

AS OF : 20/02/2014

REPUBLIC OF SOUTH AFRICA

**NATIONAL CREDIT
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Trade and Industry)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 47B—2013]

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GENERAL EXPLANATORY NOTE:

- [Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Credit Act, 2005, so as to amend certain definitions; to provide for the alteration of the governance structure of the National Credit Regulator; to empower the Chief Executive Officer to delegate certain functions to other officials of the National Credit Regulator; to provide for the registration of payment distribution agents; to tighten measures relating to debt counsellors and the conduct of their practices as debt counsellors; to allow registrants to voluntarily cancel their registration; to empower the Minister to issue notice for the removal of adverse information; to provide for automatic removal of adverse consumer information; to empower the National Consumer Tribunal to suspend reckless credit agreements; to provide for the registration and accreditation of Alternative Dispute Resolution Agents; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 34 of 2005

1. Section 1 of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of '**Board**';
- (b) by the insertion after the definition of "Cabinet" of the following definition: " 'code of conduct' except in respect of the industry code of conduct contemplated in section 76, means a code regulating the interaction between or among persons conducting business within an industry;";
- (c) by the deletion of the definition of '**member of the Board**';
- (d) by the substitution for the definition of "mortgage" of the following definition: " 'mortgage' means a mortgage bond registered by the registrar of deeds over immovable property that serves as continuing covering security for a mortgage agreement;";
- (e) by the substitution for the definition of "mortgage agreement" of the following definition: " 'mortgage agreement' means a credit agreement that is secured by [a pledge of immovable property] the registration of a mortgage bond by the registrar of deeds over immovable property;";

- (f) 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 this Act, distributes payments to credit providers in terms of a debt re-arrangement, court order, order of the Tribunal or an agreement;”;
- (g) by the substitution for the definition of “prohibited conduct” of the following definition:
 “‘prohibited conduct’ means an act or omission in contravention of this Act[, other than an act or omission that constitutes an offence under this Act, by—
 (a) an unregistered person who is required to be registered to engage in such an act; or
 (b) a credit provider, credit bureau or debt counsellor]”; and
- (h) by the substitution in the definition of “secured loan” for paragraph (b) of the following paragraph:
 “(b) retains, or receives a pledge [or cession of the title] to any movable property or other thing of value as security for all amounts due under that agreement.”.

Amendment of section 17 of Act 34 of 2005 20

2. Section 17 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 “The National Credit Regulator [may] must—”;
- (b) by the substitution in subsection (4)(b) for the words preceding subparagraph (i) of the following words:
 “(b) [negotiate agreements] enter into a valid agreement with any regulatory authority to—”;
- (c) by the deletion in subsection (4) of the word “and” at the end of paragraph (c);
- (d) by the insertion in subsection (4) of the word “and” at the end of paragraph (d);
- (e) by the addition in subsection (4) of the following paragraph:
 “(e) notify the Registrar of Banks designated in terms of the Banks Act, 1990 (Act No. 94 of 1990), within the agreed time frame, of its intention to investigate a bank as defined in the Banks Act, 1990.”;
- (f) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 “(a) [may negotiate agreements] must enter into a valid agreement with the National Credit Regulator, as anticipated in subsection 4(b); and”.

Repeal of sections 19, 20, 21 and 22 of Act 34 of 2005

3. Sections 19, 20, 21 and 22 of the principal Act are hereby repealed.

Amendment of section 23 of Act 34 of 2005

4. Section 23 of the principal Act is hereby amended— 45
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister must appoint a suitably qualified and experienced person as Chief Executive Officer of the National Credit Regulator, who
 [—
 (a) with the advice, and subject to the oversight, of the Board; and 50
 (b) is accountable to the Board]
must be responsible for all matters pertaining to the functions of the National Credit Regulator.”;
- (b) by the deletion of subsection (2); and

(c) by the addition after subsection (2) of the following subsections:

