirdly, to reduce the amount of the principal debt. 50

Part B
Surrender of goods

Surrender of goods

- 127.** (1) A consumer under an instalment agreement, secured loan or lease—
- (a) may give written notice to the credit provider to terminate the agreement; and 5
 - (b) if—
 - (i) the goods are in the credit provider's possession, require the credit provider to sell the goods; or
 - (ii) otherwise, return the goods that are the subject of that agreement to the credit provider's place of business during ordinary business hours within 10 five business days after the date of the notice or within such other period or at such other time or place as may be agreed with the credit provider.
- (2) Within 10 business days after the later of—
- (a) receiving a notice in terms of subsection (1)(b)(i); or
 - (b) receiving goods tendered in terms of subsection (1)(b)(ii), 15
- a credit provider must give the consumer written notice setting out the estimated value of the goods and any other prescribed information.
- (3) Within 10 business days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1)(a), and resume possession of any goods that are in the credit provider's 20 possession, unless the consumer is in default under the credit agreement.
- (4) If the consumer—
- (a) responds to a notice as contemplated in subsection (3), the credit provider must return the goods to the consumer unless the consumer is in default under the credit agreement; or 25
 - (b) does not respond to a notice as contemplated in subsection (3), the credit provider must sell the goods as soon as practicable for the best price reasonably obtainable.
- (5) After selling any goods in terms of this section, a credit provider must—
- (a) credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and 30
 - (b) give the consumer a written notice stating the following:
 - (i) The settlement value of the agreement immediately before the sale;
 - (ii) the gross amount realised on the sale; 35
 - (iii) the net proceeds of the sale after deducting the credit provider's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and
 - (iv) the amount credited or debited to the consumer's account.
- (6) If an amount is credited to the consumer's account and it exceeds the settlement 40 value immediately before the sale, and—

- (a) another credit provider has a registered credit agreement with the same consumer in respect of the same goods, the credit provider must remit that amount to the Tribunal, which may make an order for the distribution of the amount in a manner that is just and reasonable; or
- (b) no other credit provider has a registered credit agreement with the same consumer in respect of the same goods, the credit provider must remit that amount to the consumer with the notice required by subsection (5)(b), and the agreement is terminated upon remittance of that amount. 5
- (7) If an amount is credited to the consumer's account and it is less than the settlement value immediately before the sale, or an amount is debited to the consumer's account, the credit provider may demand payment from the consumer of the remaining settlement value, when issuing the notice required by subsection (5)(b). 10
- (8) If a consumer—
- (a) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the Magistrates' Courts Act for judgment enforcing the credit agreement; or 15
- (b) pays the amount demanded after receiving a demand notice at any time before judgment is obtained under paragraph (a), the agreement is terminated upon remittance of that amount. 20
- (9) In either event contemplated in subsection (8), interest is payable by the consumer at the rate applicable to the credit agreement on any outstanding amount demanded by the credit provider in terms of subsection (7) from the date of the demand until the date that the outstanding amount is paid.
- (10) A credit provider who acts in a manner contrary to this section is guilty of an offence. 25

Compensation for consumer

- 128.** (1) A consumer who has unsuccessfully attempted to resolve a disputed sale of goods in terms of section 127 directly with the credit provider, or through alternative dispute resolution under Part A of Chapter 7, may apply to the Tribunal to review the sale. 30
- (2) If the Tribunal considering an application in terms of this section is not satisfied that the credit provider sold the goods as soon as reasonably practicable, or for the best price reasonably obtainable, the Tribunal may order the credit provider to credit and pay to the consumer an additional amount exceeding the net proceeds of sale. 35
- (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.

Part C

Debt enforcement by repossession or judgment

Required procedures before debt enforcement 40

- 129.** (1) If the consumer is in default under a credit agreement, the credit provider—
- (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and 45

- (b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before—
- (i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86(10), as the case may be; and
 - (ii) meeting any further requirements set out in section 130. 5
- (2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.
- (3) Subject to subsection (4), a consumer may—
- (a) at any time before the credit provider has cancelled the agreement re-instate a credit agreement that is in default by paying to the credit provider all amounts that are overdue, together with the credit provider's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement; and— 10
 - (b) after complying with paragraph (a), may resume possession of any property that had been repossessed by the credit provider pursuant to an attachment order. 15
- (4) A consumer may not re-instate a credit agreement after—
- (a) the sale of any property pursuant to—
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 127; 20
 - (b) the execution of any other court order enforcing that agreement; or
 - (c) the termination thereof in accordance with section 123.

