

CONSUMER CREDIT BILL

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

(Introduced by the Minister of Finance)

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

CHAPTER 1
INTERPRETATION, PURPOSE, SCOPE AND APPLICATION OF ACT

PART A
Interpretation

Definitions

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

“adverse consumer credit information” means—

- (a) an adverse classification relating to a data subject or consumer’s creditworthiness, including but not limited to, classifications such as “delinquent”, “default”, “slow paying”, “absconded” or “not contactable”; or
- (b) an adverse classification relating to enforcement action taken by a credit provider or other creditor, including but not limited to, classifications such as “handed over for collection or recovery”, “legal action”, “revoked”, “repossessed” or “write-off”;

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

- (a) goods to be purchased or otherwise acquired on credit;
- (b) any available credit service; or
- (c) provision of credit;

“appeal board” refers to either the appeal board established under the NAMFISA Act or the appeal board established under the Banking Institutions Act as is relevant in the circumstances;

“associate”—

- (a) in relation to a natural person means—
 - (i) the spouse of the natural person;
 - (ii) the child, parent, stepchild, stepparent or sibling of the natural person and the spouse of that person;
 - (iii) another person who has entered into an agreement or arrangement with the natural person relating to the acquisition, holding or disposal of, or the exercise of voting rights in respect of, shares or other ownership interests in an entity; or
 - (iv) an entity controlled directly or indirectly by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, the natural person or any person referred to in subparagraph (i) or (ii);
- (b) in relation to an entity means—
 - (i) any entity which is controlled directly or indirectly by, or the affairs or part of the affairs of which are managed or administered by, or at the direction or instructions of, that entity; or
 - (ii) any entity—
 - (aa) which controls, directly or indirectly, that entity;
 - (bb) which manages or administers the affairs or part of the affairs of that entity;
or
 - (cc) on whose directions or instructions the affairs or part of the affairs of that entity are managed or administered;

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

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

“Banking Institutions Act” means the Banking Institutions Act, 2023 (Act No. 13 of 2023);

“branch” means any additional premises, other than the principal office, from where registered activities are or will be conducted;

“collection commission” means an amount charged by a debt collector in respect of a payment by a consumer towards settlement of a debt owed to a credit provider under a credit agreement;

“company” means a corporate body incorporated under the Companies Act, 2004 (Act No. 28 of 2004) and includes a public company;

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

“consumer” means a natural person or a small business, and includes, where relevant, a security provider;

“consumer credit information” means information concerning—

- (a) a data subject or consumer’s credit history, including applications for credit, credit agreements to which that person is or has been a party, pattern of payment or default under any such credit agreements, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (b) a data subject or consumer’s financial history, including that person’s past and current income, assets and debts, and other matters within the scope of that person’s financial means and prospects and financial obligations as defined in section 58, and related matters;
- (c) a data subject or consumer’s education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters; or
- (d) a data subject or consumer’s identity, including that person’s name, date of birth,

identity number, marital status and family relationships, past and current addresses and other contact details, and related matters;

“cooperative” means a cooperative formed and registered in terms of the Co-operatives Act, 1996 (Act No. 23 of 1996);

“corporate body” means an incorporated body wherever or however incorporated, and includes a company and a close corporation;

“court” means any court of competent jurisdiction;

“credit” means—

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

“credit agreement” means an agreement between a credit provider and a consumer for the provision of credit;

“credit bureau” means company specialised in the collection and sale of consumer credit information;

“credit facility” means a credit agreement, irrespective of its form, in terms of which a credit provider undertakes—

- (a) to supply goods or services, or to pay amounts, to the consumer, or on the consumer’s behalf or direction; and
- (b) either to—
 - (i) defer the consumer’s obligation to repay the credit provider any part of an amount contemplated in paragraph (a); or
 - (ii) bill the consumer periodically for the repayment of an amount contemplated in paragraph (a);

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

contingency occurs, and includes—

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

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

“credit provider” means a person who, for purposes of their ordinary course of business or as a result thereof, provides credit to consumers;

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

“credit score” means a numerical expression based on the consumer credit information of a data subject or consumer that is used to determine the creditworthiness of the data subject or consumer;

“data subject” means a person who is the subject of consumer credit information;

“debt collector” means—

- (a) a natural person or entity, other than a legal practitioner, who, for reward, collects unpaid or past due debt owed to another on the latter’s behalf;
- (b) a natural person or entity, other than a legal practitioner, who, in the ordinary course of their business for reward, takes over unpaid or past due debt owed to another in order to collect such debt for their own benefit; or
- (c) a natural person or entity, as an agent of a person referred to in paragraphs (a) or (b), or as an agent of a legal practitioner, who, for reward, collects unpaid or past due debt on behalf of such person or legal practitioner;

“default administration fee” means a fee charged by a credit provider in connection with administration costs incurred as a result of a consumer defaulting on an obligation under a credit agreement;

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

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

“effective date” means the date on which this Act, or any relevant provision of it, comes into operation in terms of section 121;

“entity” means a corporate body, any other juristic person, a trust, partnership, association, joint venture or any other unincorporated organisation;

“factoring arrangement” means an arrangement between a credit provider and a financier in terms of which the credit provider, in exchange for funding, either sells or offers as security, claims against the credit provider’s debtors;

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

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

“friendly society” means—

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

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

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

“informed consent” means consent which is informed, freely given, written and explicit as to its scope;

“initiation fee” means a fee charged by a credit provider in connection with initiating a credit agreement;

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

- (a) all or part of the price is deferred and is to be paid periodically;
- (b) possession and use of the goods are transferred to the consumer; and
- (c) ownership of the goods either—
 - (i) passes to the consumer only when the agreement is fully complied with; or
 - (ii) passes to the consumer immediately subject to a right of the credit provider to repossess the goods if the consumer fails to satisfy all of the consumer’s financial obligations under the agreement;

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

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

provided the person with actual knowledge of the matter;

“legal costs” means pre-litigation costs incurred by a credit provider as a result of a consumer defaulting on an obligation under a credit agreement;

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

“litigation costs” means the costs included in an order of court as a result of a consumer defaulting on an obligation under a credit agreement;

“microfinance banking institution” means a credit provider who conducts business as a microfinance banking institution as defined in the Banking Institutions Act;

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

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

- (a) a microlender provides credit to a consumer;
- (b) the principal debt under the transaction does not exceed the amount of N\$100 000 or such other amount as may be prescribed under section 7(1);
- (c) the term of the credit agreement does not exceed 60 months or such other period as may be prescribed under section 7(1);

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

“Minister” means the Minister responsible for finance;

“mortgage agreement” means a credit agreement in terms of which a credit provider registers a mortgage bond over immovable property as security for all or any amounts due under that agreement;

“NAMFISA” means the Namibia Financial Institutions Supervisory Authority established under the NAMFISA Act;

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

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

- (a) the credit provider takes possession of moveable goods as security for all or any amounts due under that agreement; and
- (b) the credit provider is entitled, on expiry of a defined period, to sell the goods and retain all the proceeds of the sale in settlement of the consumer's obligations under that agreement;

“payment facilitation fee” means the allowable service fee charged by a payment service provider as defined under the Payment System Management Act, 2023 (Act No. 14 of 2023), in connection with the facilitation of a payment from the consumer to the credit provider;

“payment instrument” has the meaning ascribed to it in the Payment System Management Act, 2023 (Act No. 14 of 2023);

"practise" means to practise as—

- (a) a legal practitioner whether on their own account or in partnership or as a professional company or otherwise in association as the Legal Practitioners Act, 1995 (Act No. 15 of 1995), may permit;
- (b) an employee or consultant of any such legal practitioner or firm; or
- (c) an employee or consultant in the service of a law centre, the State as government attorney or as prosecutor or at the Directorate: Legal Aid,

and “practising” has a corresponding meaning;

“pre-existing credit agreement” means a credit agreement that was entered into before the effective date;

"prescribe" means prescribed by the Minister by regulation;

“principal debt” means the amount deferred in terms of the credit agreement;

“principal office” means the office that meets the criteria set out in section 19;

"principal officer" means the person appointed as the registrant's chief executive officer, managing director, executive director or any other person who is mainly responsible for the management of the affairs of the registrant;

“public entity” means—

- (a) an office, ministry or agency of government as defined in section 1 of the Public Service Act, 1995 (Act No 13. of 1995);
- (b) an entity established by or under the Namibian Constitution or another law;
- (c) an entity that—
 - (i) is totally or partially owned by the government, or financed, directly or indirectly, by the government; or
 - (ii) carries out statutory or public functions or services;

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

“retirement fund” means a retirement fund as defined in the Financial Institutions and Markets Act;

“secured loan” means a credit agreement, irrespective of its form, in terms of which a credit provider retains, or receives a pledge to, any movable property or other thing of value as security for all or any amounts due under that agreement;

“security provider” means the person who—

- (a) provides security securing the obligations of a consumer or guarantor in relation to the provision of credit to a consumer; or
- (b) guarantees, promises or undertakes to satisfy, upon demand, any obligation of a consumer under a credit agreement;

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

“settlement value” means the amount in respect of a credit agreement that is required to be paid on a particular date to satisfy all the consumer’s financial obligations to the credit provider, as calculated in accordance with section 90;

“small business” means an entity or natural person conducting business in Namibia that is classified as a micro-, small- or medium-enterprise in terms of the criteria specified in Schedule 1;

“sources of consumer credit information” refers to the persons listed in Schedule 2;

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

“subscriber” means a credit provider or other person that subscribes to—

- (a) receive consumer credit information from a credit bureau; or
- (b) provide consumer credit information to a credit bureau;

“this Act” includes—

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

“written” means any mode of representing or reproducing words in a visible form.

(2) For purposes of sections 12(4)(b)(iii), 12(6) and 23(1)(c), the following persons are considered to have the ability to control an entity—

- (a) a person that has the power to appoint the majority of the members of the governing body such as directors or persons holding similar positions;
- (b) a person whose consent is needed for the appointment of the majority of the persons referred to under paragraph (a);
- (c) a person that, directly or indirectly, either alone or with one or more associates, holds 25% or more of the shares, voting rights or ownership interest in the entity; or
- (d) a person that is in a position to control or influence in essentially the same measure as a person referred to in paragraphs (a) to (c), the business or financial operations of the entity.

(3) A person referred to in subsection (2) who is considered to have the ability to control an entity is also considered as having control over any subsidiary of that entity.

Interpretation

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

(2) Notwithstanding any law to the contrary, a credit agreement is not invalid because it

is entered into electronically.

(3) When a particular number of business days are provided for the doing of anything, or for any other purpose, the number of days must be calculated by—

- (a) excluding the first day and including the last day; and
- (b) excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in paragraph (a).

(4) When a particular number of calendar days are provided for the doing of anything, or for any other purpose, the number of days must be calculated by excluding the first day and including the last day, unless the last day happens to fall on a Saturday, Sunday or public holiday, in which case the last day will be reckoned to be the next business day.

(5) This Act prevails over any other law to the extent of any inconsistency: Provided that if the other law provides for greater protection for consumers, then that other law must prevail.

PART B

Purpose, scope and application

Purpose of the Act

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

- (a) ensuring consistent treatment of different types of credit and different credit providers;
- (b) promoting responsible market conduct by—
 - (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and
 - (ii) discouraging reckless credit granting by credit providers;
- (c) promoting fair treatment of consumers by balancing the respective rights and obligations of credit providers and consumers;
- (d) addressing imbalances in negotiating power between consumers and credit providers by supporting consumers with—
 - (i) financial literacy and education about credit, rights and obligations;

- (ii) full disclosure of information and transparency in order to make informed choices; and
- (iii) protection from deception and from unfair or fraudulent conduct;
- (e) improving reporting of consumer credit information;
- (f) providing for a system of resolution of complaints and disputes arising from credit agreements;
- (g) providing for a consistent and harmonised system of debt collection and enforcement;
- (h) promoting the highest standards of conduct by credit providers, credit bureaus and debt collectors; and
- (i) regulating and supervising credit providers, credit bureaus and debt collectors.

Scope of the Act

4. (1) This Act applies to pre-existing credit agreements to the extent provided for under Schedule 3.

(2) This Act applies to every credit agreement, and incidental credit agreements as contemplated in section 5, between parties dealing at arm's length and made, or having an effect, within Namibia, except—

- (a) a credit agreement in terms of which the consumer is a public entity; or
 - (b) a credit agreement in terms of which the credit provider is the Bank of Namibia.
- (3) For greater certainty in applying subsection (2), in any of the following arrangements the parties are not dealing at arm's length:
- (a) a shareholder loan or other credit agreement between a juristic person as consumer, and a person who has a controlling interest in that juristic person as credit provider;
 - (b) a loan to a shareholder or other credit agreement between a juristic person as credit provider, and a person who has a controlling interest in that juristic person as consumer;
 - (c) a loan between a director or an employee as a consumer, and a company as credit provider for the purpose of a shareholder incentive scheme;

- (d) a credit agreement between natural persons who are in a familial relationship and—
 - (i) are co-dependent on each other; or
 - (ii) one is dependent upon the other;
 - (e) a credit agreement between persons who are in an employer-employee relationship and the provision of the credit does not fall within the employer's ordinary course of business; or
 - (f) any other arrangement—
 - (i) in which the parties are not independent of each other and consequently do not necessarily strive to obtain the utmost possible advantage out of the transaction; or
 - (ii) that is of a type that has been held in law to be between parties who are not dealing at arm's length.
- (4) This Act applies to a security provider only to the extent that this Act applies to a credit agreement in respect of which the security is granted.
- (5) If a person sells any goods or services and accepts, as full payment for those goods or services—
- (a) a payment instrument upon which payment is subsequently refused for any reason; or
 - (b) a charge by or on behalf of the buyer against a credit facility in terms of which a third person is the credit provider, and that credit provider subsequently refuses that charge for any reason,
- the resulting debt owed to the seller by the issuer of that payment instrument or charge does not constitute a credit agreement for any purpose of this Act.
- (6) An agreement, irrespective of its form, is not a credit agreement if it is—
- (a) a policy of insurance, or credit provided by an insurer for the sole purpose of maintaining the payment of premiums on a policy of insurance;
 - (b) a lease of immovable property;

- (c) a transaction between a friendly society and a member of that friendly society, or a cooperative and a member of that cooperative, in accordance with the rules of that friendly society or cooperative as the case may be, if profit is not the dominant purpose for entering into the agreement; or
- (d) a direct loan between a retirement fund and a member of that fund in accordance with the rules of the fund.

(7) If a consumer pays fully or partially for goods or services through a charge against a credit facility that is provided by a third party, the person who sells the goods or services must not be regarded as having entered into a credit agreement with the consumer merely by virtue of that payment.

Limited application of the Act to incidental credit agreements

5. (1) Only the following provisions of this Act, read with the changes required by the context, apply with respect to an incidental credit agreement:

- (a) Chapters 1, 2, 7, 8 and 9;
- (b) from Chapter 3, sections 31, 32, 33, 35, 37 and 38 under Part C;
- (c) from Chapter 4—
 - (i) sections 39, 42 and 43 under Part A;
 - (ii) sections 44 and 45(4) under Part B; and
 - (iii) section 47(1) under Part C;
- (d) from Chapter 5, Part C, subject to subsection (3);
- (e) from Chapter 5—
 - (i) Part D; and
 - (ii) section 86 under Part E,

once the incidental credit agreement is deemed to have been made in terms of subsection (2); and

- (f) from Chapter 6—

- (i) sections 90 and 91 under Part A; and
 - (ii) sections 94, 95, 98 and 99 under Part C.
- (2) The parties to an incidental credit agreement are deemed to have made that agreement on the date that—
- (a) the supplier of goods or services first charges a fee or interest in respect of an overdue payment; or
 - (b) a predetermined higher price for full settlement of the amount due first becomes applicable.
- (3) A person may only charge or recover a fee, charge or interest—
- (a) in respect of the overdue amount under an incidental credit agreement as provided for in section 73(1)(f), (h), (i), (j) and (k) subject to any maximum rates of interest or fees imposed in terms of section 77; and
 - (b) in respect of an unpaid amount contemplated in paragraph (a) of the definition of “incidental credit agreement” only if the credit provider has disclosed, and the consumer has accepted, the amount of such a fee, charge or interest, or the basis on which it may become payable, on or before the date on which the relevant goods or services were supplied.

Limited application of the Act to banking institutions and microfinance banking institutions

6. (1) The following provisions of Chapter 3 do not apply to banking institutions and microfinance banking institutions:

- (a) Part A, with the exception of section 11;
- (b) from Part B, sections 19, 20, 22, 23, 24, 25 and 26; and
- (c) from Part C, sections 29, 30, 34 and 36.

(2) The licensing requirements for banking institutions and microfinance banking institutions provided for under the Banking Institutions Act will apply to banking institutions and microfinance banking institutions.

Threshold determination and other limitations

7. (1) The Minister may prescribe the maximum permissible principal debt and maximum permissible duration of a microlending transaction pursuant to paragraphs (b) and (c) of the definition of “microlending transaction”.

(2) The Minister may prescribe—

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

(b) the minimum portion of the cash price or other consideration which must be paid as a deposit in terms of specified credit agreements.

(3) The Minister may impose, for the purposes of subsection (2), in respect of different types or categories of credit agreements—

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

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

(4) The Minister may amend the criteria specified in Schedule 1 for the classification of a small business as a micro-, small-, or medium-enterprise.

(5) The Minister may amend the sources of consumer credit information specified in Schedule 2.

(6) The Minister must state the date on which any limitation or threshold prescribed in terms of this section will come into effect.

(7) Any new or subsequent limitation or threshold prescribed in terms of this section does not affect existing credit agreements.

CHAPTER 2

CONSUMER CREDIT REGULATORS

Designation of Consumer Credit Regulators

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

(2) A reference to a Consumer Credit Regulator means a reference to the Consumer Credit Regulator in relation to that part of the consumer credit market the Consumer Credit Regulator has been designated.

(3) The Minister must prescribe, after consultation with the Consumer Credit Regulators, the persons or entities to be regulated and supervised by each respective Consumer Credit Regulator.

(4) The Consumer Credit Regulators are responsible to carry out the functions and exercise the powers set out in this Act, and assigned to them by, or in terms of, this Act.

(5) In carrying out its functions and powers, the Consumer Credit Regulators may—

- (a) have regard to international developments in the field of provision of credit; and
- (b) consult any person, organisation or institution with regard to any matter.

