

NATIONAL CREDIT ACT 34 OF 2005

(Gazette No. 28619, Notice No. 230 – See Act for Commencement dates)

RULES FOR THE CONDUCT OF MATTERS BEFORE THE NATIONAL CONSUMER TRIBUNAL

Published under Government Notice 789 in Government Gazette 30225, 28 August 2007. Commencement date: 28 August 2007.

As amended by:

General Notice 428 in Government Gazette 34405 (published in terms of section 120(1)(c) of the Consumer Protection Act, 2008 (Act No. 68 of 2008)). Commencement date: 29 June 2011

Government Notice R203 in Government Gazette 38557, dated 13 March 2015 (published in terms of section 120(1)(c) of the Consumer Protection Act 68 of 2008 and section 171(1)(c) of the National Credit Act 34 of 2005). Commencement date: 13 March 2015.

In terms of section 171 of the National Credit Act, 2005 (Act No. 34 of 2005), I, Mandisi Mpahlwa, Minister of Trade and Industry, in consultation with the Chairperson of the National Consumer Tribunal, hereby make regulations for matters relating to the functions of the Tribunal and rules for the conduct of matters before the Tribunal, as set out in the Schedule hereto.

Signed

Mandisi Mpahlwa

Minister of Trade and Industry

SCHEDULE

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(Table of Contents amended by Regulation 2 of GNR 203 of 2015)

PART A

INTERPRETATION AND DEFINITIONS

1. Definitions

(1) In these rules any word or expression to which a meaning has been assigned in the Act bears the same meaning, and unless the context indicates otherwise-

"Applicant" means the person initiating proceedings before the Tribunal;

"Commission" means the National Consumer Commission established by Section 85 of the CPA.

(Definition of "Commission" inserted by Regulation 3(2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

"Form NCR" means a form contained in the National Credit Regulations, 2006

"Form TI" means a Form contained in these rules

"File or filing" means to deliver to the Registrar in terms of Rules 30 to 31

(Definition of "file or filing" substituted by Regulation 3(1) of GNR 203 of 2015)

"party" to any matter includes an Applicant, Respondent, intervener, or any party joined in or substituted for another

"record" includes an electronic record and means the documents listed in rule 23 and a voice recording;

(Definition of "record" amended by Regulation 3(2) of GNR 203 of 2015)

"referral" includes, where applicable, all the documents and other records appended to a referral;

"registered mail" includes any type of mail with tracking capability;

"Registrar" means a person performing the functions of the Tribunal Registrar and includes any acting or assistant Registrar;

"Sheriff"

(Definition of "Sheriff" deleted by Regulation 3(3) of GNR 203 of 2015)

"the Act" means the National Credit Act, 2005 (Act 34 of 2005);

(Definition of "the Act" inserted by Regulation 3(3) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

"the CPA" means the Consumer Protection Act, 2008 (Act 68 of 2008);

(Definition of "the CPA" inserted by Regulation 3(3) General Notice 428 in Government Gazette 34405 dated 29 June 2011)

"the Registrar of Companies" means the Registrar of Companies appointed in terms of the Companies Act, 1973 (Act 61 of 1973) or the official performing similar functions in terms of any subsequent legislation.

(Definition of "the Registrar of Companies" inserted by Regulation 3(3) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

"Tribunal", means the National Consumer Tribunal, a body established by section 26(1) of the Act:

(Definition of "Tribunal" inserted by Regulation 3(4) of GNR 203 of 2015)

(Rule 1 renumbered to 1(1) by Regulation 3(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) Any reference to a section in these rules is a reference to a section in the Act unless the context indicates otherwise.

(Rule 1(2) added by Regulation 3(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(3) Saturdays, Sundays, Public Holidays and the days between 24 December and 2 January shall not be included in the computation of any time expressed in days (or as business days) prescribed by these Rules or fixed by any order of the Tribunal.

(Rule 1(3) inserted by Regulation 3(5) of GNR 203 of 2015)

PART B

ACCESS TO AND FUNCTIONS OF THE TRIBUNAL

2. Office hours and address of the Tribunal

(1) The offices of the Tribunal are open to the public Monday to Friday, excluding public holidays and the days between 24 December and 2 January, from 09:00 to 13:00 and from 14:00 to 16:00.

(Rule 2(1) amended by Regulation 4(1) of GNR 203 of 2015)

(2) The contact details of the Tribunal are:

(a) Physical address:-

Ground

Floor, Building B

272 West Avenue,

Lakefield Office Park

Centurion

Or as publicised by the Tribunal from time to time in the *Government Gazette* and on the

Tribunal's website.