Debt procedures in a Court

- 130.** (1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and— 25
- (a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(9), or section 129(1), as the case may be;
 - (b) in the case of a notice contemplated in section 129(1), the consumer has— 30
 - (i) not responded to that notice; or
 - (ii) responded to the notice by rejecting the credit provider's proposals; and
 - (c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127. 35
- (2) In addition to the circumstances contemplated in subsection (1), in the case of an instalment agreement, secured loan, or lease, a credit provider may approach the court for an order enforcing the remaining obligations of a consumer under a credit agreement at any time if—
- (a) all relevant property has been sold pursuant to— 40
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 127; and
 - (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.
- (3) Despite any provision of law or contract to the contrary, in any proceedings 45 commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—

- (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;
- (b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court; and 5
- (c) that the credit provider has not approached the court—
- (i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
- (ii) despite the consumer having— 10
- (aa) surrendered property to the credit provider, and before that property has been sold;
- (bb) agreed to a proposal made in terms of section 129(1)(a) and acted in good faith in fulfilment of that agreement;
- (cc) complied with an agreed plan as contemplated in section 129(1)(a); or 15
- (dd) brought the payments under the credit agreement up to date, as contemplated in section 129(1)(a).
- (4) In any proceedings contemplated in this section, if the court determines that— 20
- (a) the credit agreement was reckless as described in section 80, the court must make an order contemplated in section 83;
- (b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(c) the court must— 25
- (i) adjourn the matter before it; and
- (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed;
- (c) the credit agreement is subject to a pending debt review in terms of Part D of Chapter 4, the court may— 30
- (i) adjourn the matter, pending a final determination of the debt review proceedings;
- (ii) order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b); or
- (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b); 35
- (d) there is a matter pending before the Tribunal, as contemplated in subsection (3)(b), the court may—
- (i) adjourn the matter before it, pending a determination of the proceedings before the Tribunal; or 40
- (ii) order the Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or
- (e) the credit agreement is either suspended or subject to a debt re-arrangement order or agreement, and the consumer has complied with that order or agreement, the court must dismiss the matter. 45

Repossession of goods

131. If a court makes an attachment order with respect to property that is the subject of a credit agreement, section 127(2) to (9) and section 128, read with the changes required by the context, apply with respect to any goods attached in terms of that order.

Compensation for credit provider

132. (1) A credit provider who has unsuccessfully attempted to resolve a dispute over the costs of attachment of property in terms of section 129 to 131 directly with the consumer, and through alternative dispute resolution under Part A of Chapter 7, may apply to the court for compensation from the consumer in respect of any costs of repossession of property in excess of those permitted under section 131. 55

- (2) The court may grant an order contemplated in subsection (1) if it is satisfied that—
- (a) the consumer knowingly—
 - (i) provided false or misleading information to the credit provider in terms of section 97; or
 - (ii) engaged in a pattern of behaviour that was reasonably likely to frustrate or impede the exercise of the credit provider's right to repossess property under section 129 to 131; and
 - (b) as a result, the credit provider experienced unreasonable delay or incurred exceptional costs in the exercise of those rights.

Prohibited collection and enforcement practices 10

- 133.** (1) A credit provider must not—
- (a) make use of any document, number or instrument referred to in section 90(2)(l) when collecting on or enforcing a credit agreement; or
 - (b) direct or permit any other person to do anything contemplated in this subsection on behalf, or as an agent, of the credit provider. 15
- (2) When collecting money owed by a consumer under a credit agreement or when seeking to enforce a credit agreement, a credit provider must not use or rely on, or permit any person to use or rely on, any document, instrument or contract provision referred to in section 90(2)(l).
- (3) A person who contravenes this section is guilty of an offence. 20

CHAPTER 7

DISPUTE SETTLEMENT OTHER THAN DEBT ENFORCEMENT

Part A

Alternative dispute resolution

Alternative dispute resolution 25

- 134.** (1) As an alternative to filing a complaint with the National Credit Regulator in terms of section 136, a person may refer a matter that could be the subject of such a complaint as follows:
- (a) If the credit provider concerned is a financial institution as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), the matter— 30
 - (i) may be referred only to the ombud with jurisdiction to resolve a complaint or settle a matter involving that credit provider, as determined in accordance with sections 13 and 14 of that Act; and
 - (ii) must be procedurally resolved as if it were a complaint in terms of that Act; or 35
 - (b) if the credit provider is not a financial institution, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), the matter may be referred to either—
 - (i) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or 40
 - (ii) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(2) The respondent in a matter referred to an alternative dispute resolution agent under subsection (1)(b)(ii) may object to that referral in writing within 10 business days, in which case—

- (a) the matter may not be resolved by an alternative dispute resolution agent;
- (b) if the matter is the proper subject of a complaint to the National Credit Regulator, the matter is deemed to have been filed as a complaint in terms of section 136; or
- (c) if the matter is the proper subject of an application to the Tribunal, the matter is deemed to have been an application directly to the Tribunal in terms of section 137.