Functions and powers of Consumer Credit Regulators

9. (1) The Consumer Credit Regulators are responsible to enforce this Act and regulate the consumer credit market by—

- (a) registering credit providers, credit bureaus and debt collectors;
- (b) suspending or cancelling any registration issued in terms of this Act;
- (c) establishing and maintaining the register contemplated in section 18;
- (d) receiving and resolving complaints concerning alleged contraventions of this Act;
- (e) monitoring the consumer credit market to ensure that prohibited conduct is identified, assessed and prevented;
- (f) conducting mystery shopping exercises and thematic reviews;
- (g) investigating and ensuring compliance with this Act;
- (h) undertaking compliance inspections, and issuing and enforcing of directives and administrative sanctions; and
- (i) where relevant, referring any concerns regarding the behaviour or conduct of a person that may be prohibited to another relevant authority.

(2) The Consumer Credit Regulators are responsible to promote public awareness of consumer credit market conduct matters, by—

- (a) supporting consumer education measures and collaborating on financial literacy initiatives;
 - (b) providing guidance to the consumer credit market by—
 - (i) issuing explanatory notices on the interpretation of any provision of this Act; or
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; and
 - (c) monitoring consumer credit activities and trends in the consumer credit market.
- (3) The Consumer Credit Regulators are responsible to—
- (a) advise the Minister on matters of policy relating to consumer credit and standards regarding consumer protection in terms of this Act;
 - (b) report to the Minister annually on—
 - (i) the volume and cost of different types of consumer credit;
 - (ii) credit availability, access to credit and price;
 - (iii) market share, market conduct and trends within the consumer credit market;
 - (iv) levels of consumer indebtedness; and
 - (v) any other matter deemed appropriate relating to the consumer credit market;
 - (c) enquire into and report to the Minister on any matter concerning the purposes of this Act; and
 - (d) advise the Minister in respect of any matter referred to it by the Minister.

Relations with other regulatory or supervisory authorities

10. (1) The Consumer Credit Regulators may engage other regulatory or supervisory authorities, including each other, in co-operative activities of research, publication, education and on matters of common interest.

- (2) The Consumer Credit Regulators may enter into agreements or memoranda of

understanding with relevant regulatory or supervisory authorities, including each other, that, in terms of any law exercise jurisdiction over consumer credit matters within a relevant industry or sector, to—

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

(3) Regulatory or supervisory authorities that, in terms of any law exercise jurisdiction over consumer credit matters within a relevant industry or sector must enter into a written agreement with the Consumer Credit Regulator pursuant to subsection (2).

(4) The Consumer Credit Regulators may in writing request the regulatory or supervisory authority referred to in subsection (2) to submit reports or information related to their activities to the Consumer Credit Regulator.

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

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

CHAPTER 3 CONSUMER CREDIT INDUSTRY REGULATION

PART A Registration requirements, criteria and procedures

Existing registrations

11. (1) A banking institution and a microfinance banking institution registered under the Banking Institutions Act on the effective date is deemed to be a registered credit provider under section 12 and, subject to section 6, the provisions of this Act apply to that banking institution or microfinance banking institution.

(2) A microlender registered under the Microlending Act, 2018 (Act No. 7 of 2018), on the effective date is deemed to be a registered credit provider under section 12 and the provisions of this Act apply to that credit provider.

(3) A credit bureau registered under the regulations made under the Bank of Namibia Act on the effective date is deemed to be a registered credit bureau under section 12 and the provisions of this Act apply to that credit bureau.

Registration of credit providers, credit bureaus and debt collectors

12. (1) A person must not engage in the business of a credit provider, credit bureau or debt collector unless they are registered as provided for by this Act.

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

(3) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not registered as such may be declared unlawful and void to the extent provided for in section 64.

(4) Subject to section 14, the Consumer Credit Regulator must register a person as a credit provider, credit bureau or debt collector if—

- (a) the registration of the applicant is not contrary to this Act;
- (b) the applicant and—
 - (i) members of the governing body such as directors or persons holding similar positions, and persons who are responsible for the management of the applicant;
 - (ii) the principal officer; and
 - (iii) any person who has the ability to control the applicant,

satisfy the applicable qualification, experience, competency and other fit and proper requirements as may be provided for in the standards;

- (c) where the applicant is an entity—
 - (i) the incorporation or other foundation documents of the applicant specify the main objectives of the applicant, which objectives may not be inconsistent with this Act; and
 - (ii) the ownership structure of the group of which the applicant may form part, or intends to form part, will not be such as to hinder effective supervision;
- (d) the applicant has the relevant financial and operational resources as may be provided for in the standards to enable them to carry out their obligations in terms of this Act;
- (e) the applicant has adopted a complaints handling policy, which policy must comply with the minimum requirements as may be provided for in the standards, in order to ensure that questions, concerns and complaints of consumers are treated fairly and consistently in a timely, efficient and courteous manner;
- (f) in the case of an application for registration as a credit bureau, the applicant has—
 - (i) a system to enable it to consolidate consumer credit information from credit providers and other sources of consumer credit information, and disseminate such information to subscribers and other persons; and
 - (ii) management processes, covering among other things, the following aspects:
 - (aa) operational manuals that ensure the accuracy of the consumer credit information contained in its database, as well as the timely updating of such information;
 - (bb) the software required for operation;
 - (cc) procedure manuals;
 - (dd) proposed security and control measures aimed at preventing misuse or improper management of consumer credit information;
 - (ee) an overview of operations including the description of systems, design of the data collection and dissemination including the unique identification

system for persons that is adequate to ease the collection of data and handling of the database;

- (ff) a description of the premises of the applicant and its suitability for customer services and the description of the security measures to be adopted;
 - (gg) sample formats of consumer credit information and credit reports that a credit bureau may supply to subscribers and other persons; and
 - (hh) a prototype of the final product that demonstrates the principal features and functions of the system; and
- (g) the name under which the applicant proposes to conduct business, and, if applicable, the translation, shortened form or derivative of that name, will not be—
- (i) the same as, or confusingly similar to, that of another registrant;
 - (ii) likely to mislead the public; or
 - (iii) offensive to the community the applicant will serve.

(5) A person may not be registered as a credit provider or debt collector if that person is engaged in, employed by or acting as an agent for a person that is engaged in the operation of a credit bureau.

(6) A person may not be registered as a credit bureau if any person who has the ability to control the credit bureau is—

- (a) a credit provider;
- (b) a debt collector; or
- (c) a person who conducts any disqualified business prescribed in terms of subsection (8).

(7) Only a company may be registered as a credit bureau.

(8) The Minister may prescribe any business activity to be disqualified as contemplated in subsection (6)(c) if that business activity is inconsistent with the function of operating a credit bureau.

Application for registration

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

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

- (a) proof of payment of the required non-refundable application fee; and
 - (b) the information and documents as required by the standards pertaining to the requirements of section 12.
- (3) The Consumer Credit Regulator may—
- (a) issue different standards in terms of subsection (1) in respect of different types or categories of applicants;
 - (b) in writing reasonably require further information relevant to the application for registration; and
 - (c) refuse the application for registration if the applicant has not supplied the information required in terms of paragraph (b) in writing within the specified period or such longer period as the Consumer Credit Regulator on request and in writing may permit.

Disqualification

14. (1) A natural person may not be registered as a credit provider or debt collector if that person—

- (a) is an unrehabilitated insolvent; or
- (b) is not ordinarily resident in Namibia, and either not a Namibian citizen or not lawfully admitted to Namibia in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993).

(2) An entity may not be registered as a credit provider, credit bureau or debt collector if the entity is—

- (a) under provisional liquidation or has been finally liquidated or wound-up; or

(b) not incorporated, registered or established in Namibia in terms of relevant laws.

(3) A person may not be registered as a credit provider, credit bureau or debt collector if any member of the governing body such as a director or a person holding a similar position, or persons who are responsible for the management of the applicant—

(a) is an unemancipated minor; or

(b) is disqualified from individual registration in terms of subsection (1)(a).

(4) The Consumer Credit Regulator may, after giving the registrant an opportunity to be heard, cancel the registration of a natural person if such natural person becomes disqualified in terms of subsection (1) at any time after registration.

(5) If a person referred to in subsection (3) becomes disqualified from individual registration in terms of subsection (1)(a) after the entity concerned was registered—

(a) that person must notify the registrant and the Consumer Credit Regulator; and

(b) the Consumer Credit Regulator may, after giving the registrant and the person concerned an opportunity to be heard, direct the removal of the person from office pursuant to section 30.

(6) The provisions of subsection (5), read with the changes required by the context, apply to a natural person who assumes a position on the governing body or a similar position, or a position on the management, of a registrant.

(7) The Consumer Credit Regulator may, after giving the registrant an opportunity to be heard, cancel the registration of an entity if the entity becomes disqualified in terms of subsection (2) at any time after being registered.

Conditions of registration

15. (1) The Consumer Credit Regulator may impose conditions on the registration of an applicant, having regard to the purposes of this Act, the circumstances of the application and the applicable criteria.

(2) Conditions contemplated in subsection (1) must be—

(a) reasonable and justifiable in the circumstances; and

(b) in the case of a public entity, consistent with any law applicable to the public entity.

(3) Before imposing a condition, the Consumer Credit Regulator must inform the applicant in writing of the proposed conditions and the reasons for them.

(4) An applicant who has received a notice in terms of subsection (3) may respond in writing to the notice by not later than the date specified by the Consumer Credit Regulator in the notice, or such longer period as the Consumer Credit Regulator on request and in writing may permit.

(5) If an applicant—

- (a) in writing consents to the proposed conditions, the Consumer Credit Regulator must register the applicant subject to those conditions; or
- (b) does not respond, or responds but does not consent to the proposed conditions, the Consumer Credit Regulator must consider any response submitted by the applicant, may finally determine the conditions to be imposed, and register the applicant subject to those conditions.

(6) The Consumer Credit Regulator must in writing—

- (a) inform the registrant of a decision in terms of subsection (5); and
- (b) provide reasons for that decision.

Variation of conditions of registration

16. (1) The Consumer Credit Regulators may review and vary conditions imposed under section 15 or impose new conditions on any registration—

- (a) upon application by the registrant;
- (b) if the registrant has contravened this Act; or
- (c) if the registrant has not satisfied any conditions attached to its registration.

(2) An application for the review or variation of conditions in terms of subsection (1)(a) must be made to the Consumer Credit Regulator, the form, content and manner of the application, and the application fee payable, as may be provided for in the standards.

(3) The Consumer Credit Regulator may vary or impose new conditions—

- (a) in the case of a public entity, to the extent that the conditions are consistent with laws applicable to the public entity; and
 - (b) to the extent that the conditions are consistent with this Act and reasonable and justifiable in the circumstances that gave rise to the review.
- (4) Before imposing a condition in terms of subsection (1)(b) or (c), the Consumer Credit Regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming(s) in their conduct.
- (5) Before varying conditions, or imposing new conditions, in terms of this section, the Consumer Credit Regulator must in writing inform the registrant of the proposed conditions and the reasons therefor.
- (6) A registrant who has received a notice in terms of subsection (5) may in writing respond to the notice by not later than the date specified by the Consumer Credit Regulator in the notice, or such longer period as the Consumer Credit Regulator on request and in writing may permit.
- (7) If the registrant—
- (a) in writing consents to the proposed conditions, the Consumer Credit Regulator may vary or impose the conditions as proposed; or
 - (b) does not respond, or responds but does not consent to the proposed conditions, the Consumer Credit Regulator must consider any response submitted by the registrant, may finally vary, or determine, the conditions to be imposed, and impose it.
- (8) The Consumer Credit Regulator must in writing—
- (a) inform the registrant of a decision in terms of subsection (7); and
 - (b) provide reasons for the decision.
- (9) The Consumer Credit Regulator may—
- (a) in writing reasonably require further information relevant to the application contemplated in subsection (2); and
 - (b) refuse the application if the applicant has not supplied the information required in terms of paragraph (a) in writing within the specified period or such longer period as the Consumer Credit Regulator on request and in writing may permit.

Certificate, validity and public notice of registration

17. (1) Upon registering an applicant, the Consumer Credit Regulator must—
- (a) issue a certificate of registration to the registrant;
 - (b) enter the registration in the register pursuant to section 18; and
 - (c) assign a unique registration number to that registrant.
- (2) The certificate of registration issued in terms of this section must specify the—
- (a) identity and trade name, if any, of the registrant;
 - (b) registration number;
 - (c) activities that the registration permits the registrant to engage in, conduct or make available to the public in terms of this Act; and
 - (d) the term of registration and the expiry date.
- (3) A registration granted in terms of this Act authorises the registrant to conduct, engage in, or make available the registered activities.
- (4) A registrant must—
- (a) display their certificate of registration in a manner accessible and available to the public; and
 - (b) reflect their registration number, in a legible typeface on all credit agreements and communications with a consumer or the public.
- (5) The term of registration of each registrant expires on 31 March of each year or on such other date as the Consumer Credit Regulator may specify on the certificate of registration, but if the required renewal fee is paid to the Consumer Credit Regulator in the manner set out in the standards, the registration renews for a period of 12 months as from the expiry date.
- (6) If the renewal fee is not paid within the period contemplated in subsection (5), the person's registration is automatically cancelled and the Consumer Credit Regulator must remove the person's name from the register referred to in section 18.

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

Register of registrations

18. (1) The Consumer Credit Regulators must each establish and maintain a register of all persons who are registered under this Act.

(2) The register must, at a minimum, contain the information specified under section 17(2).

(3) The Consumer Credit Regulators must publish the register on their respective websites, and make the information contemplated in subsection (2) available to other regulatory and supervisory authorities, or prosecuting and law enforcement authorities, upon request.

PART B Administration

Principal office and principal officer

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

(2) The principal office must be a physical address in Namibia which serves as the registrant's main administrative office, where the registrant must hold and maintain the documents as may be provided for in the standards.

(3) The principal officer—

- (a) must be a major, natural person who satisfies the qualification, experience, competency and other fit and proper requirements as may be provided for in the standards; and
- (b) must be ordinarily resident in Namibia and either a Namibian citizen or lawfully admitted to Namibia in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993).

(4) The principal officer of a registrant is authorised to act on behalf of a registrant to ensure compliance with this Act, and where a person communicates with the registrant, the person may do so by addressing the communication to the principal officer.

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

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

(7) Process in any legal proceedings may be served on a registrant by serving a copy of the process at the registrant's principal office.

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

(9) Whenever a principal officer resigns or the appointment of a principal officer is terminated by the registrant or by the expiry of a contract of employment, the registrant must, within seven calendar days, in writing notify the Consumer Credit Regulator.

(10) Should a registrant be necessitated to, at any time, appoint a new principal officer, such appointment must be made within 90 calendar days after the previous appointment came to an end, or such longer period as the Consumer Credit Regulator on request and in writing may permit, and the registrant must, within seven calendar days of the new appointment, in writing notify the Consumer Credit Regulator of the appointment.

(11) A registrant must appoint an acting principal officer if—

- (a) the registrant is not able to find a suitable candidate as required in terms of subsection (10); or
- (b) a principal officer is or will become unavailable for a period of more than 30 calendar days.

(12) The registrant must, within seven calendar days of any acting appointment made in terms of subsection (11), in writing notify the Consumer Credit Regulator of the appointment.

(13) No acting appointment may exceed a period of 90 calendar days, unless the Consumer Credit Regulator, on request, permits a longer period.

(14) If a registrant fails to appoint a principal officer or acting principal officer, or to notify

the Consumer Credit Regulator on or before the dates determined in subsections (8), (9), (10) and (12), the registrant is liable to pay the prescribed administrative penalty.

(15) If a registrant fails to pay an administrative penalty imposed in terms of subsection (14), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(16) The administrative penalty payable in terms of subsection (14) and any interest is a debt due to the Consumer Credit Regulator by the registrant, and the Consumer Credit Regulator may recover such debt in terms of section 37.

(17) The principal officer appointed in terms of subsection (10) must, within 30 calendar days of their appointment, complete and submit to the Consumer Credit Regulator the required documentation pertaining to the qualification, experience, competency and other fit and proper requirements provided for in the standards.

(18) A person disqualified in terms of section 14 may not be appointed as a principal officer or acting principal officer.

Levies

20. (1) The Consumer Credit Regulator may, after consultation with the registrants concerned and subject to the approval of the Minister, by notice in the *Gazette*, impose levies on registrants.

(2) In the notice referred to in subsection (1) the Consumer Credit Regulator—

(a) must determine—

- (i) the amounts of the levies referred to in subsection (1) or the basis or manner of determining the amounts;
- (ii) the periods in respect of which the levies referred to in subsection (1) are imposed, the dates on which or the periods within which those levies are payable and the manner of payment; and
- (iii) the rates of interest and the manner of calculating the interest contemplated in subsection (4);

(b) may impose, in respect of different registrants, different categories of registrants and different subcategories of a specific category of registrants—

- (i) different types of levies; and

- (ii) different amounts of levies; and
- (c) must determine, in respect of different registrants, different categories of registrants and different subcategories of a specific category of registrants—
 - (i) the basis or manner of determining the amounts of the levies referred to in paragraph (b);
 - (ii) the period in respect of which the levies referred to in paragraph (b) are imposed, the dates on which or the periods within which those levies are payable, and the manner of payment; and
 - (iii) the rates of interest and the manner of calculating the interest contemplated in subsection (4).

(3) Before imposing the levies referred to in subsection (1), the Consumer Credit Regulator must publish the proposed levies and the period within which or date on which they must be paid, in the *Gazette* and in such manner as may be appropriate in order to bring the proposed levies to the attention of the registrants in question, together with a statement that representations on the proposed levies may be made to the Consumer Credit Regulator within the time period specified in the notice, which period may not be less than 30 calendar days from the date of the notice.

(4) A registrant which is subject to the imposition of a levy pursuant to subsection (1) is liable for the payment of that levy, and if it fails to pay the levy in full within the period or on the date for payment stated in the notice—

- (a) it must pay interest on the balance of the levy outstanding at the rate determined in accordance with subsection (2)(a)(iii) or (c)(iii); and
- (b) the Consumer Credit Regulator may impose administrative sanctions on the registrant pursuant to section 35.

(5) A registrant which is liable to pay a levy pursuant to this section must, within the period specified in the notice referred to in subsection (1), calculate the amount of levy which that registrant is liable to pay, and pay over the amount of levy due to the Consumer Credit Regulator within the time period specified in the notice.

(6) If the Consumer Credit Regulator does not agree with the calculation of the amount of the levy due and payable by a registrant, the Consumer Credit Regulator must notify the registrant in writing of the difference in the calculation and the reasons for the difference, and the registrant

may object to the Consumer Credit Regulator's calculation of the levy due and payable by that registrant, and may make representations in writing to the Consumer Credit Regulator within a period of 21 calendar days after receipt of the notification from the Consumer Credit Regulator.