- “(3) The Chief Executive Officer is the accounting authority for the National Credit Regulator, and as such is responsible for—
- (a) all income and expenditure of the National Credit Regulator;
 - (b) all revenue collected by the National Credit Regulator;
 - (c) all assets, and the discharge of all duties and liabilities of the National Credit Regulator; and
 - (d) proper and diligent implementation of this Act in order to achieve the objects stipulated in this Act.
- (4) The Chief Executive Officer may—
- (a) assign management and other duties to employees with appropriate skills to assist the National Credit Regulator in the management, or control of the National Credit Regulator; and
 - (b) delegate, with or without conditions, any of the powers or functions of the Chief Executive Officer to any suitably qualified employee of the National Credit Regulator, but such delegation does not divest the Chief Executive Officer of responsibility for the exercise of any power or performance of any duty.
- (5) The Minister may appoint a person who is suitably qualified and experienced, as a Deputy Chief Executive Officer to assist the Chief Executive Officer in carrying out the functions of the National Credit Regulator.”.

Amendment of section 25 of Act 34 of 2005

5. Section 25 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “The Chief Executive Officer or any employee duly authorised by the Chief Executive Officer—”.

Amendment of section 26 of Act 34 of 2005

6. Section 26 of the principal Act is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:
- “(4) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office, a person must—
- (a) not be subject to any disqualification set out in subsection (5); and
 - (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (5); and
 - (ii) does not have any interests referred to in subsection (5)(b).”;
- (b) by the addition of the following subsections:
- “(5) A person may not be a member of the Tribunal if that person—
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
 - (b) personally or through a spouse, partner or associate—
 - (i) has or acquires a direct or indirect financial interest in a registrant; or
 - (ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Tribunal;
 - (c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person’s estate;
 - (d) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;
 - (e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;
 - (f) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence

- under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or
- (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without the option of a fine. 5
- (6) For the purpose of subsection (5)(b), a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.
- (7) A member of the Tribunal must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in subsection (5)(b). 10
- (8) A member of the Tribunal must not—
- (a) engage in any activity that may undermine the integrity of the Tribunal; 15
- (b) attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, that member has an interest—
- (i) contemplated in subsection (5)(b); or
- (ii) that precludes that member from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner; 20
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Tribunal; or 25
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions as a member of the Tribunal.
- (9) If, at any time, it appears to a member of the Tribunal that a matter being considered by the Tribunal during proceedings concerns an interest of that member referred to in subsection (8)(b), that member must— 30
- (a) immediately and fully disclose the nature of that interest to the members present; and
- (b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter. 35
- (10) The disclosure by a member of the Tribunal in terms of subsection (9)(a), and the decision by the Tribunal in terms of subsection (9)(b), must be expressly recorded in the records of the proceedings in question. 40
- (11) Proceedings of the Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—
- (a) a member of the Tribunal failing to disclose an interest as required by subsection (9); or 45
- (b) a member of the Tribunal, having an interest, attending or participating in those proceedings.”.

Amendment of section 29 of Act 34 of 2005

7. Section 29 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph: 50
- “(a) must remove the Chairperson or any other member of the Tribunal from office if that person becomes subject to any of the disqualifications referred to in section [20(2)] 26(5); and”.

Amendment of section 32 of Act 34 of 2005

8. Section 32 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 55
- “(2) If, during a hearing in which a member of the Tribunal is participating, it appears to that member that the matter concerns a financial or other interest of that member contemplated in section [20(2)(b)] 26(5)(b), that member must—”.

Substitution of section 34 of Act 34 of 2005

9. The following section is hereby substituted for section 34 of the principal Act:

“Remuneration and benefits

34. (1) The Minister may, in consultation with the Minister of Finance, determine salary, allowances, benefits or any other terms and conditions of employment for members of the Tribunal. 5

(2) The salary, allowances or benefits of a member of the Tribunal may not be reduced during the term of office of such a member.”

Amendment of section 40 of Act 34 of 2005

10. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) A person must apply to be registered as a credit provider if [—

(a) that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or 15

(b) the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42(1).”

Amendment of section 42 of Act 34 of 2005

11. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 20

“(1) [On the effective date, and at intervals of not more than five years, the] The Minister, by notice in the Gazette, must determine a threshold [of not less than R500 000,] for the purpose of determining whether a credit provider is required to be registered in terms of section 40(1).” 25

Insertion of section 44A in Act 34 of 2005

12. The following section is hereby inserted in the principal Act after section 44:

“Registration of payment distribution agents

44A. (1) A person may apply to the National Credit Regulator to be registered as a payment distribution agent. 30

(2) (a) A person must not offer or engage in the services of a payment distribution agent, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as a payment distribution agent in terms of this Chapter.