(3) The Tribunal, after considering a matter in terms of a deemed application under subsection (2)(c), may make an exceptional order of costs against the respondent if the Tribunal considers that the matter could have been properly resolved by conciliation, mediation or arbitration carried out in good faith.

(4) In respect of any dispute between a credit provider and a consumer that could be the subject of an application to the Tribunal in terms of this Act, other than Part C of this Chapter, the consumer or credit provider, before either may apply directly to the Tribunal—

- (a) must attempt to resolve that matter directly between themselves; and
- (b) if unable to do so, must refer the matter—
 - (i) to the ombud with jurisdiction, for resolution in accordance with this Act and in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), if the credit provider concerned is a financial institution and a participant in a recognised scheme as defined in that Act; or
 - (ii) in any other case, to either—
 - (aa) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or
 - (bb) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(5) If an alternative dispute resolution agent concludes that either party to conciliation, mediation or arbitration in terms of subsection (4)(b)(ii)(bb) is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the alternative dispute resolution agent must issue a certificate in the prescribed form stating that the process has failed.

Dispute resolution may result in consent order

135. (1) The ombud with jurisdiction, consumer court or alternative dispute resolution agent that has resolved, or assisted parties in resolving, a dispute in terms of this Part may—

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to—
 - (i) a court to be made a consent order, in terms of its rules; or
 - (ii) the Tribunal to be made a consent order in terms of section 138.

(2) The National Credit Regulator may not intervene before the Tribunal in respect of a consent order submitted in terms of this section.

Part B
Initiating complaints or applications

Initiating a complaint to National Credit Regulator

- 136.** (1) Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator in the prescribed manner and form. 5
(2) The National Credit Regulator may initiate a complaint in its own name.

Initiating applications to Tribunal

- 137.** (1) The National Credit Regulator may apply to the Tribunal in the prescribed manner and form—
- (a) for an order resolving a dispute over information held by a credit bureau, in terms of Part B of Chapter 4; 10
 - (b) for an order compelling the delivery of a statement of account or a review of a statement in terms of Part D of Chapter 5;
 - (c) to review the conduct of a sale of goods in terms of section 127 or the distribution of proceeds from such a sale; 15
 - (d) for leave to bring a complaint directly before the Tribunal; or
 - (e) for an order condoning late filing.
- (2) A registrant, or applicant for registration, may file an application in terms of section 59 at any time within—
- (a) 20 business days after the National Credit Regulator makes the decision that is the subject of the application; or 20
 - (b) such longer time as the Tribunal may allow on good cause shown.
- (3) A consumer or credit provider who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of section 134(4) may file an application contemplated in this Act at any time within— 25
- (a) 20 business days after the failure of the attempted alternative dispute resolution; or
 - (b) such longer time as the Tribunal may allow on good cause shown.
- (4) The National Credit Regulator may intervene before the Tribunal in respect of any application contemplated in this section in which the National Credit Regulator is not already a party. 30

Consent orders

- 138.** (1) If a matter has been—
- (a) resolved through the ombud with jurisdiction, consumer court or alternative dispute resolution agent; or 35
 - (b) investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the proposed terms of an appropriate order,
- the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order. 40
- (2) With the consent of a complainant, a consent order confirmed in terms of subsection (1)(b) may include an award of damages to the complainant.

Part C
Informal resolution or investigation of complaints

Investigation by National Credit Regulator

139. (1) Upon initiating or accepting a complaint in terms of section 136, the National Credit Regulator may— 5

- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious, or does not allege any facts which, if true, would constitute grounds for a remedy under this Act;
- (b) refer the complaint to—
 - (i) a debt counsellor, if the matter appears to concern either reckless credit or possible over-indebtedness of the consumer; or
 - (ii) the ombud with jurisdiction, consumer court or an alternative dispute resolution agent for the purposes of assisting the parties to resolve the dispute in terms of section 134; or
- (c) direct an inspector to investigate the complaint as quickly as practicable, in any other case. 15

(2) At any time during an investigation, the National Credit Regulator may designate one or more persons to assist the inspector conducting the investigation contemplated in subsection (1).