(7) The Consumer Credit Regulator must consider any representations made pursuant to subsection (6), if any, and in writing notify the registrant—

- (a) of the Consumer Credit Regulator's final decision with respect to the calculation of the levy and the period within which the levy and any interest charged as contemplated in subsection (4)(a) after the calculation by the Consumer Credit Regulator must be paid; and
- (b) that if the registrant does not agree with the Consumer Credit Regulator's calculation, it may appeal against the Consumer Credit Regulator's decision to the relevant appeal board in accordance with section 38.

(8) If a registrant fails to calculate the levy as required by subsection (5), the Consumer Credit Regulator may calculate the levy which the registrant is liable to pay and by written notice to the registrant—

- (a) inform the registrant concerned of the levy due and payable by it;
 - (b) direct the registrant concerned to pay to the Consumer Credit Regulator the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice; and
 - (c) inform the registrant concerned that if it does not agree with the calculation of the amount of levy by the Consumer Credit Regulator, it may appeal against the Consumer Credit Regulator's decision to the relevant appeal board in accordance with section 38.
- (9) If a registrant—
- (a) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (1), and the Consumer Credit Regulator has not disagreed with the calculation of the levy pursuant to subsection (6);
 - (b) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (7)(a), and the registrant has not appealed against the decision of the Consumer Credit Regulator to the relevant appeal board pursuant to subsection (7)(b);

- (c) fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified in the notice referred to in subsection (8), and the registrant has not appealed against the decision of the Consumer Credit Regulator to the relevant appeal board pursuant to subsection (8)(c); or
- (d) appeals to the relevant appeal board as contemplated in subsection (7)(b) or (8)(c), but the appeal has been dismissed in whole or in part, and the registrant fails to pay the levy and any interest charged as contemplated in subsection (4)(a) within the period specified by the appeal board,

the unpaid levy and any interest charged as contemplated in subsection (4)(a) is a debt due to the Consumer Credit Regulator, and the Consumer Credit Regulator may recover such debt in terms of section 37.

(10) The Consumer Credit Regulator may, on the application of a registrant, and if the Consumer Credit Regulator considers that there are sound reasons for doing so, by written notice to the registrant concerned and published in the *Gazette*, grant an exemption to that registrant from the levy referred to in subsection (1) or from a provision relating to the levy referred to in subsection (2), to the extent of and subject to the conditions determined by the Consumer Credit Regulator, except that such exemption cannot be granted retrospectively.

(11) The Consumer Credit Regulator may withdraw or amend an exemption granted under subsection (10) if—

- (a) the Consumer Credit Regulator finds that the registrant concerned has contravened a provision of, or has failed to comply with, a condition determined by the Consumer Credit Regulator under subsection (10) or has otherwise acted contrary to the exemption; and
- (b) the Consumer Credit Regulator has given notice in writing to that effect to the registrant concerned and published such notice in the *Gazette*.

(12) The Consumer Credit Regulator must, before withdrawing or amending an exemption pursuant to subsection (11), give the registrant concerned a reasonable opportunity to be heard.

Submission of returns and information

21. (1) A credit provider must keep and maintain proper accounting records reflecting full details of all monies advanced or credit provided, interest, fees, costs and other charges raised, repayments received and all amounts outstanding, in the form and manner, and for the required time, as may be provided for in the standards.

(2) A credit provider must keep and maintain record of all applications for credit and credit agreements, in the form and manner, and for the required time, as may be provided for in the standards.

(3) A credit bureau and a debt collector must keep and maintain such records relating to their registered activities in the form and manner, and for the required time, as may be provided for in the standards.

(4) A registrant must keep and maintain a compliance plan, which plan must comply with the minimum requirements as may be provided for in the standards and must be monitored by the principal officer.

(5) A registrant must submit to the Consumer Credit Regulator such periodical and other returns, statements and reports as may be provided for in the standards.

(6) In addition to the requirements of subsection (5), a credit bureau must submit to the Consumer Credit Regulator an annual compliance report, certified by an external auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), addressing the following matters—

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

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

- (a) require credit bureaus to provide periodic synoptic reports of aggregate consumer credit information to the Consumer Credit Regulators, but such reports must not identify any particular data subject or consumer, or relate a particular data subject or consumer to any information so reported; and

- (b) make further reasonable requests for information from credit bureaus related to the information contemplated in paragraph (a).

(8) The Consumer Credit Regulator may by written notice require a registrant to furnish to the Consumer Credit Regulator, within a period specified in the notice or such longer period as the Consumer Credit Regulator on request and in writing may permit, any document or information relating to the affairs of the registrant as the Consumer Credit Regulator may reasonably require for the purposes of the performance of its functions and powers in terms of this Act.

(9) If a registrant fails to submit the required returns, statements, information or other reports referred to in subsections (5) to (8) on or before the due date or within the extended period of time granted under subsection (8), the registrant is liable to pay the prescribed administrative penalty.

(10) If a registrant fails to pay an administrative penalty imposed in terms of subsection (9), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(11) The administrative penalty payable in terms of subsection (9), and any interest, is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Use of name and change of name

22. (1) Every registrant must for all purposes use the name under which the registrant is registered.

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

- (a) change the name under which they are registered;
- (b) use or refer to themselves by a name other than the name under which they are registered; or
- (c) use or refer to themselves by a shortened form or derivative of the name under which they are registered.

(3) An application for approval of a change of name, use of another name or use of a shortened form or derivative of a name in terms of subsection (2) must be made to the Consumer

Credit Regulator, the form, content and manner of the application and the application fee payable as may be provided for in the standards.

(4) The Consumer Credit Regulator may not approve an application in terms of subsection (3) if the proposed name is—

- (a) the same as, or confusingly similar to, that of another registrant;
- (b) likely to mislead the public; or
- (c) offensive to the community the applicant will serve.

(5) The Consumer Credit Regulator must register the applicant under their new name and issue a new certificate of registration to the applicant if the proposed name does not contravene the requirements of subsection (4) and the applicant is in compliance with the provisions of any other law applicable to a change of name.

(6) The Consumer Credit Regulator may—

- (a) in writing reasonably require further information relevant to the application contemplated in subsection (3); and
- (b) refuse the application if the applicant has not supplied the information required in terms of paragraph (a) in writing within the specified period or such longer period as the Consumer Credit Regulator on request and in writing may permit.

Acquisition, amalgamation or transfer of business

23. (1) Any person who intends to—

- (a) directly or indirectly, acquire 25% or more of the ownership interest of a registrant;
- (b) directly or indirectly, acquire less than 25% of the ownership interest of a registrant if the acquisition, together with any other ownership interest already owned by that person in the registrant, would equal or exceed 25% of the total interest;
- (c) acquire the ability to control a registrant;
- (d) amalgamate their business with that of a registrant; or
- (e) transfer any part of their registered business to another person or a registrant,

must apply to the Consumer Credit Regulator, the form, content and manner of the application and the application fee payable as may be provided for in the standards, for written approval prior to conducting such acquisition, amalgamation or transfer.

(2) The Consumer Credit Regulator must approve the application if the relevant requirements of sections 12 and 14 are complied with, subject to such conditions as the Consumer Credit Regulator may impose under section 15.

(3) Any acquisition, amalgamation or transfer referred to in subsection (1) done without the prior written approval of the Consumer Credit Regulator shall be of no force and effect.

(4) In the event of non-compliance with this section, the Consumer Credit Regulator may make an application to court for—

- (a) an interdict restraining the parties involved from implementing the acquisition, amalgamation or transfer;
- (b) an order directing any party to the transaction to sell or dispose of in a specified manner, any shares, interest or other assets they have acquired;
- (c) declaring void any agreement or provision of an agreement to which the transaction was subject; and
- (d) the imposition of a pecuniary penalty.

(5) The Consumer Credit Regulator may—

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

Opening of branches

24. (1) A registrant must within 14 calendar days of opening a branch at a physical location in writing notify the Consumer Credit Regulator of the physical address of the branch and such other details as may be provided for in the standards.

(2) If a registrant fails to notify the Consumer Credit Regulator on or before the date determined in subsection (1), the registrant is liable to pay the prescribed administrative penalty.

(3) If a registrant fails to pay an administrative penalty imposed in terms of subsection (2), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(4) The administrative penalty payable in terms of subsection (2), and any interest, is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Trust accounts, indemnity and fidelity insurance

25. (1) A debt collector, other than a party to a factoring arrangement, must open and maintain a separate trust account at a banking institution or microfinance banking institution, and must deposit any money received or held by the debt collector on behalf of any other person therein within three business days after receipt thereof.

(2) A debt collector must pay the money deposited in terms of subsection (1), less the allowable collection commission, to the person on whose behalf the money is received or held within a reasonable or agreed time.

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

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

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

(6) If the registration of a debt collector is cancelled, the Consumer Credit Regulator may—

- (a) take control over, administer and finalise the trust account contemplated in subsection (1); or
- (b) make an application to court to appoint a curator *bonis* to control, administer and finalise that account.

(7) Subject to subsection (10), a debt collector, other than a party to a factoring

arrangement, must maintain appropriate professional indemnity and fidelity insurance cover sufficient to cover the risk of loss due to fraud, dishonesty, negligence, errors, omissions or any other dishonest acts or breaches of professional duty of their employees, agents and other representatives.

(8) The nature and extent of the insurance contemplated in subsection (7) must be adequate and appropriate to the level of complexity and size of the business operations undertaken by the debt collector.

(9) If the debt collector forms part of a group of companies, the professional indemnity and fidelity insurance cover contemplated in subsection (7) may be obtained at group level, but—

- (a) each entity that is covered by the group policy must be clearly identified in the policy documentation;
- (b) the amount of cover must be sufficient to cover the amounts required for each individual entity's situation; and
- (c) each entity that is covered must have a certified copy of the policy documentation available for scrutiny by the Consumer Credit Regulator.

(10) The combined cover of the professional indemnity and fidelity insurance must be at least N\$1 000 000.

Data management and quality control

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

- (a) properly and accurately recorded, maintained, classified, processed, updated and consolidated in order to provide a comprehensive credit report on a data subject or consumer;
- (b) protected against loss by ensuring availability of data back-up and disaster recovery facilities;
- (c) protected against unauthorised access, use, modification or disclosure;
- (d) utilised solely for the purposes set out in this Act;
- (e) current, authentic, legitimate and reliable;

- (f) corrected, if information in its database is contrary to provisions of this Act;
 - (g) protected against any corruption or destruction;
 - (h) arranged systematically and in a manner that facilitates prompt and easy identification and allocation; and
 - (i) kept in a secure manner that preserves the integrity of its contents.
- (2) A credit bureau must implement strict quality control procedures to ensure the maximum accuracy of its database and the continuity of its services.
- (3) Credit providers and any other sources of consumer credit information must—
- (a) enter into written agreements with credit bureaus that stipulate the conditions for supplying, obtaining and using consumer credit information, which agreements may not be inconsistent with this Act; and
 - (b) undertake to provide complete, accurate and timely consumer credit information.
- (4) The Consumer Credit Regulator may provide for additional requirements for data management and quality control in the standards.
- (5) A credit bureau may not, apart from its own business of selling credit reports, sell, lease, transfer title of its consumer credit information or transfer any file unless such sale, lease or transfer is done to another credit bureau with the approval of the Consumer Credit Regulator.
- (6) Nothing contained in this Act prevents a credit bureau from doing market segmentation and selling aggregated consumer credit information, but confidential information of data subjects or consumers may not be disclosed.

Training

27. (1) A registrant must ensure that their relevant employees, agents and other representatives—
- (a) comply with this Act; and
 - (b) are trained in a manner rendering them competent in respect of the matters to which this Act applies.
- (2) The Consumer Credit Regulator may provide for the minimum requirements for the

training contemplated in subsection (1) in the standards.

Agents

28. (1) If a credit provider makes use of agents or other representatives for solicitation, completion or conclusion of credit agreements—

- (a) the agents or other representative must show an identification card to the consumer; and
- (b) the credit provider must maintain a register of all agents and other representatives.

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

- (a) that person must be identified by name and identity number in the credit agreement;
- (b) that person must disclose to the consumer in writing the amount of any fee, commission or other amount that will be paid by the credit provider to such person; and
- (c) any fee, commission or other amount to be charged to the consumer pursuant to paragraph (b) must not exceed the prescribed amount in respect of an initiation fee.

PART C

Regulation and supervision

Restricted activities by unregistered persons

29. (1) In addition to the powers of inspection conferred upon the Consumer Credit Regulators in terms of this Act, the Consumer Credit Regulator—

- (a) may, on its own volition; or
- (b) must, after obtaining credible information from a person,

issue a notice pursuant to subsection (4) to any person who is engaged in an activity that requires registration but who is not so registered in terms of this Act.

(2) Before issuing a notice in terms of subsection (1) to a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(3) Before issuing a notice in terms of subsection (1), the Consumer Credit Regulator must give the affected person written notice—

- (a) of the nature of the activity concerned, the facts applicable, the basis of the opinion that the person engaging in that activity is required to be registered, and the applicable provision(s) of this Act;
- (b) of the intention to impose any of the penalties, or the intention to take any of the actions, pursuant to subsection (4); and
- (c) advising that the person may within the period specified in the notice, make written representations regarding paragraphs (a) and (b).

(4) After considering any written representations received, the Consumer Credit Regulator may in writing—

- (a) require the person to stop engaging in the activity that requires registration;
- (b) require the person to undertake a specified act, or to refrain from undertaking a specified act, in order to remedy the contravention of this Act; and
- (c) require the person to rectify or repay, to the satisfaction of the Consumer Credit Regulator, any damage or other undesirable consequence which was caused by, or arose out of, the contravention of this Act,

and must inform the person of the right to appeal against the decision in accordance with section 38.

(5) A person who—

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

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

Power to remove key persons

30. (1) For purposes of this section, “key person” means—

- (a) a member of the governing body such as a director or a person holding a similar position, or a person who is responsible for the management of the registrant; and
- (b) the principal officer.

(2) If, at any time, a key person no longer satisfies the qualification, experience, competency or other fit and proper requirements provided for in the standards, the Consumer Credit Regulator must, after giving the registrant and the person concerned an opportunity to be heard, in writing direct the removal of that person from office by a date specified in the notice.

(3) Before taking action pursuant to subsection (2) in respect of a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(4) The Consumer Credit Regulators may, upon receipt of a written request made by the registrant before the date determined in terms of subsection (2), in writing grant an extension of time to the registrant for the removal of that person from office, subject to such conditions as the Consumer Credit Regulators may impose.

(5) If a registrant fails to comply with the directive of the Consumer Credit Regulator in terms of subsection (2) or within the extended period of time, if any, granted under subsection (4)—

- (a) the registrant is liable to pay the prescribed administrative penalty; and
- (b) the Consumer Credit Regulator may, after giving the registrant an opportunity to be heard, cancel the registration of the registrant.

(6) If a registrant fails to pay an administrative penalty imposed in terms of subsection (5)(a), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(7) The administrative penalty payable in terms of subsection (5)(a) and any interest, is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Declaration of practices as irregular or undesirable

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

(2) Before issuing the declaration in terms of subsection (1) that will have an effect on a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(3) Before issuing the declaration in terms of subsection (1), the Consumer Credit Regulator must give the affected registrant notice in writing—

- (a) of the nature of the specific practice or method of conducting business, the facts applicable and the applicable provision(s) of this Act;
- (b) of the intention to declare the specific practice or method of conducting business as irregular or undesirable, and the reasons therefor; and
- (c) advising that the registrant may in writing within the period specified in the notice, make representations as to why the specific practice or method of conducting business should not be declared as irregular or undesirable.

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

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

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

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

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

(8) If a registrant fails to comply with the notice issued in terms of subsection (1) or with a directive issued in terms of subsection (6), the registrant is liable to pay the prescribed administrative penalty.

(9) If a registrant fails to pay an administrative penalty imposed in terms of subsection (8), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(10) The administrative penalty payable in terms of subsection (8) and any interest is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Verification of information

32. For purposes of determining the accuracy of information required in terms of this Act, the Consumer Credit Regulators may verify any information at their disposal by making enquiries from any public entity, credit bureau or any other source of information, or by obtaining evidence from such person.

Directives

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

- (a) is contravening, or has contravened, a provision of this Act; or
- (b) has failed to comply with a condition of their registration.

(2) Before issuing a directive in terms of subsection (1) to a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(3) Before issuing a directive referred to in subsection (1), the Consumer Credit Regulator must give the registrant notice in writing—

- (a) of the nature of the alleged non-compliance, including the facts which gave rise to the alleged non-compliance, and the applicable provision(s) of this Act;
- (b) of the intention to issue a directive and the reasons therefor;

- (c) of the nature or particulars of the intended directive; and
 - (d) advising that the registrant may within the period specified in the notice make written representations as to why the directive should not be issued.
- (4) Without limiting the generality of subsection (1), the Consumer Credit Regulator may issue a directive with respect to—
- (a) the furnishing to the Consumer Credit Regulator of any information or documents in the possession or under the control of the registrant within the period specified in the directive;
 - (b) pursuant to section 30, the removal of a key person from office;
 - (c) requiring the registrant to undertake a specified act, or to refrain from undertaking a specified act in order to remedy any contravention of this Act and to ensure that the registrant does not commit any further contraventions of this Act;
 - (d) rectify or repay, to the satisfaction of the Consumer Credit Regulator, any damage or other undesirable consequence which was caused by, or arose out of, a contravention of this Act; and
 - (e) any other matter which under this Act is required or permitted to be determined by directive.
- (5) The Consumer Credit Regulator may revoke a directive at any time by notice in writing to the registrant concerned.
- (6) If a registrant fails to comply with a directive of the Consumer Credit Regulator in terms of subsection (1), the registrant is liable to pay the prescribed administrative penalty.
- (7) If a registrant fails to pay an administrative penalty imposed in terms of subsection (6), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.
- (8) The administrative penalty payable in terms of subsection (6) and any interest is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Enforceable undertakings

34. (1) If under normal circumstances the Consumer Credit Regulator could impose a condition on the registration of a person under this Act, the Consumer Credit Regulator may in its discretion, in place of such condition, require a written undertaking from a registrant in connection with a matter governed by this Act and, without limitation, the undertaking may include an undertaking that the registrant will—

- (a) in order to comply with this Act, take specified action;
- (b) in order to comply with this Act, refrain from taking specified action;
- (c) take specified action directed towards ensuring they do not contravene this Act,

and that the registrant must comply with such undertaking.

(2) The registrant referred to in subsection (1) may not withdraw or vary the undertaking without the written consent of the Consumer Credit Regulator.

(3) If the Consumer Credit Regulator considers that the registrant has breached an undertaking made under subsection (1), the Consumer Credit Regulator may apply to court for an order under subsection (4).