(b) A consumer is not obliged to make use of the services of a payment distribution agent. 35

(3) In addition to the requirements of section 46, an applicant for registration as a payment distribution agent must satisfy any prescribed education, experience or competency requirements.

(4) Payment distribution agents must— 40

(a) maintain fidelity insurance and trust accounts; and

(b) submit such financial accounts as may reasonably be required by the National Credit Regulator for purposes of a financial audit.

(5) No credit provider shall have any direct or indirect interest which is inconsistent with the objects of this Act, in the management or control of the business operations of a payment distribution agent or Debt Counselling business. 45

(6) 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 the date of commencement.” 50

Amendment of section 45 of Act 34 of 2005

13. Section 45 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant [,] subject to section 48 unless the National Credit Regulator after subjecting the applicant to a fit and proper test or any other prescribed test, is of the view that there are other compelling grounds that disqualify the applicant from being registered in terms of this Act.”; and

(b) by the addition of the following subsections:

“(4) The Minister may prescribe the criteria to be considered in conducting a fit and proper test contemplated in subsection (3).

(5) The Minister may prescribe the criteria for registration as well as the duties, obligations and fees that may be charged by a registrant.”.

Amendment of section 46 of Act 34 of 2005

14. Section 46 of the principal Act is hereby amended—

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

“(2) A natural person may not be registered as a credit provider, debt counsellor or payment distribution agent if that person is an unrehabilitated insolvent.”; and

(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—”.

Amendment of section 48 of Act 34 of 2005

15. 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] apply the following criteria in respect of the application.”; and

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

“(b) the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness and compliance with a prescribed code of conduct as well as affordability assessment regulations made by the Minister on the recommendation of the National Credit Regulator [, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority]; and

(c) by the addition of the following subsection:

“(1A) The Minister may prescribe criteria and measures to determine the outcome of affordability assessments provided for in this section.”.

Insertion of section 48A in Act 34 of 2005

16. The following section is hereby inserted in the principal Act after section 48:

“Code of Conduct

48A. (1) The Minister may prescribe a code of conduct contemplated in section 48(1)(b), only after the National Credit Regulator has—

- (a) published the proposed code of conduct for public comment;
- (b) considered any submissions made during the public comment period;

- (c) consulted with—
 - (i) persons conducting business within the relevant industry; and
 - (ii) relevant accredited persons; and
- (d) made any revisions to the proposed industry code as published for comment. 5
- (2) A code of conduct must be consistent with the purposes of this Act.
- (3) The National Credit Regulator—
 - (a) must monitor the effectiveness of any code of conduct issued in terms of this Act; and
 - (b) may reasonably require persons conducting business within the relevant industry to provide information necessary for the purposes of— 10
 - (i) monitoring in terms of paragraph (a); or
 - (ii) reviewing of the effectiveness of a prescribed code of conduct relative to the purposes of this Act. 15
- (4) A registrant must not, in the ordinary course of business, contravene an applicable code of conduct as contemplated in section 48(1)(b).

Amendment of section 49 of Act 34 of 2005

17. Section 49 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (c); 20
 - (b) by the insertion in subsection (1) of the word “or” at the end of paragraph (d); and
 - (c) by the addition in subsection (1) of the following paragraph:
 - “(e) if the National Credit Regulator, on compelling grounds, deems it necessary for the attainment of the purposes of this Act and efficient enforcement of its functions.” 25

Amendment of section 51 of Act 34 of 2005

18. Section 51 of the principal Act is hereby amended by the addition in subsection (1) of the following paragraph:—
- “(d) a penalty for late renewal of registration by registrants which must be imposed by the National Credit Regulator on a registrant who fails to pay his or her prescribed registration renewal fees within 30 days from the date on which such fees were payable.” 30

Amendment of section 52 of Act 34 of 2005

19. Section 52 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph: 35
- “(b) [subject to timely payment of the prescribed registration renewal fees,] remains in effect until—
 - (i) the registrant is deregistered; [or]
 - (ii) the registration is cancelled in terms of this Act[.]; or 40
 - (iii) it has lapsed on the last day upon which the prescribed renewal fee should have been paid in terms of section 51(1)(c).”