(3) At any time during an investigation, the National Credit Regulator may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject— 20

- (a) to appear before the National Credit Regulator to be interrogated; or
- (b) to deliver or produce to the National Credit Regulator such book, document or other object, 25

at a time and place specified in the summons.

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

- (a) the person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the inspector questioning such a person must inform that person of the right set out in paragraph (a). 30

(5) No self-incriminating answer given or statement made by any person to an inspector exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 159, and then only to the extent that the answer or statement is relevant to prove the offence charged. 35

Outcome of complaint 40

140. (1) After completing an investigation into a complaint, the National Credit Regulator may—

- (a) issue a notice of non-referral to the complainant in the prescribed form;
- (b) make a referral in accordance with subsection (2), if the National Credit Regulator believes that a person has engaged in prohibited conduct; 45
- (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act; or
- (d) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act.

(2) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter— 50

- (a) to the consumer court of the province in which the consumer resides, or the consumer court of the province in which the credit provider has its principal place of business in the Republic, if there is a consumer court in such a province and if the National Credit Regulator believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or 5
- (b) to the Tribunal.
- (3) If, in respect of a matter contemplated in subsection (2), there is no consumer court within either applicable province, the National Credit Regulator may refer the matter to either—
- (a) a consumer court in another province, if the balance of convenience or interests of justice so permit; or 10
- (b) the Tribunal.
- (4) If the National Credit Regulator refers a matter to a consumer court in terms of subsection (2) or (3)(a), any party to that referral may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to— 15
- (a) a different consumer court, or
- (b) the Tribunal.
- (5) If an application has been made to the Tribunal—
- (a) in terms of subsection (4)(a), the Tribunal may order that the matter be referred to a different consumer court, if the balance of convenience or interests of justice so require; 20
- (b) in terms of subsection (4)(b), the Tribunal may order that the matter be referred to it instead of the consumer court if the balance of convenience or interests of justice so require. 25
- (6) A consumer court hearing a matter referred to in this section—
- (a) must conduct its proceedings in a manner consistent with the requirements of Part D of this Chapter; and
- (b) may make any order that the Tribunal could have made in terms of this Act after hearing that matter. 30
- (7) An order of a consumer court made after hearing a matter referred to in terms of this section has the same force and effect as if it had been made by the Tribunal.

Referral to Tribunal

- 141.** (1) If the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section 61 or an offence in terms of this Act, the complainant concerned may refer the matter directly to— 35
- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or 40
- (b) the Tribunal, with the leave of the Tribunal.
- (2) If a matter is referred directly to a consumer court in terms of subsection (1)—
- (a) the respondent may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to— 45
- (i) a different consumer court; or
- (ii) the Tribunal;
- (b) the provisions of section 140(6) and (7), read with the changes required by the context, apply to an application made in terms of paragraph (a); and
- (c) if the matter remains referred to a consumer court, the provisions of Parts D and E of this Chapter, each read with the changes required by the context, apply to the hearing of the matter by the consumer court. 50
- (3) A referral to the Tribunal, whether by the National Credit Regulator in terms of section 140(1) or by a complainant in terms of subsection (1), must be in the prescribed form.
- (4) The Tribunal must conduct a hearing into any matter referred to it under this Chapter, in accordance with the requirements of this Act. 55

Part D
Tribunal consideration of complaints, applications and referrals

Hearings before Tribunal

- 142.** (1) The Tribunal must conduct its hearings in public—
- (a) in an inquisitorial manner; 5
 - (b) as expeditiously as possible;
 - (c) as informally as possible; and
 - (d) in accordance with the principles of natural justice.
- (2) Despite subsection (1), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings— 10
- (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
 - (b) if the proper conduct of the hearing requires it; or
 - (c) for any other reason that would be justifiable in civil proceedings in a High Court. 15
- (3) The Chairperson of the Tribunal must assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:
- (a) Any application by a consumer or credit provider in terms of section 137(3);
 - (b) consent orders in terms of this Act; 20
 - (c) applications to permit late filing;
 - (d) review of requests for additional information, in terms of section 45(2);
 - (e) review of an order to cease engaging in an activity, in terms of section 54;
 - (f) applications for an order limiting consumer requests in terms of section 62, 65, 72, 110 or 113; or 25
 - (g) applications for an order concerning the remittance of proceeds of sale, in terms of section 127 or 131.
- (4) At the conclusion of a hearing, the Tribunal must make any order permitted in the circumstances in terms of this Act and must issue written reasons for its decision.
- (5) The Tribunal must provide the participants and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made in terms of subsection (2)(a). 30

Right to participate in hearing

- 143.** The following persons may participate in a hearing contemplated in this Part, in person or through a representative, and may put questions to witnesses and inspect any books, documents or items presented at the hearing: 35
- (a) The National Credit Regulator;
 - (b) the applicant or complainant, and in the case of a complaint concerning an alleged contravention of section 61, the consumer or prospective consumer, if that person is not the complainant; 40
 - (c) the respondent; and
 - (d) any other person who has a material interest in the hearing, unless, in the opinion of the presiding member of the Tribunal, that interest is adequately represented by another participant.