(4) If the court is satisfied that the registrant has breached the undertaking, the court may make—

- (a) an order directing the registrant to comply with the undertaking; and
- (b) any other order that the court considers appropriate.

(5) The Consumer Credit Regulator may, if appropriate, make available to any interested person a copy of the undertaking referred to in subsection (1).

(6) If the Consumer Credit Regulator makes a copy of an undertaking available pursuant to subsection (5), the Consumer Credit Regulator must delete from the copy any information which the Consumer Credit Regulator is satisfied—

- (a) is confidential information with commercial value;
- (b) should not be disclosed as it would be against the public interest to do so; or
- (c) consists of irrelevant personal details relating to any person.

(7) If information has been deleted from a copy of an undertaking pursuant to subsection (6), the copy must include a note stating that information has been so deleted.

Administrative sanctions and cancellation of registration

35. (1) The Consumer Credit Regulator may impose administrative sanctions referred to in subsection (7) on any registrant when satisfied on reasonable grounds that the registrant—

- (a) is contravening, or has contravened, a provision of this Act;
- (b) has failed to comply with a condition of registration;
- (c) has failed to pay levies imposed in terms of section 20; or
- (d) has failed to submit statutory returns, statements or reports pursuant to section 21.

(2) Before imposing an administrative sanction referred to in subsection (7) on a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(3) Before imposing an administrative sanction referred to in subsection (7), the Consumer Credit Regulator must give the registrant notice in writing—

- (a) of the nature of the alleged non-compliance, including the facts which gave rise to the alleged non-compliance, and the applicable provision(s) of this Act;
- (b) of the intention to impose administrative sanctions and the reasons therefor;
- (c) of the amount or particulars of the intended administrative sanction(s); and
- (d) advising that the registrant may within the period specified in the notice in writing make representations as to why the administrative sanction(s) should not be imposed.

(4) Subject to subsection (5), the Consumer Credit Regulator may suspend the registration of a registrant if it is necessary to do so to prevent or mitigate damage to the interests of consumers.

(5) The Consumer Credit Regulator must—

- (a) give the registrant written notice of the intention to suspend their registration, the reasons therefor, and an opportunity to make written representations as to why the suspension should not be imposed; and
- (b) having considered any written representations received, determine whether to suspend the registration until further administrative sanctions can be imposed.

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

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

(7) After considering any representations and the factors referred to in subsection (6), the Consumer Credit Regulator may—

- (a) give the registrant a warning;
- (b) issue a directive to the registrant requiring the registrant to undertake a specified act or to refrain from undertaking a specified act in order to—
 - (i) remedy the contravention; and
 - (ii) ensure that the registrant does not commit any further contraventions of the Act;
- (c) require the registrant to establish compliance programs, corrective advertising or changes in the management practices of the registrant;
- (d) vary the conditions of the registrant's registration, inclusive of the imposition of new or additional conditions pursuant to section 15;
- (e) require a written enforceable undertaking from the registrant pursuant to section 34;
- (f) require the registrant to rectify or repay, to the satisfaction of the Consumer Credit Regulator, any damage or other undesirable consequence which was caused by, or arose out of, the contravention;
- (g) impose a financial penalty not exceeding N\$10 000 000 or such other amount as may

be prescribed, payable by that registrant to the Consumer Credit Regulator in the manner as may be specified; or

(h) cancel the registration of the registrant.

(8) The Consumer Credit Regulator may suspend any part of any administrative sanction on any conditions the Consumer Credit Regulator considers appropriate for a period not exceeding five years.

(9) On imposing the administrative sanction(s) the Consumer Credit Regulator must in writing notify the registrant of—

(a) the decision and the reasons therefor;

(b) in the case of a cancellation of registration, the effective date of cancellation; and

(c) the right to appeal against the decision in accordance with section 38.

(10) A financial penalty imposed in terms of subsection (7)(g) may provide for interest at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(11) The financial penalty in terms of subsection (7)(g), and any interest, is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

(12) The Consumer Credit Regulator may make public the decision to impose a financial penalty pursuant to subsection (7)(g) provided that—

(a) the registrant does not appeal against the decision of the Consumer Credit Regulator within the required period; or

(b) the appeal board confirms the decision of the Consumer Credit Regulator.

(13) If a registration is cancelled in terms of this section or section 36, the Consumer Credit Regulator must amend the register referred to in section 18 accordingly.

(14) A person whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.

(15) The rights and obligations of—

(a) a credit provider under any credit agreement survive any suspension or cancellation of

their registration; and

- (b) a consumer under a credit agreement survive the suspension or cancellation of the credit provider's registration.

(16) A person who continues to engage in an activity that requires registration after the cancellation of their registration under subsection (7), commits an offence and is liable, on conviction, to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and imprisonment.

(17) The Minister may prescribe the maximum permissible financial penalty that may be imposed in terms of subsection (7)(g).

Voluntary cancellation of registration

36. (1) A registrant may voluntarily request that their registration be cancelled by—

- (a) submitting an application to the Consumer Credit Regulator, the form, content and manner of the application, and the application fee payable, to be provided for in the standards—
 - (i) stating the registrant's intention to voluntarily cancel their registration;
 - (ii) specifying the reasons for such cancellation; and
 - (iii) confirming that the registered activities have ceased or will cease at a specified date;
- (b) attaching to the application the original registration certificate issued to that registrant by the Consumer Credit Regulator; and
- (c) attaching to the application copies of the notice referred to in subsection (2).

(2) Before making an application referred to in subsection (1), the applicant must, at the expense of the applicant, give notice of the proposed application in two newspapers circulating nationally in Namibia, stating—

- (a) the name of the applicant;
- (b) the intention to cancel their registration; and
- (c) the period within which objections to the application may be lodged with the Consumer

Credit Regulator, which period may not be less than 30 calendar days from the date of publication of the notice.

(3) If, after consideration of any objection received as a result of the notice referred to in subsection (2), the Consumer Credit Regulator is of the opinion that it is reasonable to do so, the Consumer Credit Regulator may by written notice to the applicant concerned, cancel the registration.

(4) The Consumer Credit Regulator may—

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

(5) Where a credit bureau ceases to operate for any reason, the data provided to the credit bureau by credit providers and other sources of consumer credit information and stored in the database of the credit bureau, must be surrendered to the Consumer Credit Regulator without any compensation.

(6) The Consumer Credit Regulator may make information in the database referred to in subsection (5) available to another registered credit bureau.

(7) A credit bureau referred to in subsection (5) may not use the information or data for any purpose after ceasing to operate.

Debts due to the Consumer Credit Regulators

37. (1) Any levy, administrative penalty, financial penalty or interest payable under this Act is, when it becomes due and payable, a debt due to the Consumer Credit Regulator and may be recovered by the Consumer Credit Regulator in court.

(2) In any action or other proceedings instituted under subsection (1), the production by the Consumer Credit Regulator of a certificate signed by the Consumer Credit Regulator, stating the name of the debtor and the amount(s) due, shall be *prima facie* evidence of the amount(s) so due.

(3) Notwithstanding subsections (1) and (2), the Consumer Credit Regulator may, on written application by a person, waive the payment of, or refund the whole or any part of, an administrative penalty, financial penalty or interest payable in terms of this Act if the Consumer

Credit Regulator is satisfied that the failure of the person to comply with a provision of this Act was not due to wilful conduct or the want of reasonable care on the part of the person.

Appeals

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

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

CHAPTER 4 CONSUMER CREDIT POLICY

PART A Consumer rights

Consumer protection principles

39. (1) Registrants, their employees, agents and other representatives must, at all times, comply with, and act consistently with, the consumer protection principles contained in this Act.

(2) Registrants must ensure that their processes and procedures reflect the consumer protection principles contained in this Act.

(3) A registrant must—

- (a) accept responsibility for the acts and omissions of their employees, agents and other representatives;
- (b) ensure that any remuneration or commission arrangements do not provide perverse incentives for employees, agents and other representatives not to comply with this Act;
- (c) not accept or seek to enforce a credit agreement that is unlawful under this Act; and
- (d) participate and cooperate in the investigation and resolution of complaints and disputes by the Consumer Credit Regulator.

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

Right to apply for credit

40. (1) Save as is provided in this Act, every person with the required legal capacity to contract, has a right to apply to a credit provider for credit.

(2) A credit provider has a right to refuse to enter into a credit agreement with a consumer on the basis of commercial grounds that are consistent with their business model, risk management or underwriting practices.

(3) Nothing in this Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person.

Right to reasons for credit being refused

41. (1) Within seven business days after receipt of a written request from a consumer, a credit provider must advise that consumer in writing of the dominant reason for—

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

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

Right to receive information

42. (1) A consumer has a right to receive information that is required in terms of this Act—

- (a) in the official, and plain, language; and

- (b) in the required form, if any.

(2) For the purposes of this Act, information is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the information is intended, could be expected to understand the content, significance and import of the information without undue effort, having regard to—

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

(3) Without limiting the generality of the requirements in subsection (2), information is in plain language if—

- (a) legal and technical terms or jargon are avoided, unless these terms are plainly explained;
- (b) where used, abbreviations are defined or explained;
- (c) the information is presented in short sentences and paragraphs;
- (d) large, legible font with adequate spacing is used;
- (e) double negatives and exceptions to exceptions are avoided; and
- (f) important content is highlighted by writing in bold or underlining, where relevant.

(4) Information that is required to be provided to a consumer in terms of this Act, may be provided electronically on condition that the consumer's prior written consent was obtained.

(5) A person must not charge a fee for the original document or first copy of any original document required to be provided to a consumer in terms of this Act.

- (6) On request from the consumer, the person must provide the consumer with—

- (a) a single replacement copy of a document required in terms of this Act, without charge to the consumer, at any time within a year after the date for original provision of that document; and

- (b) any other replacement copy, subject to any prescribed search and production fees.

Protection of consumer credit rights

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

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

(2) If a credit agreement, or any provision of such an agreement is declared unlawful or is severed from the agreement by a court, the person who is a party to that agreement must not, in response to that decision—

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

PART B

Obligations of credit providers, credit bureaus and debt collectors

Prohibited conduct

44. A person must not—

- (a) require a consumer to sign blank or incomplete documents, inclusive of a blank or incomplete acknowledgment of debt or a blank or incomplete consent to judgment;
- (b) solicit or accept deposits from the public in contravention of the Banking Institutions

Act;

- (c) retain or keep in their possession, or request or demand to retain or keep in their possession, the consumer's physical identity document, credit or debit card other bank account or automatic teller machine access card or any similar identifying document or device as security or collateral, or payment method;
- (d) require disclosure by the consumer of their personal identification code or number used to access any credit or debit card, other bank account or automatic teller machine access card or any similar device;
- (e) use a consumer's personal identification code or number to access any credit or debit card, other bank account or automatic teller machine access card or any similar device;
- (f) send out unsolicited credit cards or offers of credit limit increases;
- (g) offer to provide credit without an application being made by the consumer; or
- (h) direct or permit any other person to do anything contemplated in this subsection on behalf of, or as an agent of, of that person.

Obligations of registrants

- 45.** (1) A registrant must—
- (a) provide access to a copy of this Act, the regulations and the standards issued under this Act to consumers on request;
 - (b) make available their complaint procedures and complaint intake forms to consumers on request;
 - (c) display their complaint procedures in a manner accessible and available to consumers; and
 - (d) in the case of credit providers, display their maximum rates of interest, default interest, fees, charges and costs imposed in respect of all the different credit agreements that the credit provider conducts business in, in a manner accessible and available to consumers.
- (2) A credit provider must subscribe to a registered credit bureau.
- (3) A credit provider must, before entering into a credit agreement with a consumer—

- (a) obtain a credit report regarding that consumer from a registered credit bureau;
 - (b) conduct an affordability assessment as required by section 61(3); and
 - (c) in respect of a consumer who transacts in person at the place where the credit provider conducts business—
 - (i) allow the consumer a reasonable opportunity to read the proposed credit agreement or have it read to the consumer if they are illiterate; and
 - (ii) explain to the consumer the key terms and conditions of the credit agreement in a language which the consumer understands, if necessary with the assistance of an interpreter provided by the consumer; or
 - (d) in respect of a consumer who transacts digitally, in writing inform the consumer that they may visit the physical premises from where the credit provider conducts business, if any, or contact the credit provider for the purpose of paragraph (c)(ii).
- (4) A credit provider or debt collector must immediately issue a written receipt to a consumer upon receipt of a cash payment.

Obligations of pawn brokers

- 46.** (1) A credit provider who enters into a pawn transaction with a consumer must—
- (a) specify, in the written credit agreement, the date on which the agreement ends;
 - (b) retain until the end of the credit agreement, and at the risk of the credit provider, any goods that is delivered to the credit provider as security under the credit agreement; and
 - (c) deliver the goods referred to in paragraph (b) to the consumer if the consumer pays the settlement value under the agreement at any time up to and including the date on which the agreement ends.
- (2) If a credit provider contemplated in subsection (1) fails to deliver the goods to the consumer as required in subsection (1)(c), a court, on application by the consumer, may order the credit provider to pay to the consumer an amount equal to—
- (a) the fair market value of the goods, less the settlement value at the time of failure to deliver the goods, as determined by the court, if the reason for the failure to return the

goods is that it has been damaged or destroyed by an intervening cause outside the control of the credit provider; or

- (b) double the fair market value of the goods, less the settlement value at the time of failure to deliver the goods, as determined by the court, if the reason for the failure to return the goods is other than as contemplated in paragraph (a).

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

PART C

Confidentiality and consumer credit records

Right to confidential treatment

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

- (a) subject to subsection (2), use that information—
 - (i) consistent with the original purpose of collection;
 - (ii) with the informed consent of the data subject or consumer; and
 - (iii) to the extent permitted or required in terms of this Act or applicable legislation;
- (b) report or release that information only to the data subject, consumer or to another person—
 - (i) to the extent permitted or required by this Act or applicable legislation;
 - (ii) as directed by—
 - (aa) the instructions of the data subject or consumer;
 - (bb) an order of a court; or
 - (cc) as may be required for, or in respect of, any court-, tribunal- and related body proceedings; and

- (c) observe through the members of their governing body such as directors or persons holding similar positions, or persons who are responsible for the management of the business, and employees, agents and other representatives, a perpetual duty of confidentiality with regard to the information divulged to them in terms of this Act.
- (2) A credit bureau must release consumer credit information to a subscriber, data subject, consumer, or prosecuting or law enforcement authority—
 - (a) for the purpose of—
 - (i) this Act or applicable legislation;
 - (ii) an investigation into, or detection and prevention services regarding fraud, corruption, theft, forgery or money laundering;
 - (iii) screening a candidate for employment in a position that requires trust and honesty, or entails the handling of cash or finances;
 - (iv) an assessment of the debtors' book of a business for the purpose of—
 - (aa) the sale of the business or debtors' book of the business; or
 - (bb) any other transaction that is dependent upon determining the value of the business or the debtors' book of the business;
 - (v) assessing the appropriateness of an application for credit;
 - (vi) setting a limit in respect of the supply of goods or services to a data subject or consumer;
 - (vii) assessing the appropriateness of an application for financial services;
 - (viii) obtaining consumer credit information about a data subject or consumer, or the tracing of a data subject or consumer, to distribute unclaimed funds, including pension funds and insurance claims;
 - (ix) tracing of a consumer by a credit provider or debt collector in respect of a credit agreement entered into between the consumer and the credit provider;
 - (x) subject to subsection (8), developing a credit score on the data subject or consumer's request; or

- (xi) fulfilling a data subject or consumer's explicit instruction or request;
 - (b) that has certified to the credit bureau that they will use the consumer credit information for the purpose as set out in this Act and for no other purpose; and
 - (c) that has agreed to securely store the consumer credit information, and to properly dispose of the consumer credit information after the required minimum retention period, if any, so that such information cannot reasonably be read or reconstructed.
- (3) Where a credit report is required in terms of subsection (2)(a)(iii), (v), (vi), (vii), (x) or (xi), the informed consent of the data subject or consumer is required.
- (4) In addition to the consumer credit information in this Act, a credit bureau may receive, compile and report the following information in respect of a data subject or consumer:
- (a) payments made in respect of a debt, where the debt has been ceded or sold by a credit provider to another party; and
 - (b) information that is not related or intended for the purpose of providing credit, provided that the informed consent of the data subject or consumer has been obtained to use the information for such purpose and to submit, compile and report such information.
- (5) A subscriber may use consumer credit information received from a credit bureau only for purposes of reaching decision on the business of the subscriber in the ordinary course of such business.
- (6) A subscriber may not release consumer credit information to a third party, other than the appointed agent of the subscriber for the purpose of assisting the subscriber in the recovery of any of its debts.
- (7) A credit bureau must have procedures to deal with all requests and enquiries made by the data subject or consumer on consumer credit information stored in the credit bureau database and must display such procedure at a place and in a manner accessible and available to the public.
- (8) The Consumer Credit Regulator may provide for minimum requirements in respect of the determination of a credit score in a standard.

Reporting of consumer credit information

48. (1) Upon entering into or amending a credit agreement, other than an incidental credit agreement, the credit provider must report to all registered credit bureaus, within the period as may be provided for in a standard, the following information:

- (a) the credit provider's name, address of their principal office and registration number;
- (b) the name, and residential or business address, of the data subject or consumer;
- (c) if the data subject or consumer is—
 - (i) a natural person, their identity number, or in the case of a person who is not a Namibian citizen and who does not have an identity number, their passport number; or
 - (ii) an entity, their registration number; and
- (d) such other information about the credit provided as may be specified in a standard by the Consumer Credit Regulator.

(2) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (1), within the period as may be provided for in a standard, to all registered credit bureaus.

(3) If a credit provider transfers to another person their rights under a credit agreement referred to in subsection (1)—

- (a) the transferor must report the particulars of that transfer, within the period as may be provided for in a standard, to all registered credit bureaus; and
- (b) the transferee must satisfy any subsequent obligations of the credit provider under this section.

Credit bureau information

49. (1) A credit bureau must—

- (a) accept, without charge, the filing of consumer credit information from any credit provider and other sources of consumer credit information;
- (b) accept, without charge, the filing of consumer credit information from any data subject or consumer concerned for the purpose of correcting or challenging information held by that credit bureau concerning that data subject or consumer;
- (c) retain any consumer credit information reported to it for the periods as may be provided for in a standard, irrespective of whether that information reflects positively

or negatively on the person;

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

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

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

Credit reports

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

- (a) establish controls and procedures to be applied when a subscriber, data subject, consumer, or prosecuting or law enforcement authority requests credit reports from the credit bureau;
- (b) maintain an automated system to retrieve consumer credit information and a system to trace each entry made in the consumer credit information of a data subject or consumer and to trace all accessed consumer credit information by a subscriber, data subject, consumer, or prosecuting or law enforcement authority;
- (c) maintain a system to trace proven or suspected breaches of security that include details of consumer credit information affected, details of the breach, and any action taken as

a result of an investigation; and

- (d) review on a regular basis password controls of all credit bureau personnel and subscribers.

