

REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT BILL

(Minister of Trade and Industry)

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.
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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 Distributing Agents; to tighten measures relating to debt counsellors and the conduct of their practices as debt counsellors; to allow debt counselors to voluntarily cancel their registration; to provide for Ministerial power 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 (herein after referred to as “the principal Act”)

1. Section 1 of the principal Act is hereby amended by:-
 - (a) the insertion after the definition of “advertisement” of the following definitions:

“adverse classifications of consumer behavior” means subjective classifications of consumer behavior and include classifications such as ‘delinquent’, ‘default’, ‘slow paying’, ‘absconded’, or ‘not contactable’;
“adverse classifications of enforcement action” means classifications related to enforcement action taken by the credit provider, including classifications such as ‘handed over for collection or recovery’, ‘legal action’, or ‘write-off’;
 - (b) the deletion in the definition of ‘lease’ of paragraph (d);
 - (c) the substitution for the definition of ‘mortgage’ of the following definition:

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

- (d) the substitution for the definition of 'mortgage agreement' of the following definition:
“**mortgage agreement**” means a credit agreement that is secured by a registration of a mortgage bond by the registrar of deeds over immovable property [pledge of immovable property]; and
- (e) 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 by-
- (a) the substitution in paragraph (b) of subsection (4) for the words preceding subparagraph (i) of the following words:
“(b) **[negotiate agreements]** enter into a valid agreement with any regulatory authority to-.”;
- (b) the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“(4) The National Credit Regulator must [may]-.”.
- (c) the addition in subsection (4) of the following paragraph:
“(e) notify within the agreed time frame, the Registrar of Banks designated in terms of the Banks Act,1990 (Act No.94 of 1990), of its intention to investigate a Bank as defined in the Banks Act,1990.”; and
- (d) the substitution in subsection (5) for the words preceding paragraph (b) of the following words:
“(5) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer credit matters within a particular industry or sector-
- (a) **[may] must [negotiate agreements]** enter into a valid agreement with the National Credit Regulator, as anticipated in subsection 4(b); and.”.

Amendment of section 25 of Act 34 of 2005

3. Section 25 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
“(1)The Chief Executive Officer or any official duly authorized by the Chief Executive Officer-”.

Amendment 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

- 34.** (1) The Minister , in consultation with the Minister of Finance, may determine salary, allowances, benefits or any other terms and conditions of employment of members of the Tribunal;
(2) During the term of office of a member of the Tribunal, the member's salary, allowance or benefits may not be reduced.”.

Insertion of section 44A in Act 34 of 2005

5. The principal Act is hereby amended by the insertion after section 44 of the following section:

“ Registration of payment distribution agents

- 44A.** (1) A natural or juristic person may apply to be registered as a payment distributing agent.
(2) A person must not offer or engage in the services of a payment distributing agent , or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as such in terms of this Chapter.
(3) In addition to the requirements of section 46, an applicant for registration as a payment distributing agent must satisfy any prescribed education, experience or competency requirements.”.
(4) Contravention of subsection (2) shall constitute an offence.”.

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 having subjected the applicant to a probity test or any other prescribed test or upon investigation is of the view that there are other compelling grounds that disqualifies the applicant and rendering 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 distributing agent if that person is an unrehabilitated insolvent.”.

Amendment of section 48 of Act 34 of 2005

8. Section 48(1) of the principal Act is hereby amended by the substitution 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 or a guideline including but not limited to an affordability assessment guideline prescribed by the Minister after consultation with 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

Amendment of section 49 of the principal Act

9. Section 49 of the principal Act is hereby amended by the insertion in subsection (1) of the following paragraph:

“(e) at any time, 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 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 principal Act is hereby amended by the insertion after section 58 of the following section:

“**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 a prescribed manner and form and a sworn statement in the form of an affidavit to the National Credit Regulator, stating the registrant's intention to voluntarily cancel its registration, reasons for such cancellation, the date on which the cancellation shall take effect and attach proof that all the affected consumers, affected credit providers and all credit bureaus have been notified about the cancellation and must attach to the notice to cancel the registration, the certificate issued to the registrant by the National Credit Regulator;
- (b) in the prescribed manner and form notify in writing -
 - (i) all affected credit providers;
 - (ii) all credit bureaus; and
 - (iii) all affected consumers,
notifying them of his or her deregistration; and
- (c) submit an affidavit to the National Credit Regulator, advising it that the consumers referred to in paragraph (b)(iii) above have been transferred to another registered debt counsellor.