Powers of member presiding at hearing

- 144.** The member of the Tribunal presiding at a hearing may—
- (a) direct or summon any person to appear at any specified time and place;
 - (b) question any person under oath or affirmation;
 - (c) summon or order any person— 5
 - (i) to produce any book, document or item necessary for the purposes of the hearing; or
 - (ii) to perform any other act in relation to this Act; and
 - (d) give directions prohibiting or restricting the publication of any evidence given to the Tribunal. 10

Rules of procedure

145. Subject to the rules of procedure of the Tribunal, the member of the Tribunal presiding at a hearing may determine any matter of procedure for that hearing, with due regard to the circumstances of the case and the requirements of the applicable sections of this Act. 15

Witnesses

- 146.** (1) Every person giving evidence at a hearing of the Tribunal must answer any relevant question.
- (2) The law regarding a witness's privilege in a criminal case in a court of law applies equally to a person who provides information during a hearing. 20
 - (3) The Tribunal may order a person to answer any question or to produce any article or document, even if it is self-incriminating to do so.
 - (4) Section 139(5) applies to evidence given by a witness in terms of this section.

Costs

- 147.** (1) Subject to subsection (2), each party participating in a hearing must bear its own costs. 25
- (2) If the Tribunal—
 - (a) has not made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs to the respondent and against a complainant who referred the complaint in terms of section 141(1); or 30
 - (b) has made a finding against a respondent, the member of the Tribunal presiding at a hearing may award costs against the respondent and to a complainant who referred the complaint in terms of section 141(1).

Appeals and reviews

- 148.** (1) A participant in a hearing before a single member of the Tribunal may appeal a decision by that member to a full panel of the Tribunal. 35
- (2) Subject to the rules of the High Court, a participant in a hearing before a full panel of the Tribunal may—
 - (a) apply to the High Court to review the decision of the Tribunal in that matter; or 40
 - (b) appeal to the High Court against the decision of the Tribunal in that matter, other than a decision in terms of section 138.

Part E
Tribunal orders

Interim relief

149. (1) At any time, whether or not a hearing has commenced into a complaint, a complainant may apply to the Tribunal for an interim order in respect of that complaint, and the Tribunal may grant such an order if— 5

- (a) there is evidence that the allegations may be true; and
- (b) an interim order is reasonably necessary to—
 - (i) prevent serious, irreparable damage to that person; or
 - (ii) prevent the purposes of this Act from being frustrated; 10
- (c) the respondent has been given a reasonable opportunity to be heard, having regard to the urgency of the proceedings; and
- (d) the balance of convenience favours the granting of the order.

(2) An interim order in terms of this section must not extend beyond the earlier of—

- (a) the conclusion of a hearing into the complaint; or 15
- (b) the date that is six months after the date of issue of the interim order.

(3) If an interim order has been granted, and a hearing into that matter has not been concluded within six months after the date of that order, the Tribunal, on good cause shown, may extend the interim order for a further period not exceeding six months.

Orders of Tribunal 20

150. In addition to its other powers in terms of this Act, the Tribunal may make an appropriate order in relation to prohibited conduct or required conduct in terms of this Act, including—

- (a) declaring conduct to be prohibited in terms of this Act;
- (b) interdicting any prohibited conduct; 25
- (c) imposing an administrative fine in terms of section 151, with or without the addition of any other order in terms of this section;
- (d) confirming a consent agreement in terms of this Act as an order of the Tribunal;
- (e) condoning any non-compliance of its rules and procedures on good cause shown; 30
- (f) confirming an order against an unregistered person to cease engaging in any activity that is required to be registered in terms of this Act;
- (g) suspending or cancelling the registrant's registration, subject to section 57(2) and (3); 35
- (h) requiring repayment to the consumer of any excess amount charged, together with interest at the rate set out in the agreement; or
- (i) any other appropriate order required to give effect to a right, as contemplated in this Act.

Administrative fines 40

151. (1) The Tribunal may impose an administrative fine only in the circumstances expressly provided for in this Act.

(2) An administrative fine imposed in terms of this Act may not exceed the greater of—

- (a) 10 per cent of the respondent's annual turnover during the preceding financial year; or 45
- (b) R1 000 000.