Insertion of section 58A in Act 34 of 2005

20. The following section is hereby inserted in the principal Act after section 58:
- “Additional requirements for cancellations 45
 - 58A. (1) A registrant who voluntarily requests that his or her registration be cancelled must—
 - (a) submit a notice in the prescribed manner and form, and an affidavit to the National Credit Regulator, stating—
 - (i) the registrant’s intention to voluntarily cancel his or her registration; 50

- (ii) reasons for such cancellation; and
 - (iii) the date on which the cancellation shall take effect;
 - (b) attach to the said notice proof that all the affected consumers, credit providers and all credit bureaus have been notified about the intended cancellation; and
 - (c) attach to the said notice the registration certificate issued to that registrant by the National Credit Regulator.
- (2) A registrant whose registration has been cancelled in accordance with subsection (1) must, in the prescribed manner and form, submit an affidavit to the National Credit Regulator stating that the consumers referred to subsections (1)(b) have been transferred to another registrant chosen by the consumer.
- (3) A credit provider who voluntarily requests that his or her registration be cancelled shall, in the prescribed manner and form, submit a cancellation notice to the National Credit Regulator accompanied by—
- (a) the registration certificate that was issued to that credit provider; and
 - (b) an affidavit from the accounting officer, auditor or authority of such credit provider, confirming that the registered activities have ceased.
- (4) The Minister may prescribe the procedure for hand over and transfer of records of consumers where the registrant ceases to operate for any reason, including cancellation of registration, lapsing of registration, death or incapacity.”.

Amendment of section 71 of Act 34 of 2005

21. Section 71 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

“(1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter, [may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement] must be issued with a clearance certificate by a debt counsellor within seven days after the consumer has—

- (a) satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or
- (b) demonstrated—
 - (i) financial ability to satisfy the future obligations in terms of the re-arrangement order or agreement under—
 - (aa) a mortgage agreement which secures a credit agreement for the purchase or improvement of immovable property; or
 - (bb) any other long term agreement as may be prescribed;
 - (ii) that there are no arrears on the re-arranged agreements contemplated in subparagraph (i); and
 - (iii) that all obligations under every credit agreement included in the re-arrangement order or agreement, other than those contemplated in subparagraph (i), have been settled in full.

(2) A debt counsellor must for the purposes of the demonstration envisaged in subsection (1) (b), apply such measures as may be prescribed.

(3) If a debt counsellor [refuses] decides not to issue or fails to issue a clearance certificate as contemplated in subsection [(2)(b)(i)] (1), the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection [(2)(b)(i)] (1), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer.

(4) (a) A [consumer to whom a clearance certificate is issued in terms of this section may] debt counsellor must within seven days after the issuance of the clearance certificate file a certified copy of that certificate, with the national register established in terms of section 69 of this Act [or any credit bureau] and all registered credit bureaus.

(b) If the debt counsellor fails to file a certified copy of a clearance certificate as contemplated in subsection (1), a consumer may file a certified copy of such certificate with the National Credit Regulator and lodge a complaint against such debt counsellor with the National Credit Regulator.”.

Insertion of section 71A of Act 34 of 2005

22. The following section is hereby inserted in the principal Act after section 71:

“Automatic removal of consumer credit information

- 71A. (1) The credit provider must submit to all registered credit bureaus within seven days after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was the subject of—
- (a) an adverse classification of consumer behaviour;
 - (b) an adverse classification enforcement action against a consumer;
 - (c) an adverse listing recorded in the payment profile of the consumer; or
 - (d) a judgement debt.
- (2) The credit bureau must remove any adverse listing contemplated in subsection (1) within seven days after receipt of such information from the credit provider.
- (3) If the credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the National Credit Regulator.
- (4) For the purposes of this section—
- (a) **‘adverse classification of consumer behaviour’** means classification relating to consumer behaviour and includes a classification such as “delinquent”, “default”, “slow paying”, “absconded”, or “not contactable”; and
 - (b) **‘adverse classification of enforcement action’** means classification relating to enforcement action taken by the credit provider, including a classification such as “handed over for collection or recovery”, “legal action”, or “write-off”.

