

THE CONSUMER CREDIT BILL, 2013  
(BILL NO....of 2013)

(to be presented by the Minister of Finance)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to bring the law on credit into conformity with the Constitution, the Financial Services Regulatory Authority Act, 2010 and other laws so as to promote a fair and equal access to credit products and for that purpose provide for-

- (a) the consolidation and reform of the law on credit;
- (b) the prohibition of certain unfair credit, credit-marketing practices and reckless credit provision;
- (c) the regulation of consumer credit and consumer credit information;
- (d) the establishment of the office of the Registrar of Credit under the Financial Services Regulatory Authority;
- (e) the development and promotion of consumer credit education and the education on the effects of consumer choices;
- (f) the debt counselling services and debt re-arrangement in cases of over-indebtedness;
- (g) the licensing of credit bureaux, credit providers, pawn brokers, credit agents and debt counsellors;
- (h) the establishment of rights and obligations relating to consumer credit and the protection of those rights;
- (i) the enforcement procedures on credit so as to provide proficient protection redress even for consumer who are subjected to abuse and exploitation;
- (j) the repeal of the Money Lending and Credit Financing Act, No.3 of 1991, Hire Purchase Act, No. 11 of 1969 and Pawn Broking Act No.13 of 1894; and
- (k) other incidental matters.

J. M. DLAMINI

*Attorney-General*

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A BILL

*Entitled*

An Act to provide for the regulation of consumer credit, protection of consumer credit rights and other incidental matters.

Enacted by the King and Parliament of Swaziland.

*Arrangement of Sections*

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PART I  
PRELIMINARY PROVISIONS

*Short title and Commencement*

1. (1) This Act may be cited as the Consumer Credit Act, 2013.  
  
(2) This Act shall come into force on a date to be appointed by the Minister by notice in the Gazette.

## *Interpretation*

2. In this Act, unless the context otherwise requires –

'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;
- (b) any available service; or
- (c) credit to be granted;

'affordable housing' includes any housing provided in terms of a housing scheme determined by the Government, low income earner housing assistance measure or any other measure or arrangement designed to-

- (a) facilitate access to credit for housing or housing delivery in the rural community; or
- (b) rehabilitate or upgrade existing housing stock, or related local authority infrastructure and services, for the benefit of low income earners and rural communities, low density populations and communities, or other persons who cannot independently provide for their own housing needs;

'agreement' includes an arrangement or understanding between or among two or more parties, which purports to establish a relationship in law between those parties;

'annual percentage rate' means the effective finance charge, prescribed as an annual rate in terms of section 37;

“arm’s length” means a transaction where each party to the transaction preserves its independent ability to bargain and the parties have acted severally and independently in forming their bargain;

'Authority' means Financial Services Regulatory Authority established under section 3 of the Financial Services Regulatory Authority Act, No. 2 of 2010;

'collection costs' means an amount that may be charged by a credit provider in respect of enforcement of monetary obligations of a consumer under a credit agreement, but does not include a default administration charge;

'confidential information' means personal information that belongs to a person and is not generally available to or known by others;

'consumer', in respect of a credit agreement to which this Act applies, means-

- (a) the party to whom goods or services are sold or otherwise acquired under a discount transaction, hire purchase agreement;
- (b) the party to whom money is paid, or credit granted, under a pawn transaction;
- (c) the party to whom credit is granted under a credit facility;
- (d) the mortgagor under a mortgage agreement;
- (e) the borrower under a secured or unsecured loan;
- (f) the guarantor under a credit guarantee; or
- (g) the party to whom or at whose direction money is advanced or credit granted under any other credit agreement;

'consumer credit information' means information concerning-

- (a) the credit history of a person, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, and related matters;
- (b) the financial history of a person, including the past and current income, assets and debts of the person, and other matters within the scope of the financial means, prospects and obligations of that person, as defined in section 76(4), and related matters;
- (c) the education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters of a person; or
- (d) the identity, including the name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters of a person;

'incidental credit agreement' means an agreement, irrespective of its form, in terms of which an account was tendered for goods or services that have been provided to the consumer, or goods or services that are to be provided to a consumer, where the intention was not credit over a period of time and either or both of the following conditions apply-

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

“company or body corporate' includes a partnership or association but does not include *luholiswane* or group savings scheme;

“company or body corporate related to another company or body corporate” means-

- (a) one of them has direct or indirect control over the whole or part of the business of the other; or
- (b) a person has direct or indirect control over both of them;

'continuous service' means the supply for consideration of a utility or service, other than credit or access to credit, or the supply of such a utility or service combined with the supply of any goods that are essential for the utilisation of that utility or service by the consumer, with the intent that, so long as the agreement to supply that utility or service remains in force, the supplier will make the service continuously available to be used, accessed or drawn upon-

- (a) from time to time as determined by the consumer; and
- (b) with any frequency or in any amount as determined, accessed, required, demanded or drawn upon by the consumer, subject only to any total use or cost limits set out in the agreement;

“court” means the Magistrate’s Court Act, 1938 or Small Claims Court Act, 2012 ;

'credit', when used as a noun, 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 agent' means a person licensed as a credit agent under section 66;

'credit bureau' means a person licensed as a credit bureau under section 63;

'credit agreement' means an agreement defined in section 20 of this Act;

'credit facility' means an agreement by a credit provider and a consumer pursuant to a credit agreement between the credit provider and the consumer to supply goods or services or grant credit to the consumer at any time the credit is needed by the consumer and either to-

- (a)
  - (i) defer the obligations of the consumer to pay any part of the cost of goods or services, or to repay to the credit provider any part of an amount granted to the consumer; or
  - (ii) bill the consumer periodically for any part of the cost of goods or services, or any part of an amount granted to the consumer; and
- (b) charge a fee or interest payable to the credit provider in respect of the deferred amount or billed amount not paid within the time provided in the agreement.



'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 liability of a consumer 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 similar device; or
  - (ii) any loss or theft of credit consequential to a loss or theft contemplated in subparagraph (i);

“credit institution” means a credit provider licensed to provide credit in terms of this Act;

'credit life insurance' includes cover payable in the event of death, disability, terminal illness, unemployment of the consumer, or other insurable risk that is likely to impair the ability of the consumer to earn an income or meet the obligations under a credit agreement;

'credit provider', means a person licensed as a credit provider under section 61;

'debt counselling services' means the financial service of –

- (a) evaluating a consumer for over-indebtedness;
- (b) assisting the parties to a credit agreement to develop and agree on a plan to bring payments under a credit agreement up to date when a consumer is in default;
- (c) assisting a consumer to achieve a re-arrangement of one or more obligation under a credit agreement; and
- (d) negotiating on behalf of a consumer with a credit provider on re-payment terms under a credit agreement;

'debt counsellor' means a person licensed as a debt counsellor under section 64;

'default administration charge' means a charge that may be imposed by a credit provider to cover administration costs incurred as a result of a consumer defaulting on an obligation under a credit agreement;

'deliver', unless otherwise provided for in this Act, and subject to section 25 means in respect of any document-

- (a) sending by hand, by fax, by email in printable form or by registered mail to the address chosen in the agreement by the proposed recipient as may have been amended from time to time or handing over in person to a recipient; or
- (b) where an agreement does not form the basis of the relationship between the deliverer and recipient, or if no address chosen in the agreement by the proposed recipient is available, sending by hand, by fax, by email in printable form or by registered mail to the last known address or registered address of the recipient or handing over in person to a recipient;

'developmental credit agreement' means a credit agreement defined in section 16(2);

'discount transaction' means an agreement, irrespective of its form, in terms of which-

- (a) goods or services are to be provided to a consumer over a period of time; and
- (b) more than one price is quoted for the goods or services, the lower price being applicable if the account 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 during the period;

'discount rate' means the rate determined by the Monetary Policy Consultative Committee in terms of section 43 of the Central Bank Order No. 6 of 1974;

'educational loan' means-

- (a) a student loan;
- (b) a school loan; or
- (c) another credit agreement entered into by a consumer for purposes related to the adult education, training or development of skill of the consumer;

'emergency loan' means a credit agreement entered into by a consumer to finance costs arising from or associated with-

- (a) a death, illness or medical condition affecting the consumer, a person who is dependent upon the consumer or a person for whom the consumer is financially responsible;
- (b) unexpected loss or interruption of income; or
- (c) catastrophic loss of or damage to home or property due to fire, theft, or natural disaster;

'Financial Services Regulatory Authority Act' means the Financial Services Regulatory Authority Act, No.2 of 2010.

'initiation fee' means a fee in respect of costs of initiating a credit agreement, and-

- (a) charged to the consumer by the credit provider; or

(b) paid to the credit provider by the consumer upon entering into the credit agreement;

'hire purchase agreement' means –

(1) a sale of movable property in terms of which-

(a) all or part of the price is deferred for any period in the life of the agreement and is to be paid by periodic payments;

(b) possession and use of the property is transferred to the consumer;

(c) ownership of the property 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 re-possess the property if the consumer fails to satisfy all of the consumer's financial obligations under the agreement;

(d) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred;

(2) an agreement in terms of which-

(a) temporary possession of any movable property is delivered to or at the direction of the consumer, or the right to use any such property is granted to or at the direction of the consumer; and

(b) payment for the possession or use of that property is-

(i) made on an agreed or determined periodic basis during the life of the agreement; or

(ii) deferred in whole or in part for any period during the life of the agreement; and

(c) at the end of the term of the agreement, ownership of that property either-

(i) passes to the consumer absolutely; or

(ii) passes to the consumer upon satisfaction of specific conditions set out in the agreement; and

(d) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred;

'licensed' means licensed to carry out a business or undertake activity in terms of this Act;

'licensee' means a person who has been licensed in terms of this Act;

“low income earner” means a person who earns a minimum of one thousand Emalangeni;

“*luholiswane*” means a rotating savings scheme;

'Minister' means the minister responsible for finance;

'mortgage' means the registration of a bond over immovable property that serves as security for a mortgage agreement;

'mortgage agreement' means a credit agreement that is secured by a mortgage;

“official languages” means Siswati and English declared under the Constitution;

**“ombudsman” means the person appointed as an ombudsman under the Financial Services Regulatory Authority Act;**

“once-off credit provider” means a person who grants credit once in six months to one person or as may be prescribed by the Minister;

'pawn transaction' means an agreement, irrespective of its form, in terms of which-

- (a) one party advances money or grants credit to another, and at the time of doing so, takes possession of goods as security for the money advanced or credit granted; and
- (b) either-
  - (i) the estimated resale value of the goods exceeds the value of the money provided or the credit granted; or
  - (ii) a charge, fee or interest is imposed in respect of the agreement, or in respect of the amount loaned or the credit granted; and
- (c) the party that advanced the money or granted the credit 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 the agreement;

'prescribed' means prescribed by regulations under this Act;

'principal debt' means the amount calculated in accordance with section 37 (1) (a);

