

FOR CONSIDERATION ONLY BY THE PORTFOLIO COMMITTEE ON TRADE AND
INDUSTRY

PROPOSED AMENDMENTS TO

NATIONAL CREDIT AMENDMENT BILL

[B 47 of 2013]

CLAUSE 1

1. On page 2, from line 9, to omit the definition of **"mortgage"** and to substitute:

"**"mortgage"** means a mortgage bond registered by the registrar of deeds over immovable property that serves as continuing covering security for a mortgage agreement."

2. On page 2, in line 16, to omit "and".

3. On page 2, after line 16, to insert:

"(d) by the insertion after the definition of **"pawn transaction"** of the following definition:

"**"payment distribution agent"** means a person who on behalf of a consumer, that has applied for debt review in terms of section 86(1), distributes payments to credit providers in terms of a debt re-arrangement court order or an agreement."; and

4. On page 2, in line 17, to omit "(d)" and to substitute "(e)".
5. On page 2, in line 20, to omit **"[movable]"** and to substitute "movable".

CLAUSE 3

1. On page 3, in line 26, to omit “official” and to substitute “employee”.

CLAUSE 5

1. On page 3, in line 39, after “person” to insert “,with three years’ experience in the payment industry.”
2. On page 3, in line 47, to omit “ “. ”.
3. On page 3, after line 47, to insert:
“(4) Payment distribution agents must—
(a) maintain fidelity insurance and trust accounts;
(b) be registered under the National Payment System Act, 1998 (Act No. 78 of 1998); and
(c) submit such financial accounts as may reasonably be required by the National Credit Regulator for purposes of a financial audit.
(5) Any natural or juristic person who operated as a payment distribution agent prior to the commencement of the National Credit Amendment Act, 2014 must comply with subsection
(1) within a period of 12 months from such date of commencement.”.

CLAUSE 6

1. On page 4, in line 8, to omit ‘probity’ and to substitute “fit and proper”.
2. On page 4, in line 9, to omit “investigations” and to substitute “inquiry”.

CLAUSE 7

1. On page 4, to omit lines 14 and 15, and to substitute:
“7. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:".

2. On page 4, in line 17, to omit the second "." and to substitute "; and".

3. On page 4, after line 17 to insert:

"(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

"(3) A natural person may not be registered as a credit provider, **[or]** debt counsellor, or payment distribution agent, if that person—".

CLAUSE 8

1. On page 4, to omit lines 19 and 20, and to substitute:

"8. Section 48 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If a person qualifies to be registered as a credit provider, the National Credit Regulator must further **[consider the application, relating to the following criteria]** apply the following criteria in respect of the application:"; and

(b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:"

2. On page 4, in line 27, to omit "after consultation with" and to substitute "on the recommendation of".

CLAUSE 9

CLAUSE 10

CLAUSE 11

1. On page 5, in line 4, to omit "debt counsellor" and to substitute "registrant".

2. On page 5, in line 8, to omit "debt counsellor's".
3. On page 5, in line 14, after ":", to add "and".
4. On page 5, from line 15, to omit "debt counsellor" and to substitute "registrant".
5. On page 5, in line 16 to omit "; and" and to substitute ".".
6. On page 5, from line 17, to omit paragraph (d).
7. On page 5, from line 21, to omit all the words from "in" up to and including "deregistration" in line 26, and to substitute "submit an affidavit to the National Credit Regulator that the consumers referred to in paragraph (b) have been transferred to another registered debt counsellor."
6. On page 5, in line 32, to omit "seized" and to substitute "ceased".

CLAUSE 12

1. On page 5, from line 44, to omit paragraph (b) and to substitute:
"cleared all defaults under every credit agreement that was subject to that debt re-arrangement order or agreement and demonstrated financial ability to satisfy every obligation that existed prior to the debt arrangement, under all such credit agreements."
2. On page 5, to omit line 46, and to substitute:
"(b) by the substitution for subsection (2) of the following subsection:
"(2) A debt counsellor must for the purposes of the demonstration envisaged in subsection (1)(b), apply such measures as may be prescribed."
3. On page 6, from line 1, to omit "or any credit bureau" and to substitute **"[or any credit bureau] and all registered credit bureaus"**.

CLAUSE 13

1. On page 6, in line 11, to omit "the credit bureau" and to substitute "all registered credit bureaus".
2. On page 6, in line 17, to omit "a" and to substitute "an adverse".

CLAUSE 14

CLAUSE 15

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 82 of Act 34 of 2005

15. Section 82 of the principal Act is hereby amended-

"(a) by the substitution for subsection (1) of the following subsection:

(1) Subject to **[subsections (2)(a) and (3)]** subsection (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 81, provided that any such mechanism, model or procedure results in a fair and objective assessment.";

(b) by the substitution for subsection (2) of the following subsection:

no longer applicable
"(2) The Minister may, on the recommendation of the National Credit Regulator, prescribe guidelines, evaluative mechanisms, models or procedures to be used in terms of section 81 and any other guidelines related thereto, applicable to credit agreements." and

(b) by the deletion of subsections (3) and (4).