(2) A credit bureau must—

- (a) immediately furnish a credit report requested by a subscriber; and
- (b) within five business days of the date of a request, furnish a credit report requested by a data subject, consumer or any other person lawfully entitled to the information.

(3) A credit bureau may not include any information relating to the race, colour, ethnic origin, religion or social status of a data subject or consumer in a credit report.

Search enquiries

51. (1) A credit bureau must maintain a record of all search enquiries made on the consumer credit information of a data subject or consumer.

(2) The record referred to in subsection (1), must include the date of the search enquiry, the purpose of the search enquiry and name of the person who conducted the search.

(3) Where the results of a search enquiry show that there is no consumer credit information of the data subject or consumer, a record must be created and maintained on the subject of the search enquiry including the details specified under subsection (2).

(4) A credit bureau must make the record of both favourable and adverse consumer credit information available to credit providers for affordability assessment purposes.

Reporting of settlement of obligation classified as adverse consumer credit information

52. (1) A credit provider must submit information regarding a settlement, where an obligation under a credit agreement was previously classified as adverse consumer credit information, to all registered credit bureaus within the period provided for in a standard.

(2) The credit bureau must incorporate the information of the settlement reported to it in terms of subsection (1) in the consumer credit information kept regarding the person, within the period provided for in a standard, after receipt of such information from the credit provider.

(3) If a credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against the credit provider with the Consumer

Credit Regulator in terms of section 100.

Right to access and challenge credit records and consumer credit information

53. (1) A credit bureau must have procedures to deal with all requests and enquiries made by any person on consumer credit information stored in the credit bureau's database and must display the procedures in a manner accessible and available to the public.

(2) A credit provider must, in writing, inform a consumer at least five business days before any adverse consumer credit information concerning the consumer is reported by the credit provider to a credit bureau, and must, upon request, provide the consumer with that information in writing at no charge.

(3) Every person has a right to, at a credit bureau—

(a) obtain a credit report concerning that person—

(i) without charge—

(aa) once within any period of twelve months; and

(bb) once after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and

(ii) at any other time, upon payment of the fee of the credit bureau, if any; and

(b) in writing, challenge the accuracy of any information concerning that person—

(i) that is the subject of the proposed report contemplated in subsection (2); or

(ii) that is held by the credit bureau,

and require the credit provider or credit bureau, as the case may be, to investigate the accuracy of any challenged information, without charge to the person.

(4) A credit provider must not require or induce a consumer to obtain or request a credit report from a credit bureau in connection with an application for credit or an affordability assessment under section 61.

(5) A credit bureau must in writing inform a person of their right to challenge the information maintained in the credit bureau's database at the time the person requests a credit

report.

(6) If a person has challenged the accuracy of information proposed to be reported by a credit provider in terms of subsection (2) or after obtaining a credit report held by a credit bureau in terms of subsection (3), the credit provider or credit bureau, as the case may be, must take reasonable steps to investigate the challenged information, and within 20 business days after the filing of the challenge must—

- (a) provide a written response to the person who filed the challenge if they were able to find credible evidence in support of the information; or
- (b) subject to subsection (9)(a), remove the information and all record thereof from the credit report if they were unable to find credible evidence in support of the information, and inform the person in writing of the removal of the information.

(7) After receiving the written response in terms of subsection (6)(a), the person who challenged the information and who is not satisfied with the response may lodge a complaint with the Consumer Credit Regulator in terms of section 100.

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

(9) A credit bureau and a credit provider must for the period required in the standards—

- (a) maintain a record of all challenged information and its status;
- (b) document the manner in which it was resolved; and
- (c) submit such information to the Consumer Credit Regulator as may be required.

(10) Where a credit provider fails to respond or conclude the necessary investigations within 20 business days in terms of subsection (6), the credit bureau must report such incidence in writing to the Consumer Credit Regulator within five business days.

Verification, review and removal of consumer credit information

54. The Consumer Credit Regulator may, in a standard, provide for—

- (a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaus must be reviewed, verified, corrected or removed; and
- (b) the manner in which an external auditor contemplated in the Public Accountants' and

Auditors' Act, 1951 (Act No. 51 of 1951) may confirm that the consumer credit information referred to in paragraph (a) has been reviewed, verified, corrected or removed.

PART D

Credit marketing practices

Negative option marketing and opting out requirements

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

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

(3) A credit provider must not make a proposal to alter or amend a credit agreement, or induce a person to accept such an alteration or amendment, on the basis that the alteration or amendment will automatically take effect unless the consumer rejects the proposal.

(4) A credit agreement entered into as a result of an offer or proposal contemplated in subsections (1), (2) or (3) may be declared unlawful and void to the extent provided for in section 64.

(5) A credit provider must present to the consumer the option to be excluded from any—

(a) marketing campaigns that may be conducted by, or on behalf of, the credit provider; or

(b) marketing or customer list that may be sold or distributed by the credit provider.

(6) A credit provider must not act in a manner contrary to an option selected by a consumer in terms of subsection (5).

Marketing and sale of credit at home or work

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

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

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

Advertising practices and required marketing information

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

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

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

- (a) must comply with this section;
- (b) must contain any required statement as may be provided for in the standards;
- (c) must not—

- (i) advertise a form of credit that is unlawful;
 - (ii) be misleading, fraudulent or deceptive; or
 - (iii) contain any prohibited statement as may be provided for in the standards; and
- (d) may contain a statement of comparative credit costs to the extent permitted by any applicable law or code of conduct, but any such statement must—
- (i) show costs for each alternative being compared;
 - (ii) show rates of interest and all other costs of credit for each alternative;
 - (iii) be set out in the manner and form as may be provided for in the standards; and
 - (iv) be accompanied by the required cautions or warnings as may be provided for in the standards concerning the use of such comparative statements.

(4) The Consumer Credit Regulator may, pursuant to section 33, direct the suspension or modification of an advertisement if it does not comply with this section or is considered to be misleading, fraudulent, deceptive, inaccurate or against the public interest.

(5) Any solicitation by or on behalf of a credit provider for the purpose of inducing a person to apply for or obtain credit must include a statement with the required information as may be provided for in a standard for the particular type of solicitation.

PART E

Over-indebtedness and reckless credit

Application and interpretation of this Part

- 58.** (1) Sections 61 to 63, and any other provisions of this Part to the extent that they relate to reckless credit, do not apply to an incidental credit agreement.
- (2) In this Part, “financial means and prospects” with respect to a consumer includes—
- (a) income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer receives, has a right to receive, or holds in trust for another person;
 - (b) assets; and

- (c) if the consumer has a commercial purpose for applying for or entering into a particular credit agreement, the reasonable estimated future revenue flow from that business purpose.
- (3) In this Part, “financial obligations” with respect to a consumer includes—
 - (a) debt repayment obligations such as loans, credit facilities, student loans, accounts, personal loans and other forms of borrowing;
 - (b) housing costs such as rent and mortgage payments;
 - (c) utility bills such as water, electricity, levies and municipal rates;
 - (d) taxes;
 - (e) maintenance obligations;
 - (f) insurance premiums;
 - (g) contractual obligations such as service contracts;
 - (h) educational fees and tuition; and
 - (i) any other financial commitments the consumer is obliged to meet on a regular basis.

Over-indebtedness

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

- (a) existing financial means and prospects; and
- (b) existing financial obligations.

(2) When a finding is to be made whether a consumer is over-indebted or not, the court must apply the criteria set out in subsection (1) as they existed at the time the determination was made.

Reckless credit

60. (1) A credit agreement is reckless if, at the time the agreement was made, or at any time when the credit limit is increased—

- (a) the credit provider failed to conduct an affordability assessment as required by section 61(3), irrespective of what the outcome of such an affordability assessment might have concluded at the time; or
- (b) the credit provider, having conducted an affordability assessment as required by section 61(3), entered into the credit agreement with the consumer despite the fact that the consumer was over-indebted, or entering into that credit agreement would make the consumer over-indebted.

(2) When a finding is to be made whether a credit agreement is reckless or not, the court must apply the criteria set out in subsection (1) as they existed at the time the agreement was made.

Prevention of reckless credit

61. (1) A credit provider must not enter into a reckless credit agreement with a consumer.

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

(3) A credit provider must not enter into a credit agreement without first taking reasonable steps to assess the consumer's—

- (a) debt re-payment history as a consumer under credit agreements;
 - (b) existing financial means and prospects;
 - (c) existing financial obligations; and
 - (d) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, if the consumer has such a purpose for applying for that credit agreement.
- (4) It is a complete defence to an allegation that a credit agreement is reckless if—
- (a) the consumer failed to fully and truthfully answer any requests for information made by the credit provider as part of the affordability assessment required by this section; and

- (b) a court determines that the consumer's failure to do so materially affected the ability of the credit provider to make a proper affordability assessment.

Affordability assessment mechanisms and procedures

62. (1) A credit provider must have procedures in place to be used in meeting its affordability assessment obligations under section 61.

(2) A credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its affordability assessment obligations under section 61, provided that any such mechanism, model or procedure—

- (a) results in a fair, transparent and objective assessment; and
- (b) is not inconsistent with any affordability assessment requirements as may be provided for in a standard.

(3) A credit provider must keep the records of every affordability assessment conducted in terms of section 61 for at least five years from the date on which the credit agreement ended.

Declaration of reckless credit agreement

63. (1) In any court proceedings in which a credit agreement is being considered, the court may declare that the credit agreement is reckless as provided for in this Part.

(2) If a court declares that a credit agreement is reckless in terms of section 60(1)(a) or (b), the court may make any order that is just and reasonable in the circumstances, inclusive of setting aside all or part of the consumer's obligations under that agreement.

CHAPTER 5 CREDIT AGREEMENTS

PART A

Unlawful credit agreements and unfair provisions

Unlawful credit agreements

64. (1) Subject to subsections (2) and (3), a credit agreement is unlawful if, at the time the agreement is made—

- (a) the consumer did not have the required legal capacity to contract, and the credit

provider knew, or could reasonably have determined, that the consumer lacked such capacity;

- (b) the consumer was subject to an administration order referred to in section 74 of the Magistrates' Courts Act, 1944 (Act 32 of 1944) and the administrator concerned did not in writing consent to the agreement, and the credit provider knew, or could reasonably have determined, that the consumer was the subject of such an order;
- (c) the agreement results from an offer prohibited in terms of section 55(1), (2) or (3);
- (d) it is an unlawful supplementary agreement or document prohibited by section 66; or
- (e) the credit provider was unregistered and this Act requires that they be registered.

(2) Subsection (1)(a) or (b) does not apply 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 paragraph (b).

(3) A credit agreement that is prohibited in terms of this section is not void unless a court declares that agreement to be unlawful.

(4) If a credit agreement is declared unlawful in terms of this section, despite any other legislation or any provision of an agreement to the contrary, a court may make any order that is just and reasonable in the circumstances.

(5) No person may be a party to a credit agreement or any other agreement in terms of which, or which has the effect that—

- (a) an earlier credit agreement is cancelled and substituted by a later credit agreement and the goods or service, or any part thereof, to which that earlier agreement relates; or
- (b) any money or other consideration paid or delivered in terms of that earlier credit agreement,

serves as a deposit in respect of the goods or service to which that later credit agreement relates.

(6) A credit agreement is not binding until the consumer has paid the prescribed deposit,

if any.

(7) For the purpose of subsection (6)—

- (a) payment of the deposit may be effected wholly or partly in goods if the credit provider and consumer agree thereto;
- (b) payment in goods to the extent that the value placed thereon for the purposes of such payment exceeds a reasonable price for those goods, may not be regarded as payment; and
- (c) no credit provider may make credit available or cause credit to be made available by any other person to a consumer for the purpose of paying the deposit out of such credit in respect of a credit agreement, and no consumer may receive or pay the deposit out of credit obtained directly or indirectly from or through the credit provider or any other person whose business or part of whose business it is, by arrangement with a credit provider, to make credit available for the payment of the deposit in terms of a credit agreement: Provided that the provisions of this paragraph must not be so construed as to prohibit the payment of the deposit in terms of a credit agreement by a consumer out of money paid or owing to the consumer by the credit provider as emoluments.

(8) No person may be a party to a credit agreement in terms of which the term of the credit agreement exceeds the maximum permissible duration of such credit agreement.

Unfair provisions

65. (1) A credit agreement must not contain an unfair provision.

(2) Without limiting the generality of subsection (1), a provision of a credit agreement is unfair if—

- (a) it reflects a significant imbalance in the parties' rights and obligations;
- (b) it is not reasonably required to protect the credit provider's legitimate interests;
- (c) its general purpose or effect is to—
 - (i) defeat the purposes of this Act;
 - (ii) deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;

- (d) it directly or indirectly purports to—
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a credit provider's obligation or duty in terms of this Act;
 - (iii) set aside or override the effect of any provision of this Act; or
 - (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;
- (e) in the case of a standard form contract which is not subject to full and genuine negotiation—
 - (i) it purports to waive any common law rights that may be applicable to the credit agreement;
 - (ii) it purports to exempt the credit provider from liability, or limit such liability, for—
 - (aa) any act, omission or representation by a person acting on behalf of the credit provider; or
 - (bb) any guarantee or warranty that would, in the absence of such a provision, be implied in a credit agreement;
 - (iii) it expresses an acknowledgement by the consumer that—
 - (aa) 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 when representations or warranties were in fact made to the consumer; or
 - (bb) the consumer has received goods or services, or a document that is required by this Act to be provided to the consumer, which have not in fact been rendered or provided to the consumer; or
 - (iv) it expresses an agreement by the consumer to forfeit any money to the credit

provider if the consumer fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;

- (f) it expresses, on behalf of the consumer—
 - (i) an authorisation for the credit provider or any person acting on behalf of the credit provider to, without an order of court, take possession of goods to which the credit agreement relates;
 - (ii) a grant of a power of attorney in advance to the credit provider in respect of any matter related to the provision of credit in terms of this Act;
 - (iii) a consent to a pre-determined value of costs relating to enforcement of the agreement that is inconsistent with this Act;
 - (iv) a limitation of the credit provider's liability for an action contemplated in subparagraph (iii); or
 - (v) a consent to the jurisdiction of—
 - (aa) the High Court of Namibia, if a Magistrates' Court has concurrent jurisdiction; or
 - (bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer resides or works or where any goods to which the credit agreement relates, if any, are ordinarily kept;
- (h) it purports to direct or authorise any person engaged in processing of payments to give priority to payments for the credit provider over any other credit provider;
- (i) 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 89;
- (j) the consumer is prohibited from resiling from the credit agreement and from claiming repayment of any amount paid by the consumer in terms of the credit agreement if, without any reluctance on the consumer's part to accept performance in accordance with such credit agreement, the goods or services to which the credit agreement relates have not been delivered or rendered to the consumer within the agreed period after the date of the credit agreement; or

- (k) the consumer acknowledges that they have inspected any goods to which the credit agreement relates, if the goods were in fact not inspected.

(3) The provisions of subsections (2)(e)(iii)(aa), (2)(e)(iv), (2)(j) and (2)(k) do not apply to any credit agreement providing for any goods, to which the credit agreement relates, to be imported into Namibia as per order of, or be manufactured according to the requirements of, the consumer.

(4) A provision of a credit agreement that is unfair in terms of this section is not void unless a court declares that provision void.

(5) In any matter before a court regarding a credit agreement that contains an unfair provision contemplated in subsection (2), the court may—

- (a) sever that 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 64(4) with respect to that provision, or entire agreement, as the case may be.

Prohibition of unlawful supplementary agreements

66. (1) A credit provider must not, as an inducement to enter into any credit agreement, directly or indirectly offer, give or promise any benefit to a consumer unless such benefit, in the ordinary course of events, will constitute a condition of the credit agreement.

(2) A credit provider must not directly or indirectly require or induce a consumer to enter into a supplementary agreement or sign any document, that contains a provision that would be unlawful or unfair if it were included in a credit agreement.

PART B

Disclosure, form and effect of credit agreements

Pre-agreement disclosure

67. (1) A credit provider must, prior to entering into a credit agreement with a consumer, provide the consumer with—

- (a) the written proposed credit agreement addressing all matters required in terms of section 68; and
- (b) a written short form key facts statement setting out the following with the purpose to help the consumer understand key information and to compare product offers—
 - (i) key terms and conditions of the proposed credit agreement;
 - (ii) the principal debt, and, if practical, the proposed distribution of the principal debt over the repayment period;
 - (iii) pricing information, such as the applicable effective interest rate and, if practical, the proposed distribution of the interest over the repayment period, as well as the fees, charges and costs;
 - (iv) the amount to be paid as deposit, if any;
 - (v) if practical, the total cost of the proposed agreement;
 - (vi) if practical, the minimum repayment amount, at least at the onset of the agreement, and the number of repayments over the repayment period;
 - (vii) if applicable, the cost of any credit insurance; and
 - (viii) if applicable, contain a reference to section 79.

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

Form of credit agreements

68. (1) The credit provider must, within three business days from entering into a credit agreement with a consumer, provide the consumer with a copy of the written credit agreement at no charge.

- (2) A credit agreement must, at a minimum in writing—
 - (a) state the names of the credit provider and the consumer and their business or residential addresses;

- (b) state the amount paid, or to be paid, as deposit, if any;
- (c) state the type of credit agreement entered into;
- (d) contain all the terms and conditions of the credit agreement, clearly reflecting the rights and obligations of both parties;
- (e) pricing information, such as the applicable effective interest rate, and fees, charges and costs;
- (f) if applicable, contain a description whereby the goods or service to which that credit agreement relates, and any goods delivered to the credit provider as payment, may be readily identified;
- (g) if applicable, state the conditions, if any, as to the—
 - (i) reservation and passing of ownership of the goods to which that credit agreement relates; and
 - (ii) right of the credit provider to the return of the goods to which that credit agreement relates;
- (h) if applicable, the cost of any credit insurance; and
- (i) if applicable, contain a reference to the provision of section 79.

(3) The Consumer Credit Regulator may provide for additional minimum content requirements that must be included in a credit agreement for purposes of subsection (2), in a standard.

Liability for lost or stolen access devices or personal identification codes

69. (1) For purposes of this section, “access device” means a card or code, including a personal identification code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to access or transact on that account.

- (2) A credit provider must—
 - (a) maintain a 24-hour telephone number to report lost or stolen access devices; and

- (b) display the 24-hour telephone number in a manner that is easily accessible to the public.
- (3) A consumer must immediately upon becoming aware of—
 - (a) the loss or theft of an access device; or
 - (b) any fraudulent activity or unauthorised access to, or use of, an access device or an account,

report such loss or theft, or fraudulent or unauthorised access or use, to the credit provider.