'priority debt' means the mortgage agreement in respect of the primary residence of the consumer or a credit agreement for the purchase of an essential asset as prescribed;

'private dwelling' means any housing or building that is occupied as a residence, or any part of a structure or outdoor living area that is accessory to, and used principally for the purposes of, a residence;

'public interest credit agreement' means a credit agreement declared in terms section 21;

'reckless credit' means the credit granted to a consumer under a credit agreement concluded in circumstances described in section 78;

'Registrar of Credit' means the Registrar appointed in terms of section 13;

“group savings scheme” means a temporary financial scheme with entertainment, social or economic functions, which-

- (a) consists of two or more persons in a voluntary association, each of whom has pledged mutual support to the others towards the attainment of specific objectives;
- (b) establishes a continuous pool of capital by raising funds by means of the subscriptions of the members;
- (c) grants credit to and on behalf of members;
- (d) provides for members to share in profits from, and to nominate management of, the scheme; and
- (e) relies on self-imposed regulation to protect the interest of its members;

'savings and credit co-operative' means a SACCO as defined in the Financial Service Regulatory Authority Act;

'school loan' means a credit agreement in terms of which-

- (a) money is paid to a primary or secondary school by the credit provider on account of school fees or related costs for the benefit of the consumer's child or other dependant; or
- (b) a primary or secondary school defers payment of all or part of the school fees or related costs for the consumer's child or other dependant;

'secured loan ' means a credit agreement, irrespective of its form but not including an hire purchase agreement, in terms of which a person-

- (a) advances money or grants credit to another, and
- (b) retains, or receives a pledge or cession of any movable property or other thing of value as security for all amounts due under that 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 84 (2);

'sms' means a short message service provided through a telecommunication system;

'small business' means a person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related persons, at the time the agreement is made, is below the threshold value determined by the Minister in terms of section 11;

'student loan' means a credit agreement in terms of which-

- (a) money is paid by the credit provider to an institution of tertiary education on account of education fees or related costs for the benefit of the consumer or a dependant of the consumer; or
- (b) an institution of tertiary education defers payment of all or part of the consumer's education fees or related costs;

“utility” means the supply to the public of an essential-

- (a) commodity, such as electricity, water, or gas; or
- (b) service, such as waste removal, or access to sewage lines, telecommunication networks or any transportation infrastructure;

“unsecured loan” shall have the meaning ascribed to it in the Financial Institutions Act, 2005.

#### *Application*

3. (1) This Act applies to a credit agreement between parties dealing at arm's length and made in, or having an effect in the Kingdom of Swaziland.

(2) This Act shall not apply to a credit agreement in terms of which-

(a) the consumer is -

- (i) a company or body corporate whose asset or turnover value equals or exceeds the threshold determined by the Minister in terms of section 11;
- (ii) the state;
- (iii) legislature, executive and judiciary as defined in the Constitution; or
- (iv) local Government.

(b) the credit provider is the Central Bank of Swaziland;

(3) This Act does not apply to a credit agreement of a *liholiswane* or group saving scheme.

(4) The Act applies to a credit agreement or proposed credit agreement irrespective of whether the credit provider resides or has its principal office within or outside the Kingdom of Swaziland.

*Administration of Act*

4. This Act is a financial services law for the purposes of the Financial Services Regulatory Authority Act.

PART II

PROHIBITED CREDIT PRACTICES

*Prohibition against credit provision business without a licence*

5. (1) A person shall not provide, purport to provide or otherwise carry on as being authorised to provide credit or pawn broking unless that person-

- (a) is the holder of a credit provider licence; and
- (b) carries out the credit provision or pawn broking activities in accordance with this Act.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeneni (E20.000) or to imprisonment for a term not exceeding two (2) years or both.

(3) Notwithstanding subsection (1), a person may provide credit as a once-off credit provider or in an incidental credit agreement.

*Prohibition against debt counselling, credit bureau business without a licence*

6. (1) A person shall not carry on debt counselling or credit bureau business unless that person –

- (a) is the holder of a licence; and
- (b) carries out the debt counselling or credit bureau business in accordance with this Act.

(2) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand (20, 000) Emalangeneni or imprisonment for a period not exceeding two (2) years.

*Prohibited credit agreement*

7. (1) A credit agreement relating to the grant of credit, credit facility or credit guarantee, which is inconsistent with this Act, shall, subject to section 113, be void from the date the credit agreement was entered into.

(2) A credit provider whose credit agreement is void in terms of subsection (1), shall refund to the consumer any money paid by the consumer under that agreement to the credit provider, with interest calculated-

- (a) at the rate stipulated in that agreement; and
- (b) for the period from the date on which the consumer paid the money to the credit provider, until the date the money is refunded to the consumer.

*Prohibited supplementary agreement*

8. A credit provider shall 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 prohibited if it were included in a credit agreement.

*Restriction on entry into a credit agreement*

9. A credit agreement shall not be entered into with -

- (a) a person under the age of 18 years unassisted by a guardian;
- (b) a person who is subject to an order of a competent court holding that person to be mentally unfit and the credit provider knows, or can reasonably determine, that that person is the subject of such an order;
- (c) a credit provider who is subject to a directive of the Registrar to –
  - (i) stop offering, making available or extending credit under any credit agreement, or agreeing to do any of those things; or
  - (ii) stop offering, making available or extending credit under the particular form of credit agreement used by the credit provider;whether an appeal or review is available in respect of that directive; or
- (d) a person who grants or offers to grant credit without a licence.

*Prohibition against certain practices*

10. A credit provider shall not-

- (a) request or demand a consumer to-
  - (i) give the credit provider temporary or permanent possession of an instrument referred to in section 26 (1)(i) other than for the purpose of identification, or to make a copy of the instrument;
  - (ii) reveal any personal identification code or number contemplated in section 27(2)(1) (ii);
- (b) obtain in advance from a consumer a grant of power of attorney to the credit provider in respect of any matter related to the granting of credit in terms of this Act;
- (c) require a consumer to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time of signing;



- (d) require a consumer to consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with this Act;
- (e) require, direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
- (f) direct, or knowingly permit, any other person to do anything referred to in this section on behalf or for the benefit of the credit provider.

#### *Determination of threshold*

11. (1) The Minister shall, at the commencement of this Act, and at intervals of not more than five years, by notice in the Gazette, determine a monetary asset value or annual turnover threshold.

(2) A subsequent threshold shall take effect six months after the date on which it is published in the Gazette.

(3) Notwithstanding subsection (2), each successive threshold determination shall continue in effect until a subsequent threshold takes effect.

### PART III

#### ADMINISTRATION

##### *Establishment of office of registrar of credit*

12. There is established the office of the Registrar of Credit which shall be a department in the ministry responsible for credit.

##### *Appointment of Registrar of Credit*

13. (1) The Minister shall, on the recommendation of the Authority, appoint on conditions the Minister may determine and in compliance with the law governing the public service, an officer called the Registrar of Credit who shall head the office of the Registrar of Credit.

(2) The Authority shall, in consultation with the Registrar, appoint, on conditions the Authority may determine and in compliance with the laws governing the public service, such staff as is required by the Registrar of Credit to perform the duties of the office of Registrar of Credit.

(3) The tenure of office of the Registrar of Credit shall be a period of five (5) years which may be renewed for a period not exceeding five years.

(4) The Registrar and the staff of the office shall be remunerated out of the Consolidated Fund which shall be reimbursed from the funds of the Authority.

##### *Disqualification from appointment as Registrar.*

14. (1) A person shall not be appointed as the Registrar if that person –

- (a) is a holder of a credit provider, debt counsellor or credit bureau licence;
- (b) is a chairman, director or majority shareholder in a credit provider or credit institution or financial services provider company registered in Swaziland;
- (c) is an unrehabilitated insolvent in terms of the laws of any country;
- (d) has been convicted of theft, fraud, forgery or uttering a forged document or perjury or any other crime involving dishonesty or fraud during the last ten years;
- (e) is of unsound mind; or
- (f) has been a director or chairman of any financial services provider or credit institution that has been wound up in any country:

(2) Where the person referred to in subsection (1) (f) was a director of a subsidiary company which has been wound up as a result of its parent company being wound up and the Minister is satisfied that the subsidiary company did not wholly or partly cause the parent company to be wound up, the person shall be considered eligible for appointment as Registrar.

#### *Functions of Registrar of Credit*

15. The Registrar of Credit shall exercise the functions and have the power vested in the Authority in the regulation of financial services activities to -

- (a) regulate the activities of credit providers, credit institutions, credit bureaux, debt counsellors, pawn brokers and any other financial service provider who carry-on a credit provision business;
- (b) promote and support the development, where necessary, of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry to low income earners and rural communities;
- (c) prescribe appropriate conditions for the supplementary licensing of credit providers intending to enter into developmental credit agreements, in order to promote access to credit in the manner, and for the persons, contemplated in paragraph (b);
- (d) formulate and coordinate measures to inform and educate the public, including consumers and credit providers, on the consumer credit rights and obligations and its social and economic effects and control;
- (e) monitor and report to the Minister in respect of-
  - (i) credit availability, price and market conditions, conduct and trends;
  - (ii) market share, market conduct and competition within the consumer credit industry and the credit industry

- structure;
  - (iii) access to consumer credit by small businesses or persons contemplated in paragraph (b);
  - (iv) levels of consumer indebtedness and the incidence and social effects of over-indebtedness; and
  - (v) any other matter relating to the credit industry; and
- (f) conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve access to credit for persons contemplated in paragraph (b).

*Delegation of the powers and duties of the Registrar.*

16. (1) The Registrar may, on such conditions as the Registrar may determine, delegate any of the powers or assign any of the duties of the Registrar to an officer or employee of the office of the Registrar.
- (2) A delegation or assignment under subsection (1) shall not —
- (a) usurp the powers or duties of the Registrar and the Registrar may set aside any decision made in the exercise of the delegated powers; or
  - (b) prevent the exercise of the power or duty by the Registrar other than through a delegation.

*Removal of Registrar from office.*

17. The Minister may remove the Registrar from office —
- (a) where the Registrar becomes disqualified subject to any disqualification in section 14;
  - (b) where the Minister can demonstrate incompetence on the part of the Registrar; or
  - (c) where the Minister is of the opinion that the continued occupation of the office by Registrar is detrimental to the functioning of the credit industry.

*Report by Registrar to Authority.*

18. (1) The Registrar shall within three (3) months after the expiry of the financial year end of the office of the Registrar prepare and submit to the Authority a report on the activities of the office of the Registrar.
- (2) The Authority shall submit the report submitted under subsection (1) to the Minister in terms of section 27 of the Financial Services Regulatory Authority Act.