Amendment of section 73 of Act 34 of 2005

23. Section 73 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister [must, within a period of six months after the effective date,] may, at any time prescribe—”;
 - (b) by the deletion in subsection (1) of the word “and” at the end of paragraph (a);
 - (c) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“(aA) the manner in which a registered auditor may confirm that the consumer credit information referred to in paragraph (a) has been reviewed, verified, corrected or removed; and”;
 - (d) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the time-frame and schedule for the exercise by the consumers of their rights in terms of section 72 (1) [, within a period of one year after the regulations being promulgated].”;

Amendment of section 82 of Act 34 of 2005

24. Section 82 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) [Subject to subsections (2)(a) and (3), a] 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 and must not be inconsistent with the affordability assessment regulations made by them.

(2) The Minister must, on recommendation of the National Credit Regulator, make affordability assessment regulations.”;
 - (b) by the deletion of subsections (3) and (4).

Amendment of section 83 of Act 34 of 2005

25. Section 83 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
 “[~~Court~~ may suspend reckless credit agreement] Declaration of reckless credit agreement”; 5
- (b) by the substitution for subsection (1) of the following subsection:
 “(1) Despite any provision of law or agreement to the contrary, in any court or Tribunal proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be, may declare that the credit agreement is reckless, as determined in accordance with this Part.”; 10
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “If a court or Tribunal declares that a credit agreement is reckless in terms of section 80(1)(a) or 80(1)(b)(i), the court or Tribunal, as the case may be, may make an order—”; 15
- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “If a court or Tribunal, as the case may be, declares that a credit agreement is reckless in terms of section 80(1)(b)(ii), the court or Tribunal, as the case may be—”; 20
- (e) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) must further consider whether the consumer is over-indebted at the time of those [~~court~~] proceedings; and”; 25
- (f) by the substitution in subsection (3) for the words preceding subparagraph (i) of paragraph (b) of the following words:
 “if the court or Tribunal, as the case may be, concludes that the consumer is over-indebted, the said court or Tribunal may make an order—”; and
- (g) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
 “Before making an order in terms of subsection (3), the court or Tribunal, as the case may be, must consider—”. 30

Amendment of section 86 of Act 34 of 2005

26. Section 86 of the principal Act is hereby amended— 35

- (a) by the substitution for subsection (2) of the following subsection:
 “(2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section [~~129~~] 130 to enforce that agreement.”; 40
- (b) by the substitution for subsections (10) and (11) of the following subsections, respectively:
 “(10) (a) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may, at any time at least 60 business days after the date on which the consumer applied for the debt review, give notice to terminate the review in the prescribed manner to— 45
 [(a)] (i) the consumer;
 [(b)] (ii) the debt counsellor; and 50
 [(c)] (iii) the National Credit Regulator [at any time at least 60 business days after the date on which the consumer applied for the debt review].; and
 (b) No credit provider may terminate an application for debt review lodged in terms of this Act, if such application for review has already been filed in a court or in the Tribunal.; and 55
- (c) by the substitution for subsection (11) of the following subsection:
 (11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the [~~Magistrate’s Court~~] court hearing the 60

matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.”.

Amendment of section 89 of Act 34 of 2005

27. Section 89 of the principal Act is hereby amended—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 5

“If a credit agreement is unlawful in terms of this section, despite [any provision of common law,] any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that—”; and 10

(b) by the deletion in subsection (5) of paragraphs (b) and (c).

Substitution of section 91 of Act 34 of 2005

28. The following section is hereby substituted for section 91 of the principal Act:

“Prohibition of unlawful provisions in credit agreements and supplementary agreements 15

91. (1) A credit provider must not directly or indirectly, by false pretence or with the intent to defraud, offer, require or induce a consumer to enter into or sign a credit agreement that contains an unlawful provision as contemplated in section 90.

(2) A credit provider must not directly or indirectly require or induce a consumer to enter into a supplementary agreement or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement.”. 20

Amendment of section 100 of Act 34 of 2005

29. Section 100 of the principal Act is hereby amended by the addition of the following subsection: 25

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

Amendment of section 106 of Act 34 of 2005

30. Section 106 of the principal Act is hereby amended by the addition of the following subsection: 30

“(8) The Minister may, in consultation with the Minister of Finance prescribe the limit in respect of the cost of credit life insurance that a credit provider may charge a consumer.”.

