

(b) to facilitate the settlement of any dispute between the National Credit Regulator and one or more provincial credit regulators.

(2) If this Act requires the provincial credit regulators to perform a particular function within their respective provinces, and—

(a) within a particular province, no provincial credit regulator has been established; or

(b) the Minister concludes on reasonable grounds that the provincial credit regulator within a particular province is unable to perform that function effectively,

the Minister must consult with the responsible MEC of that province to determine the steps to be taken to ensure the fulfilment of that statutory obligation.

Information sharing

38. (1) A provincial credit regulator must keep a register of each person whom it registers in terms of applicable provincial legislation.

(2) The register must include prescribed information relating to—

(a) the activities permitted under each such registration;

(b) the address of any premises in, on or from which registered activities may be engaged in, conducted or made available under registrations issued by it; and

(c) any other prescribed information.

(3) Each provincial credit regulator must report to the National Credit Regulator, at the prescribed intervals, the information kept by that provincial credit regulator in terms of subsection (1).

(4) A credit regulator must, on request from another credit regulator, provide a copy of all prescribed information in its possession concerning a registrant or applicant for registration.

(5) The Minister, by regulation in accordance with section 171, may prescribe the timing, manner and form, and content of information to be provided in terms of this section.

CHAPTER 3

CONSUMER CREDIT INDUSTRY REGULATION

Part A

Registration requirements, criteria and procedures

Limited application of this Part

39. (1) Sections 40, 42, 45, 48, 49 and 51 do not apply to a credit provider who—

(a) operates only within one province; and

(b) is registered as a credit provider in terms of applicable provincial legislation, if the Minister has declared that the registration requirements in terms of that provincial legislation are comparable to or exceed the registration requirements in terms of this Act.

(2) The Minister may make a declaration contemplated in subsection (1) by notice in the *Gazette* after consulting the relevant MEC of the province concerned.

Registration of credit providers

40. (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

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- (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).
- (2) In determining whether a person is required to register as a credit provider—
- (a) the provisions of subsection (1) apply to the total number and aggregate principal debt of credit agreements in respect of which that person, or any associated person, is the credit provider; 5
- (b) each associated person that is a credit provider in its own name and falls within the requirements of subsection (1) must apply for registration in its own name; 10
- (c) a credit provider that conducts business in its own name at or from more than one location or premises is required to register only once with respect to all of such locations or premises; and
- (d) “associated person”—
- (i) with respect to a credit provider who is a natural person, includes the credit provider’s spouse or business partners; and 15
- (ii) with respect to a credit provider that is a juristic person, includes—
- (aa) any person that directly or indirectly has a controlling interest in the credit provider, or is directly or indirectly controlled by the credit provider; 20
- (bb) any person that has a direct or indirect controlling interest in, or is directly or indirectly controlled by, a person contemplated in clause (aa); or
- (cc) any credit provider that is a joint venture partner of a person contemplated in this subparagraph. 25
- (3) A person who is required in terms of subsection (1) to be registered as a credit provider, but who is not so registered, must not offer, make available or extend credit, enter into a credit agreement or agree to do any of those things.
- (4) A credit agreement entered into by a credit provider who is required to be registered in terms of subsection (1) but who is not so registered is an unlawful agreement and void to the extent provided for in section 89. 30
- (5) A person to whom this section does not apply in terms of section 39, or who is not required to be registered as a credit provider in terms of this section, may voluntarily apply to the National Credit Regulator at any time to be registered as a credit provider.
- (6) When determining whether, in terms of subsection (1), a credit provider is required to register— 35
- (a) the value of any credit facility issued by that credit provider is the credit limit under that credit facility; and
- (b) any credit guarantee to which a credit provider is a party is to be disregarded.

Supplementary registration to provide developmental credit 40

41. (1) A registered credit provider, or a credit provider who has applied to be registered in terms of section 40, may apply for supplementary registration as a credit provider in respect of developmental credit agreements if the credit provider—

- (a) is a close corporation, company, credit co-operative, trust, statutory entity, mutual bank or bank; 45
- (b) is registered with the South African Revenue Service; and
- (c) does not employ any person in a controlling or managerial capacity who would be disqualified from individual registration in terms of section 46(3).