## PART IV

### CONSUMER CREDIT AGREEMENTS

#### *Distinction between a secured or unsecured credit*

19. Credit shall have the effect to be distinguished as secured or unsecured credit for the purposes of this Act.

#### *Credit agreement*

20. (1) A credit agreement is an agreement where the credit provider agrees to grant a credit of any type requested by a consumer and the consumer accepts that credit from the consumer.

(2) A credit agreement does not include-

- (a) a policy of insurance or credit extended by an insurer solely to maintain the payment of premiums on a policy of insurance;
- (b) a lease of immovable property; or
- (c) a transaction between a group savings scheme and a member of that group savings scheme in accordance with the rules of that group savings scheme.

#### *Classification of credit agreements*

21. (1) A credit agreement may be classified as a developmental or commercial credit agreement.

(2) A credit agreement is a developmental credit agreement if –

- (a) at the time the agreement is entered into, the credit provider holds a supplementary licence issued in terms of an application contemplated in section 65; and
- (b) the credit agreement is-
  - (i) between a savings and credit co-operative as credit provider, and a member of that savings and credit co-operative as consumer, if profit is not the dominant purpose for entering into the agreement, and the principal debt under that agreement does not exceed the prescribed maximum amount;
  - (ii) a loan specified in subsection (4); or
  - (iii) entered into for -
    - (aa) development of a small business;
    - (bb) the acquisition, rehabilitation, building or expansion of housing; or
    - (cc) any other prescribed purpose.

(3) The Minister may prescribe-

- (a) additional purposes, as contemplated in subsection (2)(b)(iii)(cc), that are designed to promote the socio-economic development and welfare of persons contemplated in section 15(b);
- (b) a maximum principal debt above which a credit agreement contemplated in section 21(4) does not automatically qualify as a developmental credit agreement; and
- (c) criteria and standards to be applied by the Registrar of Credit in considering whether a credit provider's dominant purpose for making an agreement was profit or a purpose other than profit, including but not limited to the extent to which the credit agreement concerned contributes to the socio-economic development and welfare of persons contemplated in section 15(b).

(4) The types of developmental credit agreement that may be entered into include-

- (a) an educational loan;
- (b) the first housing loan;
- (c) an emergency loan; and
- (c) any other loan as may be prescribed by the Minister.

(5) The types of commercial credit agreement that may be entered into include-

- (a) a hire purchase agreement;
- (b) a mortgage loan ;
- (c) a pawn transaction or discount transaction; and
- (d) any other loan as may be prescribed by the Minister.

(6) Where a person sells any goods or services and accepts, as full payment for those goods or services-

- (a) a cheque or similar 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 cheque or charge does not constitute a credit agreement for any purpose of this Act.

*Public interest credit agreement*

22. (1) Notwithstanding section 21, the Minister may, in order to promote the availability of credit in circumstances of natural disaster or similar emergency or any

circumstance the Minister considers to be in the public interest, by notice in the Government gazette, declare that a credit agreement entered into in specified circumstances, or for specified purposes, during a specific period or until the declaration is revoked, is a public interest credit agreement.

(2) The Minister may make the declaration in terms of subsection (4) with or without prior notice or consultation.

(3) In making the declaration the Minister shall prescribe -

- (g) the public interest circumstance in which credit may be granted or made available to a consumer;
- (h) the maximum permissible principal debt;
- (i) the maximum permissible duration of the credit agreement; and
- (j) the area within the Kingdom of Swaziland in which the consumer under such an agreement shall reside or carry on business.

#### *Application for credit*

23. Subject to section 9, any person may apply to a credit provider for credit.

#### *Pre-agreement statement or quotation*

24. (1) A credit provider shall not enter into a credit agreement unless the credit provider has delivered to the consumer a pre-agreement statement and quotation in the prescribed form.

(2) Subject to subsection (3) and section 25 within five days from the date on which a quotation is delivered in terms of subsection (1), the credit provider may at the request of the consumer, enter into the contemplated credit agreement at an interest rate or total credit cost , subject to section 39, that-

- (a) is at or below the interest rate or total credit cost quoted; or
- (b) is higher than the interest rate or total credit cost quoted by a margin no greater than the difference between the respective prevailing bank rates on the date of the quote, and the date the agreement is made..

(3) Where credit is extended for the purchase of an item with limited availability, the credit provider may state that the quotation provided in terms of this section is subject to the continued availability of the item during the period contemplated in subsection (2).

#### *Assessment of consumer*

25. (1) During an application for credit and consideration of that application by the credit provider, the prospective consumer shall fully and truthfully answer any requests for information made by the credit provider as part of the assessment required by this section.

(2) A credit provider shall not enter into a credit agreement without first taking reasonable steps to assess-

- (a) the proposed consumer's-
  - (i) understanding and appreciation of the risks and costs of the proposed credit, and of the rights and obligations of a consumer under a credit agreement;
  - (ii) debt re-payment history as a consumer under credit agreements;
  - (iii) existing financial means and prospects;
  - (iv) existing and future financial obligations; and
- (b) whether there is a reasonable basis to conclude that any commercial purpose may prove to be successful, where the consumer has such a purpose for applying for that credit agreement.

(3) A credit provider shall not enter into a reckless credit agreement with a prospective consumer.

(4) For purposes of this Act, it is a defence to an allegation that a credit agreement is reckless where-

- (a) the credit provider establishes that the consumer failed to fully and truthfully answer any requests for information made by the credit provider as part of the detailed assessment required by this section; and
- (b) the Authority or a court determines that the failure of the consumer to do so materially affected the ability of the credit provider to make a proper assessment.

(5) This section shall not apply to a pawn transaction, a public interest credit agreement or incidental credit agreement.

#### *Assessment mechanisms and procedures*

26. (1) Subject to subsections (2) a credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 25, provided that any such mechanism, model or procedure results in a fair and objective assessment.

(2) The Authority may issue guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 25.

#### *Unlawful provisions of credit agreement*

27. (1) A provision of a credit agreement is unlawful if its general purpose or effect is to -

- (a) deceive the consumer or subject the consumer to fraudulent conduct;
- (b) express an agreement by the consumer to-

- (i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or
- (ii) provide a personal identification code or number to be used to access an account;
- (c) purport to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
- (d) purport 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 83;

(2) In any matter before the court respecting a credit agreement that contains a provision contemplated in subsection (1), the court shall-

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

and make any further order that is just and reasonable in the circumstances to give effect to the principles of section 7 with respect to that unlawful provision, or entire agreement, as the case may be.

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

#### *Options before entry into agreement*

28. (1) The credit provider shall, before entry into an agreement, present to the consumer a statement of the following options and afford the consumer an opportunity to select any of those options-

- (a) to decline the option of pre-approved annual credit limit increases as provided for in section 55 (4), if the agreement is a credit facility; and
- (b) to be excluded from any-
  - (i) telemarketing campaign that may be conducted by or on behalf of the credit provider;
  - (ii) marketing or customer list that may be sold or distributed by the credit provider, other than as required by this Act; or



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

(2) A credit provider-

- (a) shall maintain a register in the prescribed manner and form of all options selected by consumers in terms of subsection (6); and
- (b) shall not act in a manner contrary to an option selected by a consumer in terms of subsection (6).

*Information and language*

29. (1) A credit provider shall offer a consumer an opportunity to choose in which of the two official languages the consumer wishes to exchange information or receive a document, and credit provider shall exchange such information or provide such document to the consumer accordingly.

(2) The information or document that is required to be exchanged with or delivered to a consumer in terms of this Act shall be-

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

(3) For the purposes of this section, a document is in plain language where it is reasonable to conclude that an ordinary consumer for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and importance of the document without undue effort, having regard to-

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

(4) The Authority may publish guidelines for methods of assessing whether a document satisfies the requirements of subsection (2)(b).

*Refusal or grant of credit*

30. (1) A credit provider may refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.

(2) A credit provider shall, on request by the consumer, give reasons, in writing 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 by the consumer, 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.

(3) In response to a request in terms of subsection (2), a credit provider who has based its decision on an adverse credit report received from a credit bureau shall, give the consumer in writing, the name, address and other contact particulars of that credit bureau.

*Form of credit agreement*

31. A document that records a credit agreement shall be in writing and in the form prescribed by the Minister for that class of credit agreements.

*Delivery of credit agreement document*

32. (1) A credit provider shall deliver to the consumer, without charge, a copy of a credit agreement document.

(2) The credit provider and the consumer in a credit agreement shall choose in their agreement an address for delivery of a document.

(3) The parties to a credit agreement may change the address referred to in subsection (1) by delivering to the other party a written notice of address change.

*Issue of cards, personal identification code or other devices*

33. (1) A credit provider may, pursuant to the grant of a credit facility under a credit agreement, issue a card, credit card, personal identification code, number or similar identification device to a consumer.

(2) Where a credit agreement provides for access to its credit facility by use of a card, credit card, personal identification code or number or similar identification device, the document that records that credit agreement shall set out a contact telephone number at which the consumer may report the loss or theft of that card, personal identification code or number or other device.

(3) A credit provider shall not impose a liability on a consumer for any use of a

credit facility after the time that the consumer has reported the loss or theft of the associated card, personal identification code or number or similar device, unless-

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

*Disclosure of location of goods*

34. (1) This section applies where in a credit agreement the consumer has goods and in terms of that agreement-

- (a) the title to those goods has not passed to the consumer; or
- (b) the credit provider has a right to take possession of the goods irrespective of whether they are owned by the consumer or another person.

(2) The consumer shall inform the credit provider, in the prescribed time, manner and form, of any change concerning-

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

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

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

(5) A consumer who knowingly-

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

commits an offence and is liable, upon conviction to a fine not exceeding two thousand Emalangeni or imprisonment of a period not exceeding two years.

*Application of credit agreement to substituted goods*

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

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

*Obligations of a pawn broker*

36. (1) A pawn broker who enters into a pawn transaction with a consumer-

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

(2) Where a pawn broker contemplated in this section fails to deliver any property to the consumer as required in subsection (1)(c), the ombudsman or the court may direct the pawn broker to pay to the consumer an amount equal to-

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

(3) Where property contemplated in subsection (2) has been sold by the pawn

broker, evidence of the price at which that property was sold may be considered by the ombudsman or court, but is not conclusive, in determining the fair market value of that property.

#### *Changes, deferrals and waivers*

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

#### *Liability, interest, charges and fees of consumer*

##### *Prohibited charges*

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

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

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

##### *Cost of credit*

39. (1) A credit provider shall not, in a credit agreement, require payment by the consumer of any money or other consideration, except-

- (a) the principal debt, being the amount deferred in terms of the agreement, plus the value of any item contemplated in section 40;
- (b) an initiation fee, which-
  - (i) may not exceed the prescribed amount relative to the principal debt; and
  - (ii) shall not be applied unless the application results in the establishment of a credit agreement with that consumer;

- (c) a service fee, which-
  - (i) in the case of a credit facility, may be payable monthly, annually, on a per transaction basis or on a combination of periodic and transaction basis; or
  - (ii) in any other case, may be payable monthly or annually; and
  - (iii) shall not exceed the prescribed amount relative to the principal debt;
- (d) interest, which-
  - (i) shall be expressed in percentage terms as an annual rate calculated in the prescribed manner; and
  - (ii) shall not exceed the applicable maximum prescribed rate determined in terms of section 41;
- (e) cost of any credit insurance provided in accordance with section 44;
- (f) default administration charges, which-
  - (i) may not exceed the prescribed maximum for the category of credit agreement concerned; and
  - (ii) may be imposed if the consumer has defaulted on a payment obligation under the credit agreement; and
- (g) collection costs, which may not exceed the prescribed maximum costs.