(Rule 2(2)(a) amended by Regulation 4(3) of GNR 203 of 2015)

(b) Postal address:-

Private

Bag X110

Centurion

0046

(c) Telephone (012) 663 5615

(d) Facsimile (012) 663 5693.

(e) Email to registry@thenct.org.za

(Rule 2(2) substituted by Regulation 4 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

3. Powers of the Tribunal

(1) The Tribunal may deal with a matter:

(a) listed in Table1A and Table1B of these rules;

(Rule 3(1)(a) amended by Regulation 5(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(b) referred to the Tribunal in terms of s134(2)(c) of the Act;

(c) originating as a complaint to the Regulator or arising from a complaint, and referred to the Tribunal in terms of s137(1), s140 or s141(1)(b) of the Act;

(d) which is referred to the Tribunal in terms of s137(3) of the Act;

(Rule 3(1)(d) amended by Regulation 5(2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) The Tribunal may:

(a) grant interim relief in respect of a matter described in rule 3(1)(c);

(b) confirm a consent agreement entered into between parties (s138);

(c) consider applications related to an adjudication process-

(i) to intervene in proceedings in terms of rules 11 and 12;

(ii) to amend documents in terms of rule 15;

(iii) to change the forum at which a matter will be heard in terms of section 140(4) or 141(2)(a);

(iv) to condone non-compliance with the rules and proceedings of the Tribunal;

(v) for an order of substituted service in terms of rule 30;

(vi) to grant a default order in terms of rule 25; or

(vii) relating to other procedural matters;

- (d) in respect of its prior rulings, consider-
- (i) matters on appeal in terms of s148(1);
- (ii) an application in terms of s165 for the variation or rescission of a decision or order.
- (e) distribute a remittance in terms of s127(6); and
- (f) deal with any other matter in accordance with rule 10.
- (3) The Chairperson may issue practice directives, which are consistent with the Act, the CPA and these rules, which shall be binding on parties to Tribunal proceedings and which will assist in proper case management and service delivery at the Tribunal.

(Rule 3(3) inserted by Regulation 5 of GNR 203 of 2015)

PART C

APPLICATIONS

4. Proceedings before the Tribunal

- (1) An Applicant must comply with the requirements set out in Table 2 of the rules for the type of application being made, in respect of:
 - (a) the time within which the application must be made;
 - (b) the form to be used;
 - (c) documents and information required;
 - (d) any application fee that is payable;
 - (e) the parties requiring notification of the application; and
 - (f) the documents that must be served on them.
- (2) If an application relates to a matter contemplated in rule 3(2)(c) that is not specifically provided for in Table 2, the Applicant must:
 - (a) apply by way of Notice of Motion in Form Tl.r4;
 - (b) append a supporting affidavit setting out the facts on which the application is based;
 - (c) serve the Notice and affidavit on the Respondent and other parties t *[sic]* the matter; and
 - (d) file the application documents and proof of service with the Registrar.
- (3) If the Applicant is a company or other corporate entity, the officer signing the application must append a copy of the board resolution or other proof of authority to act on behalf of that company or entity.

4A. Representative or class proceedings

Any person or persons, who intend to approach the Tribunal in any manner provided for in the CPA and in terms of these rules and who base their *locus standi* on Section 4(1)(c), (d) or (e) of the CPA or on either one or more of those provisions, must first make application to the Tribunal for :-

- (1) Leave to approach the Tribunal on this basis; and
- (2) If such leave is granted, directions from the Tribunal as to:

- (a) Service of further papers;
- (b) joinder and/or participation of other parties; and
- (c) the further proceeding of the matter

(Rule 4A inserted by Regulation 6 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 4A amended by Regulation 6 of GNR 203 of 2015)

5. Fees

(1) If a fee is payable in respect of a matter:

- (a) it must be deposited in cash or transferred by way of electronic funds transfer into the Tribunal's designated bank account before the application is submitted; and
- (b) a copy of the deposit slip or a print-out of the transfer record must be included in the application documents as proof of payment.

(Rule 5(1)(b) amended by Regulation 7(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 5(1) amended by Regulation 7(2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011 by the addition of opening brackets to paragraphs a), b) and c))

(2) The Tribunal's designated bank account details can be requested from the Registrar.

(Rule 5(1)(c) renumbered to 5(2) and amended by Regulation 7 of GNR 203 of 2015)

6. Notification of parties and service of application documents

- (a) The Applicant must notify the persons mentioned in column g of Table 2 by serving on them the documents required under column h of that Table.
- (b) The application documents filed with the Tribunal must include a proof of service for every person requiring notification.

(Rule 6(b) amended by Regulation 8 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(c) Notification and service must comply with rule 30.