(2) The National Credit Regulator may grant supplementary registration to a credit provider only if it concludes that the credit provider has—

- (a) sufficient human, financial and operational resources to enable it to function efficiently and to effectively carry out its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources; and 5
- (b) adequate administrative procedures and safeguards to justify the application of statutory exceptions from this Act, or presents to the National Credit Regulator a credible plan to develop those procedures and safeguards before entering into any developmental credit agreement. 10

Thresholds applicable to credit providers

42. (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the *Gazette*, must determine a threshold of not less than R 500 000, for the purpose of determining whether a credit provider is required to be registered in terms of section 40(1). 15

(2) An initial threshold determined by the Minister in terms of this section takes effect on the effective date, and each subsequent threshold takes effect six months after the date on which it is published in the *Gazette*.

(3) If, as a result of a determination made by the Minister in terms of subsection (1) after the effective date— 20

- (a) a credit provider is required to be registered for the first time, that credit provider must apply for registration by the time the threshold takes effect, and may thereafter continue to provide credit until the time that the National Credit Regulator makes a decision in respect of its application; 25
- (b) a credit provider who previously was required to be registered falls below the newly determined threshold, that credit provider—
 - (i) may apply to the National Credit Regulator for a clearance certificate to release it from the obligation to be registered; and
 - (ii) until the National Credit Regulator makes a decision in respect of such an application, must continue to be registered, despite section 40(1). 30

Registration of credit bureaux

43. (1) A person must apply to be registered as a credit bureau if that person engages for payment, other than as a credit provider or an employee of a credit provider, in the business of—

- (a) receiving reports of, or investigating— 35
 - (i) credit applications;
 - (ii) credit agreements;
 - (iii) payment history or patterns; or
 - (iv) consumer credit information as defined in section 70(1), relating to consumers or prospective consumers, other than reports of court orders or reasons for judgment or similar information that is in the public domain; 40
- (b) compiling and maintaining data from reports contemplated in subparagraph (i); and
- (c) issuing reports concerning consumers or other natural persons based on information or data referred to in this paragraph. 45

(2) A person must not offer or conduct business as a credit bureau, or hold themselves out to the public as being authorised to offer any service customarily offered by a credit bureau, unless that person is registered as a credit bureau in terms of this Chapter.

(3) The National Credit Regulator must not register a person as a credit bureau unless that person— 50

- (a) maintains and imposes appropriate qualification, competence, knowledge and experience requirements for its employees or contractors who will have authority to represent it in any function under this Act;
- (b) has, in the opinion of the National Credit Regulator, sufficient human, financial and operational resources to enable it to function efficiently and to carry out effectively its functions in terms of this Act, or presents to the National Credit Regulator a credible plan to acquire or develop those resources; **5**
- (c) has adopted procedures to ensure that questions, concerns and complaints of consumers or credit providers are treated equitably and consistently in a timely, efficient and courteous manner, or presents to the National Credit Regulator a credible plan to acquire or develop those procedures; and **10**
- (d) is registered with the South African Revenue Services.
- (4) In addition to the requirements of section 46, a person may not be registered as a credit bureau if any person who has a controlling interest in the applicant is— **15**
- (a) a credit provider;
- (b) a debt collection agency; or
- (c) a person who conducts any disqualified business prescribed in terms of subsection (5).
- (5) The Minister may, by regulation, declare any business activity disqualified as contemplated in subsection (4)(c) if that business activity is inconsistent with the function of operating an independent and objective credit bureau. **20**

Registration of debt counsellors

- 44.** (1) A natural person may apply to be registered as a debt counsellor.
- (2) A person must not offer or engage in the services of a debt counsellor in terms of this Act, 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. **25**
- (3) In addition to the requirements of section 46, an applicant for registration as a debt counsellor must—
- (a) satisfy any prescribed education, experience or competency requirements, or **30**
- (b) be in a position to satisfy within a reasonable time such requirements as the National Credit Regulator may determine as a condition of the applicant's registration.