(4) A credit provider must block the use of the access device, or block access to the account, as the case may be, immediately after receipt of a report made to them or to the 24-hour telephone number.

(5) A block imposed in terms of subsection (4) may only be lifted upon receipt of the consumer's written consent to that effect.

(6) A credit provider must not impose a liability on a consumer for any use of an access device or account after receipt of a report in terms of subsection (3), unless—

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

Consumer must disclose location of goods

70. (1) This section applies to any goods to which the credit agreement relates, and in terms of the credit agreement—

- (a) the consumer at any time during the agreement has or had possession of those goods; and
- (b) the title to the goods to which the credit agreement relates has not passed to the consumer, or the credit provider has a right to repossess the goods irrespective of whether they are owned by the consumer or another person.

(2) Until the termination of a credit agreement to which this section applies, the consumer must inform the credit provider, by way of a written notice, of any change concerning—

- (a) the address of the premises where those goods are ordinarily kept; or
 - (b) the name and address of any other person to whom possession of the goods has been transferred.
- (3) On request by the credit provider, a deputy sheriff or messenger of court, the consumer must inform that person of the address of the premises where the goods are ordinarily kept and the name and address of the landlord, if any, of those premises.
- (4) If at the time of a request under subsection (3) the consumer is no longer in possession of the goods, the consumer must provide the name and address of the person to whom possession of those goods has been transferred.
- (5) A consumer who knowingly—
- (a) provides false or misleading information to a credit provider, deputy sheriff or messenger of court under this section; or
 - (b) acts in a manner contrary to this section with intent to frustrate or impede a credit provider exercising their rights under this Act or a credit agreement,

commits an offence.

Agreement attaches to substituted goods

71. If, after delivery to the consumer of the goods to which the credit agreement relates, the consumer and the credit provider agree to substitute other goods for all or part of the goods so described—

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

PART C

Consumer's liability, interest, charges and fees

Prohibited charges

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

- (a) a fee or charge prohibited by this Act;
- (b) a fee or charge other than those provided for under section 73 or elsewhere in this Act;
- (c) a fee or charge exceeding the amount that may be charged consistent with this Act;
- (d) an interest charge exceeding the amount that may be charged consistent with this Act;
or
- (e) any fee, charge, commission, expense or other amount payable to any third party in respect of the credit agreement, except as contemplated in section 74 or elsewhere in this Act.

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

Cost of credit

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

- (a) subject to subsection (2) and section 74, the principal debt;
- (b) regulatory levies, where applicable;
- (c) any stamp duties payable in terms of the Stamp Duties Act, 1993 (Act No. 15 of 1993);
- (d) an initiation fee, which—
 - (i) may not exceed the prescribed amount relative to the principal debt; and
 - (ii) must not be applied unless the application results in the establishment of a credit agreement with that consumer;
- (e) a service fee, which—
 - (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or
 - (ii) in any other case, may be payable monthly or annually; and

- (iii) must not exceed the prescribed amount relative to the principal debt;
- (f) interest, which—
 - (i) must be expressed in percentage terms as an annual rate calculated in the prescribed manner; and
 - (ii) must not exceed the applicable maximum rates prescribed in terms of section 77;
- (g) the cost of any credit insurance payable in accordance with section 78(3);
- (h) a default administration fee, which—
 - (i) may not exceed the prescribed amount relative to the principal debt; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement and only for as long as the consumer remains in default;
- (i) collection commission, which—
 - (i) may not exceed the prescribed maximum; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement and only for as long as the consumer remains in default;
- (j) legal costs, which—
 - (i) may not exceed the prescribed maximum;
 - (ii) may only consist of the prescribed items; and
 - (ii) may be imposed only if the consumer has defaulted on a payment obligation under the credit agreement and only for as long as the consumer remains in default;
- (k) litigation costs; and
- (l) any payment facilitation fees which may not exceed the prescribed amount relative to the principal debt.

(2) The value of any item contemplated in paragraphs (d), (e), (f), (h), (i), (j), (k) and (l) of subsection (1), or, subject to section 74, any other cost, fee or charge, may not form part of the principal debt.

(3) 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)(d) in respect of that second credit agreement.

Fees or charges that may form part of principal debt

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

- (a) the cost of an extended warranty agreement;
- (b) delivery, installation and initial fuelling charges;
- (c) connection fees, levies or charges;
- (d) taxes, licence or registration fees;
- (e) subject to section 78(3), the premiums of any credit insurance payable in respect of that credit agreement; and
- (f) costs of the preparation, execution and registration of a bond.

(2) A credit provider must not—

- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the consumer's agent in arranging for the service concerned; and
- (b) if the consumer has exercised the choice referred to in paragraph (a), charge the consumer an amount under subsection (1) in excess of—
 - (i) the actual amount payable by the credit provider for the service, as determined after taking into account any discount or other rebate or other applicable allowance received or receivable by the credit provider; or
 - (ii) the fair market value of a service contemplated in subsection (1), if the credit

provider delivers that service directly without paying a charge to a third party.

(3) If the actual amount paid by a credit provider to another person is not ascertainable when the consumer pays an amount to the credit provider for a fee or charge contemplated in subsection (1) and if, when it is ascertained, it is less than the amount paid by the consumer, the credit provider must refund or credit the difference to the consumer.

Interest

75. (1) Subject to subsections (5) and (6), the interest rate applicable to an amount in default or an overdue payment under a credit agreement must not exceed the highest interest rate applicable under that agreement.

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

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

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

(5) Despite any provision of the common law or a credit agreement to the contrary, the interest contemplated in section 73(1)(f) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.

(6) Despite any provision of a credit agreement to the contrary, no interest may accrue on overdue amounts contemplated in section 73(1)(d), (e), (f), (h), (j), (k) or (l).

Changes to interest, fees or charges

76. (1) A credit provider must give prior written notice of at least five business days to a consumer setting out particulars of a change concerning—

- (a) the periodic service fees, or the method of calculating such fees, that may be charged under the credit agreement; or
- (b) the amount of any other fee or charge, or the frequency or time for payment of such fee or charge.

(2) 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 five business days after the day on which a change in the variable interest rate takes effect, setting out—

- (a) the new rate; or
- (b) if a rate is determined by referring to a reference rate as contemplated in section 75(3), the new reference rate.

Maximum rates of interest, fees and charges

77. (1) The Minister must prescribe—

- (a) maximum amounts in respect of initiation-, service-, default administration-, and payment facilitation fees relative to the principal debt, for purposes of section 73(1)(d), (e), (h) and (l);
- (b) maximum rates or limits, and methods of calculation, in respect of interest, for purposes of section 73(1)(f); and
- (c) maximum amounts or limits in respect of collection commission and legal costs for purposes of section 73(1)(i) and (j).

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

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

(4) The Minister must state the date on which any maximum, limit or rate in terms of this section will come into effect.

Credit insurance

78. (1) A credit provider may require a consumer to purchase and maintain, during the term of their credit agreement, credit insurance—

- (a) not exceeding, at any time during the duration of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their credit agreement;
 - (b) in the case of a mortgage agreement in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
 - (c) in the case of a credit agreement that deals with movable property, against damage or loss of the property to which the credit agreement relates, not exceeding, at any time during the duration of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their credit agreement.
- (2) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1)—
- (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 (4); and
 - (b) in the case of an annual premium, the premium must be recovered from the consumer within the applicable year.
- (3) With respect to any policy of insurance arranged by a credit provider as contemplated in subsection (2), the credit provider must—
- (a) not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider;
 - (b) disclose to the consumer, in terms of section 67—
 - (i) the cost to the consumer of any insurance supplied;
 - (ii) the amount of any fee, commission, remuneration or benefit receivable by the credit provider in relation to that insurance; and
 - (iii) provide the consumer with a copy of that written policy; and
 - (c) 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.
- (4) If the consumer exercises the right under subsection (2)(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, requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums; and
- (b) a valid direction to the insurer, 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) 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 year's premium.

Cooling-off period

79. (1) A consumer may terminate a microlending transaction or microloan within a period of three business days after the date of the credit agreement, by repaying the principal debt in full to the credit provider, together with—

- (a) *pro rata* interest at the rate applicable to the credit agreement;
- (b) the initiation fee; and
- (c) any stamp duties payable in terms of the Stamp Duties Act, 1993 (Act No. 15 of 1993).

(2) If a consumer terminates the credit agreement pursuant to subsection (1), the credit provider may only stipulate for, demand or receive from the consumer the amounts charged consistent with subsection (1).

PART D

Statements of account

Limited application of this Part

80. (1) This Part does not apply in respect of a security provider until the time that the credit provider first calls on the security provider to satisfy an obligation of the consumer.

- (2) Section 81 does not apply in respect of a discount transaction or an incidental credit

agreement until the time that the higher price becomes payable, or the fee, charge or interest is first charged on the debt owed.

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

Statements of account

81. (1) A credit provider must, without charge, provide a consumer with a written monthly statement of account.

(2) Despite subsection (1)—

- (a) a consumer and credit provider may in writing agree to reduce the frequency of statements of account referred to in subsection (1), but no such agreement may provide for more than three months between delivery of successive statements of account; and
- (b) a statement of account need not be provided in respect of a credit facility if no amount has been debited or credited to the account during the statement period.

(3) The statement of account must specify, at a minimum, the following—

- (a) an opening balance, which must be the same as the closing balance shown in the immediately preceding statement of account;
- (b) the current balance;
- (c) any amounts credited or debited during the statement period;
- (d) any amounts currently overdue; and
- (e) any amount currently payable and the due date of payment.

(4) Subject to subsection (6), a credit provider must, at the request of a consumer and upon payment of the prescribed fee, provide the consumer with a duplicate copy of any statement of account already provided in terms of subsection (1).

(5) A statement requested in terms of subsection (4) must be provided—

- (a) within three business days, if all the requested information relates to a period of one

year or less before the request was made; or

- (b) within five business days, if any of the requested information relates to a period of more than one year before the request was made.

(6) A credit provider is not required to provide a statement of account under subsection (5) if it relates to transactions or balances that occurred prior to the closure of the account and that account has been closed for three years or more.

- (7) The Minister may prescribe the fee pursuant to subsection (4).

Disputed entries in accounts

82. (1) A consumer may in writing dispute all or part of any particular credit or debit entered under a credit agreement.

- (2) A credit provider who receives a notification of dispute in terms of subsection (1)—

- (a) must, within 14 business days, provide the consumer with a written explanation—

- (i) explaining the entry in reasonable detail; or
- (ii) confirming that the entry was in error either in whole or in part, and setting out the revised entry; and

- (b) must not begin enforcement proceedings on the basis of a default arising from the disputed entry until the credit provider has complied with paragraph (a).

Dating and adjustment of debits and credits in accounts

83. (1) A debit to a consumer's account takes effect as of the date on which the consumer incurred that debit.

(2) A credit to a consumer's account takes effect on the date the payment is received by the credit provider or debt collector, or otherwise on the date the consumer earns the right to have the account credited.

(3) A credit provider may, as far as it is consistent with this Act, subsequently adjust debits or credits to a consumer's account, and the account balances, so as to accurately reflect the legal obligations of the consumer and the credit provider.

Statement of settlement amount

84. (1) A credit provider must, at the request of a consumer, provide the consumer with a written statement of the amount required to settle a credit agreement, as calculated in accordance with section 90, as of a date specified in the request.

(2) The statement of the settlement amount referred to in subsection (1) must be provided—

(a) free of charge once per calendar year; or

(b) upon payment of the prescribed fee for every other time.

(3) A statement requested in terms of subsection (1)—

(a) must be provided within three business days; and

(b) is binding for the period specified by the credit provider after provision thereof, subject to subsection (4).

(4) A statement of the settlement amount 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.

(5) The Minister may prescribe the fee pursuant to subsection (2)(b).

Disputes concerning statements

85. (1) A consumer who has unsuccessfully attempted to resolve a disputed entry directly with the credit provider in terms of section 82, may apply to the court to resolve—

(a) a disputed entry shown on a statement of account;

(b) the amounts in relation to which the statement was sought; or

(c) a dispute concerning a statement of the settlement amount.

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

PART E

Alteration of credit agreement

Alteration of original or amended credit agreement

86. (1) Subject to section 76, any change to a credit agreement or an amended credit agreement, after it was entered into, is void unless the change—

- (a) reduces the consumer's liabilities under the agreement; or
 - (b) is agreed to in writing between the parties.
- (2) A credit provider may not unilaterally change—
- (a) the period for repayment of the principal debt; or
 - (b) the manner of calculating the minimum payment due periodically under a credit facility.

(3) If the parties to a credit agreement agree to change its terms, the credit provider must, not later than three business days after the date of the change, provide the consumer with a copy of the written amended agreement which complies with the requirements set out in section 68.

Reductions to credit limit under credit facility

87. (1) A consumer, under a credit facility, may at any time in writing—

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

(2) After receiving a notification 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 notification from the consumer.

(3) Subject to section 43, a credit provider under a credit facility may, by written notification to the consumer, reduce the credit limit under that credit facility to take effect on a specified date.

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

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

Increases in credit limit under credit facility

88. (1) Subject to subsections (2) and (3), a credit provider may increase a credit limit under a credit facility only upon written request made by the consumer.

(2) Before increasing a credit limit in terms of subsection (1), the credit provider must complete a fresh affordability assessment as required by section 61.

(3) If the consumer, at the time of applying for the credit facility or at any later time, has specifically requested the option of having the credit limit increased from time to time, a credit provider must, before increasing the credit limit, complete a fresh affordability assessment as required by section 61.

(4) 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 section 68.

CHAPTER 6 COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

PART A Collection and repayment practices

Charges to other accounts

89. (1) It is lawful for a consumer to provide, a credit provider to request, or a credit agreement to include, a written authorisation to the credit provider to make a charge or series of charges contemplated in section 65(2)(i), if such authorisation meets all the following conditions—

- (a) the charge or series of charges may be made only against an asset, account, or amount that has been—
 - (i) deposited by or for the benefit of the consumer and held by that credit provider or that third party; and

- (ii) specifically named by the consumer in the authorisation;
- (b) the charge or series of charges may be made only to satisfy—
 - (i) a single obligation under the credit agreement; or
 - (ii) a series of recurring obligations under the credit agreement, specifically set out in the authorisation;
- (c) the charge or series of charges may be made only for an amount that is—
 - (i) calculated by reference to the obligation it is intended to satisfy under the credit agreement; and
 - (ii) specifically set out in the authorisation; and
- (d) the charge or series of charges may be made only on or after a specified date, or series of specified dates—
 - (i) corresponding to the date on which an obligation arises, or the dates on which a series of recurring obligations arise, under the credit agreement; and
 - (ii) specifically set out in the authorisation.

(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 notify the consumer in writing, setting out the particulars as required by this section of the charge or charges to be made under that authorisation.

(3) If there is a conflict between a provision of this section and a provision of the Payment System Management Act, 2023 (Act No. 14 of 2023), the provisions of that Act prevail.

Early payments and early settlements

90. (1) Subject to subsection (6), a consumer may prepay any amount owed to a credit provider under a credit agreement at any time, without notice or penalty.

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

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

- (a) firstly, to satisfy any due or unpaid interest charges;
 - (b) secondly, to satisfy any due or unpaid fees or charges; and
 - (c) thirdly, to reduce the amount of the principal debt.
- (4) Subject to subsection (6), a consumer is entitled to settle the credit agreement at any time, with or without advance notice to the credit provider.
- (5) Subject to subsection (6), the amount required to settle a credit agreement is the total of the following amounts—
- (a) the unpaid balance of the principal debt at that time; and
 - (b) the unpaid interest and all other fees and charges that may be charged consistent with this Act up to the settlement date.
- (6) In respect of a mortgage agreement, and such other credit agreements as may be prescribed by the Minister, the principal debt of which equals or exceeds the threshold value determined by the Minister, the amount required to settle the credit agreement is the total of the following amounts—
- (a) the unpaid balance of the principal debt at that time;
 - (b) the unpaid interest and all other fees and charges that may be charged consistent with this Act up to the settlement date; and
 - (c) at a fixed rate of interest, an early termination charge of no more than the prescribed charge or, if no charge has been prescribed, a charge calculated in accordance with paragraph (d); or
 - (d) other than at a fixed rate of interest, an early termination charge equal to no more than the interest that would have been payable under the agreement for a period equal to the difference between—
 - (i) three months; and
 - (ii) the period of notice of settlement if any, given by the consumer.
- (7) Despite subsection (6), in respect of the credit agreements referred to in subsection (6), the parties may agree on a lower early termination charge pursuant to paragraphs (c) or (d) of

subsection (6).

- (8) The Minister may prescribe—
 - (a) the types or categories of credit agreements and the threshold value of the principal debts under those agreements, pursuant to subsection (6); and
 - (b) the maximum early termination charge, pursuant to subsection (6)(c).

Application of prescription on debt

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

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

- (a) which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969); and
- (b) where the consumer raises the defence of prescription, or would reasonably have raised the defence of prescription had the consumer been aware of such a defence, in response to a demand, whether as part of legal proceedings or otherwise.

PART B

Surrender of goods

Surrender of goods

92. (1) A consumer under an instalment agreement—

- (a) may give written notice to the credit provider to terminate the agreement; and
- (b) return the goods to which the credit agreement relates to the credit provider's place of business during ordinary business hours within three business days after the date of the notice referred to under paragraph (a), 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 receiving goods tendered in terms of subsection (1)(b), a credit provider must give the consumer written notice setting out the estimated value of the goods.

(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), and resume possession of any goods that are in the credit provider's possession, unless the consumer is in default under the credit agreement.

(4) If the consumer—

- (a) is in default under the credit agreement; or
- (b) does not respond to the notice under subsection (2),

the credit provider must sell the goods as soon as practical for the best price reasonably obtainable.

(5) After selling any goods in terms of this section, a credit provider must—

- (a) credit or debit the consumer with a payment or charge equivalent to the proceeds of the sale, less any expenses reasonably incurred by the credit provider in connection with the sale of the goods; and
- (b) give the consumer a written notice stating the following—
 - (i) the settlement value of the credit agreement immediately before the sale;
 - (ii) the gross amount realised on the sale;
 - (iii) the net proceeds of the sale after deducting all other fees and charges that may be charged consistent with this Act, and reasonable costs allowed under paragraph (a); and
 - (iv) the amount credited or debited to the consumer's account.