(3) When determining an appropriate fine, the Tribunal must consider the following factors:

- (a) The nature, duration, gravity and extent of the contravention; 50
- (b) any loss or damage suffered as a result of the contravention;

- (c) the behaviour of the respondent;
 - (d) the market circumstances in which the contravention took place;
 - (e) the level of profit derived from the contravention;
 - (f) the degree to which the respondent has co-operated with the National Credit Regulator and the Tribunal; and 5
 - (g) whether the respondent has previously been found in contravention of this Act.
- (4) For the purpose of this section, the annual turnover of—
- (a) a credit provider at the time an administrative fine is assessed, is the total income of that credit provider during the immediately preceding year under all credit agreements to which this Act applies, less the amount of that income that represents the repayment of principal debt under those credit agreements; 10
 - or
 - (b) any other person, is the amount determined in the prescribed manner.
- (5) A fine payable in terms of this section must be paid into the National Revenue Fund referred to in section 213 of the Constitution. 15

Status and enforcement of orders

- 152.** (1) Any decision, judgment or order of the Tribunal may be served, executed and enforced as if it were an order of the High Court, and is binding on—
- (a) the National Credit Regulator; 20
 - (b) provincial credit regulators;
 - (c) a consumer court;
 - (d) an alternative dispute resolution agent or the ombud with jurisdiction;
 - (e) a debt counsellor; and
 - (f) a Magistrate's Court. 25
- (2) The National Credit Regulator may institute proceedings in the High Court on its own behalf for recovery of an administrative fine imposed by the Tribunal.
- (3) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative fine.

CHAPTER 8 30

ENFORCEMENT OF ACT

Part A *Searches*

Authority to enter and search under warrant

- 153.** (1) A judge of the High Court, a regional magistrate or a magistrate may issue a warrant to enter and search any premises that are within the jurisdiction of that judge or magistrate if, from information on oath or affirmation, there are reasonable grounds to believe that— 35
- (a) prohibited conduct has taken place, is taking place or is likely to take place on or in those premises; or 40
 - (b) anything connected with an investigation into possible prohibited conduct is in the possession of, or under the control of, a person who is on or in those premises.
- (2) A warrant to enter and search may be issued at any time and must specifically— 45
- (a) identify the premises that may be entered and searched; and
 - (b) authorise an inspector or a police officer to enter and search the premises and to do anything listed in section 154.

- (3) A warrant to enter and search is valid until one of the following events occurs:
- (a) The warrant is executed;
 - (b) the warrant is cancelled by the person who issued it or, in that person's absence, by a person with similar authority;
 - (c) the purpose for which it was issued has lapsed; or 5
 - (d) one month has expired after the date it was issued.

(4) A warrant to enter and search may be executed only during the day, unless the judge, regional magistrate or magistrate who issued it authorises that it may be executed at night at a time that is reasonable in the circumstances.

(5) A person authorised by a warrant issued in terms of subsection (2) may enter and search premises named in that warrant. 10

(6) Immediately before commencing with the execution of a warrant, a person executing that warrant must either—

- (a) if the owner, or person in control, of the premises to be searched is present—
 - (i) provide identification to that person and explain to that person the authority by which the warrant is being executed; and 15
 - (ii) hand a copy of the warrant to that person or to the person named in the warrant; or
- (b) if none of those persons is present, affix a copy of the warrant to the premises in a prominent and visible place. 20

Powers to enter and search

154. (1) A person who is authorised under section 153 to enter and search premises may—

- (a) enter upon or into those premises;
- (b) search those premises; 25
- (c) search any person on those premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the investigation;
- (d) examine any article or document on or in those premises that has a bearing on the investigation; 30
- (e) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
- (f) take extracts from, or make copies of, any book or document on or in the premises that has a bearing on the investigation; 35
- (g) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
- (h) seize any output from that computer for examination and copying; and 40
- (i) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(2) Section 139(5) applies to an answer given or statement made to an inspector in terms of this section.

(3) An inspector authorised to conduct an entry and search in terms of section 153 45 may be accompanied and assisted by a police officer.

Conduct of entry and search

155. (1) A person who enters and searches any premises under section 154 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy. 50

(2) During any search under section 154(1)(c), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who enters and searches premises under section 154, before questioning any person— 55

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

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

- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) During a search, a person may refuse to permit the inspection or removal of an article or document on the grounds that it contains privileged information. 5

(6) If the owner or person in control of an article or document refuses in terms of subsection (5) to give that article or document to the person conducting the search, the person conducting the search may request the registrar or sheriff of the High Court that has jurisdiction to attach and remove the article or document for safe custody until that court determines whether or not the information is privileged. 10

(7) A police officer who is authorised to enter and search premises under section 154, or who is assisting an inspector who is authorised to enter and search premises under section 154, may overcome resistance to the entry and search by using as much force as is reasonably required, including breaking a door or window of the premises.