Application for registration

- 45.** (1) A person who wishes to be registered in terms of this Act must apply for registration in the prescribed manner and form to the National Credit Regulator. **35**
- (2) The National Credit Regulator may—
- (a) require further information relevant to an application contemplated in subsection (1); and
- (b) refuse an application if the applicant has not supplied any information required in terms of paragraph (a) within the prescribed time. **40**
- (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.

Disqualification of natural persons

46. (1) A natural person may not be registered as a credit bureau.

(2) A natural person may not be registered as a credit provider if that person is an unrehabilitated insolvent.

(3) A natural person may not be registered as a credit provider or debt counsellor if that person — **5**

- (a) is under the age of 18 years;
- (b) as a result of a court order, is listed on the register of excluded persons in terms of section 14 of the National Gambling Act, 2004 (Act No. 7 of 2004);
- (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; **10**
- (d) has ever been removed from an office of trust on account of misconduct relating to fraud or the misappropriation of money, whether in the Republic or elsewhere;
- (e) has ever been a director or member of a governing body of an entity at the time that such an entity has— **15**
 - (i) been involuntarily deregistered in terms of a public regulation;
 - (ii) brought the consumer credit industry into disrepute; or
 - (iii) acted with disregard for consumer rights generally; or
- (f) has been convicted during the previous 10 years, in the Republic or elsewhere, **20** of—
 - (i) theft, fraud, forgery or uttering a forged document, perjury, or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or comparable legislation of another jurisdiction;
 - (ii) a crime involving violence against another natural person; or **25**
 - (iii) an offence in terms of this Act, a repealed law or comparable provincial legislation,

and has been sentenced to imprisonment without the option of a fine unless the person has received a grant of amnesty or free pardon for the offence.

(4) In addition to the disqualifications set out in subsection (3), a natural person may not be registered as a debt counsellor if that person is— **30**

- (a) subject to an administration order as contemplated in section 74 of the Magistrates' Court Act, 1944 (Act No. 32 of 1944);
- (b) subject to debt re-arrangement as contemplated in sections 86 and 87; or
- (c) engaged in, employed by or acting as an agent for a person that is engaged in— **35**
 - (i) debt collection;
 - (ii) the operation of a credit bureau;
 - (iii) credit provision; or
 - (iv) any other activity prescribed by the Minister on the grounds that there is an inherent conflict of interest between that activity and debt counselling. **40**

(5) The National Credit Regulator must deregister a natural person if the registrant becomes disqualified in terms of this section at any time after being registered.

Disqualification of juristic persons and associations

47. (1) A registered credit provider, a juristic person or an association of persons may not be registered as a debt counsellor.

(2) Subject to subsection (4), a juristic person or an association of persons may not be registered as a credit provider or credit bureau if any natural person who would be disqualified from individual registration in terms of section 46(3) exercises general management or control of that person or association, alone or in conjunction with others. 5

(3) Subject to subsection (4), if a natural person contemplated in subsection (2) becomes disqualified from individual registration in terms of section 46(3) after the business concerned was registered in terms of this Act— 10

(a) that natural person must advise the registrant, and the National Credit Regulator, in the prescribed manner and form; and

(b) if that natural person—

(i) holds an interest in that business, it must be disposed of within a reasonable period of not more than three years, determined by the National Credit Regulator after considering the circumstances and the nature of the disqualification; or 15

(ii) is a manager or controller of the business, the National Credit Regulator may impose reasonable conditions on the continuation of the registration with the object of ensuring continuing compliance with the principles of this Act. 20

(4) Subsections (2) and (3) do not apply to a regulated financial institution.

(5) The provisions of subsection (3), read with the changes required by the context, apply to a natural person who—

(a) acquires a financial interest in a registrant; or 25

(b) assumes a management or control function with a registrant.

(6) The National Credit Regulator must deregister a juristic person if the registrant becomes disqualified in terms of this section at any time after being registered.

