REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 36916 of 9 October 2013)
(The English text is the official text of the Bill)

(MINISTER OF TRADE AND INDUSTRY)

[B 47—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 empower the Chief Executive Officer to delegate certain functions to other officials of the National Creditor 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 debt counsellors 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 Credit 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 paragraph *(d)* in the definition of 'lease';

(b) by the substitution for the definition of "mortgage" of the following definition:

" **'mortgage'** means **[a pledge of immovable property]** security for a secured loan that the credit provider makes to a borrower that serves as security for a mortgage agreement;";

(c) 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; and

(d) 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

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—"; 5

(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)*; 10

(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."; 15 and

(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]**(4)*(b)*; and". 20

Amendment of section 25 of Act 34 of 2005

3. 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: 25

"The Chief Executive Officer or any official duly authorised by the Chief Executive Officer—".

Substitution of section 34 of Act 34 of 2005

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

"**Remuneration and benefits** 30

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.

(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.". 35

Insertion of section 44A in Act 34 of 2005

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

"**Registration of payment distribution agents**

44A. (1) A natural or juristic person may apply to the National Credit Regulator to be registered as a payment distribution agent. 40

(2) 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.

(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.". 45

Amendment of section 45 of Act 34 of 2005

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

(a) after subjecting the applicant to a probity test or any other prescribed test; or

(b) upon investigations,

is of the view that there are other compelling grounds that disqualify the applicant and which render such an applicant not to be a fit and proper person to be registered in terms of this Act.".

Amendment of section 46 of Act 34 of 2005

7. Section 46 of the principal Act is hereby amended 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.".

Amendment of section 48 of Act 34 of 2005

8. Section 48 of the principal Act is hereby amended 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 **[, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority]** or compliance with a prescribed code of conduct or a guideline including but not limited to an affordability assessment guideline prescribed by the Minister after consultation with the National Credit Regulator; and".

Amendment of section 49 of Act 34 of 2005

9. 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)*;

(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.".

Amendment of section 51 of Act 34 of 2005

10. Section 51 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word "and" at the end of paragraph *(b)*;

(b) by the insertion in subsection (1) of the word "and" at the end of paragraph *(c)*; and

(c) by the addition in subsection (1) of the following paragraph:

"*(d)* a penalty fee for late renewal of registration by registrants which shall be imposed by the National Credit Regulator on a registrant that fails to renew its registration within the specified time period.".

Insertion of section 58A in Act 34 of 2005

11. The following section is hereby inserted in the principal Act after section 58:

"**Additional requirements for voluntary cancellations**

58A. (1) A debt counsellor 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 debt counsellor's intention to voluntarily cancel his or her registration;

(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;

(c) attach to the said notice the registration certificate issued to that debt counsellor by the National Credit Regulator; and

(d) submit an affidavit to the National Credit Regulator, advising the National Credit Regulator that the consumers referred to in paragraph *(b)* have been transferred to another registered debt counsellor.

(2) A debt counsellor whose registration has been cancelled in accordance with this section must, in the prescribed manner and form, notify in writing all affected—

(i) consumers;

(ii) credit bureaus; and

(iii) credit providers,

of his or her deregistration.

(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 seized.".

Amendment of section 71 of Act 34 of 2005

12. Section 71 of the principal Act is hereby amended—

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

"(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 financial ability to satisfy every current obligation under every credit agreement.";

(b) by the deletion of subsection (2);

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

"(3) If a debt counsellor **[refuses]** decides not to issue a clearance certificate 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."; and

(d) by the substitution for subsection (4) of the following subsection:

"(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 or any credit bureau.

(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

13. 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 the credit bureau 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; or

(c) a payment profile listed in the consumer credit payment profile.

(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

14. 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

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

(a) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

''The Minister, in consultation with the National Credit Regulator may—'';

and

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

"*(b)* publish guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 81 and any other guidelines related thereto, applicable to **[other]** credit agreements.". 5

Amendment of section 83 of Act 34 of 2005

16. 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"; 10

(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 15 Part.";

(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*(l)(b)*(i), the court or Tribunal, as the case 20 may be, may make an order—";

(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 25 Tribunal, as the case may be—";

(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"; 30

(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 35 the following words:

"Before making an order in terms of subsection (3), the court or Tribunal, as the case may be, must consider—".

Amendment of section 86 of Act 34 of 2005

17. Section 86 of the principal Act is hereby amended— 40

(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 45 that agreement."; and

(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 50 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—

(a) the consumer;

(b) the debt counsellor; and 55

(c) the National Credit Regulator **[,at any time at least 60 business days after the date on which the consumer applied for the debt review]**.

(b) No credit provider may terminate a review contemplated in paragraph *(a)* if such review is filed in court as contemplated in section 87.

(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 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

18. 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:

''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

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

Substitution of section 91 of Act 34 of 2005

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

''**Prohibition of unlawful provisions in credit agreements and supplementary agreements**

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.''.