7. Filing an application

(1) Once notification of an application has been served in terms of rule 6, the application must be filed with the Registrar.

(2) An application is filed by delivery of the relevant Form and all the documents listed in column e of Table 2, if applicable, or as required elsewhere in these rules, to the Registrar.

(3) Applications to the Tribunal must be addressed to the Registrar and:

- (a) delivered to the physical address; or
- (b) sent by registered mail to the postal address; or
- (c) sent by fax; or
- (d) sent by e-mail; or
- (e) sent by electronic filing.

(Rule 7(3)(e) inserted by Regulation 8 of GNR 203 of 2015)

(Rule 7(3) amended by Regulation 8 of GNR 203 of 2015)

(4) In response to an application, the Registrar must -

(a) allocate a unique reference number to the matter;

(b)

(Rule 7(4)(b) amended by Regulation 9 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 7(4)(b) deleted by Regulation 8 of GNR 203 of 2015)

(5) The filing of an application must comply with the general rules for delivery of documents in terms of these rules.

8. Incomplete applications

(1) If an application does not satisfy the requirements of the rules-

(a) the Registrar may notify the Applicant and the other parties of the defect; and

(Rule 8(1)(a) amended by Regulation 9 of GNR 203 of 2015)

(b) the Applicant may within a time permitted by the Registrar-

(i) complete the application; and

(ii) if required to do so, serve additional documents or information on the parties.

(Rule 8 renumbered to 8(1) by Regulation 10 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) The application shall lapse if the Applicant does not take any further steps in completing the application within the time permitted by the Registrar as contemplated in subrule (1)(b).

(Rule 8(2) added by Regulation 10 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 8(2) amended by Regulation 10 of GNR 203 of 2015)

9. Deemed applications

(1) If the Tribunal grants leave in terms of s137(1)(d) of the Act for a complaint submitted to the National Credit Regulator or in terms of Section 73(4) or Section 75(2) of the CPA for a complaint referred to a Consumer Court to be brought directly before the Tribunal the Complainant-

(a) will become the Applicant to the Tribunal; and

(Rule 9(1)(a) amended by Regulation 11 of GNR 203 of 2015)

(b) must proceed in accordance with the rules applicable to the type of application made, provided that no application fee is payable.

(Rule 9(1) amended by Regulation 11(1) and (2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) If:

(a) a Respondent to a matter, that has been referred to alternative dispute resolution in terms of s134(1)(b)(ii) of the Act objects in writing to the referral;

- (b) the objection was noted within 10 business days of the referral; and
- (c) the matter could give rise to an application listed in Table 1; then

(Rule 9(2)(c) amended by Regulation 11(3) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

the matter will be deemed to be an application to the Tribunal.

(Rule 9(2)(d) amended by Regulation 11(4) of General Notice 428 in Government Gazette 34405 dated 29 June 2011 by the deletion of the expression "d")

(Rule 9(2) amended by Regulation 12 of GNR 203 of 2015)

- (3) On receiving notification in terms of rule 9(2)(b), the person who referred the matter to alternative dispute resolution may apply to the Tribunal according to the rules governing such an application.

10. Applications in respect of matters not provided for in the rules

- (1) A person wishing to bring before the Tribunal a matter which is not listed in rule 3, or otherwise provided for in these rules, must first apply to the High Court for a declaratory order confirming the Tribunal's jurisdiction -

- (a) to deal with the matter;
 - (b) to grant the order to be sought from the Tribunal.
- (2) The Tribunal must be served with a notice of an application under rule 10(1).
 - (3) If the High Court issues the declaratory order, the Registrar must notify the Applicant of-
 - (a) the appropriate Form to be used and the manner in which the matter may be brought before the Tribunal;
 - (b) the fee payable;
 - (c) the parties to be notified; and
 - (d) documents to be served.

11. Interventions by notice

- (1) The National Credit Regulator may intervene before the Tribunal in any matter referred to in terms of s137(4) of the Act.

(Rule 11(1) amended by Regulation 13(1) of GNR 203 of 2015)

- (2) An intervention in terms of rule 11(1) must be
 - (a) by way of a notice of intervention in Form TI.r11,
 - (b) served on the Applicant and every other party on whom the application in the principal matter was served; and

(Rule 11(2)(b) amended by Regulation 13(2) of GNR 203 of 2015)

- (c) filed with the Tribunal.
- (3) The notice of intervention of the National Credit Regulator must include a description of the-
 - (a) nature of the interest of the National Credit Regulator in the proceedings; and
 - (b) aspect on which the National Credit Regulator will make representations.