Insertion of section 126A in Act 34 of 2005

31. The principal Act is hereby amended by the insertion of the following section after section 126: 35

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

(b) No person may continue the collection of, or re-activate a debt under a credit agreement to which this Act applies— 40

(i) which debt has extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969); and

(ii) where the consumer raises the defence of prescription, or would reasonably have raised the defence of prescription had the consumer been aware of such a defence, in response to a demand, whether as part of legal proceedings or otherwise.”. 45

Amendment of section 129 of Act 34 of 2005

32. Section 129 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) Subject to subsection (4), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider’s prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.”

(b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following word:

“A [consumer] credit provider may not re-instate or revive a credit agreement—”; and

(c) by the addition of the following subsections:

“(5) The notice contemplated in subsection (1)(a) must be delivered to the consumer—

(a) by registered mail; or

(b) to an adult person at the location designated by the consumer.

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

(7) Proof of delivery contemplated in subsection (5) is satisfied by—

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or

(b) the signature or identifying mark of the recipient contemplated in subsection (5)(b)”.

Amendment of section 130 of Act 34 of 2005

33. Section 130 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 [(9)](10), or section 129(1), as the case may be;”.

Amendment of section 134 of Act 34 of 2005

34. Section 134 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“As an alternative to filing a complaint with the National Credit Regulator in terms of section 136, a person may refer a matter or a dispute following an allegation of a reckless credit agreement that could be the subject of such a complaint as follows:”.

Insertion of sections 134A and 134B in Act 34 of 2005

35. The following sections are hereby inserted in the principal Act after section 134:

“Registration and accreditation of alternative dispute resolution agents

134A. The National Credit Regulator must register and accredit alternative dispute resolution agents.

Deregistration of alternative dispute resolution agents

134B. (1) Subject to subsection (2), registration and accreditation in terms of section 134A may be cancelled by the Tribunal on application by the National Credit Regulator, if an alternative dispute resolution agent—

(a) fails to comply with any condition of its registration and accreditation; or

(b) contravenes this Act.

- (2) If an alternative dispute resolution agent fails to comply with any condition of its registration or accreditation or contravenes this Act, and such alternative dispute resolution agent is also licensed by another regulatory authority, the National Credit Regulator may—
- (a) impose conditions on the registration of such alternative dispute resolution agent consistent with its licence, if any; 5
 - (b) refer the matter to the regulatory authority that licensed such alternative dispute resolution agent, with a request that the regulatory authority review that licence in the circumstances; or
 - (c) at the request, or with the consent, of the regulatory authority that licensed that alternative dispute resolution agent, apply to the Tribunal for cancellation of the registration and accreditation. 10
- (3) A regulatory authority to whom a matter has been referred to in terms of subsection (2)(b)—
- (a) must conduct a formal review of the alternative dispute resolution agent's licence; 15
 - (b) to the extent permitted by the legislation in terms of which the alternative dispute resolution agent is licensed, may suspend that licence pending the outcome of that review; or
 - (c) may request, or consent to, the National Credit Regulator lodging an application with the Tribunal for cancellation of the registration. 20
- (4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issued a licence to an alternative dispute resolution agent that is registered in terms of section 134A, to co-ordinate the procedures to be followed in taking any action in terms of subsections (2) and (3). 25
- (5) The registration of an alternative dispute resolution agent is cancelled as of—
- (a) the date on which the Tribunal issues an order; or
 - (b) in the case of a voluntary cancellation, the date specified by the said alternative dispute resolution agent in the notice of voluntary cancellation. 30
- (6) An alternative dispute resolution agent whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.”. 35

Amendment of section 136 of Act 34 of 2005

36. Section 136 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person may submit a complaint concerning an alleged contravention of this Act or a complaint concerning an allegation of reckless credit to the National Credit Regulator in the prescribed manner and form.”. 40

Amendment of section 163 of Act 34 of 2005

37. Section 163 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 45
 - “(1) A credit provider, debt counsellor or payment distributing agent must ensure that its employees or agents are trained in respect of the matters to which this Act applies.”;
- (b) by the insertion after subsection (1) of the following subsections:
 - “(1A) The Minister must prescribe the requirements and standards for the training contemplated in subsection (1). 50
 - (1B) Until the regulations envisaged in subsection (1A) have been made, credit providers, debt counsellors and payment distributing agents must ensure that its employees or agents are trained to such an extent that they can contribute to the purpose of this Act.
 - (1C) A debt counsellor may only make use of agents for administrative tasks relating to debt review.”; and 55

(c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) that person must disclose to the consumer in writing the amount of any fee or commission that will be paid if the agreement is concluded; and”.