(8) Before using force in terms of subsection (7), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search. 15

(9) The National Credit Regulator may compensate anyone who suffers damage because of a forced entry during a search when no-one responsible for the premises was present. 20

Part B ***Offences***

Breach of confidence

156. (1) It is an offence to disclose any confidential information concerning the affairs of any person or juristic person obtained— 25

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

(2) Subsection (1) does not apply to information disclosed— 30

- (a) for the purpose of the proper administration or enforcement of this Act;
- (b) for the purpose of the administration of justice; or
- (c) at the request of an inspector, regulator or member of the Tribunal entitled to receive the information.

Hindering administration of Act 35

157. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

Failure to attend when summoned

158. A person commits an offence who, having been directed or summoned to attend a hearing— 40

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but— 45
 - (i) refuses to be sworn in or to make an affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person.

Failure to answer fully or truthfully

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

- (a) subject to section 139(5), fails to answer any question fully and to the best of that person's ability; or 5
- (b) gives false evidence, knowing or believing it to be false.

Offences relating to regulator and Tribunal

160. (1) A person commits an offence who contravenes or fails to comply with an order of the Tribunal.

- (2) A person commits an offence who— 10
 - (a) does anything calculated to improperly influence the Tribunal or a regulator concerning any matter connected with an investigation;
 - (b) anticipates any findings of the Tribunal or a regulator concerning an investigation in a way that is calculated to influence the proceedings or findings; 15
 - (c) does anything in connection with an investigation that would have been contempt of court if the proceedings had occurred in a court of law;
 - (d) knowingly provides false information to a regulator;
 - (e) defames the Tribunal or a member of the Tribunal, in their respective official capacities; 20
 - (f) wilfully interrupts the proceedings of a hearing or misbehaves in the place where a hearing is being conducted;
 - (g) acts contrary to a warrant to enter and search; or
 - (h) without authority, but claiming to have authority in terms of section 153— 25
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Penalties

161. Any person convicted of an offence in terms of this Act, is liable—

- (a) in the case of a contravention of section 160(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or 30
- (b) in any other case, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

Magistrate's Court jurisdiction to impose penalties

162. Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in section 161. 35

Part C
Miscellaneous matters

Agents

163. (1) A credit provider must ensure that its employees or agents are trained in respect of the matters to which this Act applies. 40

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

- (a) the agents must show an identification card in the prescribed manner and form to any person with whom the agent interacts in the solicitation, completion or conclusion of credit agreements; and 45
- (b) the credit provider must maintain a register in the prescribed manner and form of all agents.

- (3) If a person who is not an employee or agent of a credit provider, solicits, completes or concludes a credit agreement for or on behalf of a credit provider or a consumer—
- (a) that person must be identified by name and identity number in the credit agreement;
 - (b) that person must disclose to the consumer the amount of any fee or commission that will be paid if the agreement is concluded; and 5
 - (c) any fee or commission to be charged to the consumer—
 - (i) must not exceed the prescribed amount; and
 - (ii) may be paid to that person only if the agreement is concluded.

Civil actions and jurisdiction 10

164. (1) Nothing in this Act renders void a credit agreement or a provision of a credit agreement that, in terms of this Act, is prohibited or may be declared unlawful unless a court declares that agreement or provision to be unlawful.

(2) In any action in a civil court, other than a High Court, if a person raises an issue concerning this Act or a credit agreement which the Tribunal— 15

- (a) has previously considered and determined that court—
 - (i) must not consider the merits of that issue; and
 - (ii) must apply the determination of the Tribunal with respect to the issue; or
- (b) has not previously determined, that court may—
 - (i) consider the merits of that issue, or 20
 - (ii) refer the matter to the Tribunal for consideration and determination.

(3) A person who has suffered loss or damage as a result of prohibited conduct or dereliction of required conduct—

- (a) may not commence an action in a civil court for the assessment of the amount or awarding of damages if that person has consented to an award of damages in a consent order; or 25
- (b) if entitled to commence an action referred to in paragraph (a), when instituting proceedings, must file with the registrar or clerk of the court a notice from the Chairperson of the Tribunal in the prescribed form—
 - (i) certifying that the conduct constituting the basis for the action has been found to be a prohibited or required conduct in terms of this Act; 30
 - (ii) stating the date of the Tribunal's finding; and
 - (iii) setting out the relevant section of this Act in terms of which the Tribunal made its finding.