12. Interventions by application

- (1) An intervention other than in terms of rule 11 (1) must be-
 - (a) by application on Form TL.r12:
 - (b) served on the Applicant and every other party on whom the application in the principal matter was served; and
(Rule 12(1)(b) amended by Regulation 12 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)
 - (c) filed with the Registrar.
- (2) The application to intervene must include a concise statement of the nature of the interest of the Applicant in the proceedings and the aspect on which the Applicant will make representations.
- (3) The presiding member in the principal matter may at his or her discretion-
 - (a) grant the application to intervene without a hearing;
 - (b) hear the application concurrently with the principal matter; or
 - (c) hear the application before the principal matter.

13. Opposing an application or referral

- (1) Any Respondent to an application or referral to the Tribunal may oppose the application or referral by serving an answering affidavit on:
 - (a) the Applicant; and
 - (b) every other person on whom the application was served.

(Rule 13(1) amended by Regulation 14(1) of GNR 203 of 2015)

- (2) An answering affidavit to an application or a referral other than an application for interim relief must be served on the parties and filed with the Registrar within 15 business days of receipt by such party of the application.

(Rule 13(2) amended by Regulation 14(2) of GNR 203 of 2015)

- (3) An answering affidavit to an application for interim relief must be served on the parties and filed with the Registrar within 10 business days of receipt by such party of the application, or within a shorter period if directed by the Registrar by notice in writing.

(Rule 13(3) amended by Regulation 14(3) of GNR 203 of 2015)

- (4) The answering affidavit must set out in numbered paragraphs-
 - (a) a concise statement of the grounds on which the matter is opposed;
 - (b) facts or allegations contained in the application or referral that the Respondent admits;
 - (c) facts or allegations contained in the application or referral that the Respondent denies and the grounds for such denial; and
 - (d) the material facts or points of law on which the Respondent relies.
- (5) Any fact or allegation in the application or referral not specifically denied or admitted in an answering affidavit, will be deemed to have been admitted.

- (6) If an Application relates to the review of any decision, determination or ruling made by the Regulator, the Commission, the Registrar of Companies, or any other person or entity, when exercising a power or function in terms of Act or the CPA, then the Regulator, the Commission, the Registrar of Companies, or any other person or entity as the

case may be, must within a time period as notified by the Tribunal, serve and file a complete record of the decision, determination or ruling forming the subject matter of the review proceedings.

(Rule 13(6) substituted by Regulation 14(4) of GNR 203 of 2015)

14. Reply by Applicant

- (1) The Applicant may within 10 business days of being served with an answering affidavit, lodge a replying affidavit to any new issues raised in the answering affidavit, other than a point of law.
- (2) A replying affidavit must set out in numbered paragraphs-
 - (a) an admission or denial of each new ground or material fact raised in the answering affidavit; and
 - (b) the position of the Applicant on any point of law raised in the answering affidavit.
- (3) The Applicant must -
 - (a) serve the replying affidavit on the Respondent and on every other person who had to be notified of the application; and
 - (b) file the replying affidavit with the Registrar, together with -
 - (i) a cover sheet describing the matter and stating its Tribunal Reference Number; and
 - (ii) proof of service in accordance with rule 30(3) for the persons mentioned in rule 14(3)(a).
- (4) If the Applicant does not file a replying affidavit, the Applicant will be deemed to have denied each new issue raised in the answering affidavit and each allegation of fact relevant to each of those issues.

15. Amendment of documents

(1) An Applicant or Respondent may at any time prior to the conclusion of the hearing of the matter, apply by way of Form Tl.r15 for an order authorising an amendment of documents filed in connection with the proceedings, save that where all parties to the proceedings consent in writing to a proposed amendment, such amendment may be effected by merely delivering the amended documents to the Tribunal and to the parties.

(Rule 15(1) amended by Regulation 15 of GNR 203 of 2015)

(2) A party affected by an amendment may respond within a time allowed by the Tribunal.

16. Joinder or substitution of parties

(1) The Tribunal may of its own accord or on application by a party, combine any number of persons, either jointly, jointly and severally, separately, or in the alternative, as parties in the same proceedings, if their rights to relief depend on the determination of substantially the same questions of law or fact.

(Rule 16(1) amended by Regulation 16 of GNR 203 of 2015)

(2) A party to proceedings, on giving notice to the other parties, may apply to the presiding member for an order to substitute a person for a current party.

(3) A joinder or substitution in terms of these rules will not affect the validity of any prior proceedings in the matter.

16A. Consolidation of matters

(1) Where separate applications have been instituted the Tribunal may, if it appears convenient to do so, consolidate such applications alternatively, upon the application of any party thereto and having served on all interested parties, make an order consolidating such applications, whereupon: -

(a) the said applications shall proceed as one;

(b) the Tribunal may make any order which to it deems appropriate with regard to the further procedure, and may give one judgment disposing of all matters in dispute in the said applications.