5

Amendment of law

38. The laws specified in the Schedule hereto are hereby amended to the extent specified in that Schedule.

Short title and commencement

39. This Act is called the National Credit Amendment Act, 2013, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

10

Schedule

No and year of Act	Short title	Extent of Amendment
Act No. 24 of 1936	Insolvency Act, 1936	<p>1. The Insolvency Act is hereby amended by the insertion after section 8 of the following section:</p> <p style="padding-left: 40px;">“Debt review</p> <p style="padding-left: 40px;"><u>8A. A debtor who has applied for a debt review must not be regarded as having committed an Act of insolvency.”.</u></p>
Act No. 68 of 2008	Consumer Protection Act, 2008	<p>1. Section 71 of the Consumer Protection Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) Any person may file a complaint concerning a matter contemplated in section 69{(1)}(c)(iv) [or (2)(b)] with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.”.</p>

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL CREDIT
AMENDMENT BILL**

1. BACKGROUND

Since the coming into operation of the National Credit Act, 2005 (Act No. 34 of 2005)(Act), there have been from time to time implementation and interpretation challenges in respect of credit regulation. These challenges that necessitate amendments to the Act in order to ensure proper and better implementation of the Act and also to ensure certainty and clarity where the Act seems to create uncertainty.

2. OBJECTS OF BILL

The main objective of the National Credit Amendment Bill (Bill) is to address implementation challenges that have materialised during the implementation of the Act and also to make some improvements.

3. CLAUSE-BY-CLAUSE ANALYSIS

- 3.1 Clause 1 amends certain definitions.
- 3.2 Clause 2 of the Bill amends section 17 of the Act in order to provide for the regulatory authorities to enter into a valid agreement and National Credit Regulator must notify the Registrar of Banks within the agreed time frames of the National Credit Regulator's intention to investigate a bank.
- 3.3 Clause 3 of the Bill repeals sections 19, 20, 21 and 22 of the Act so as to remove the Board of the National Credit Regulator.
- 3.4 Clause 4 of the Bill provides for the Chief Executive Officer of the National Credit Regulator to be responsible for the duties of the Board (now repealed in clause 3).
- 3.5 Clause 5 of the Bill amends section 25 of the Act in order to empower the Chief Executive Officer of the National Credit Regulator to delegate certain powers to other employees of the National Credit Regulator.
- 3.6 Clause 6 of the Bill incorporates the aspects of sections 20 and 21 (now being repealed) that related to the Tribunal, directly into section 26, which deals with the Tribunal.
- 3.7 Clauses 7 and 8 effect consequential amendments to section 29 and 32, necessitated due to the repeal of section 20.
- 3.8 Clause 9 of the Bill amends section 34 of the Act to empower the Minister in consultation with the Minister of Finance to determine the salary, allowances and benefits of members of the Tribunal.
- 3.9 Clauses 10 and 11 of the Bill amend sections 40 and 42 of the Act to allow the Minister to require all credit providers to register.
- 3.10 Clause 12 of the Bill inserts a new section 44A providing for the registration of payment distribution agents.
- 3.11 Clause 13 of the Bill amends section 45 of the Act by adding a condition relating to grounds that disqualify an applicant from registration.
- 3.12 Clause 14 of the Bill amends section 46 of the Act to preclude unrehabilitated insolvents and other categories of natural persons from being registered as a debt counsellor or payment distributing agent.

