

Part A
Alternative dispute resolution

Alternative dispute resolution

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134. (1) As an alternative to filing a complaint with the National Credit Regulator in terms of section **136**, a person may refer a matter that could be the subject of such a complaint as follows:

- (a) If the credit provider concerned is a financial institution as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. **37** of 2004), the matter—
 - (i) may be referred only to the ombud with jurisdiction to resolve a complaint or settle a matter involving that credit provider, as determined in accordance with sections **13** and **14** of that Act; and
 - (ii) must be procedurally resolved as if it were a complaint in terms of that Act; or
- (b) if the credit provider is not a financial institution, as defined in the Financial Services Ombud Schemes Act, 2004 (Act No. **37** of 2004), the matter may be referred to either—
 - (i) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or
 - (ii) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(2) The respondent in a matter referred to an alternative dispute resolution agent under subsection (1)(b)(ii) may object to that referral in writing within 10 business days, in which case—

- (a) the matter may not be resolved by an alternative dispute resolution agent;
- (b) if the matter is the proper subject of a complaint to the National Credit Regulator, the matter is deemed to have been filed as a complaint in terms of section 136; or
- (c) if the matter is the proper subject of an application to the Tribunal, the matter is deemed to have been an application directly to the Tribunal in terms of section 137.

(3) The Tribunal, after considering a matter in terms of a deemed application under subsection (2)(c), may make an exceptional order of costs against the respondent if the Tribunal considers that the matter could have been properly resolved by conciliation, mediation or arbitration carried out in good faith.

(4) In respect of any dispute between a credit provider and a consumer that could be the subject of an application to the Tribunal in terms of this Act, other than Part C of this Chapter, the consumer or credit provider, before either may apply directly to the Tribunal—

- (a) must attempt to resolve that matter directly between themselves; and
- (b) if unable to do so, must refer the matter—
 - (i) to the ombud with jurisdiction, for resolution in accordance with this Act and in terms of the Financial Services Ombud Schemes Act, 2004 (Act No. 37 of 2004), if the credit provider concerned is a financial institution and a participant in a recognised scheme as defined in that Act; or
 - (ii) in any other case, to either—
 - (aa) a consumer court, for resolution in accordance with this Act and the provincial legislation establishing that consumer court; or
 - (bb) an alternative dispute resolution agent, for resolution by conciliation, mediation or arbitration.

(5) If an alternative dispute resolution agent concludes that either party to conciliation, mediation or arbitration in terms of subsection (4)(b)(ii)(bb) is not participating in that process in good faith, or that there is no reasonable probability of the parties resolving their dispute through that process, the alternative dispute resolution agent must issue a certificate in the prescribed form stating that the process has failed.

Dispute resolution may result in consent order

135. (1) The ombud with jurisdiction, consumer court or alternative dispute resolution agent that has resolved, or assisted parties in resolving, a dispute in terms of this Part may—

- (a) record the resolution of that dispute in the form of an order, and
- (b) if the parties to the dispute consent to that order, submit it to—
 - (i) a court to be made a consent order, in terms of its rules; or
 - (ii) the Tribunal to be made a consent order in terms of section 138.

(2) The National Credit Regulator may not intervene before the Tribunal in respect of a consent order submitted in terms of this section.

Part B
Initiating complaints or applications

Initiating a complaint to National Credit Regulator

- 136.** (1) Any person may submit a complaint concerning an alleged contravention of this Act to the National Credit Regulator in the prescribed manner and form. 5
(2) The National Credit Regulator may initiate a complaint in its own name.

Initiating applications to Tribunal

- 137.** (1) The National Credit Regulator may apply to the Tribunal in the prescribed manner and form—
- (a) for an order resolving a dispute over information held by a credit bureau, in terms of **Part B** of Chapter 4; 10
 - (b) for an order compelling the delivery of a statement of account or a review of a statement in terms of **Part D** of Chapter 5;
 - (c) to review the conduct of a sale of goods in terms of section 127 or the distribution of proceeds from such a sale; 15
 - (d) for leave to bring a complaint directly before the Tribunal; or
 - (e) for an order condoning late filing.
- (2) A registrant, or applicant for registration, may file an application in terms of section 59 at any time within—
- (a) 20 business days after the National Credit Regulator makes the decision that is the subject of the application; or 20
 - (b) such longer time as the Tribunal may allow on good cause shown.
- (3) A consumer or credit provider who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of section 134(4) may file an application contemplated in this Act at any time within— 25
- (a) 20 business days after the failure of the attempted alternative dispute resolution; or
 - (b) such longer time as the Tribunal may allow on good cause shown.
- (4) The National Credit Regulator may intervene before the Tribunal in respect of any application contemplated in this section in which the National Credit Regulator is not already a party. 30

Consent orders

- 138.** (1) If a matter has been—
- (a) resolved through the ombud with jurisdiction, consumer court or alternative dispute resolution agent; or 35
 - (b) investigated by the National Credit Regulator, and the National Credit Regulator and the respondent agree to the proposed terms of an appropriate order,
- the Tribunal or a court, without hearing any evidence, may confirm that resolution or agreement as a consent order. 40
- (2) With the consent of a complainant, a consent order confirmed in terms of subsection (1)(b) may include an award of damages to the complainant.