(2) A credit provider who charges a consumer any of the fees, interest or charges contemplated in subsection (1) (a)-(e), shall disclose the total cost of credit over the duration of the agreement and the annual percentage rate in the prescribed manner, in the pre-agreement quotation and the credit agreement.

(4) 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 not charge that consumer an initiation fee contemplated in subsection (1)(b) in respect of that second credit agreement.

(5) An initiation fee may be charged at the registration of a replacement mortgage in respect of a transfer from one credit provide to another, without there being a transfer of ownership of the mortgaged property, if –

- (a) the transfer is done at the request of the consumer; and
- (b) the levying of the fee and the amount of the fee has been disclosed to the consumer by the acquiring credit provider before the consumer has agreed to the transfer.

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

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

(b) otherwise, is exempt from the prescribed maximum contemplated in subsection (1).

(7) A credit provider may not split a loan for the purposes of maximising fees and charges when a single loan would have met the need of the consumer.

*Inclusion of fees and charges in principal debt*

40. (1) A credit provider may include in the principal debt deferred under the credit agreement to the extent that they are applicable in respect of any goods or property that are the subject of the agreement if the consumer has been offered and declined the option of paying that fee or charge separately-

- (a) an initiation fee as contemplated in section 39(1)(b),
- (b) the cost of an extended warranty agreement;
- (c) delivery, installation and initial fuelling charges;
- (d) connection fees, levies or charges;
- (e) the costs associated with the preparation, execution, and registration of a mortgage bond
- (f) taxes, licence or registration fees; or
- (g) subject to section 44, the premiums of any credit insurance payable in respect of that credit agreement.

(2) A credit provider shall not-

- (a) charge an amount in terms of subsection (1) unless the consumer chooses to have the credit provider act as the agent of the consumer in arranging for the service concerned;
- (b) require the consumer to appoint the credit provider as the consumer's agent for the purpose of arranging any service mentioned in subsection (1); or

(3) charge the consumer an amount under subsection (1) in excess of-

- (a) 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
- (b) 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.

(4) Where 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 shall refund or credit the difference to the consumer.

### *Interest*

41. (1) Subject to subsection (5), the interest rate applicable to an amount in default or an overdue payment under a credit agreement may not exceed the highest interest rate applicable to any part of the principal debt under that agreement.

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

(3) A credit provider shall 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 shall be the same as that used by that credit provider in respect of any similar credit agreements currently being issued by it.

(5) The interest rate charged may during the term of an agreement never exceed the maximum prescribed rate of interest chargeable notwithstanding that an agreement provides for a fixed rate of interest for the term of the agreement.

(6) Notwithstanding any provision of the common law or a credit agreement to the contrary, the amounts contemplated in section 60 (1) (b) to (g) that accrue during the time that a consumer is in default under the credit agreement may not, in aggregate, exceed the unpaid balance of the principal debt under that credit agreement as at the time that the default occurs.

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

### *Changes to interest, credit fees or charges*

42. (1) A credit provider shall not unilaterally increase-

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



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

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

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

- (a) the new rate and any further prescribed information; or
- (b) if a rate is determined by referring to a reference rate as contemplated in section 62(4), the new reference rate.

*Maximum rates of interest, fees and charges*

43. (1) The Minister, after consulting the Authority, may prescribe a method for calculating-

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

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

(2) When prescribing a matter contemplated in subsection (1), the Minister shall consider, among other things-

- (a) the need to make credit available to persons contemplated in section 12(2);
- (b) conditions prevailing in the credit market, including the cost of credit and the optimal functioning of the consumer credit market; and
- (c) the social impact on low income consumers.

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

- (a) shall establish different maximums for credit agreements within each subsector of the consumer credit market; and
- (b) may prescribe the method, consistent with section 60(3), for allocating service fees between the provision of credit and the provision of related financial services, in circumstances in which a credit provider offers multiple financial services under a single agreement.

*Credit insurance*

44. (1) A credit provider may require a consumer to maintain during the term of their credit agreement-

- (a) credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the outstanding obligations of the consumer to the credit provider in terms of their agreement; and
- (b) either-
  - (i) in the case of a mortgage agreement, insurance cover in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or
  - (ii) in any other case, insurance cover not exceeding, at any time during the life of the credit agreement, the total of the outstanding obligations of the consumer to the credit provider in terms of their agreement.

(2) Notwithstanding subsection (1), a credit provider shall not offer or demand that the consumer purchase or maintain insurance that is-

- (a) unreasonable; or
- (b) at an unreasonable cost to the consumer,

having regard to the actual risk and liabilities involved in the credit agreement.

(3) Where the consumer has purchased an insurance policy, the credit provider may require the consumer to provide the credit provider with written directions -

- (a) in the prescribed manner and form requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums; and
- (b) to the insurer in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the obligation of the consumer under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement.

(4) Where the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final premium of the year.

## *Statements of Accounts*

### *Statement of account*

45. (1) A credit provider shall deliver to a consumer periodic statement of account without any charge in accordance with this section.

(2) The credit provider shall issue statements of account at least once a month, except as otherwise provided for in this subsection;

(3) Notwithstanding subsection (2)-

(a) a consumer and credit provider may agree to reduce the frequency of statements of account referred to in subsection (2)(a) or (b), but no such agreement may provide for more than three months between delivery of successive statements of account; and

(b) a statement of account need not be delivered in respect of a credit facility if no amount has been debited or credited to the account during the statement period.

### *Form and content of statement of account*

46. A statement of account shall show the opening balance in each successive statement of account as being the same as the closing balance shown in the immediately preceding statement of account.

### *Statement of amount owing and related matters*

47. (1) A credit provider shall, at the request of the consumer, deliver without charge to the consumer a statement of all or any of the following-

- (a) the current balance of the account of the consumer;
- (b) any amounts credited or debited during a period specified in the request;
- (c) any amounts currently overdue and when each such amount became due; or
- (d) any amount currently payable and the date it became due.

(2) A statement requested in terms of subsection (1) shall be delivered-

- (a) within 10 days, where all the requested information relates to a period of one year or less before the request was made; or
- (b) within 20 days, where any of the requested information relates to a period of more than one year before the request was made.

(3) A statement under this section may be delivered-

- (a) orally, in person or by telephone; or

(b) in writing, either to the consumer in person or by sms, mail, fax, email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facility, as directed by the consumer when making the request.

(4) A credit provider is not required to provide-

(a) a further written statement under this section if it has, within the three months before the request is given, given such a statement to the person requesting it; or

(b) information in a statement under this section more than three years after the account was closed.

#### *Disputed entries in accounts*

48. (1) A consumer who disputes all or part of any particular credit or debit entered under a credit agreement, shall deliver a written notice of dispute to the credit provider.

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

(a) shall give the consumer a written notice either-

(i) explaining the entry in reasonable detail; or

(ii) confirming that the statement was in error either in whole or in part, and setting out the revised entry; and

(b) shall not begin enforcement proceedings on the basis of a default arising from the disputed entry-

(i) until the credit provider has complied with paragraph (a); or

(ii) at any time that the matter is before the Authority in terms of section 51.

#### *Dating and adjustment of debits and credits in accounts*

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

(2) A credit to an account of a consumer takes effect on the date the consumer makes a payment to the credit provider, or otherwise earns the right to have the account credited.

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

### *Statement of settlement amount*

50. (1) A credit provider shall, at the request of a consumer or guarantor, deliver without charge to the consumer or guarantor a statement of the amount required to settle a credit agreement, as calculated in accordance with section 86, as of a date specified in the request.

(2) A statement requested in terms of subsection (1)-

(a) shall be delivered within five days;

(b) may be delivered-

(i) orally, in person or by telephone; or

(ii) in writing, either to the consumer in person or by sms, mail, fax or email or other electronic form of communication, to the extent that the credit provider is equipped to offer such facility, as directed by the consumer when making the request; and

(c) is binding for a period of five days after delivery, subject to subsection (3).

(3) A statement delivered in respect of a credit agreement 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.

### *Provision of statement on direction of Registrar*

51. Where a statement is not delivered within the time required under this Act, the Registrar, on request by the consumer, may-

(a) direct the credit provider to provide the statement; or

(b) determine the amounts in relation to which the statement was sought.

### *Disputes concerning statements*

52. (1) A consumer who has unsuccessfully attempted to resolve a disputed entry with the credit provider, may request the Registrar to resolve-

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

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

(2) Where the Registrar is satisfied that an entry, or the settlement amount, as shown on a statement is in error, the Registrar may determine the matter in dispute and may direct any correction to the statement that gave rise to the dispute.

### *Amendment of credit agreement*

### *Amendment of credit agreement*

53. (1) An amendment to a credit agreement, after it is signed by the consumer, is void unless-

- (a) the amendment reduces the liabilities of the consumer under the agreement;
- (b) after the amendment that is effected in terms of section 56(1)(c), the consumer signs or initials in the margin opposite the amendment;
- (c) the amendment is recorded in writing and signed by the parties; or
- (d) any oral amendment is recorded electromagnetically and subsequently reduced to writing.

(2) A credit provider shall not make a proposal to amend a credit agreement, or induce a person to accept such an alteration or amendment, on the basis that the amendment will automatically take effect unless the consumer rejects the proposal, except to the extent contemplated in section 42, 55(1)(a), 55(3) or 56(4).

### *Amendment by agreement*

54. Where the parties to a credit agreement agree to amend its terms, the credit provider shall, not later than twenty (20) days after the date of the agreement, deliver to the consumer the amended credit agreement in the form prescribed in terms of section 31.

### *Reductions to credit limit under credit facility*

55. (1) The consumer may, by written notice to the credit provider –

- (a) request 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) On receipt of a notice in terms of subsection (1), the credit provider shall confirm, in writing, -

- (a) the new credit limit, which shall 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 thirty (30) days after the date of the notice from the consumer.

(3) The credit provider under a credit agreement, may, by written notice to the consumer, reduce the credit limit under that credit agreement and that credit limit shall take effect on delivery of the notice.

(4) Where, 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 shall 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 shall not charge the consumer a fee for reducing a credit limit.