Conditions of registration

48. (1) If a person qualifies to be registered as a credit provider, the National Credit Regulator must further consider the application, relating to the following criteria: 30

(a) to the extent it is appropriate having regard to the nature of the applicant, the commitments, if any, made by the applicant or any associated person in terms of black economic empowerment considering the purpose, objects and provisions of the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003); 35

(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; and 40

(c) registration with the South African Revenue Services.

(2) If the National Credit Regulator has determined that an applicant qualifies for registration as a debt counsellor, the National Credit Regulator must further consider the application, relating to the applicant's education, experience and competence relative to any prescribed standards. 45

(3) The National Credit Regulator, having regard to the objects and purposes of this Act, the circumstances of the application and the applicable criteria set out in subsections (1) and (2), may propose any conditions on the registration of an applicant by delivering a written notice in the prescribed manner and form setting out the proposed conditions, and the reasons for them. 50

(4) Conditions contemplated in subsection (3) may extend to an associated person, and in any case must be—

- (a) reasonable and justifiable in the circumstances; and
- (b) in the case of a regulated financial institution, consistent with its licence.

(5) An applicant who has received a proposal of conditions must respond to the National Credit Regulator within— 5

- (a) 20 business days after the date on which the applicant received the proposal; or
- (b) such longer period as the National Credit Regulator may permit, on good cause shown. 10

(6) If an applicant who has received a proposal of conditions—

- (a) consents to the conditions being imposed, the National Credit Regulator must register the applicant, subject only to the conditions as proposed; or
- (b) does not respond, or responds but does not consent to the proposed conditions, the National Credit Regulator must consider any response submitted by the applicant and may finally determine the conditions to be imposed and register the applicant. 15

(7) The National Credit Regulator must—

- (a) inform an applicant in writing of a decision in terms of subsection (6); and
- (b) provide written reasons for that decision if the National Credit Regulator has amended a previously proposed condition. 20

Variation of conditions of registration

49. (1) The National Credit Regulator may review, and propose new conditions on, any registration—

- (a) upon request by the registrant submitted to the National Credit Regulator in the prescribed manner and form; 25
- (b) if at least five years have passed since the National Credit Regulator last reviewed or varied the conditions of registration;
- (c) if the registrant has contravened this Act; or
- (d) if the registrant— 30
 - (i) has not satisfied any conditions attached to its registration;
 - (ii) has not met any commitment or undertaking it made in connection with its registration; or
 - (iii) has breached any approved code of conduct applicable to it, and cannot provide adequate reasons for doing so. 35

(2) Before imposing a condition in terms of subsection (1)(c) or (d), the National Credit Regulator must provide the registrant with a reasonable opportunity to remedy the shortcoming in its conduct.

(3) The National Credit Regulator may impose new or alternative conditions—

- (a) in the case of a regulated financial institution— 40
 - (i) only to the extent that the conditions are consistent with its licence; and
 - (ii) if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review; or
- (b) in the case of any other registrant, if the review is under subsection (1)(c) or (d), only to the extent that the conditions are reasonable and justifiable in the circumstances that gave rise to the review. 45

Authority and standard conditions of registration

50. (1) A registration issued in terms of this Act is valid throughout the Republic and authorises the registrant to conduct, engage in, or make available the registered activities at any place within the Republic. 50

(2) It is a condition of every registration issued in terms of this Act that the registrant must—

- (a) permit the National Credit Regulator or any person authorised by the National Credit Regulator to enter any premises at or from which the registrant conducts the registered activities during normal business hours, and to conduct reasonable inquiries for compliance purposes, including any act contemplated in section **154(1)(d)** to (h); 5
- (b) comply with every applicable provision of—
 - (i) this Act;
 - (ii) the Financial Intelligence Centre Act, **2001** (Act No. **38** of 2001); and
 - (iii) applicable provincial legislation within any province in which the registrant conducts, engages in, or makes available the registered activities. 10

Application, registration and renewal fees

51. (1) The Minister may prescribe—

- (a) an application fee to be paid in connection with any application in terms of this Chapter; 15
- (b) an initial registration fee to be paid upon registration; and
- (c) an annual registration renewal fee to be paid by registrants.