(Rule 16A inserted by Regulation 17 of GNR 203 of 2015)

PART D

HEARINGS

17. Allocation of matters and pre-hearing procedures

(1) Within 5 business days from the date on which an application was found to comply with all formal requirements, the Chairperson must-

(a)

(Rule 17(1)(a) deleted by Regulation 18(1) of GNR 203 of 2015)

(b)

(Rule 17(1)(b) deleted by Regulation 18(1) of GNR 203 of 2015)

(3) Prior to a hearing, the Tribunal may confer with the parties to the matter and may convene a pre-hearing conference.

(Rule 17(3) substituted by Regulation 18(2) of GNR 203 of 2015)

(4) A pre-hearing conference-

(a) may be in person, by telephone, via video-conferencing or other means of telecommunication;

(b) need not follow any formal procedures;

(c) may be adjourned and re-convened; and

(d) is not open to the public.

(5) At a pre-hearing conference, the presiding member may –

(a) give directions for the clarification or simplification of issues;

(b) obtain admissions of facts or documents;

(c) set the time within which any evidence must be requested obtained and delivered or preparations for the hearing must be complete;

(Rule 17(5)(c) amended by Regulation 18(3) of GNR 203 of 2015)

(d) determine the treatment of confidential information;

(e) determine procedures to be followed at a hearing;

(f) determine the date, time and place of a hearing; or

(g) attend to any other matter that might assist with the proceedings or to resolve the matter.

(6) If the presiding member considers that it would be practical to resolve any point of law before proceeding with a pre-hearing conference, the member may -

(a) direct the Registrar to set down that point of law for adjudication by the Tribunal

(b) may adjourn or postpone the conference pending the outcome of the adjudication on the point of law.

(Rule 17(6) amended by Regulation 13(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(7) In any matter which originated as a complaint to the National Credit Regulator, and was referred to the Tribunal in terms of s137(1), s140 or s141(1)(b), the presiding member may direct the National Credit Regulator to investigate or further investigate the matter or to procure specified evidence.

(7A) In any matter which originated as a complaint to the Commission, referred to the Tribunal in terms of s73, 74 or 75 of the CPA, the presiding member may direct the Commission to investigate or further investigate the matter or to procure further specified evidence.

(Rule 17(7A) inserted by Regulation 13(2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(8) At the conclusion of pre-hearing procedures, the presiding member must -

- (a) issue a notice recording any agreements or rulings relating to the matter dealt with;
- (b) publish the notice to the parties and file it with the Registrar; and
- (c) direct the Registrar to set the matter down for the time and place specified in rule 17(5)(f).

(Rule 17(8)(c) amended by Regulation 18(4) of GNR 203 of 2015)

17A Summoning of witnesses

(1) A member of the Tribunal may issue a summons for any person as contemplated in section 144 by-

(a) completing Form TI.144, ensuring that-

- (i) the names, addresses and contact details of the persons to be summonsed are adequately set out;
- (ii) the venue, time and date of the hearing are clearly stated; and
- (iii) any document or item which such person must produce is accurately described;

(b) signing the Form in the place marked for the Tribunal member's signature; and

(c) submitting the completed and signed Form to the Registrar, to be stamped by the Registrar.

(2) Any party in a matter who requires a Tribunal member to issue a summons as contemplated in subrule(1) must file with the Registrar a Form TI.144, fully completed and containing the information required in 1(a)(i) to (iii), to be submitted by the Registrar to the Tribunal member for signature.

(3) Upon submission in terms of subrule (2) of a completed form TI.144 to a Tribunal member, the Tribunal member may-

(a) sign the Form and direct the Registrar to stamp same; or

(b) direct the party requiring the issuing of the summons to make submissions on:

- (i) why the evidence of the person(s) to be summonsed is (are) required; and
- (ii) any other aspect relating to the issuing of the summons.

(4) After receipt of a party's submissions in subrule(3)(b), the Tribunal member may either decline to issue the summons or may sign the form and direct the registrar to stamp same.

(5) When a summons is issued by a Tribunal member-

- (a) of the Tribunal's own accord, the Registrar must ensure that the summons is served on the persons set out therein, in accordance with rule 30; or
- (b) at the request of a party in a matter, such party must ensure that the summons is served on the persons set out therein, in accordance with rule 30.
- (6) A summons may, in the summons form TI.144, require a witness to hand any documents or items to the Registrar by a date before the hearing. The parties to a matter will then, subject to the provisions of rule 32, be entitled to inspect and/or obtain copies of such documents or items.