*Increases in credit limit under credit agreement*

56. (1) A credit provider may increase the credit limit under a credit agreement -

- (a) temporarily, as contemplated in subsection (2);
- (b) by agreement with the consumer, subject to subsection (3)-
  - (i) in response to a written or oral request made by the consumer at any time; or
  - (ii) with the written consent of the consumer in response to a written proposal by the credit provider, which may be delivered to the consumer at any time; or
- (c) unilaterally, in accordance with, and subject to the limitations set out in, subsection (4).

(2) An increase in the credit limit under a credit agreement is temporary where-

- (a) the credit provider honours an instrument issued by the consumer, despite the fact that it results in a debt that exceeds the established credit limit; or
- (b) the increase is to accommodate a particular transaction, on condition that the preceding credit limit will again apply within a specified period, or after a specified occurrence has taken place.

(3) Prior to the increase of a credit limit in terms of subsection (1)(b), the credit provider shall undertake another assessment of the ability of the consumer to meet the obligations that could arise under that credit agreement as required in section 26.

(4) Where the consumer has, at any time, in writing, requested the option of having the credit limit automatically increased from time to time, a credit provider may unilaterally increase the credit limit under that credit agreement-

- (a) once during each year, as measured from the -
  - (i) the date that the credit facility was established; or

- (ii) the date on which the credit limit was most recently altered in accordance with subsection (1)(b); and
- (b) by an amount not exceeding the lesser of-
  - (i) the average monthly purchases or cash advances charged to the credit facility by the consumer; or
  - (ii) the average monthly payments made by the consumer, during the twelve (12) months immediately preceding the date on which the credit limit is increased.

(5) Where, in increasing the credit limit under a credit facility, the credit provider alters any other term of the credit agreement, the credit provider shall comply with the requirements set out in section 24.

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

#### *Unilateral amendments by credit provider*

57. (1) Notwithstanding any provision to the contrary in a credit agreement, 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, subject to section 55(4).

(2) Except as otherwise provided for in section 42, a credit provider shall give the consumer written notice of at least five days of a unilateral amendment to a credit agreement and in that notice shall set out the particulars of the amendment.

### *Rescission and Termination of credit agreements*

#### *Rescission of credit agreement*

58. (1) A consumer may rescind a credit agreement within five days after the date on which the agreement was signed by the consumer, by-

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

(2) Where a credit agreement is terminated in terms of this section, the credit provider-



- (a) shall refund any money the consumer has paid under the agreement within seven (7) days after the delivery of the notice to terminate; and
- (b) may require payment from the consumer for-
  - (i) the reasonable cost of having any goods returned to the credit provider and restored to saleable condition; and
  - (ii) a reasonable rent for the use of those goods for the time that the goods were in the consumer's possession, unless those goods are in their original packaging and it is apparent that they have remained unused;
  - (iii) reasonable cost incurred by the credit provider in initiating and delivery of the credit.

(3) In this section, “reasonable costs” means an initiation fee and delivery cost.

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

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

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

#### *Termination of credit agreement by consumer*

59. (1) A consumer may terminate a credit agreement at any time by paying the settlement amount to the credit provider, in accordance with section 96.

(2) In addition to subsection (1), a consumer may terminate an hire purchase agreement, secured loan, by-

- (a) surrendering to the credit provider the goods that are the subject of that agreement in accordance with section 99; and
- (b) paying to the credit provider any remaining amount demanded in accordance with section 99 (7).

*Termination of agreement by credit provider*

60. (1) A credit provider may, at any time or where a consumer is in default under a credit agreement, terminate a credit agreement.

(2) A credit provider may, in respect of a credit facility-

(a) suspend that credit facility at any time the consumer is in default under the credit agreement; or

(b) close that credit facility by giving written notice to the consumer at least ten (10) days before the credit facility is closed.

(3) A credit agreement referred to in subsection (2) remains in effect to the extent necessary until the consumer has paid all amounts lawfully charged to that account.

(4) A credit provider may not close or terminate a credit facility solely on the grounds that-

(a) the credit provider has declined a request of the consumer to increase the credit limit;

(b) the consumer has declined the offer of the credit provider to increase the credit limit;

(c) the consumer has requested a reduction in the credit limit, unless that reduction would reduce the credit limit to a level at which the credit provider does not customarily offer or establish credit facilities; or

(d) the card, personal identification code or number or other identification device used to access that facility has expired.

(5) The unilateral termination of a credit agreement by a credit provider as

contemplated in this section does not suspend or terminate any residual obligations of the credit provider to the consumer under that credit agreement or this Act.

## PART V

### CONSUMER CREDIT LICENCES

#### *Restriction on licence*

61. (1) A person shall not qualify to be licensed as a credit provider if that person-
- (a) is under the age of 18 years;
  - (b) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
  - (c) has been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money, whether in Swaziland or elsewhere;
  - (d) has been a director or member of a governing body of an entity at the time that such an entity has-
    - (i) been involuntarily deregistered in terms of any law;
    - (ii) brought the consumer credit industry into disrepute; or
    - (iii) acted with disregard for consumer rights generally; or
  - (e) has been convicted during the previous five (5) years, in Swaziland or elsewhere, of-
    - (i) an offence involving dishonesty;
    - (ii) a crime involving grievous bodily harm against another person;
    - or
    - (iii) an offence in terms of this Act,
  - (f) has been sentenced to imprisonment for a term of not less than three (3) months during the previous five years unless the person has received a pardon for the offence;
  - (g) subject to debt re-arrangement; or
  - (h) engaged in, employed by or acting as an agent for a person that is engaged in any other activity prescribed by the Minister on the grounds that there is an inherent conflict of interest between that activity and credit provision.

#### *Restriction of other persons*

62. (1) A person shall not be licensed to hold more than one licence under this Act.

(2) A company or body corporate may not be licensed as a credit provider, pawn broker, debt counsellor or credit bureau if any natural person who would be disqualified

from individual licensing exercises general management or control of that juristic person, alone or in conjunction with others.

(3) Subject to subsection (4), if a natural person contemplated in subsection (2) becomes disqualified from licensing in terms of section after the business concerned was licensed in terms of this Act -

(a) that natural person shall advise the licensee, and the Authority, in the prescribed manner and form; and

(b) if that natural person-

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

(ii) is a manager or controller of the business, the Authority may impose reasonable conditions on the continuation of the licensing with the object of ensuring continuing compliance with this Act.

(4) Subsections (2) and (3) do not apply to a regulated financial institution as defined in the Financial Services Regulatory Authority Act.

(5) In addition to other circumstances under which the Authority may revoke a license, the Authority shall revoke the license of a juristic person if the licensee becomes disqualified in terms of this section at any time after being licensed.

#### *Credit provider licence*

63. (1) An application for a credit provider licence or renewal of a credit provider licence shall be made to the Authority in the form and manner prescribed by the Authority and shall be accompanied by the prescribed fees.

(2) An application for a renewal shall be made not later than one month before the expiry of the licence.

(3) Notwithstanding subsection (1), the applicant shall provide the information set out in section 36 of the Financial Services Regulatory Act for financial services providers.

#### *Rights conferred under a credit provider licence*

64. A credit provider licensed under this Act shall have the right to –

(a) supply goods or services under a discount transaction, hire purchase agreement;

- (b) advance money or credit under a pawn transaction;
- (c) extend credit under a credit facility;
- (d) be a mortgagee under a mortgage agreement;
- (e) lend money under a secured or unsecured credit agreement;
- (f) accept an assurance or promise made under a credit guarantee; or
- (g) advance money or credit to another under any other credit agreement;

*Supplementary licence in respect developmental credit agreement*

65. (1) A credit provider who has applied for a licence under this Act, may apply for supplementary licensing as a credit provider in respect of developmental credit agreements if the credit provider-

- (a) is a company, savings and credit co-operative, trust, statutory body, bank or building society; and
- (c) does not employ any person in a controlling or managerial capacity who would be disqualified from individual licensing in terms of section 61.

(2) The Authority may grant supplementary licensing to a credit provider if it is satisfied that the credit provider has sufficient and adequate human, financial and operational resources, administrative procedures and safeguards to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the Authority a credible plan to acquire or develop those resources.

*Credit bureau licence*

66. (1) The Authority may not grant a natural person except a company or body corporate a credit bureau licence.

(2) A company or body corporate shall not be granted a licence unless that company or body corporate-

- (a) maintains and imposes appropriate qualification, competence, knowledge and experience requirements for its employees or contractors who will have authority to represent it in any function under this Act;
- (b) has, in the opinion of the Authority, sufficient human, financial and operational resources to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the Authority a credible plan to acquire or develop those resources;
- (c) has adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated equitably and consistently in a timely, efficient and courteous manner, or presents to the Authority a credible plan to acquire or develop those procedures.

(3) A company or body corporate may not be licensed as a credit bureau if any person who has a controlling interest in the applicant is-

- (a) a debt collection agency; or
- (c) a person who conducts a business whose licence has been revoked in terms of in terms of this Act.

(4) The Minister may, by notice, declare a credit bureau disqualified as contemplated in section 61 if that credit bureau business is inconsistent with the function of operating an independent and objective credit bureau.

#### *Rights conferred under a credit bureau licence*

67. A credit bureau licensed under this Act shall have the right to engage in the business of-

- (a) receiving reports of, or investigating-
  - (i) credit applications;
  - (ii) credit agreements;
  - (iii) payment history or patterns; or
  - (iv) consumer credit information, relating to consumers or prospective consumers, other than reports of court orders or reasons for judgment or similar information that is in the public domain;
- (b) compiling and maintaining data from reports contemplated in subparagraph (i); and
- (c) issuing reports concerning consumers or persons based on information or data referred to in this paragraph;

#### *Licensing of debt counsellors*

68. (1) A company or body corporate, other than a natural person, may, subject to section 61 and 62, apply to be licensed as a debt counsellor.

(2) In determining whether an applicant is fit to engage in a debt counselling business, the Authority shall have regard to-

- (a) qualifications, competence, knowledge and experience or maintenance and imposition of appropriate qualification, competence, knowledge and experience requirements of the employees or contractors of the applicant who will have authority to represent it in

- any function under this Act;
- (b) sufficiency of human, financial and operational resources to enable the debt counsellor to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the Authority a credible plan to acquire or develop those resources; and
- (c) adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated equitably and consistently in a timely, efficient and courteous manner, or presents to the Authority a credible plan to acquire or develop those procedures.

(3) A company or body corporate may not be licensed as a credit bureau if any person who has a controlling interest in the applicant is-

- (a) a debt collector or debt collection agency; or
- (b) a person who conducts a business whose licence has been revoked in terms of in terms of this Act.

(4) The Minister may prescribe standards to be maintained by a debt counsellor in the conduct of the business under the licence.

*Rights conferred under a debt counsellor licence*

69. A debt counsellor licensed under this Act shall engage in the business of -

- (a) evaluating a consumer for over-indebtedness;
- (b) assisting a consumer to achieve a re-arrangement of one or more obligation under a credit agreement; and
- (c) negotiating on behalf of a consumer with a credit provider on re-payment terms under a credit agreement;

*Pawn broker licence*

70. (1) Any person may, subject to section 61 and 62 apply for a pawn broker licence.