- 3.13 **Clause 15** of the Bill amends section 48 of the Act to empower the Minister to issue affordability assessment codes, compliance with which codes are a prerequisite for registration.
- 3.14 **Clause 16** inserts section 48A in the Act in order to set out the process and requirements for a code of conduct.
- 3.15 **Clause 17** amends section 49 of the Act in order to grant the National Credit Regulator more powers in respect of the review and proposal of new conditions on registrations.
- 3.16 **Clause 18** of the Bill amends section 51 of the Act to empower the National Credit Regulator to impose an administrative penalty fee for late renewal of registration.
- 3.17 **Clause 19** of the Bill amends section 52 of the Act to provide for registration to continue to exist, in addition to current prescripts, to such date as it lapses and a renewal fee was payable.
- 3.18 **Clause 20** of the Bill introduces a new section 58A that provides for additional requirements in respect of voluntary cancellations by registrants, so as to deal adequately with registrants who want to be de-registered, whilst still protecting the interests of consumers that they were counselling or providing credit to.
- 3.19 **Clause 21** of the Bill amends section 71 of the Act by providing for the debt counsellor to issue a clearance certificate if the consumer has satisfied all the debt obligations as prescribed and to effect consequential amendments.
- 3.20 **Clause 22** of the Bill inserts a new section 71A in order to provide for automatic removal of consumer credit information.
- 3.21 **Clause 23** of the Bill amends section 73 of the Act to delete certain time frames prescribed by the Minister and by the addition of subsection (1)(c) to provide for a registered auditor to confirm that consumer credit information have been reviewed, verified, corrected or removed.
- 3.22 **Clause 24** of the Bill repeals section 82 of the Act.
- 3.23 **Clause 25** of the Bill amends section 83 of the Act in order to include the National Consumer Tribunal in the suspension of reckless credit agreements.
- 3.24 **Clause 26** of the Bill amends section 86 of the Act in order to effect technical corrections and also provides that a credit provider may not terminate a review if a legal action has been lodged in court in respect of a review.
- 3.25 **Clause 27** of the Bill amends section 89 of the Act in order to empower the court to make a just and equitable order amongst other orders a court may make.
- 3.26 **Clause 28** of the Bill substitutes section 91 of the Act to provide for the prohibition of fraudulent misrepresentations relating to the signing of credit agreements.
- 3.27 **Clause 29** of the Bill amends section 100 of the Act to provide for the claiming of prohibited charges to constitute an offence.
- 3.28 **Clause 30** of the Bill amends section 106 of the Act to provide that the Minister may prescribe a limit on the cost of credit insurance.
- 3.29 **Clause 31** of the Bill amends section 129 of the Act in order to provide for delivery of a section 129 notice, condonation of default and revival of a credit agreement.

- 3.30 **Clause 32** of the Bill amends section 130 of the Act in order to rectify an incorrect cross-reference.
- 3.31 **Clause 33** of the Bill amends section 133 of the Act to proscribe the selling or collecting of prescribed debts.
- 3.32 **Clause 34** of the Bill amends section 134 of the Act in order to empower a person to refer a matter or a dispute following an allegation of a reckless credit agreement to alternative dispute resolution.
- 3.33 **Clause 35** of the Bill inserts two new sections, 134A and 134B which deals with registration and accreditation of alternative dispute resolution agents and deregistration of alternative dispute resolution agents, respectively.
- 3.34 **Clause 36** of the Bill amends section 136 of the Act in order to empower a person to submit a complaint concerning allegation of a reckless credit agreement to the National Credit Regulator.
- 3.35 **Clause 37** amends section 163 of the Act to require prescribed training of agents and to provide that the debt counselors may only make use of agents for administrative tasks in respect of reviews.
- 3.36 **Clause 38** of the Bill amends section 171 to make consequential amendments where regulations are required for processes contained in more than one clause in the Bill, or section in the Act.
- 3.37 **Clause 39** provides for the consequential amendments to the Insolvency Act, 1936 (Act No. 24 of 1936) and the Consumer Protection Act, 2008 (Act No.68 of 2008).
- 3.38 **Clause 40** of the Bill provides for the short title and commencement.
- 3.39 Consequential amendments are made to the arrangement of sections of the Act.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

National Credit Regulator and National Treasury.

5. IMPLICATIONS FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR STATE

To be accommodated within the existing budgetary framework.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Trade and Industry are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution of the Republic of South Africa, 1996, since it contains provisions that falls within "Consumer Protection".
- 7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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