(Rule 17A inserted by Regulation 19 of GNR 203 of 2015)

17B. Expert witnesses

Subject to any agreement reached between the parties or direction given or ruling made by the Tribunal pursuant to, or at a pre-hearing conference or otherwise, where any party in a matter intends to rely at the hearing on the evidence of an expert witness, such party must notify the other parties and the Tribunal not less than 10 (ten) days before the hearing date.

(Rule 17B inserted by Regulation 19 of GNR 203 of 2015)

18. Set downs and postponements

- (1) The Registrar must issue a notice of set-down to the parties in a matter that is set down for hearing.
- (2) Subsequent to issuing a notice of set-down to the parties, the Registrar will file a Certificate of Set Down on the case file, certifying that the set down was issued in accordance with subsection (1). Such Certificate will be *prima facie* proof of the contents thereof.
- (3) A party to the proceedings may apply for a postponement and, if permitted by the Tribunal, the Registrar will notify the parties of the postponement in writing.

(Rule 18 substituted by Regulation 20 of GNR 203 of 2015)

19. Withdrawal of matters

- (1) An Applicant, before an application has been decided, may withdraw all or part of the application by-
- (a) serving a notice of withdrawal in Form TI.r19 by hand delivery, fax or email; and

(Rule 19(1)(a) amended by Regulation 14 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

- (b) filing with the Registrar a copy of the notice of withdrawal with proof of service.
- (2) A notice of withdrawal may include a consent to pay costs, or the other party may apply to the Tribunal for an order for costs.

20. Consent orders

- (1) The Tribunal may confirm a resolution or agreement as a consent order -
- (a) on application by the facilitator of that resolution or agreement; and
- (b) without hearing any evidence.
- (2) Upon the receipt of an application for a consent order, the Tribunal may:
- (a) make its ruling on the application based on the documents filed alone, without hearing any evidence;
- (b) require further submissions or documents from the parties before adjudicating on the application, in which case the directions of the Tribunal will be communicated to the parties by the Registrar; or

(c) require that a hearing date be scheduled for the application, in which case the Registrar will proceed in terms of rule 18(1).

(Rule 20(2) substituted by Regulation 21(1) of GNR 203 of 2015)

(3) If the Tribunal refuses to make the consent order applied for, or requires any changes that a party is unwilling to accept, the Registrar must serve on each party to the agreement or resolution-

- (a) a notice that the application has been refused; and
- (b) a copy of the agreement or resolution in its original form, in respect of which the application was refused.
- (c) a copy of the Tribunal's reasons for the refusal.

(Rule 20(3)(c) inserted by Regulation 21(3) of GNR 203 of 2015)

21. Hearings

(1) A hearing must be informal and follow procedures determined by the presiding member in terms of rule 17(5)(e) or at any time before or during the hearing.

(Rule 21(1) amended by Regulation 15 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 21(1) amended by Regulation 22(1) of GNR 203 of 2015)

- (2) The Tribunal will be the judge of the admissibility of any evidence adduced and of its probative value.
- (3) The hearings of the Tribunal are open to the public unless otherwise determined by the Presiding Member
- (4) In a hearing for interim relief, only evidence by affidavit will be admitted, subject to sub-rule (2).
- (5)

(Rule 21(5) deleted by Regulation 22(2) of GNR 203 of 2015)

(6)

(Rule 21(6) deleted by Regulation 22(2) of GNR 203 of 2015)

- (7) A witness must take an oath or affirm the undertaking contained in Table 3.
- (8) The Tribunal may order that a witness-
 - (a) be paid in accordance with the tariff of allowances published by the Minister responsible for Justice by notice in the *Gazette* in terms section 42 of the Supreme Court Act, 1959 (Act No. 59 of 1959);
 - (b) be paid a portion of the amount permitted under paragraph(a); or
 - (c) not be paid.
- (9) A party requiring the services of an interpreter must notify the Registrar at least 10 business days prior to the date for which the matter has been set down.
- (10) An interpreter-
 - (a) will be procured at the expense of the Tribunal;
 - (b) must be a person admitted as a sworn translator of the High Court; or
 - (c) must take an oath or affirm the undertaking contained in Table 3, with a signed copy to form part of the record of the proceedings.

(11) The Tribunal may at any stage condone any non-compliance with these Rules or any irregularities in the conduct of proceedings.

(Rule 21(11) substituted by Regulation 22(3) of GNR 203 of 2015)

22. Settlement conference

At any time prior to making a final order in relation to a matter, the member or panel, as the case may be, may order an adjournment of the proceedings to allow an opportunity for the parties to reach agreement on an issue.