(2) An application for a pawn broker licence shall comply with the requirements set out in section 36 of the Financial Services Regulatory Act and the provisions of this Act relating to credit providers.

*Credit agent*

71. (1) A person shall not act as a credit agent for a credit provider unless that person is a natural person authorised by the Authority in terms of this Act.

(2) A credit provider who intends to appoint a person a credit agent shall, prior to lodging the application, train the person or employee the credit provider intends to appoint in respect of the matters to which this Act applies.

(3) The Authority shall, prior to granting authority, consider whether that person is fit to act as agent in terms of section 61.

(4) A credit agent who solicits, completes or concludes a credit agreement for or on behalf of a credit provider or a consumer shall-

(a) be identified by name and identity number in the credit agreement;

(b) disclose to the consumer the amount of any fee or commission that will be paid if the agreement is concluded.

(5) A credit agent shall not claim or demand any fee, commission or charge from a consumer for a service in this Act.

*Grant, suspension, revocation of licence*

72. A licence under this Act may be issued, suspended or revoked in terms of the provisions for issuing, suspending or revoking a licence under the Financial Services Regulatory Authority Act.

PART VI

CONSUMER CREDIT INFORMATION

*Confidential treatment of information*

73. (1) A person who, in terms of this Act, receives, compiles, retains or reports any confidential information pertaining to a consumer or prospective consumer shall protect the confidentiality of that confidential information, and in particular, shall-

(a) use that confidential information for a purpose permitted or required in terms of this Act or any other law; and

(b) report or release that information to the consumer or prospective consumer, or to another person-



- (i) to the extent permitted or required by this Act or any law; or
- (ii) as directed by-
  - (aa) the instructions of the consumer or prospective consumer; or
  - (bb) an order of a court or instruction of the Authority.

(2) A person who receives, compiles, retains consumer credit information shall protect the confidentiality of that consumer credit information and shall-

- (a) use that consumer credit information for a purpose permitted or required in terms of this Act; and
- (b) report or release that consumer credit information to the consumer or prospective consumer, or to another person-
  - (iii) to the extent permitted or required by this Act or any law; or
  - (iv) as directed by-
    - (aa) the instructions of the consumer or prospective consumer; or
    - (bb) an order of a court or instruction of the Authority.

*Submission of consumer credit information to credit bureau*

74. (1) A credit provider may submit consumer credit information to more than one credit bureau.

(2) Upon entry into or amendment of a credit agreement, the credit provider shall submit to a credit bureau consumer credit information, in the prescribed manner and form, and within the prescribed time -

- (a) the name, principal business address, and registration number of a credit provider;
- (b) the name and address of the consumer;
- (c) if the consumer is-
  - (i) a natural person, their identity number, or in the case of a person who is not a citizen and who does not have an identity number, a passport number; or
  - (ii) a company or body corporate, its registration number or tax certificate number;
- (d) if the agreement of a credit facility, the credit limit under that facility, and the expiry date of the agreement, if any; and
- (e) if the agreement is a credit transaction or credit guarantee-
  - (i) the principal debt under the agreement;
  - (ii) the particulars of any previously existing credit agreement that was terminated or satisfied in connection with the making of the new agreement;

- (iii) the amount and schedule of each payment due under the agreement; and
- (iv) the date on which the consumer's obligations will be fully satisfied if the agreement is fully complied with.

(2) A credit provider shall report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (1), in the prescribed manner and form to a credit bureau.

(3) Where a person transfers to another person the rights of a credit provider under a credit agreement referred to in subsection (1)-

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

#### *Credit bureau activities*

75. (1) A credit bureau -

- (a) may accept the filing of consumer credit information from any credit provider on payment of the filing fee;
- (b) may accept without charge the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;
- (c) shall take reasonable steps to verify the accuracy of any consumer credit information reported to it;
- (d) shall retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
- (e) maintain its records of consumer credit information in a manner that satisfies the prescribed standards;
- (f) promptly remove from its records any prescribed consumer credit information that, in terms of the regulations, is not permitted to be entered in its records or is required to be removed from its records;
- (g) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in this Act, upon payment of the credit bureau's fee except where the Act explicitly provides that no fee be charged;
- (h) shall not draw a negative inference about, or issue a negative assessment of, the creditworthiness of a person on the basis that the

credit bureau has no consumer credit information concerning that person;

- (i) not knowingly or negligently provide a report to any person containing inaccurate information; and
- (j) provide negative and positive consumer credit information of a the creditworthiness of a consumer.

(2) In addition to-

- (a) the consumer credit information contemplated in subsection (1), a credit bureau may receive, compile and report only other prescribed information in respect of a consumer; and
- (b) the sources of consumer credit information contemplated in subsection (1),

a credit bureau may receive consumer credit information in respect of a consumer from other prescribed persons.

(3) The Minister may prescribe-

- (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and
- (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person.

#### *Establishment of register of consumer credit information*

76. (1) The Authority shall establish a register of consumer credit information for the registration of the credit information submitted in terms of section 67.

(2) The consumer credit information referred to in subsection (1) shall be used by the Authority for the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit by persons contemplated in section 15(1)(b), and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act

#### *Submission of consumer credit information to Authority*

77. (1) A credit bureau shall submit reports, on a quarterly basis, of aggregate consumer credit information in the prescribed manner and form to the Authority, but any such report shall not identify any particular consumer or relate a particular consumer to any information so reported.

(2) The Authority may request further information from a credit bureau related to the consumer credit information contemplated in subsection (1) and may analyse the consumer credit information provided to it under this section.

*Debt re-arrangement clearance certificate and removal of record of rescinded judgement*

78. (1) A consumer whose debts have been re-arranged in terms of this Act, may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement.

(2) A debt counsellor who receives an application in terms of subsection (1), shall-

(a) investigate the circumstances of the debt re-arrangement; and

(b) either-

- (i) issue a clearance certificate in the prescribed form if the consumer has fully satisfied all the obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement; or
- (ii) refuse to issue a clearance certificate, in any other case.

(3) Where a debt counsellor refuses to issue a clearance certificate contemplated in subsection (2)(b)(i) the consumer may apply to the Authority to review that decision, and if the Authority is satisfied that the consumer is entitled to the certificate in terms of subsection (2)(b)(i), the Authority may instruct the debt counsellor to issue a clearance certificate to the consumer.

(4) A debt counsellor who issues a clearance certificate in terms of this section, shall file a certified copy of that certificate with any credit bureau who shall retain the information for the prescribed period.

(6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau shall remove from its records all information relating to that judgment.

*Dispute on credit records and information*

79. (1) The credit provider shall, before submitting any information concerning a person to a credit bureau, within the prescribed time, deliver a notice to the consumer or person of its intention to report such information and upon request supply the consumer or person with a copy of that information.

(2) Any person may-

(a) inspect any credit bureau file or information concerning that person-

- (i) without charge-
  - (aa) as of right once within any period of twelve months;
  - (bb) if so ordered by a court or the instructed by the Authority;
  - and
  - (cc) once within a reasonable period after successfully challenging any information in terms of this section, for the purpose of verifying whether that information has been corrected; and
- (ii) at any other time, upon payment of the inspection fee of the credit bureau , if any;
- (b) challenge the accuracy of any information concerning that person-
  - (i) that is the subject of a proposed report contemplated in paragraph (a); or
  - (ii) that is held by the credit bureau ,
- (c) require the credit bureau to investigate the accuracy of any challenged information, without charge to the consumer; and
- (d) be compensated by any person who reported incorrect information to a registered credit bureau for the cost of correcting that information.

(3) A credit provider shall not require or induce a prospective consumer to obtain or request a report from a credit bureau in connection with an application for credit or an assessment under section 26.

(4) Where a person has challenged the accuracy of information proposed to be reported to a credit bureau, or held by a credit bureau, the credit provider or credit bureau, as the case may be, shall take reasonable steps to seek evidence in support of the challenged information, and within the prescribed time after the filing of the challenge shall-

- (a) provide a copy of any such credible evidence to the person who filed the challenge, or
- (b) remove the information, and all record of it, from its files, if it is unable to find credible evidence in support of the information.

(5) Within twenty (20) days after receiving a copy of evidence in terms of subsection (4)(a), the person who challenged the information held by a credit provider or credit bureau may apply in the prescribed manner and form to the Authority to investigate the disputed information as a complaint.

(6) A credit bureau may not report information that is challenged until the challenge has been resolved in terms of subsection (4)(a) or (b).

*Verification, review and removal of consumer credit information*

80. (1) The Minister shall, after the commencement of this Act, prescribe the nature of, time-frame, form and manner in which consumer credit information held by credit bureaux shall be reviewed, verified, corrected or removed.

(2) The Minister shall, when prescribing the actions under subsection (1)- consider -

- (i) the predictive nature of the information;
- (ii) the socio-economic impact on consumers of the removal of the information; and
- (iii) engage in consultation with affected stakeholders.

*Over-indebtedness and reckless credit*

*Over-indebtedness*

81. (1) In this section, 'financial means, prospects and obligations', with respect to a consumer or prospective consumer, includes-

- (a) income, or any right to receive income, regardless of the source, frequency or regularity of that income, other than income that the consumer or prospective consumer receives, has a right to receive, or holds in trust for another person;
- (b) the financial means, prospects and obligations of any other adult person within the consumer's immediate family or household, to the extent that the consumer, or prospective consumer, and that other person customarily-
  - (i) share their respective financial means; and
  - (ii) mutually bear their respective financial obligations.

(2) A consumer is over-indebted if the gravity 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 the-

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

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

(4) In making a determination in terms of this section, the value of-

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

*Reckless credit*

82. (1) A credit agreement is reckless where, at the time that the agreement was made, or at the time when the amount approved in terms of the agreement is increased, other than an increase in credit limit-

- (a) the credit provider failed to conduct an assessment as required by section 26, irrespective of what the outcome of such an assessment might have concluded at the time; or
- (b) the credit provider, having conducted an assessment as required by section 26, entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that-
  - (i) the consumer did not understand or appreciate the risks, costs or obligations of the consumer under the proposed credit agreement; or
  - (ii) entering into that credit agreement would make the consumer over-indebted or further over-indebted.

(2) Where a determination is to be made whether a credit agreement is reckless or not, the person making that determination shall apply the criteria set out in subsection (1) as they existed at the time the agreement was made, and without regard for the ability of the consumer to-

- (a) meet the obligations under that credit agreement; or
- (b) understand or appreciate the risks, costs and obligations under the proposed credit agreement,

at the time the determination is being made.