(2) The Minister may prescribe different fees in terms of subsection (1) for different categories of applicants or registrants, including but not limited to group registration and registration renewal fees based on the number of locations at or from which persons carry on registered activities in their own names as contemplated in section **40(2)(c)**. 20

Certificate, validity and public notice of registration

52. (1) Upon registering an applicant, the National Credit Regulator must—

- (a) issue a prescribed certificate of registration to the applicant, and in the case of persons contemplated in section **40(2)(c)**, a duplicate copy of the certificate of registration for each registered location at or from which that person conducts the registered activities; 25
- (b) enter the registration in the register; and
- (c) assign a unique registration number to that registrant.

(2) A registration certificate, or duplicate registration certificate issued in terms of this section must specify— 30

- (a) the identity of the registrant;
- (b) the activities that the registration permits the registrant to engage in, conduct or make available to the public; and
- (c) any other prescribed information. 35

(3) A valid certificate or duplicate certificate of registration, or a certified copy of it, is *prima facie* proof that the registrant is registered in terms of this Act.

(4) A registration—

- (a) takes effect on the date on which the certificate or duplicate certificate of registration is issued; and 40
- (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.

(5) A registrant must— 45

- (a) post the certificate or duplicate registration certificate in any premises at or from which it conducts its registered activities;
- (b) reflect its registered status and registration number, in a legible typeface, on all its credit agreements and communications with a consumer;

- (c) comply with its conditions of registration and the provisions of this Act;
- (d) pay the prescribed annual renewal fees within the prescribed time;
- (e) keep any prescribed records relating to its registered activities, in the prescribed manner and form; and
- (f) file any prescribed reports with the National Credit Regulator in the prescribed manner and form. 5

(6) In addition to the requirements of subsection (5), a registered credit bureau must submit to the National Credit Regulator an annual compliance report, certified by an independent auditor, addressing the following matters:

- (a) Accuracy of data received and reported by it; 10
- (b) incidence of complaints and complaint resolution;
- (c) adequacy of procedures employed by it to ensure—
 - (i) the accuracy of data received and reported by it;
 - (ii) that confidentiality of data is maintained and all relevant legislation concerning the privacy and confidentiality of information is complied with; and 15
 - (iii) that complaints are resolved; and
- (d) any other related or similar matters prescribed by regulation.

National record of registrations

53. (1) The National Credit Regulator must establish and maintain a register in the prescribed form of all persons who have been registered— 20

- (a) under this Act; or
- (b) in terms of applicable provincial legislation, as reported by provincial credit regulators in terms of section 38,

including those whose registration has been altered or cancelled. 25

(2) The National Credit Regulator must make the information contemplated in subsection (1) available to a provincial credit regulator, upon request.

(3) The National Credit Regulator must—

- (a) permit any person to inspect the register established in terms of subsection (1), during normal business hours, and upon payment of the prescribed fee; 30
- (b) publish and maintain the register on a website; and
- (c) provide a print copy of the register, or an extract from it, at any time to a person requesting it, upon payment of the prescribed fee.

(4) Any person may—

- (a) inspect a copy of a registration certificate issued in terms of this Act; and 35
- (b) obtain a copy of it, upon payment of the prescribed fee.

Part B

Compliance procedures and cancellation of registration

Restricted activities by unregistered persons

54. (1) Subject to subsection (2), the National Credit Regulator may issue a notice in the prescribed form to any person who, or association of persons, that— 40

- (a) is engaging in an activity that, in terms of this Act, requires registration, or offering to engage in such an activity, or holding themselves out as authorised to engage in such an activity; and

(b) is not registered in terms of this Act to engage in that activity, 45
 requiring that person or association to stop engaging in, offering to engage in or holding themselves out as authorised to engage in, that activity.

(2) Before issuing a notice in terms of subsection (1) to a regulated financial institution, the National Credit Regulator must consult with the regulatory authority that issued a licence to that regulated financial institution. 50