Part C
Informal resolution or investigation of complaints

Investigation by National Credit Regulator

139. (1) Upon initiating or accepting a complaint in terms of section 136, the National Credit Regulator may— 5

- (a) issue a notice of non-referral to the complainant in the prescribed form, if the complaint appears to be frivolous or vexatious, or does not allege any facts which, if true, would constitute grounds for a remedy under this Act;
- (b) refer the complaint to — 10
 - (i) a debt counsellor, if the matter appears to concern either reckless credit or possible over-indebtedness of the consumer; or
 - (ii) the ombud with jurisdiction, consumer court or an alternative dispute resolution agent for the purposes of assisting the parties to resolve the dispute in terms of section 134; or
- (c) direct an inspector to investigate the complaint as quickly as practicable, in any other case. 15

(2) At any time during an investigation, the National Credit Regulator may designate one or more persons to assist the inspector conducting the investigation contemplated in subsection (1).

(3) At any time during an investigation, the National Credit Regulator may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject— 20

- (a) to appear before the National Credit Regulator to be interrogated; or
- (b) to deliver or produce to the National Credit Regulator such book, document or other object, 25

at a time and place specified in the summons.

(4) A person questioned by an inspector conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

- (a) the person is not obliged to answer any question if the answer is self-incriminating; and 30
- (b) the inspector questioning such a person must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to an inspector exercising any power in terms of this section is admissible as evidence against the person who gave the answer or made the statement in criminal proceedings in any court, except in criminal proceedings for perjury or in which that person is tried for an offence contemplated in section 159, and then only to the extent that the answer or statement is relevant to prove the offence charged. 35

Outcome of complaint 40

140. (1) After completing an investigation into a complaint, the National Credit Regulator may—

- (a) issue a notice of non-referral to the complainant in the prescribed form;
- (b) make a referral in accordance with subsection (2), if the National Credit Regulator believes that a person has engaged in prohibited conduct; 45
- (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act; or
- (d) refer the matter to the National Prosecuting Authority, if the complaint concerns an offence in terms of this Act.

(2) In the circumstances contemplated in subsection (1)(b), the National Credit Regulator may refer the matter— 50

- (a) to the consumer court of the province in which the consumer resides, or the consumer court of the province in which the credit provider has its principal place of business in the Republic, if there is a consumer court in such a province and if the National Credit Regulator believes that the issues raised by the complaint can be dealt with expeditiously and fully by such a referral; or 5
 - (b) to the Tribunal.
- (3) If, in respect of a matter contemplated in subsection (2), there is no consumer court within either applicable province, the National Credit Regulator may refer the matter to either—
- (a) a consumer court in another province, if the balance of convenience or interests of justice so permit; or 10
 - (b) the Tribunal.
- (4) If the National Credit Regulator refers a matter to a consumer court in terms of subsection (2) or (3)(a), any party to that referral may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to— 15
- (a) a different consumer court, or
 - (b) the Tribunal.
- (5) If an application has been made to the Tribunal—
- (a) in terms of subsection (4)(a), the Tribunal may order that the matter be referred to a different consumer court, if the balance of convenience or interests of justice so require; 20
 - (b) in terms of subsection (4)(b), the Tribunal may order that the matter be referred to it instead of the consumer court if the balance of convenience or interests of justice so require. 25
- (6) A consumer court hearing a matter referred to in this section—
- (a) must conduct its proceedings in a manner consistent with the requirements of **Part D** of this Chapter; and
 - (b) may make any order that the Tribunal could have made in terms of this Act after hearing that matter. 30
- (7) **An** order of a consumer court made after hearing a matter referred to in terms of this section has the same force and effect as if it had been made by the Tribunal.

Referral to Tribunal

- 141. (1)** If the National Credit Regulator issues a notice of non-referral in response to a complaint other than a complaint concerning section **61** or an offence in terms of this Act, the complainant concerned may refer the matter directly to— 35
- (a) the consumer court of the province within which the complainant resides, or in which the respondent has its principal place of business in the Republic, subject to the provincial legislation governing the operation of that consumer court; or 40
 - (b) the Tribunal, with the leave of the Tribunal.
- (2) If a matter is referred directly to a consumer court in terms of subsection (1)—
- (a) the respondent may apply to the Tribunal, in the prescribed manner and form and within the prescribed time, for an order that the matter be referred to— 45
 - (i) a different consumer court; or
 - (ii) the Tribunal;
 - (b) the provisions of section **140(6)** and **(7)**, read with the changes required by the context, apply to an application made in terms of paragraph (a); and
 - (c) if the matter remains referred to a consumer court, the provisions of Parts D and E of this Chapter, each read with the changes required by the context, apply to the hearing of the matter by the consumer court. 50
- (3) A referral to the Tribunal, whether by the National Credit Regulator in terms of section **140(1)** or by a complainant in terms of subsection (1), must be in the prescribed form.
- (4) The Tribunal must conduct a hearing into any matter referred to it under this Chapter, in accordance with the requirements of this Act. 55