(3) In making a determination in terms of this section, the value of-

- (a) any credit facility is the credit limit at that time under that credit facility;
- (b) any pre-existing credit guarantee is-
  - (i) the settlement value of the credit agreement that it guarantees, if the guarantor has been called upon to honour that guarantee; or

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

*Consequences of reckless credit*

83. (1) Where a credit provider has entered into a reckless credit agreement with a consumer,

- (a) the Authority may exercise any of its powers or functions as it deems appropriate, including acting against the credit provider in terms of section 67 of the Financial Services Regulatory Authority Act; or
- (b) despite any provision of law or agreement to the contrary, on application by the consumer or in any court proceedings in which a credit agreement is being considered, a court may declare that the credit agreement is reckless, as determined in this Act.

(2) Where a court declares that a credit agreement is reckless in terms of section 82, the court may make an order-

- (a) setting aside all or part of the rights and obligations of the credit provider and or the consumer under that agreement, as the court determines just and reasonable in the circumstances; or
- (b) suspending the force and effect of that credit agreement in accordance with subsection (3) (b)(i).

(3) Where a court declares that a credit agreement is reckless in terms of section 82 (1) (b) (ii), the court-

- (a) shall further consider whether the consumer is over-indebted at the time of the court proceedings; and
- (b) where the court concludes that the consumer is over-indebted, the court may make an order-
  - (i) suspending the force and effect of that credit agreement until a date determined by the Court when making the order of suspension; and
  - (ii) re-arranging the obligations of the consumer under any other credit agreement, in accordance with section 94.

(4) Before making an order in terms of subsection (3), the court shall consider-

- (a) the consumer's current means and ability to pay the financial obligations of the consumer that existed at the time the agreement was made; and



- (b) the expected date when any such obligation under a credit agreement will be fully satisfied, assuming the consumer makes all required payments in accordance with any proposed order.

*Effect of suspension of credit agreement*

84. (1) During the period that the operation of a credit agreement is suspended in terms of this Act-

- (a) the consumer is not required to make any payment required under the agreement;
- (b) no interest, fee or other charge under the agreement may be charged to the consumer; and
- (c) the rights of the creditor under the agreement, or under any law in respect of that agreement, are unenforceable, notwithstanding any law to the contrary.

(2) After a suspension of the operation of a credit agreement ends-

- (a) the respective rights and obligations of the credit provider and the consumer under that agreement-
  - (i) are revived; and
  - (ii) are fully enforceable except to the extent that a court may order otherwise; and
- (b) for greater certainty, no amount may be charged to the consumer by the credit provider with respect to any interest, fee or other charge that were unable to be charged during the suspension in terms of subsection (1)(b).

*Declaration of and relief of over-indebtedness*

85. Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged that the consumer under a credit agreement is over-indebted, the court may-

- (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the circumstances of the consumer and make a recommendation to the court in terms of section ; or
- (b) declare that the consumer is over-indebted, as determined in accordance with this Act, and make any order contemplated in section to relieve the over-indebtedness of the consumer.

*Application for debt review*

86. (1) A consumer may apply to a debt counsellor in the prescribed manner and form to have the consumer declared over-indebted.

(2) An application in terms of this section may not be made in respect of a particular credit agreement if,

- (a) at the time of the application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 101 to enforce that agreement; or
- (b) the credit agreement is for a priority debt as elected by the consumer, in consultation with the debt counsellor, subject to subsection (8).

(3) A debt counsellor may require the consumer or a credit provider to pay a fee for services rendered during the debt review process, as prescribed before accepting an application in terms of subsection (1).

#### *Proof of receipt of application*

87. On receipt of an application in terms of section 86, a debt counsellor shall-

- (a) provide the consumer with proof of receipt of the application;
- (b) notify, in the prescribed manner and form-
  - (i) all credit providers that are listed in the application in respect of credit agreements to which the application applies; and
  - (ii) every registered credit bureau and
  - (iii) the Authority.

#### *Participation of consumer*

88. A consumer who applies to a debt counsellor, and each credit provider contemplated in section 87(b), shall-

- (a) comply with any reasonable requests by the debt counsellor to facilitate the evaluation of the state of indebtedness of the consumer and the prospects for responsible debt re-arrangement; and
- (b) participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement.

#### *Determination of application*

89. A debt counsellor who has accepted an application in terms of this section shall determine, in the prescribed manner and within the prescribed time whether-

- (a) the consumer appears to be over-indebted; and
- (b) any of the credit agreements of the consumer appear to be reckless.

#### *Rejection of application*

90. (1) The debt counsellor shall reject an application, where, as a result of a determination conducted in terms of section 89, the debt counsellor concludes that the consumer is not over-indebted, and shall, on conclusion that a particular credit agreement appears to be reckless, report the reckless credit to the Authority.

(2) Where a debt counsellor rejects the application, the consumer, with leave of the court, may apply directly to the court, in the prescribed manner and form, for an order of debt review.

#### *Effect of over-indebtedness*

91. (1) A debt counsellor may, reject an application where the debt counsellor concludes that the consumer is over-indebted and that there are insufficient funds to support a reasonable debt rearrangement plan, unless the inclusion of the excluded priority debts would release sufficient funds to support such a plan, in which case the debt counsellor shall proceed in terms of sections 92 or 93.

(2) A debt counsellor who concludes that the consumer is over-indebted shall negotiate for an agreement between the consumer and the respective credit providers to voluntarily consider a plan of debt re-arrangement.

(3) Where the consumer and each credit provider concerned agree on a plan of debt re-arrangement, the debt counsellor shall record the plan in the prescribed manner and submit a copy of the plan to the Authority and the agreed plan shall be binding on all parties.

#### *Application for debt review by debt counsellor*

92. Where the consumer and all the respective credit providers are unable to reach agreement on a voluntary plan of debt re-arrangement, the debt counsellor may apply, on behalf of the consumer, to Court make an order -

- (a) that one or more of the credit agreements of the consumer be declared to be reckless credit; and
- (b) that one or more of the obligations of the consumer be re-arranged by-
  - (i) extending the period of the agreement and reducing the amount of each payment due accordingly;
  - (ii) postponing during a specified period the dates on which payments are due under the agreement;

- (iii) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
- (iv) recalculating the obligations of the consumer because of contravention with this Act.

*Termination of debt review by credit provider*

93. (1) Where a consumer is in default under a credit agreement that is being reviewed in terms of this section, unless an application for debt re-arrangement in terms of section 93 has been lodged with a Court, the credit provider in respect of that credit agreement may give notice to terminate the review in the prescribed manner to-

- (a) the consumer;
- (b) the debt counsellor; and
- (c) the Authority,

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

(2) Where a credit provider who has given notice to terminate a review as contemplated in subsection (1) proceeds to enforce that agreement in terms of this Act, the court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.

*Re-arrangement of obligations of consumer*

94. (1) Where a debt counsellor applies to Court in terms of section 91 or a consumer applies to the Court in terms of section 92, the Court shall conduct a hearing and, having regard to the proposal and information before it and the financial means of the consumer, prospects and obligations, may-

- (a) reject the recommendation or application as the case may be; or
- (b) make-
  - (i) an order declaring any credit agreement to be reckless, and an order of over-indebtedness, if the Court concludes that the agreement is reckless;
  - (ii) an order re-arranging the obligations of the consumer in any manner contemplated in section 93 (b)(ii); or
  - (iii) both orders contemplated in subparagraph (i) and (ii).

(2) The Authority may not intervene before the Court in a matter referred to it in terms of this section.

*Effect of debt review*

96.. (1) A consumer who has filed an application for debt review, or who has alleged in court that the consumer is over-indebted, shall not incur any further charges under a credit agreement or enter into any further credit agreement, other than a consolidation agreement, with any credit provider until one of the following events has occurred-

- (a) the debt counsellor rejects the application and the prescribed time period for direct filing in terms of section 93 has expired without the consumer having so applied;
- (b) the court has determined that the consumer is not over-indebted, or has rejected a debt counsellor's proposal or the consumer's application;
- (c) the consumer and credit providers having made an agreement re-arranging the obligations of the consumer, or a court having made an order, the obligations of the consumer under the credit agreements as re-arranged are fulfilled, unless the consumer fulfilled the obligations by way of a consolidation agreement

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

(3) Subject to section 93 and 94, a credit provider who receives notice of court proceedings contemplated in section 90 or 92, or notice in terms of section 93 (b)(i), may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until-

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

(4) Where a credit provider enters into a credit agreement, other than a consolidation agreement contemplated in this section, with a consumer who has voluntarily agreed on a plan of debt re-arrangement in terms of section 93 or in respect of whom a court has ordered re-arranging of the consumer's obligations and that re-arrangement still subsists, all or part of that new credit agreement may be declared to be reckless credit, whether or not the circumstances set out in section 39 apply.

(5) Where a consumer applies for or enters into a credit agreement contrary to this section, the provisions of this Act shall not apply to that agreement.

## PART VII

### COLLECTION, REPAYMENT, SURRENDER AND DEBT ENFORCEMENT

#### *Charges to other accounts*

96. (1) A credit provider may request or a credit agreement may include an authorisation to the credit provider to make a charge or series of charges contemplated in section 49(2)(n), 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;
- (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; and
- (e) any authorisation not given in writing, shall be recorded electromagnetically and subsequently reduced to writing.

(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 shall deliver to the consumer notice in the prescribed manner and form, setting out the particulars as required by this subsection, of the charge or charges to be made under that authorisation.

#### *Settlement of credit agreement by consumer or guarantor*

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

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

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

*Early payments and crediting of payments*

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

(2) A credit provider shall 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 shall 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.

*Surrender of goods*

99. (1) A consumer under an hire purchase agreement or secured loan -

- (a) may give written notice to the credit provider to terminate the agreement; and
- (b) if-
  - (i) the goods are in the credit provider's possession, require the credit provider to sell the goods; or
  - (ii) otherwise, return the goods that are the subject of that agreement to the credit provider's place of business during ordinary business hours within five business days after the date of the notice or within such other period or at such

other time or place as may be agreed with the credit provider.

(2) Within ten (10) days after the later of-

- (a) receiving a notice in terms of subsection (1)(b)(i); or
- (b) receiving goods tendered in terms of subsection (1)(b)(ii),  
a credit provider shall give the consumer written notice setting out the estimated value of the goods and any other prescribed information.

(3) Within ten (10) days after receiving a notice under subsection (2), the consumer may unconditionally withdraw the notice to terminate the agreement in terms of subsection (1)(a), and resume possession of any goods that are in the credit provider's possession, unless the consumer is in default under the credit agreement.

(4) If the consumer-

- (a) responds to a notice as contemplated in subsection (3), the credit provider shall return the goods to the consumer unless the consumer is in default under the credit agreement; or
- (c) does not respond to a notice as contemplated in subsection (3), the credit provider shall sell the goods as soon as practicable for the best price reasonably obtainable.