23. Record of hearing

(1) The Registrar must compile a record of the proceedings in respect of any matter that has come before the Tribunal, comprising of:

- (a) the application documents;
- (b) notices;
- (c) the presiding member's record of pre-hearing procedures;
- (d) any interlocutory orders made by the Tribunal;
- (e) all documentary evidence;
- (f) the transcript, if any, of the oral evidence given at the hearing; and
- (g) a written record of the Tribunal's final decision with reasons.

(Rule 23(1) amended by Regulation 23 of GNR 203 of 2015 by renumbering the paragraphs)

24. Non appearance

(1) If a party to a matter fails to attend or be represented at any hearing or any proceedings, and that party –

- (a) is the applicant, the presiding member may dismiss the matter by issuing a written ruling; or
- (b) is not the applicant, the presiding member may –
 - (i) continue with the proceedings in the absence of that party; or
 - (ii) adjourn the hearing to a later date.

(2) The Presiding member must be satisfied that the party had been properly notified of the date, time and venue of the proceedings, before making any decision in terms of subrule (1).

(3) The Registrar must send a copy of the ruling to the parties.

(Rule 24(3) amended by Regulation 24 of GNR 203 of 2015)

(Rule 24 substituted by Regulation 16 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

24A. Variation or rescission of Tribunal orders

(1) An application for the variation or rescission of a Tribunal order must be made within 20 days of the date on which the applicant became aware of

- (a) the Tribunal order which was granted in the absence of the applicant;
- (b) the ambiguity, error or omission; or

- (c) a mistake common to the parties to the proceedings; or
 - (d) within such longer period as permitted by the Tribunal.
- (2) An application for rescission or variation in terms of section 165 must be made by way of Form TI.165.

(Rule 24A inserted by Regulation 25 of GNR 203 of 2015)

25. Orders and awards of the Tribunal

- (1) The Tribunal may make the orders contemplated in section 150 of the Act.
- (2) An Applicant may make application by way of form TI.r25(2) for purposes of obtaining a default order, if no response to the application was filed within the time stated in the application.

(Rule 25(2) substituted by Regulation 17 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

- (2A) Upon the filing of an application in terms of subrule (2), a hearing date will be scheduled in accordance with rule 18(1).

(Rule 25(2A) inserted by Regulation 17 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 25(2A) substituted by Regulation 26(1) of GNR 203 of 2015)

- (3) The Tribunal may make a default order –
- (a) after it has considered or heard any necessary evidence; and
 - (b) if it is satisfied that the application documents were adequately served.

(Rule 25(3) substituted by Regulation 17 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

- (4) The Tribunal may award costs in the circumstances contemplated in section 147 of the Act, in the following terms-
- (a) the fees of a single representative may be allowed between party and party;
 - (b) the costs between party and party must be taxed by the Registrar according to the tariff agreed between the parties or otherwise according to the tariff applicable in the High Court;
 - (c) the Registrar may tax a bill of costs for services actually rendered in connection with proceedings, and call for any book, document paper or account that in the opinion of the Registrar is necessary to properly determine any matter relating to the taxation.
- (5) The Registrar must not proceed to tax any bill of costs unless the party liable to pay the bill-
- (a) is present or represented at the taxation;

(Rule 25(5)(a) substituted by Regulation 26(2)(a) of GNR 203 of 2015)

- (b)

(Rule 25(5)(b) deleted by Regulation 26(2)(b) of GNR 203 of 2015)

- (c) consented in writing to the taxation taking place in absentia; or
- (d) received due notice as to the time and place of the taxation and of the party's right to be present, and despite this notice fails to appear, in person or by representative, at the taxation.

(Rule 25(5)(d) amended by Regulation 26(2)(c) of GNR 203 of 2015)

(6) The Registrar may delegate any of the responsibilities imposed under sub-rules (4) and (5) to a suitably qualified person in the employ of the Tribunal to conduct the taxation of bills of costs.

(7) The Tribunal may award punitive costs against any party who is found to have made a frivolous or vexatious application to the Tribunal.

(8) The taxation of costs is subject to the review of the High Court on application.

26. Appeals

(1) An appeal lodged against a ruling of a single member of the Tribunal must be referred by the Chairperson to an appeal panel consisting of three members of the Tribunal;

(Rule 26(1) amended by Regulation 18(1) and (2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) The Notice of Appeal must-

(a) be lodged with the Registrar within 20 days of the ruling;

(b) set out concisely the grounds of appeal;

(c) be accompanied by a record of the ruling ; and

(d) attach any relevant documentation.

(3) The appellant must deliver a copy of the Notice of Appeal and relevant documentation to the respondent within 2 days of lodging such documents with the Registrar.