(2) 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;
- (b) a sworn statement in the form of an affidavit from the accounting officer or auditor or authority of the registrant, 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 by-

(a) 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) the deletion of subsection (2).

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

"(3) If a debt counsellor **[refuses]** decides not to issue or fails to issue a clearance certificate 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) the substitution for subsection 4 of the following subsection:

"(4) 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: Provided that if the debt counsellor fails to file such certificate, a consumer may file such certificate and file a complaint against such debt counsellor to the National Credit Regulator."

Insertion of section 71A of Act 34 of 2005

13. The principal Act is hereby amended by the insertion after section 71 of the following section:

"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 a subject of -

(a) an adverse classification of consumer behaviour;

(b) an adverse classification enforcement action against a consumer; or

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

(2) The Credit bureau must remove such adverse listing contemplated in this section within seven days after receipt of such information from the credit provider;

(3) If the credit provider fails to submit such settlement as contemplated in subsection (1), a consumer may file a complaint against such credit provider with the National Credit Regulator."

Amendment of section 73 of Act 34 of 2005

14. Section 73 of the Principal Act is hereby amended by-

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

"(1) The Minister may at any time **[must, within a period of six months after the effective date,]** prescribe-;

(b) 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].and

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

“(c) that a registered auditor confirm that such consumer credit information have been reviewed, verified, corrected or removed.”.

Amendment of section 82 of Act 34 of 2005

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

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

“The Minister, in consultation with the **[The]** National Credit Regulator may-;.” and

(b) 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.”.

Amendment of section 83 of Act 34 of 2005

16. Section 83 of the principal Act is hereby amended by-

(a) the substitution for the heading of the following heading:

“83 [Court may suspend reckless credit agreement] Declaration of reckless credit agreement;

(b) 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.”.

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

“If a court or National Consumer 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- “

(d) the substitution in subsection (3) for the words preceding subparagraph (i) of the following words:

“(3) 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—
(a) must further consider whether the consumer is over-indebted at the time of those **[court]** proceedings; and
(b) if the court or Tribunal, as the case may be, concludes that the consumer is over-indebted, the court or Tribunal may make an order-” and

(e) 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-”.

Amendment of section 86 of Act 34 of 2005

17. Section 86 of the principal Act is hereby amended by:

(a) 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.”.

(b) the substitution for subsection (10) of the following subsection:

“(10) 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 give notice to terminate the review in the prescribed manner to -
(a) the consumer;
(b) the debt counsellor; and
(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: Provided that no credit provider may terminate such review if such review is filed in court as contemplated in section 87.” and

(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 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 the Act 34 of 2005

18. Section 89 of the principal Act is hereby amended by-

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

Substitution of section 91 of Act 34 of 2005

19. The principal Act is hereby amended by the substitution for section 91 of the following section:

“[Supplementary requirements and documents] Prohibition of unlawful provisions and supplementary documents

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-

(a) 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;

(3) Contravention of this section shall constitute an offence.”.

Amendment of section 129 of Act 34 of 2005

20. Section 129 of the principal Act is hereby amended by-

(a) 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, and 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

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

;

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

“(3) Subject to subsection (4), a **[consumer] credit provider** may **[-]**
[(a)] at any time before the **[credit provider has cancelled 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.**”
[re-instate a credit agreement that is in default by paying to the credit provider all amounts that are overdue, together with the credit provider’s permitted default charges and reasonable costs of enforcing the agreement up to the time of re-instatement;]

(c) the deletion in subsection (3) of paragraph (b); and

(d) 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 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 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 reckless credit agreement that could be the subject of such a complaint as follows:”.

Insertion of section 134A of Act 34 of 2005

23. The principal Act is hereby amended by the insertion after section 134 of the following sections:

“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 accreditation in terms of section 134A of this Act may be cancelled by the Tribunal on request by the National Credit Regulator, if the registrant -

- (a) fails to comply with any condition of its registration and accreditation; or
- (b) contravenes this Act.

(2) In any circumstance contemplated in subsection (1) concerning a registrant that is licenced by any other regulatory authority, the National Credit Regulator may-

- (a) impose conditions on the registration of such registrant consistent with its licence if any;
- (b) refer the matter to the regulatory authority that licensed such registrant , 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 registrant, request the Tribunal to cancel the registration.