CLAUSE 16

1. On page 7, in line 34, to omit "and".
2. On page 7, in line 38, to omit "." and to substitute "; and".
3. On page 7, after line 38, to insert:

"(h) by the addition of the following subsection (5):

"(5) A decision by the Tribunal in terms of this section is subject to appeal to, or review by, the High Court to the extent permitted by section 148."

*Flagged
for more opinion*

CLAUSE 17

1. On page 7, in line 54, to omit "[a]" and to substitute "(i)".
2. On page 7, in line 54, to omit "[b]" and to substitute "(ii)".
3. On page 7, in line 54, to omit "[c]" and to substitute "(iii)".
4. On page 8, in line 2, after "section" to insert ", 83, 85 and"

} consequential

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 100 of Act 34 of 2003

20. Section 100 of the principal Act is hereby amended by the addition of the following subsection:

"(3) A person who contravenes this section is guilty of an offence."

CLAUSE 18

CLAUSE 20

1. On page 8, in line 31, to omit "20" and to substitute "21".
2. On page 8, in line 34, to omit "may" and to substitute "must".
3. On page 8, in line 38, after "dispute" to insert "relating to payment".
4. On page 8, from line 41, to omit subparagraph (ii) and to substitute:

"(ii) the National Credit Regulator or court, in the event of any other dispute relating to the terms of the credit agreement, with the intent that the parties resolve any such dispute;".

5. On page 8, in line 48, to omit "revive" and to substitute "re-instate".
6. On page 8, in line 52, to omit "and".
7. On page 9, in line 3, to omit "[re-instate], revive a credit a" and to substitute "re-instate or revive a credit".
8. On page 9, after "agreement" in line 4, to insert "as the case may be".
9. On page 9, in line 4, to omit "." and to substitute "; and".
10. On page 9, after line 4, to insert:

"(d) by the addition of the following subsection:

"(5) The notice contemplated in subsection (1)(a) must --

(a) be made available to the consumer through one or more of the following mechanisms:

(i) track and trace registered mail;

(ii) fax;

(iii) email;

(iv) at the business premises of the credit provider; or

(v) at any other location designated by the consumer but at the consumer's expense; and

(b) be delivered to the consumer in the manner chosen by the consumer from the options made available in terms of paragraph (a)."

CLAUSE 21

1. On page 9, in line 6, to omit “21” and to substitute “22”.

CLAUSE 22

1. On page 9, in line 12, to omit “22” and to substitute “23”.

CLAUSE 23

1. On page 9, in line 19, to omit “23” and to substitute “24”.

CLAUSE 24

1. On page 10, in line 14, to omit “24” and to substitute “25”.

CLAUSE 25

Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Amendment of section 140 of Act 34 of 2005

26. Section 140 of the principal Act is hereby amended-

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"After completing an investigation into a complaint, the National Credit Regulator may take any enforcement action provided for in this Act, including but not limited to –"

~~(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:~~

~~"(a) issue a notice of non-referral to the complainant in the prescribed form where the outcome of the investigation does not require a referral contemplated in paragraphs (a), (b) or (c).~~

CLAUSE 26

1. On page 10, in line 26, to omit "26" and to substitute "27".
2. On page 10, from line 27, to omit paragraph (a).
3. On page 10, in line 31, to omit "(b)" and to substitute "(a)".
4. On page 10, in line 31, to omit "subsection" and to substitute "subsections".
5. On page 10, after line 31, to insert:
"(1A) The Minister may prescribe the training contemplated in subsection (1)."
6. On page 10, in line 32, to omit ~~"(1A)"~~ and to substitute "(1B)".
7. On page 10, in line 34, to omit "(c)" and to substitute "(b)".

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 171 of Act 34 of 2003

28. Section 171 of the principal Act is hereby amended by the substitution in paragraph (d) of subsection (1) for subparagraph (i) of the following subparagraph:

"(i) any forms required to be used for the purposes of this Act; **[and]**

(iA) may prescribe criteria and measure to determine the outcome of assessments, inquiries or investigations provided for in this Act;

(iB) may prescribe the criteria for registration as well as the duties, obligations and fees

that may be charged by a Registrant;

(iC) may prescribe processes for de-registration of registrants that provides for the protection of the consumers involved;

(iD) may prescribe formulae for the calculation of penalties provided for in this Act;

(iE) may prescribe processes for termination of debt review, debt re-arrangement or declarations of over-indebtedness; and".

CLAUSE 27

1. On page 10, in line 40, to omit "27" and to substitute "29".

CLAUSE 28

1. On page 10, in line 43, to omit "28" and to substitute "30".