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

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

(8) If a consumer—

- (a) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence debt enforcement proceedings pursuant to section 94; or
 - (b) pays the amount demanded after receiving a demand notice, the credit agreement is terminated upon remittance of that amount.
- (9) In either event contemplated in subsection (8)—
- (a) fees and charges that may be charged consistent with this Act; and
 - (b) interest at the rate applicable to the credit agreement on any outstanding amount demanded by the credit provider in terms of subsection (7),

are payable by the consumer from the date of the demand until the date that the outstanding amount is paid.

Disputed sale of goods

93. (1) A consumer who has unsuccessfully attempted to resolve a disputed sale of goods in terms of section 92 directly with the credit provider may apply to the court to review the sale.

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

PART C

Debt enforcement

Required procedures before debt enforcement

94. (1) Despite any provision of law or a contract to the contrary and subject to subsection (2), if the consumer is in default under a credit agreement, the credit provider—

- (a) must, in writing, draw the default to the notice of the consumer and propose that the parties discuss the default within a period of at least 15 business days, with the intent that the parties attempt to resolve any possible dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) may not commence debt enforcement proceedings before first providing notice as

contemplated in paragraph (a).

(2) In the event of the consumer being in default under a credit agreement on two or more occasions, the period referred to under subsection (1)(a) is reduced to 10 business days.

(3) Subject to subsection (4), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with all other fees and charges that may be charged consistent with this Act up to the time the default was remedied.

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

(a) the sale of any goods to which the credit agreement relates pursuant to—

(i) an attachment order; or

(ii) surrender of goods in terms of section 92;

(b) the execution of any other court order enforcing that agreement;

(c) the termination thereof; or

(d) the court ordered that the debt that underlies a credit agreement is extinguished: Provided that where only a portion of the debt due under a credit agreement was extinguished, this subsection applies only in respect of the portion so extinguished.

Debt procedures in court

95. (1) Despite any provision of law or a contract to the contrary and subject to subsection (2), a credit provider may approach a court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and—

(a) the required minimum number of business days have elapsed since the credit provider notified the consumer as contemplated in section 94(1)(a) or 94(2);

(b) the consumer has—

(i) not responded to that notice; or

(ii) responded to the notice by rejecting the credit provider's proposals; and

- (c) in the case of an instalment agreement, the consumer has not surrendered the goods to which the credit agreement relates to the credit provider as contemplated in section 92.
- (2) In addition to the circumstances contemplated in subsection (1), in the case of an instalment agreement, 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) any goods to which the credit agreement relates have been sold pursuant to a surrender of the goods in terms of section 92; 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 a contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that—
- (a) in the case of proceedings to which sections 92 or 94 apply, the procedures required by those sections have been complied with; and
 - (b) the credit provider has not approached the court despite the consumer having—
 - (i) surrendered the goods to which the credit agreement relates to the credit provider and before those goods have been sold in terms of section 92;
 - (ii) agreed to a proposal made in terms of section 94(1)(a) and acted in good faith in fulfilment of that agreement;
 - (iii) complied with an agreed plan as contemplated in section 94(1)(a); or
 - (iv) brought the payments under the credit agreement up to date, as contemplated in section 94(1)(a) or 94(3).
- (4) In any proceedings contemplated in this section, if the court determines that the credit provider has not complied with subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(b) the court must—
- (a) adjourn the matter before it; and
 - (b) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed.

Automatic interdict against removal or use of goods

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

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

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

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

Emolument attachment and garnishee orders

97. No court shall make—

- (a) an emolument attachment order;
- (b) a garnishee order; or
- (c) an order referred to in section 65A(1) of the Magistrates' Court Act, 1944 (Act 32 of 1944),

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

- (i) any goods to which the credit agreement relates cannot be recovered by the credit provider by reason of the fact that without any fault on the credit provider's part those goods have been destroyed or become lost;
- (ii) the consumer is no longer in possession of those goods and the credit provider cannot locate the whereabouts thereof; or

- (iii) those goods have been seized under another law or by order of court, and that it is unlikely that the credit provider will obtain possession thereof.

Prohibited collection and enforcement practices

98. (1) A credit provider or debt collector may not—

- (a) take possession of, or retain, the consumer's physical identity document, credit or debit card, other bank account or automatic teller machine access card or any similar identifying document or device as security or collateral, or payment method;
- (b) require the consumer to disclose the consumer's personal identification code or number to be used to access any credit or debit card, other bank account or automatic teller machine access card, or any similar device; or
- (c) direct or permit any other person to do anything contemplated in this section on behalf of, or as an agent of, the credit provider or debt collector.

(2) A credit provider or debt collector may not unlawfully repossess any goods to which the credit agreement relates.

(3) A credit provider or debt collector may not—

- (a) harass, or have unnecessary or excessive contact with a consumer or any other person in relation to the payment of a debt;
- (b) use force or threaten to use force against a consumer or any other person with whom the consumer has family ties or a familial or personal relationship;
- (c) act towards a consumer or any other person with whom the consumer has family ties or a familial or personal relationship in an excessive or intimidating manner;
- (d) make use of fraudulent or misleading representations, including—
 - (i) the simulation of legal proceedings;
 - (ii) the use of simulated official or legal documents;
 - (iii) representation as a police officer, deputy sheriff of court, messenger of court, or other officer of court or any similar person; or
 - (iv) the making of unjustified threats to enforce rights;

- (e) spread, or threaten to spread, false information concerning the creditworthiness of a consumer;
- (f) harass the consumer or disclose the existence of the debt to third parties at the consumer's workplace;
- (g) publicly shame the consumer;
- (h) contravene or fail to comply with any applicable provision of this Act; or
- (i) behave or act in any manner amounting to conduct which is contrary to consumer protection principles or the public interest.

(4) For purposes of subsection (3)(i), the Consumer Credit Regulator may provide for further consumer protection principles in relation to prohibited collection and enforcement practices in a standard.

Recovery of debt

99. A credit provider or debt collector must not recover from a consumer any amount other than the unpaid balance of the principal debt, the unpaid interest charges and any other fees and charges that may be charged consistent with this Act.

CHAPTER 7 COMPLAINTS

Complaints to Consumer Credit Regulators

100. (1) Any person may, after exhausting the available internal complaint resolution mechanisms, submit a written complaint concerning an alleged contravention of this Act to the Consumer Credit Regulator, in the form and manner as may be provided for in a standard.

(2) After receiving a complaint in terms of subsection (1), the Consumer Credit Regulator may cause the complaint to be investigated.

(3) Before investigating a complaint involving a public entity, the Consumer Credit Regulator must notify the relevant regulatory or supervisory authority of that public entity of the complaint and the intention to investigate it.

(4) After completing an investigation into a complaint, the Consumer Credit Regulator may, among other—

- (a) refer the matter to the relevant prosecuting or law enforcement authority, if the complaint concerns an offence in terms of this Act; and
 - (b) may take any appropriate action as is relevant for the specific circumstances, including, but not limited to—
 - (i) the issuing of a directive to the registrant in terms of section 33; or
 - (ii) the imposition of an administrative sanction on the registrant pursuant to section 35.
- (5) The Consumer Credit Regulator may provide for the process and procedures for the investigation of complaints in a standard.
- (6) A complaint in terms of this Act may not be made to the Consumer Credit Regulator more than three years after—
- (a) the act or omission that is the cause of the complaint; or
 - (b) in the case of a course of conduct or continuing practice, the date that the conduct or practice ceased.

Court orders to enforce Act

101. (1) Where a registrant, former registrant or unregistered person has contravened any provision of this Act, the court may make any order considered appropriate for the purposes of enforcing this Act or protecting the interests of consumers.

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

- (a) direct the person to undertake a specified act, or refrain from undertaking a specified act, in order to—
 - (i) remedy the effects of the contravention;
 - (ii) compensate persons who have suffered loss because of the contravention;
 - (iii) ensure that the person does not commit further contraventions of this Act; or
 - (iv) prevent the disposal of evidence; and

- (b) include an order for the attachment of assets to prevent their concealment, removal, dissipation or destruction.
- (3) The court may in appropriate circumstances issue an interim order pending the final determination of the matter.

CHAPTER 8 ENFORCEMENT OF ACT

PART A Inspections and searches

Appointment of inspectors and investigators

102. (1) The Consumer Credit Regulators may—

- (a) designate employees; and
- (b) appoint suitably qualified persons,

as inspectors.

(2) The Consumer Credit Regulator must issue each inspector with a certificate stating that the person has been appointed as an inspector in terms of this Act.

(3) When an inspector performs any function in terms of this Act, the inspector must—

- (a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (2); and
- (b) show that certificate to any person who—
 - (i) is affected by the inspector's actions in terms of this Act; or
 - (ii) requests to see the certificate.

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

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

Authority to inspect and investigate

103. (1) The Consumer Credit Regulators may, without prior notification to the registrant concerned, authorise a person appointed under section 102 to conduct an on-site inspection of, or to investigate, the business and affairs of the registrant.

(2) Before conducting an on-site inspection of, or investigate, the business and affairs of a public entity, the Consumer Credit Regulator must consult with the relevant regulatory or supervisory authority of that public entity.

(3) Subject to section 105(4), a person referred to in subsection (1) may, at any time during business hours enter and search the premises of the registrant.

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

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

(5) Before questioning any person, the Consumer Credit Regulator—

- (a) must advise that person of the right to be assisted at the time by a legal practitioner; and
- (b) allow that person to exercise that right.

(6) A person questioned by the Consumer Credit Regulator must answer each question truthfully and to the best of their ability, but—

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

(7) No self-incriminating answer given or statement made by any person to the Consumer Credit Regulator or the person conducting the investigation is admissible as evidence, against the

person who gave the answer or made the statement, in criminal proceedings in any court, except in criminal proceedings for perjury, and then only to the extent that the answer or statement is relevant to prove the offence charged.

(8) Following an inspection or an investigation, and if the Consumer Credit Regulator considers that the registrant is contravening or failing to comply with, or has contravened or failed to comply with, any provision of this Act or a condition of its registration, the Consumer Credit Regulator may take any appropriate action as is relevant for the specific circumstances, including, but not limited to—

- (a) issuing of a directive to the registrant in terms of section 33; or
- (b) imposition of an administrative sanction on the registrant pursuant to section 35.

(9) The Consumer Credit Regulator may, by means of any appropriate public statement, make known the status, outcome and details of an inspection or investigation if such disclosure is in the public interest.

Powers to enter and search

104. (1) A person who is authorised under section 103 to enter and search premises may—

- (a) enter upon or into those premises and require the production of the accounts, accounting and other records, books, documents or other items related to the inspection or investigation;
- (b) search those premises for the accounts, accounting and other records, books, documents or other items related to the inspection or investigation;
- (c) open, or cause to be opened any strong room, safe or other container in which the inspector suspects the accounts, accounting and other records, books, documents or other items related to the inspection or investigation are kept;
- (d) search any person on those premises if there are reasonable grounds to believe that the person has personal possession of an article or document that has a bearing on the inspection or investigation;
- (e) examine any accounts, accounting and other records, books, documents or other items on or in those premises that has a bearing on the inspection or investigation;
- (f) request information or explanations about any accounts, accounting and other records, books, documents or other items related to the inspection or investigation from the

owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;

- (g) take extracts from, or make copies of, any accounts, accounting and other records, books, documents or other items related to the inspection or investigation on or in the premises;
 - (h) use any computer system on the premises, or require assistance of any person on the premises to use that computer system, to—
 - (i) search any data related to the inspection or investigation contained in or available to that computer system; and
 - (ii) reproduce any record from that data;
 - (i) seize any output related to the inspection or investigation from that computer for examination and copying;
 - (j) if necessary and against issue of a receipt, attach and remove from the premises for examination and safekeeping anything that has a bearing on the inspection or investigation; and
 - (k) require the registrant to produce, at a specific time and place, the accounts, accounting and other records, books, documents or other items of the registrant or related to the inspection or investigation.
- (2) Section 103(7) applies to an answer given or statement made to an inspector or investigator in terms of this section.
- (3) An inspector or investigator may, with the written authority of the Consumer Credit Regulator, also inspect the accounts, accounting and other records, books, documents or other items of any person or corporate entity if the Consumer Credit Regulator—
- (a) has reason to believe that the registrant has or had a direct or indirect interest in the business of that person or corporate entity;
 - (b) has reason to believe that such person or corporate entity has or had a direct or indirect interest in the business of the registrant; or
 - (c) considers it necessary for a proper inspection or investigation of the affairs of the registrant that those accounts, accounting and other records, books, documents or other items be inspected or investigated, and the provisions of subsection (1) apply with the

necessary changes in respect of such an inspection or investigation.

(4) For the purposes of subsection (3)(b), a person who holds shares as a nominee or in trust on behalf of another person in a registrant, is deemed to have an interest in the registrant, and must on request of the inspector disclose the name of that other person.

(5) The registrant whose accounts, accounting and other records, books, documents or items have been seized under subsection (1)(j), or their lawful representative, is entitled to examine, make entries in and make extracts from them during office hours under such supervision as the Consumer Credit Regulator or an inspector or investigator may determine.

(6) On completion of an inspection or investigation in terms of this Act, or at such intervals as the Consumer Credit Regulator may determine, the inspector or investigator must prepare a report which must be submitted to the Consumer Credit Regulator, and the Consumer Credit Regulator must transmit a copy of the report to the registrant.

(7) A person authorised to conduct an inspection or investigation in terms of section 103 may be accompanied and assisted by a police officer.

Conduct of entry and search

105. (1) A person who enters and searches any premises under section 104 must conduct the entry and search with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) During any search under section 104(1)(d), only a female inspector or police officer may search a female person, and only a male inspector or police officer may search a male person.

(3) A person who 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 practical after achieving the purpose for which it was removed.

(4) An inspector or investigator may take any action referred to in section 104 in respect of a private dwelling or part of such dwelling at or from which the registrant conducts the registered business, only if—

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

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

- (i) a warrant will be issued under subsection (5) if the inspector or investigator applies for such warrant; and
 - (ii) the delay in obtaining a warrant would prejudice the object of the inspection or investigation, or failure to act immediately may prejudice securing the accounts, accounting and other records, books, documents or other items for supervisory or enforcement action by the Consumer Credit Regulator; or
- (c) consent to such actions have been given by the owner or person in physical control of the premises after that owner or person was informed that there is no obligation to admit the inspector in the absence of a warrant.

(5) On application by an inspector or investigator, a judge or a magistrate having jurisdiction in the area where the premises in question are located may issue a warrant referred to in subsection (4).

(6) A judge or a magistrate may only issue a warrant referred to in subsection (4) on written application by an inspector or investigator setting out under oath or affirmation the grounds why it is necessary for the inspector or investigator to gain access to the relevant premises.

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

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

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

(9) A police officer who is assisting a person who is authorised to enter and search premises under section 104, 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.

(10) Before using force in terms of subsection (9), a police officer must audibly demand admission and must announce the purpose of the entry, unless it is reasonable to believe that doing so may induce someone to destroy or dispose of an article or document that is the object of the search.

Costs of inspection and investigation

106. If the Consumer Credit Regulator, after considering the results of an inspection or investigation in terms of this Act, is satisfied that the registrant is not conducting its affairs in terms of the Act, the expenses incurred by and the remuneration of—

- (a) an inspector appointed under section 102(1)(b); or
- (b) a person appointed or contracted under section 102(3),

may be recovered from the registrant.

Disclosure to certain parties

107. If, in the opinion of the Consumer Credit Regulator, it is necessary or desirable to do so for the purposes of this Act or other applicable laws, the Consumer Credit Regulator may convey any information obtained during the exercise of its functions and powers under this Act to, among others, the following persons:

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

PART B Offences

Breach of confidence

108. (1) It is an offence to disclose any confidential information concerning the affairs of any

person obtained in carrying out any function in terms of this Act.

- (2) Subsection (1) does not apply to information disclosed—
 - (a) for the purpose of the proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice; or
 - (c) at the request of a person referred to in section 107.

Offence by non-natural person

109. Where an offence is committed by a non-natural person, a person—

- (a) who is a director, controller, or partner; or
- (b) who is responsible for the management of the affairs of the non-natural person,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without their consent or connivance and that they exercised such diligence to prevent the commission of the offence as they ought to have exercised, having regard to the nature of their function in that capacity and to the circumstances.

Offences relating to Consumer Credit Regulators

110. (1) It is an offence to hinder, oppose or obstruct any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by this Act.

- (2) A person commits an offence who—
 - (a) attempts to, or does anything to improperly influence a Consumer Credit Regulator or any other person exercising a power or performing a duty delegated, conferred or imposed on that person by this Act;
 - (b) knowingly provides false information to a Consumer Credit Regulator; or
 - (c) without authority, but claiming to have authority in terms of section 103—
 - (i) enters or searches premises; or
 - (ii) attaches or removes an article or document.

Penalties

- 111.** (1) Any person convicted of an offence in terms of this Act, is liable—
- (a) to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or
 - (b) if the convicted person is not a natural person as contemplated in section 109, to a fine not exceeding 10% of its annual turnover or N\$1 000 000, whichever amount is the greater.
- (2) When determining an appropriate penalty, the following factors must be considered:
- (a) the need for the penalty to be effective, proportionate and dissuasive;
 - (b) the nature, duration, gravity and extent of the contravention;
 - (c) any loss or damage suffered as a result of the contravention;
 - (d) the behaviour of the person convicted of an offence in terms of this Act, including, without limitation, any remedial action taken by the person;
 - (e) the market circumstances in which the contravention took place;
 - (f) the value of the credit agreement that formed the basis for the commission of the offence;
 - (g) the degree to which the person convicted of an offence in terms of this Act has co-operated with the Consumer Credit Regulator; and
 - (h) whether the person convicted of an offence in terms of this Act has previously been found in contravention of this Act.
- (3) For purposes of determining the appropriate penalty contemplated in subsection (1)(b), annual turnover must be calculated with reference to the total income of the non-natural person during the year immediately preceding the commission of the offence.

Magistrates' Court's jurisdiction to impose penalties

- 112.** Despite anything to the contrary contained in any other law, a Magistrates' Court has jurisdiction to impose any penalty provided for in section 111.

CHAPTER 9 GENERAL PROVISIONS

Power to issue standards

113. (1) The Consumer Credit Regulators may, by notice in the *Gazette*, issue such standards that may be considered necessary or advisable for the due carrying out of the provisions of this Act and to achieve the purpose and intent of this Act.

(2) The notice referred to in subsection (1) must state the date on which the standard will come into effect.

(3) Before issuing a standard, the Consumer Credit Regulator must—

- (a) obtain the approval of its board;
- (b) publish the proposed standard in the *Gazette* for public comment;
- (c) give the public not less than 30 calendar days after the date of publication of the proposed standard to make representations in writing to the Consumer Credit Regulator with respect to the proposed standard; and
- (d) take any such representations into account in determining whether to issue the standard as originally published or in a modified form.