(4) A certificate referred to in subsection (3)(b) is conclusive proof of its contents, and is binding on a civil court. 35

(5) An appeal or application for review against an order made by the Tribunal in terms of section 148 suspends any right to commence an action in a civil court with respect to the same matter.

(6) A person's right to damages arising out of any prohibited or required conduct comes into existence— 40

- (a) on the date that the Tribunal makes a determination in respect of a matter that affects that person; or
- (b) in the case of an appeal, on the date that the appeal process in respect of that matter is concluded. 45

(7) For the purposes of section 2A(2)(a) of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), interest on a debt in relation to a claim for damages in terms of this Act will commence on the date of issue of the certificate referred to in subsection (3)(b).

Variation of order

165. The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary or rescind its decision or order— 5

- (a) erroneously sought or granted in the absence of a party affected by it;
- (b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or
- (c) made or granted as a result of a mistake common to all the parties to the proceedings. 10

Limitations of bringing action

166. (1) A complaint in terms of this Act may not be referred or made to the Tribunal or to a consumer court more than three years after— 15

- (a) the act or omission that is the cause of the complaint; or
- (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

(2) A complaint in terms of this Act may not be referred to the Tribunal or to a consumer court in terms of this Act against any person that is, or has been, a respondent in proceedings under another section of this Act relating substantially to the same conduct. 20

Standard of proof

167. In any proceedings before the Tribunal, or before a consumer court, in terms of this Act the standard of proof is on a balance of probabilities.

Serving documents 25

168. Unless otherwise provided in this Act, a notice, order or other document that, in terms of this Act, must be served on a person will have been properly served when it has been either—

- (a) delivered to that person; or
- (b) sent by registered mail to that person's last known address. 30

Proof of facts

169. (1) In any proceedings in any court for the recovery of debt in terms of a credit agreement, if the consumer—

- (a) alleges that the cost of credit claimed by, or made to, the credit provider exceeds the maximum permitted in terms of this Act; and 35
- (b) requests that the credit provider be called as a witness to prove the amount of debt claimed to be owing,

the court must not give judgment until it has afforded an opportunity for the consumer to examine the credit provider in relation to the debt claimed to be owing, unless it appears to the court that the consumer's allegation is *prima facie* without foundation, or that examination of the credit provider is impracticable. 40

(2) In any criminal proceedings in terms of this Act—

- (a) if it is proved that a false statement, entry or record or false information appears in or on a book, document, plan, drawing or computer storage medium, the person who kept that item must be presumed to have made the statement, entry, record or information unless the contrary is proved; and 45
- (b) an order certified by the Chairperson of the Tribunal is conclusive proof of the contents of the order of the Tribunal.

(3) A statement, entry or record, or information, in or on any book, document, plan, drawing or computer storage medium is admissible in evidence as an admission of the facts in or on it by the person who appears to have made, entered, recorded or stored it unless it is proved that that person did not make, enter, record or store it. 50

Credit provider to keep records

170. A credit provider must maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time.

CHAPTER 9

5

GENERAL PROVISIONS**Regulations**

- 171.** (1) The Minister—
- (a) may make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2); 10
 - (b) in consultation with the National Credit Regulator, may make regulations for matters relating to the functions of the National Credit Regulator, including—
 - (i) forms;
 - (ii) time periods;
 - (iii) information required; 15
 - (iv) additional definitions applicable to those regulations;
 - (v) filing fees;
 - (vi) access to confidential information; and
 - (vii) manner and form of participation in National Credit Regulator procedures; 20
 - (c) in consultation with the Chairperson of the Tribunal, and by notice in the *Gazette*, may make regulations for matters relating to the functions of the Tribunal and rules for the conduct of matters before the Tribunal; and
 - (d) may make regulations regarding—
 - (i) any forms required to be used for the purposes of this Act; and 25
 - (ii) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before making any regulations in terms of subsection (1)(a), the Minister—
- (a) must publish the proposed regulations for public comment; and
 - (b) may consult the National Credit Regulator and provincial regulatory 30 authorities.
- (3) A regulation in terms of this Act must be made by notice in the *Gazette*.

Conflicting legislation, consequential amendments, repeal of laws and transitional arrangements

172. (1) If there is a conflict between a provision of this Act mentioned in the first column of the table set out in Schedule 1, and a provision of another Act set out in the second column of that table, the conflict must be resolved in accordance with the rule set out in the third column of that table. 35