(3) A regulatory authority to whom a matter is or may be referred in terms of subsection (2)(b)-

- (a) must conduct a formal review of the registrant's licence;
- (b) to the extent permitted by the legislation in terms of which the registrant is licensed, may suspend that licence pending the outcome of that review; and
- (c) may request, or consent to, the National Credit Regulator filing a request with the Tribunal as contemplated in subsection (2)(c);

(4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issues licences to registrant 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) If the Tribunal has cancelled a registration, the National Credit Regulator must notify the registrant in writing of-

- (a) the cancellation;
- (b) the reasons for the cancellation; and
- (c) the date of cancellation.

(6) A registration 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 registrant in the notice of voluntary cancellation.

(7) A registrant 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 complaint concerning allegation of 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 for subsection (1) of the following subsection:

“(1) 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 by:

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

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

(b) 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) 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 Acts mentioned in the Schedule hereto is hereby amended to the extent indicated therein.

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 | Insertion of section 8A in Act 24 of 1935 The Insolvency Act is hereby amended by the insertion after section 8 of the following section: <u>8A A debtor who has applied for a debt review must not be regarded as having committed an Act of insolvency.</u> |
| Act No.68 of 2008 | Consumer Protection Act, 2008 | Amendment of Act 68 of 2008 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

- 1.1 Since the coming into operation of the National Credit Act, No. 34 of 2005, there have been from time to time implementation and interpretation challenges that warrant amendments to the Act in order to bring about a better implementation of credit regulation and clarity where the Act seems to be unclear.

2. OVERVIEW OF THE BILL

- 2.1 Clause 1 amends certain definitions.
- 2.2 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 notification of the Registrar of Banks by the National Credit Regulator of its intention to investigate a Bank.
- 2.3 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.
- 2.4 Clause 4 of the Bill amends section 34 of the Act by adding a proviso to empower the Minister in consultation with the Minister of Finance to determine salary, allowances, benefits of members of the Tribunal.
- 2.5 Clause 5 of the Bill amends section 71 of the Act by inserting subsection 44A to provide for the registration of payment distribution agents.
- 2.6 Clause 6 of the Bill amends section 45 of the Act by adding a proviso relating to grounds in respect of registration with the National Credit Regulator.
- 2.7 Clause 7 precludes unrehabilitated insolvents from being registered as debt counsellors.
- 2.8 Clause 8 empowers the Minister to issue affordability assessment standards and guidelines.

- 2.9 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.
- 2.10 Clause 10 of the Bill empowers the NCR to levy a penalty fee for late renewal of registration.
- 2.11 Clause 11 of the Bill amends section 58 of the Act and 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.
- 2.12 Clause 12 of the Bill amends section 71 of the Act by providing for the issuance of a clearance certificate by the debt counselor if the consumer has satisfied all the debt obligations.
- 2.13 Clause 13 of the Bill inserts a new section 71A in order to provide for automatic removal of consumer credit information.
- 2.14 Clause 14 of the Bill amends section 73 of the Act to delete certain time frames prescribed to 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.
- 2.15 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.
- 2.16 Clause 16 of the Bill amend section 83 to empower the National Consumer Tribunal to declare reckless credit agreements.
- 2.17 Clause 17 of the Bill amends section 86 of the Act in order effect technical corrections. It also add a proviso to ensure that a credit provider does not terminate a review if a legal action has been lodged in court in respect of a review.
- 2.18 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 and also provides for the deletion in subsection (5) of paragraph (b) and (c).
- 2.19 Clause 19 of the Bill amends section 91 so as to provides for prohibiting a credit provider from directly or indirectly induce a consumer to enter into an unlawful agreement.

- 2.20 Clause 20 of the Bill amends section 129 of the Act in order to delete subsection (3).
- 2.21 Clause 21 of the Bill amends section 130 of the Act in order to effect a technical correction.
- 2.22 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 reckless credit agreement to alternative dispute resolution bodies
- 2.23 Clause 23 of the Bill inserts two new sections, 134A and 134B so as to provide for registration, accreditation and deregistration of alternative dispute resolution agents
- 2.24 Clause 24 of the Bill amends section 136 of the Act in order to empower a person to submit complaint concerning allegation of reckless credit agreement.
- 2.25 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.
- 2.26 Clause 26 amends section 163 of the Act to require that the debt counselors may only make use of agents for administrative tasks in respect of reviews.
- 2.27 Clause 27 provides for the consequential amendments to the Insolvency Act, 1936 (Act No. 24 of 1936).
- 2.28 Clause 28 of the Bill provides for the short title and commencement.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

National Credit Regulator/ National Treasury

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

To be accommodated within the existing budgetary framework.

6. PARLIAMENTARY PROCEDURE

6.1 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 of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

6.2 Furthermore, 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.