(4) If the Consumer Credit Regulator considers it necessary on an urgent basis, the Consumer Credit Regulator may issue a standard without following the procedure set out in subsection (3), but any such standard ceases to have effect at the end of 90 calendar days after it has been issued, unless the procedure referred to in subsection (3) has been followed.

(5) The Consumer Credit Regulator may, by notice in the *Gazette*, revoke or modify a standard, subject to the procedure referred to in subsection (3).

Standards

114. (1) Without derogating from the generality of section 113(1), the Consumer Credit Regulators may issue the standards referred to in subsection (2).

(2) For the purposes of this Act, the Consumer Credit Regulators may issue standards relating to—

- (a) the qualification, experience, competency and other fit and proper requirements for

- applicants and key persons for purposes of section 12(4)(b);
- (b) the financial and operational resources for applicants for purposes of section 12(4)(d);
 - (c) the minimum requirements in respect of the complaint handling policy for purposes of section 12(4)(e);
 - (d) the form, content and manner of the application for registration, and the application fee payable, for purposes of section 13(1);
 - (e) the form, content and manner of the application for the review or variation of conditions, and the application fee payable, for purposes of section 16(2);
 - (f) the manner of payment of the renewal fee, for purposes of section 17(5);
 - (g) the documents to be held and maintained at the principal office, pursuant to section 19(2);
 - (h) the accounting records relating to all monies advanced or credit provided, interest, fees, costs and other charges raised, repayments received and all monies outstanding that must be kept by a credit provider, the manner and form in which it must be kept, and the required time for which it must be kept for purposes of section 21(1);
 - (i) the records relating to—
 - (i) all applications for credit and credit agreements to be kept by a credit provider, the form and manner in which it must be kept, and the required time for which it must be kept for purposes of section 21(2); and
 - (ii) the registered activities of a credit bureau and debt collector that must be kept, the form and manner in which it must be kept, and the required time for which it must be kept for purposes of section 21(3);
 - (j) the minimum requirements in respect of the compliance plans that must be kept for purposes of section 21(4);
 - (k) the periodical and other returns, statements and reports, as well as the dates, intervals and manner of submission thereof, pursuant to section 21(5);
 - (l) the form, content and manner of an application for approval of a change of name, use of another name or use of a shortened form or derivative of a name, and the application fee payable for purposes of section 22(3);

- (m) the form, content and manner of an application for approval of an acquisition, amalgamation or transfer of business, and the application fee payable for purposes of section 23(1);
- (n) the additional information that must be submitted to the Consumer Credit Regulator pertaining to the opening of a branch for purposes of section 24(1);
- (o) additional requirements for data management and control for purposes of section 26(4);
- (p) the minimum requirements for the training of registrants' employees, agents and other representatives, pursuant to section 27(2);
- (q) the form, content and manner of an application for cancellation of registration, and the application fee payable in terms of section 36(1);
- (r) further principles on treating consumers fairly, pursuant to section 39(4);
- (s) the minimum requirements in respect of the determination of a credit score for purposes of section 47(8);
- (t) the applicable reporting periods for purposes of section 48(1), (2) and (3);
- (u) such other information about the credit provided that must be reported to a credit bureau for purposes of section 48(1)(d);
- (v) the period of retention of any consumer credit information reported to a credit bureau in respect of section 49(1)(c);
- (w) standards for the filing, retention and reporting of consumer credit information by credit bureaus, pursuant to section 49(2);
- (x) the period within which information regarding a settlement of an obligation previously classified as adverse consumer credit information must be reported to credit bureaus for purposes of section 52(1);
- (y) the period within which a credit bureau must incorporate the information reported to it in terms of section 52(1) must be incorporated in their database for purposes of section 52(2);
- (z) the period for which a credit bureau must maintain a record of challenged information,

its status and the manner in which a challenge was resolved for purposes of section 53(9);

- (aa) for purposes of section 54(a), the nature of, time frame, form and manner in which consumer credit information held by credit bureaus must be reviewed, verified, corrected or removed;
- (bb) for purposes of section 54(b), the manner in which an external auditor contemplated in the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) may confirm that the consumer credit information referred to in section 54(a) has been reviewed, verified, corrected or removed;
- (cc) pursuant to section 57(3)—
 - (i) the statements that must be contained in an advertisement;
 - (ii) the statements that are prohibited in an advertisement;
 - (iii) the manner and form of a statement of comparative costs in an advertisement; and
 - (iv) the cautions or warnings concerning the use of comparative statements;
- (dd) the statements to be included for particular types of solicitation for purposes of section 57(5);
- (ee) the affordability assessment requirements in respect of section 62(2)(b);
- (ff) the additional minimum content requirements that must be included in credit agreements pursuant to section 68(3);
- (gg) further consumer protection principles in relation to prohibited collection and enforcement practices pursuant to section 98(4);
- (hh) the form and manner of a complaint concerning an alleged contravention of this Act, pursuant to section 100(1);
- (ii) the process and procedures for the investigation of complaints pursuant to section 100(5); and
- (jj) any other matter which under this Act is required or permitted to be determined by a standard.

(3) Different standards may be issued under subsection (2) in respect of different registrants, credit agreements, applications or forms, different categories of registrants or credit agreements, and different subcategories of a specific category of registrants or credit agreements, goods, services, classes or groups of goods or services, or consumers or categories of consumers.

(4) A standard issued under this section may, in respect of a contravention or a failure to comply with the standard, provide for a prescribed administrative penalty.

(5) If a registrant fails to pay an administrative penalty imposed in terms of subsection (4), the registrant is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(6) The administrative penalty payable in terms of subsection (4) and any interest thereon is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

Fees

115. (1) The Consumer Credit Regulator may, after considering any representation made under subsection (2), determine—

- (a) those matters in respect of which fees are payable under this Act;
- (b) the amount of the fee payable in respect of each such matter;
- (c) the persons by whom the fees must be payable and the manner of payment; and
- (d) where necessary, the payment of interest on overdue fees.

(2) Before making a determination with respect to fees under subsection (1), the Consumer Credit Regulator must publish information about the proposed fees through a notice in the *Gazette* and in such manner as may be appropriate in order to bring the proposed fees to the attention of persons who may be affected thereby, together with a statement that representations on the proposed fees may be made to the Consumer Credit Regulator within the time period specified in the notice, which period may not be less than 30 calendar days from the date of the notice.

(3) A fee determined by the Consumer Credit Regulator under subsection (1), or any change to such fee, comes into effect 30 calendar days after the date of the notice announcing the final fee or within such extended period as may be determined by the Consumer Credit Regulator, which period may not exceed 90 calendar days from the date that the notice was published in the *Gazette*.

Regulations

116. (1) The Minister may, on the recommendation of the Consumer Credit Regulator, make any regulations—

- (a) expressly authorised or contemplated elsewhere in this Act; and
- (b) regarding any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) Without derogating from the generality of subsection (1), the Minister may make regulations relating to—

- (a) the maximum permissible principal debt and maximum permissible duration of a microlending transaction pursuant to paragraphs (b) and (c) of the definition of “microlending transaction”, pursuant to section 7(1);
- (b) the maximum permissible duration of credit agreements, pursuant to section 7(2)(a);
- (c) the minimum deposits to be paid in terms of credit agreements, pursuant to section 7(2)(b);
- (d) the persons or entities to be regulated and supervised by each respective Consumer Credit Regulator for purposes of section 8(3);
- (e) the disqualification of any business activity pursuant to section 12(8);
- (f) pursuant to section 19(14), the administrative penalty in respect of a failure to appoint a principal officer or acting principal officer, or to notify the Consumer Credit Regulator on or before the dates pursuant to section 19(8), (9), (10) and (12);
- (g) pursuant to section 21(9), the administrative penalty in respect of a failure to submit required returns, statements, information and other reports;
- (h) pursuant to section 24(2), the administrative penalty in respect of a failure to notify the Consumer Credit Regulator on or before the dates pursuant to section 24(1);
- (i) pursuant to section 30(5), the administrative penalty in respect of a failure to comply with a directive issued in terms of section 30(2);
- (j) pursuant to section 31(8), the administrative penalty in respect of a failure to comply

with a notice issued in terms of section 31(1) or a directive issued in terms of section 31(6);

- (k) pursuant to section 33(6), the administrative penalty in respect of a failure to comply with a directive issued in terms of section 33(1);
- (l) the maximum financial penalty that may be imposed in terms of section 35(7)(g);
- (m) search and production fees in respect of section 42(6)(b);
- (n) maximum fees that may be charged to a consumer for accessing consumer credit information for purposes of section 49(3);
- (o) maximum amounts in respect of initiation-, service-, default administration-, and payment facilitation fees relative to the principal debt, for purposes of section 73(1)(d), (e), (h) and (l);
- (p) maximum rates and limits, and methods of calculation, in respect of interest, for purposes of section 73(1)(f);
- (q) maximum amounts and limits in respect of collection commission and legal costs, for purposes of section 73(1)(i) and (j);
- (r) the fee for a duplicate copy of a statement of account for purposes of section 81(4);
- (s) the fee for the statement of settlement amount for purposes of section 84(2)(b);
- (t) the types or categories of credit agreements and the threshold value of the principal debt, for purposes of section 90(6);
- (u) the maximum early termination charge for purposes of section 90(6)(c);
- (v) pursuant to section 114(4) and 116(5), the administrative penalty in respect of a failure to comply with a standard issued or regulation made;
- (w) the rate of interest payable on overdue and outstanding administrative and financial penalties imposed;
- (x) any matter or aspect considered necessary for the protection of present and future consumers;
- (y) any matter or aspect considered necessary for the protection and furtherance of the

integrity and stability of the consumer credit market in Namibia; and

- (z) the promotion of generally accepted principles of sound and ethical business practices and public regulation.

(3) Different regulations may be made under subsection (2) in respect of different registrants or credit agreements, different categories of registrants or credit agreements and different subcategories of a specific category of registrants or credit agreements, different kinds of credit agreements, goods, services, classes or groups of goods or services, or consumers or categories of consumers.

- (4) The Minister may publish the proposed regulations for public comment.

(5) A regulation made under this section may, in respect of a contravention or a failure to comply with the regulation, prescribe an administrative penalty.

(6) If a person fails to pay an administrative penalty imposed in terms of subsection (5), the person is liable to pay interest on the outstanding administrative penalty at the prescribed rate, payable from a date determined by the Consumer Credit Regulator.

(7) The administrative penalty payable in terms of subsection (5) and any interest thereon is a debt due to the Consumer Credit Regulator by the registrant and the Consumer Credit Regulator may recover such debt in terms of section 37.

(8) A person who fails to comply with a regulation commits an offence and is liable, on conviction, to a fine not exceeding N\$5 000 000 or to imprisonment for a period not exceeding ten years, or to both a fine and imprisonment.

Exemptions

117. (1) The Minister may exempt any person or category of persons, or specific type or category of credit agreements, from any provision of this Act.

- (2) An exemption referred to in subsection (1) may be made—

- (a) on the Minister's own initiative but after consultation with the Consumer Credit Regulator; or

- (b) on the recommendation of the Consumer Credit Regulator.

- (3) An exemption may not be granted if it unreasonably—

- (a) conflicts with the public interest;
 - (b) prejudices the interests of consumers; or
 - (c) frustrates the achievement of the purpose of this Act.
- (4) The Minister must consider the nature, scale and complexity of the business of the affected persons or of the relevant types of credit agreements.
- (5) With respect to any exemption granted under subsection (1), the Minister may impose any requirements or conditions that the Minister considers necessary or desirable in the circumstances.
- (6) The Minister may withdraw or amend an exemption granted under subsection (1) if the person concerned has contravened a provision of, or has failed to comply with, a condition determined by the Minister under subsection (5), or has otherwise acted contrary to the exemption.
- (7) The Minister must, before withdrawing or amending an exemption pursuant to subsection (6), give the person concerned a reasonable opportunity to be heard.
- (8) The Minister must publish any exemption granted under subsection (1) in the *Gazette*.

Indemnification

118. (1) The Consumer Credit Regulator or its employees or representatives or any person performing a function or exercising a power in terms of this Act, is not liable for damage caused by any action taken or report presented in good faith to further the objects of this Act, unless the damage is attributable to the fraud or gross negligence of the employee, representative or person.

(2) A credit provider and other sources of consumer credit information must indemnify a credit bureau for any type of action or damage awards that may result from inaccurate consumer credit information reported to it, if the credit bureau takes reasonable measures to ensure the information is correct when processed by the credit bureau.

Repeal of laws and transitional arrangements

119. (1) The repeal of the laws specified in this section does not affect the transitional arrangements, which are set out in Schedule 3.

(2) Subject to subsection (1) and the provisions of Schedule 3, the following Acts are hereby repealed—

- (a) the Usury Act, 1968 (Act No. 73 of 1968);
- (b) the Credit Agreements Act, 1980 (Act No. 75 of 1980); and
- (c) the Microlending Act, 2018 (Act No. 7 of 2018).

Financial services law

120. This Act is declared to be a financial services law.

Short title and commencement

121. This Act is called the Consumer Credit Act, 20.., and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1

CRITERIA FOR THE CLASSIFICATION OF A SMALL BUSINESS AS A MICRO-, SMALL-, OR MEDIUM-ENTERPRISE

<u>Category</u>	<u>No. of full time employees</u>	<u>and/or</u>	<u>Annual turnover (N\$)</u>
Micro-enterprise	1 to 10	and/or	0 to 300 000
Small-enterprise	11 to 30	and/or	300 001 to 3 000 000
Medium-enterprise	31 to 100	and/or	3 000 001 to 10 000 000

SCHEDULE 2

SOURCES OF CONSUMER CREDIT INFORMATION

- 1.** Utilities:
 - (a) Regional electricity distributors
 - (b) Bulk water suppliers
 - (c) Telecommunication service providers
- 2.** Public entities
- 3.** Courts and judicial officials
- 4.** Local authorities:
 - (a) Municipalities
 - (b) Town Councils
 - (c) Village Councils
- 5.** Any other person that provides goods or services that give rise to a credit agreement.

SCHEDULE 3

TRANSITIONAL PROVISIONS

Definitions

1. (1) In this Schedule—

"effective date" means the date on which this Act, or any relevant provision of it, comes into operation in terms of section 121;

"pre-existing credit agreement" means an agreement that was entered into before the effective date; and

"previous Act" means a law repealed by section 119.

(2) A reference in this Schedule—

(a) to a section by number is a reference to the corresponding section of—

(i) the previous Act, if the number is followed by the words "of the previous Act"; or

(ii) this Act, in any other case; and

(b) to an item or a sub-item by number is a reference to the corresponding item or sub-item of this Schedule.

Delayed application of required registration

2. (1) Where, on the effective date, a person is operating as a credit provider, a credit bureau or a debt collector, the person must make an application pursuant to section 12 within six months after the effective date to be registered to operate as a credit provider, a credit bureau or a debt collector.

(2) The person referred to in sub-item (1) may continue to carry on its business activities until their application for registration is granted or refused in terms of this Act.

(3) If a person referred to in sub-item (1) fails to make an application to the Consumer Credit Regulator for registration within the period referred to in sub-item (1), the Consumer Credit Regulator must take such action the Consumer Credit Regulator considers appropriate pursuant to section 29.

- (4) Sub-item (1) does not apply to existing registrations as contemplated in section 11.

Reporting of consumer credit information

3. Pursuant to section 48, a credit provider must, within six months after the effective date, report to all registered credit bureaus the information pertaining to pre-existing credit agreements.

Application of Act to pre-existing agreements

4. (1) This Act applies to a pre-existing credit agreement if that credit agreement would have fallen within the application of this Act in terms of Chapter 1 if this Act had been in effect when the agreement was made, subject to sub-items (2) to (5).

(2) Sections 55(4), 64, 66(1) and Part E of Chapter 4 of this Act do not apply to a pre-existing credit agreement.

(3) The provisions of this Act referred to in the first column of the following table apply to pre-existing credit agreements to the extent indicated in the second column:

Provision of this Act	Extent to which the provisions apply to a pre-existing credit agreement
Section 65, excluding subsection (2)(e)(iii) and (2)(k) thereof	Apply to a pre-existing credit agreement after 18 months from the effective date.
From Part C of Chapter 5, sections 72, 73, 74, 75 and 78	Apply to a pre-existing credit agreement after 18 months from the effective date.
Sections 90 and 99	Apply to a pre-existing credit agreement after 18 months from the effective date.

(4) For the purpose of this item, a change after the effective date to any pre-existing credit agreement constitutes the making of a new credit agreement, unless it is an amendment, deferral or waiver which brings about a change to—

- (a) the interest rate under a variable rate agreement;

- (b) the credit limit under a credit facility; or
- (c) provide credit as a result of the amendment, deferral or waiver,

provided such amendment, deferral or waiver is made in accordance with this Act or the credit agreement.

(5) A credit provider may not unilaterally cause any changes which bring about a credit agreement in terms of sub-item (4), and any such changes must be agreed to by both parties.

Maximum interest rates

5. The maximum annual finance charge rates determined in terms of the Usury Act, 1968 (Act No. 73 of 1968) and the Microlending Act, (Act No. 7 of 2018), and in effect immediately before the effective date continues in force, despite the repeal of those Acts, as the maximum interest rates until the Minister first prescribes maximum rates of interest in terms of section 77.

General preservation of notices and other instruments

6. (1) A notice given by any person to another person in terms of any provision of a previous Act must be considered as notice given in terms of any comparable provision of this Act, as from the date that the notice was given under the previous Act.

(2) A document that, before the effective date, had been served in accordance with a previous Act must be regarded as having been satisfactorily served for any comparable purpose of this Act.

(3) An order given by an inspector, in terms of any provision of a previous Act, and in effect immediately before the effective date, continues in effect, subject to the provisions of this Act.

(4) A complaint may not be made to the Consumer Credit Regulator in respect of an act or omission that is brought about by any obligation excluded in terms of item 4(2).

Continued enforcement of repealed laws

7. Despite the repeal of the previous Acts, for a period of three years after the effective date and in respect of a matter that occurred during the period of three years immediately before the effective date, the Consumer Credit Regulators may exercise any power in terms of any such previous Act to investigate and prosecute any breach of that Act, as if they were proceeding with a complaint in terms of this Act.

Standards and regulations

8. On the effective date, and for a period of 60 business days after the effective date, the Consumer Credit Regulators and the Minister may issue or make any standard or regulation contemplated in this Act without meeting the procedural requirements set out in sections 113, 116 or elsewhere in this Act, provided the Consumer Credit Regulator or the Minister has published such proposed standards or regulations in the *Gazette*, allowing a period of at least 30 calendar days for comment.