Amendment of section 129 of Act 34 of 2005

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

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

''*(a)* may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to—

(i) a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; **[and]** or

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

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

''(3) Subject to subsection (4), a credit provider may at any time before the termination of a credit agreement or court judgment following default by a consumer of such credit agreement, condone such default and revive such credit agreement by not effecting termination of such agreement if the consumer, to the satisfaction of the credit provider, makes a reasonable arrangement or undertaking to rectify such default or upon payment of any agreed amount.''; and

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

"A **[consumer]** credit provider may not **[re-instate]** revive a credit a agreement after—".

Amendment of section 130 of Act 34 of 2005

21. 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

22. 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

23. 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;

(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.

(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;

(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.

(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).

(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.

(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.''.

Amendment of section 136 of Act 34 of 2005

24. 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 a reckless credit agreement to the National Credit Regulator in the prescribed manner and form.''.

Amendment of section 140 of Act 34 of 2005

25. Section 140 of the principal Act is hereby amended 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—''.

Amendment of section 163 of Act 34 of 2005

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

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

''(1) A credit provider, debt counsellor or payment distributing agent must ensure that its employees or agents **[are trained]** attend prescribed training in respect of the matters to which this Act applies.'';

(b) by the insertion after subsection (1) of the following subsection:

''(1A) A debt counsellor may only make use of agents for administrative tasks relating to debt review.''; and

(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''.

Amendment of law

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

Short title and commencement

28. 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*.

Schedule

No and year of Act	Short title	Extent of Amendment
Act No. 24 of 1936	Insolvency Act, 1936	1. The Insolvency Act is hereby amended by the insertion after section 8 of the following section: "**Debt review** **8A.** A debtor who has applied for a debt review must not be regarded as having committed an act of insolvency.".
Act No. 68 of 2008	Consumer Protection Act, 2008	1. Section 71 of the Consumer Protection Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) Any person may file a complaint concerning a matter contemplated in section 69**[(1)]***(c)*(ii) **[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.".

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 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 the 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 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 officials of the National Credit Regulator.

3.4 **Clause 4** 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.

3.5 **Clause 5** of the Bill inserts a new section 44A providing for the registration of payment distribution agents.

3.6 **Clause 6** of the Bill amends section 45 of the Act by adding a condition relating to grounds that disqualify an applicant from registration.

3.7 **Clause 7** of the Bill amends section 46 of the Act to preclude unrehabilitated insolvents from being registered as a debt counsellor or payment distributing agent.

3.8 **Clause 8** of the Bill amends section 48 of the Act to empower the National Credit Regulator to issue affordability assessment standards and guidelines.

3.9 **Clause 9** of the Bill 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.

3.10 **Clause 10** of the Bill amends section 51 of the Act to empower the National Credit Regulator to impose a penalty fee for late renewal of registration.

3.11 **Clause 11** of the Bill introduces a new section 58A that provides for additional requirements in respect of voluntary cancellations by debt counsellors and credit providers, so as to deal adequately with debt counsellors and credit providers who want to be de-registered, whilst still protecting the interests of consumers that they were counselling or providing credit to.

3.12 **Clause 12** of the Bill amends section 71 of the Act by inserting subsection (1) in order to provide for a debt counsellor to issue a clearance certificate if the consumer has satisfied all the debt obligations.

3.13 **Clause 13** of the Bill inserts a new section 71A in order to provide for automatic removal of consumer credit information.

3.14 **Clause 14** 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.

3.15 **Clause 15** of the Bill amends section 82 of the Act in order to empower the Minister to pre-approve assessment mechanisms and procedures in consultation with the National Credit Regulator.

3.16 **Clause 16** of the Bill amends section 83 of the Act in order to include the National Consumer Tribunal in the suspension of reckless credit agreements.

3.17 **Clause 17** 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.

3.18 **Clause 18** 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.

3.19 **Clause 19** of the Bill substitutes section 91 of the Act to provide for the prohibition of fraudulent misrepresentations relating to the signing of credit agreements.

3.20 **Clause 20** of the Bill amends section 129 of the Act in order to provide for condonation of default and revival of a credit agreement.

3.21 **Clause 21** of the Bill amends section 130 of the Act in order to rectify an incorrect cross-reference.

3.22 **Clause 22** 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.

3.23 **Clause 23** of the Bill inserts two new sections 134A and 134B which deal with registration and accreditation of alternative dispute resolution agents and the deregistration of alternative dispute resolution agents, respectively.

3.24 **Clause 24** 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.

3.25 **Clause 25** of the Bill amends section 140 of the Act in order to give the National Credit Regulator additional powers to take enforcement action after completing an investigation.

3.26 **Clause 26** amends section 163 of the Act to require that debt counselors may only make use of agents for administrative tasks in respect of reviews.

3.27 **Clause 27** provides for a Schedule in respect of consequential amendments to the Insolvency Act, 1936 (Act No. 24 of 1936) and the Consumer Protection Act, 2008 (Act No.68 of 2008).

3.28 **Clause 28** of the Bill provides for the short title and commencement.

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 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

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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