(3) After selling any goods in terms of this section, a credit provider shall-

- (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) deliver to consumer a written notice stating the-
  - (i) the settlement value of the agreement immediately before the sale;
  - (ii) the gross amount realised on the sale;
  - (iii) the net proceeds of the sale after deducting the credit provider's permitted default charges, if applicable, and reasonable costs allowed under paragraph (a); and
  - (iv) the amount credited or debited to the consumer's account.

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

(5) 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).

(6) If a consumer-



- (a) fails to pay an amount demanded in terms of subsection (7) within 10 business days after receiving a demand notice, the credit provider may commence proceedings in terms of the High Court Act for judgment enforcing the credit agreement; or
- (b) pays the amount demanded after receiving a demand notice at any time before judgment is obtained under paragraph (a), the agreement is terminated upon remittance of that amount.

(7) In either event contemplated in subsection (8), interest is payable by the consumer at the rate applicable to the credit agreement on any outstanding amount demanded by the credit provider in terms of subsection (7) from the date of the demand until the date that the outstanding amount is paid.

(8) A credit provider who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeni (E20,000) or imprisonment for a term not exceeding two (2) years or both.

#### *Debt enforcement by repossession or judgment*

##### *Required procedures before debt enforcement*

100. (1) If the consumer is in default under a credit agreement, the credit provider-
- (a) shall deliver to the consumer a notice in writing, drawing the attention of the consumer to the default and propose, in the case of inability to pay, that the consumer refer the credit agreement to a debt counsellor with the intent that the parties develop and agree on a plan to bring the payments under the agreement up to date or, in the case of any other dispute under the agreement, refer the matter to the ombudsman
  - (b) , with the intent that the parties resolve the dispute; and
  - (c) subject to section 88(2), may not commence any legal proceedings to enforce the agreement -
    - (i) before first providing notice to the consumer, as contemplated in Subsection 1(a), or in section 45(12), as the case may be and meeting any further requirements set out in section 88 or
    - (ii) if it has come to the attention of the credit provider that the notice contemplated in Subsection 1(a), did not come to the attention of the consumer.
- (2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.
- (3) Subject to subsection (4), a consumer may-

- (a) at any time before the credit provider has cancelled the agreement re-instate a credit agreement that is in default by paying to the credit provider all amounts that are overdue, together with the credit provider's permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement; and
  - (b) after complying with paragraph (a), may resume possession of any property that had been repossessed by the credit provider pursuant to an attachment order.
- (7) A consumer may not re-instate a credit agreement after-
- (a) the sale of any property pursuant to-
    - (i) an attachment order; or
    - (ii) surrender of property in terms of section 86;
  - (b) the execution of any other court order enforcing that agreement; or
  - (c) the termination thereof in accordance with section 82.

*Debt procedures in court*

101. (1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least twenty (20) days and-

- (a) at least ten (10) days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 93;
- (b) in the case of a notice contemplated in section 100(1), the consumer has-
  - (i) not responded to that notice; or
  - (ii) responded to the notice by rejecting the proposals of the credit provider; and
- (c) in the case of an hire purchase agreement, secured credit, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 99.

(2) In addition to the circumstances contemplated in subsection (1), in the case of an hire purchase agreement or secured credit, a credit provider may approach the court for an order enforcing the remaining obligations of a consumer under a credit agreement at any time if-

- (a) all relevant property has been sold pursuant to-
  - (i) an attachment order; or
  - (ii) surrender of property in terms of section 86; and
- (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.

(3) Notwithstanding any provision of law or 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 if the court is satisfied that-

- (a) in the case of proceedings to which sections 99, 100 or 102 apply, the procedures required by those sections have been complied with;
- (b) there is no matter arising under that credit agreement, and pending before the Authority or Appeals Tribunal, that could result in an order affecting the issues to be determined by the court; and
- (c) that the credit provider has not approached the court-
  - (i) during the time that the matter was before a debt counsellor or the ; or
  - (ii) despite the consumer having-
    - (aa) surrendered property to the credit provider, and before that property has been sold;
    - (bb) agreed to a proposal made in terms of section 100(1)(a) and acted in good faith in fulfilment of that agreement;
    - (cc) complied with an agreed plan as contemplated in section 100(1)(a); or
    - (dd) brought the payments under the credit agreement up to date, as contemplated in section 100(1)(a).

(4) In any proceedings contemplated in this section, if the court determines that-

- (a) the credit agreement was reckless as described in section 82, the court shall make an order contemplated in section 83;
- (b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(c) the court shall-
  - (i) adjourn the matter before it; and
  - (ii) make an appropriate order setting out the steps the credit provider shall complete before the matter may be resumed;
- (c) the credit agreement is subject to a pending debt review, the court may-
  - (i) adjourn the matter, pending a final determination of the debt review proceedings;
  - (ii) order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b); or
  - (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b);
- (d) there is a matter pending before the Authority or Appeals Tribunal , as contemplated in subsection (3)(b), the court may-

- (i) adjourn the matter before it, pending a determination of the proceedings before the Authority or Appeals Tribunal; or
  - (ii) order the Authority or Appeals Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or
- (e) the credit agreement is either suspended or subject to a debt re-arrangement order or agreement, and the consumer has complied with that order or agreement, the court shall dismiss the matter.

### *Repossession of goods*

102. If a court makes an attachment order with respect to property that is the subject of a credit agreement, section 99(2) to (9) read with the changes required by the context, apply with respect to any goods attached in terms of that order.

### *Compensation for credit provider*

103. (1) A credit provider who has unsuccessfully attempted to resolve a dispute over the costs of attachment of property in terms of section 100 to 102 directly with the consumer, may apply to the court for compensation from the consumer in respect of any costs of repossession of property in excess of those permitted under section 102.

(2) The court may grant an order contemplated in subsection (1) if it is satisfied that-

- (a) the consumer knowingly-
  - (i) provided false or misleading information to the credit of section 56; or
  - (ii) engaged in a pattern of behaviour that was reasonably likely to frustrate or impede the exercise of the credit provider's right to repossess property under section 100 to 102; and
- (b) as a result, the credit provider experienced unreasonable delay or incurred exceptional costs in the exercise of those rights.

### *Prohibited collection and enforcement practices*

104. (1) A credit provider shall not-

- (a) make use of any document, number or instrument referred to in section 27(1)(b) when collecting on or enforcing a credit agreement; or
- (b) direct or permit any other person to do anything contemplated in this subsection on behalf, or as an agent, of the credit provider.

(2) When collecting money owed by a consumer under a credit agreement or when seeking to enforce a credit agreement, a credit provider shall not use or rely on, or permit any person to use or rely on, any document, instrument or contract provision referred to in section 27(1)(b).

(3) A person who contravenes this section commits an offence and shall, on conviction, be liable to fine not exceeding twenty thousand Emalangeni or imprisonment of a term not exceeding two years or both.

## PART VIII

### MISCELLANEOUS MATTERS

#### *Prohibition against harassment for credit at home or work*

105. (1) A credit provider shall 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 shall not enter into a credit agreement at a private dwelling of the consumer except-

- (a) during a visit pre-arranged by the consumer for that purpose; or
- (b) if a credit provider visited the private dwelling for the purpose of offering goods or services for sale, and incidentally offered to provide or arrange credit to finance the purchase of those goods or services.

(3) A credit provider shall not visit a place of employment of a person for the purpose of inducing the person to apply for or obtain credit, whether or not by invitation from the employer or representative trade union.

#### *Advertising practices*

106. (1) This section does not apply to an advertisement-
- (a) that does not make reference to a specific credit product or credit provider, and of which the dominant purpose is to promote-
    - (i) responsible credit practices; or
    - (ii) the use of credit generally;
  - (b) that generally promotes a specific credit provider, brand or type of credit agreement, but does not make specific reference to product price, cost or availability of credit; or

(c) by the seller of goods or services, or on the premises of such a person, if that notice or advertisement indicates only that the person is prepared to accept payment through a credit facility in respect of which another person is the credit provider.

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

(3) A person who is not licensed as a credit provider or pawn broker, shall not advertise the availability of credit, or of goods or services to be purchased on credit.

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

(a) shall not-

- (i) advertise a form of credit that is unlawful;
- (ii) be misleading, fraudulent or deceptive; or
- (iii) contain any prohibited statement ; and

(b) may contain a statement of comparative credit costs to the extent permitted by any applicable law or industry code of conduct, but any such statement shall-

- (i) show costs for each alternative being compared;
- (ii) show rates of interest and all other costs of credit for each alternative;
- (iii) be set out in the prescribed manner and form; and
- (iv) be accompanied by the prescribed cautions or warnings concerning the use of such comparative statements.

(8) In any advertisement concerning the granting of credit, a credit provider shall state or set out the interest rate and other credit costs in the prescribed manner and form.

#### *Advertising statement*

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

#### *Court to declare agreement or provision unlawful*

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

*Proof of facts*

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

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

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

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

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

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

*Credit provider to keep records*

110. Subject to section 30 (1) (b) of the Financial Services Regulatory Authority Act, a credit provider shall maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form for a period of not exceeding five years.

*General penalty*

111. Any person who contravenes any provision of this Act for which no penalty is expressly provided, shall be liable to a fine not exceeding twenty thousand Emalangeni (20,000) or to imprisonment for a period not exceeding five years or to such other higher penalties as the court deems fit.

### *Regulations*

112. (1) The Minister may, after consultations with the Authority, make regulations for the better carrying out the provisions of this Act and without prejudice to the generality of the foregoing, may make regulations -

- (a) for matters relating to the functions of the Authority, including-
  - (i) forms;
  - (ii) time periods;
  - (iii) information required;
  - (iv) additional definitions applicable to those regulations;
  - (v) filing fees;
  - (vi) access to confidential information; and
  - (vii) manner and form of participation in Authority procedures;
- (b) prescribing -
  - (i) any forms required to be used for the purposes of this Act; and
  - (ii) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act;
- (c) prescribing standards for retention, filing and reporting of credit information;
- (d) prescribing fees, charges and levies to be paid in terms of this Act.

### *Transitional provisions*

113. (1) An existing credit agreement entered into in terms of any other law and subsisting immediately before the commencement of this Act shall continue be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with this Act.

(2) Within six months of the commencement of this Act, a credit bureau, debt counsellor or credit provider shall, in relation to authorisation and other related matters comply with the provisions of this Act.

(3) Existing credit information before the commencement of this Act shall, within twelve months of the commencement of this Act, be submitted to a credit bureau.

### *Repeal*

114. (1) The Money Lending and Credit Financing Act, No.3 of 1991, Hire Purchase Act, No. 11 of 1969 and the Pawn Broking Act, No. 13 of 1894 are repealed.

(2) Any regulations, notices, instructions and orders made under the repealed laws shall remain in force until repealed under this Act and where they are inconsistent with any provisions of this Act, the regulations, notices, instructions and orders shall be



construed with such modifications, adaptations, qualification and exceptions as may be necessary to bring them into conformity with this Act.