(4) The respondent may file with the Registrar a replying affidavit within 15 days of receipt of the Notice of Appeal and deliver a copy of such replying affidavit to the Appellant.

(Rule 26(4) amended by Regulation 27(1) of GNR 203 of 2015)

(5) The appellant must -

(a) prepare 4 copies of the record of the ruling appealed against; and

(b) prepare 4 copies of the appeal documentation; and

(Rule 26(5) amended by Regulation 27(2) of GNR 203 of 2015)

(c) index and paginate such documents in separate bundles.

(Rule 26(5) substituted by Regulation 18(3) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(6) The bundles contemplated in subrule (5) must be delivered to the Registrar within 5 days of the filing of the respondent's replying affidavit or in the absence of a reply within 5 days of the lapse of the period provided for in sub-rule (4);

(Rule 26(6) amended by Regulation 18(4) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(7) The respondent may, within 5 days supplement the bundles in the event of any relevant documents being omitted.

(8) Upon the filing of a Notice of Appeal, the Registrar must -

(a) in consultation with the Chairperson, set down a date and time for the hearing of the appeal;

(b) deliver a notice of set down on every party to the matter appealed against.

- (9) The parties and their legal representatives may appear at the appeal hearing;
- (10) A party that wishes to submit heads of argument must deliver within 48 hours of the hearing, 4 copies of the heads of argument to the Registrar and a copy to the other party.

(Rule 26(10) amended by Regulation 27(3) of GNR 203 of 2015)

27. Decision of the Appeal Panel

- (1) The appeal panel may refer any matter to a panel appointed by the Chairperson for re-consideration or for such action as the appeal panel may decide.
- (2) The appeal panel is not restricted to the record of the proceedings before a single member and may:
- (a) call for additional documentation and representations from the parties on any matter relevant to the complaint; or
- (b) procure expert evidence and further research.

(Rule 27(2) amended by Regulation 19(1) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

- (3) The appeal panel, in collaboration with the Chairperson, may take any steps as are reasonably necessary for the just and effective determination of the appeal.

(Rule 27(3) amended by Regulation 19(2) of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

28. Rules relating to court orders and court notices

- (1) A court which in terms of section 130(4)(d), serves an order or delivers a notice to the Tribunal must, in either case,
- (a) identify the parties to the court proceeding;
- (b) identify the credit agreement concerned;
- (c) specify the date on which application was made to the court;
- (d) cite the matter as it is cited before that court;
- (e) cite the Tribunal Reference Number of the matter;
- (2) In respect of an order, state how the matter before the Tribunal affects the issues to be determined by the court;
- (3) In respect of a notice, state how the court depends on the outcome of the matter before the Tribunal in order to conclude its own matter.
- (4) An order or notification under rule 28 must be served or delivered in accordance with the general rules relating to the service or delivery of documents provided for in rule 30.
- (5) Within 5 business days of receipt of an order under section 130 the Registrar must send a notice of adjournment to the Applicant and any other parties to the matter before the Tribunal.

29. Certificate of prohibited or required conduct

- (1) Any person may submit a request in writing to the Registrar for the Tribunal to issue a certificate in terms of section 164(3)(b) of the Act or in terms of section 115(2)(b) of the CPA.

(Rule 29(1) amended by Regulation 28 of GNR 203 of 2015)

- (2) The Chairperson must issue a section 164(3)(b) notice or a notice in terms of section 115(2)(b) of the CPA if the conduct was found by the Tribunal to be prohibited or required in terms of the Act or the CPA, as the case may be.

- (3) A section 164(3)(b) certificate or a certificate in terms of Section 115(2)(b) of the CPA, must –
- (a) be issued in the form of TI.164(3);
 - (b) be signed by the Chairperson;
 - (c) name the person requesting the certificate;
 - (d) describe in detail the conduct which was found to be a prohibited or required conduct in terms of the Act or the CPA
 - (e) state the specific section of the Act or the CPA in terms of which the conduct was found to constitute prohibited or required conduct; and
 - (f) set out the basis on which the finding was made.

(Rule 29 substituted by Regulation 20 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

PART E

GENERAL RULES

30. Service and proof of service of documents

- (1) A document may be served on a party by -
- (a) delivering it to the party; or
 - (b) sending it by registered mail to the party's last known address.

(1A) Any document, application or affidavit served or delivered by a party must contain at the front thereof a filing notice in accordance with form TI.r30A and must be filed at the Tribunal.

(Rule 30(1A) inserted by Regulation 29(1) of GNR 203 of 2015)

(2) Parties may expedite service by sending notices and documents by fax or e-mail, provided that this is followed within 3 business days with service in accordance with rule 30(1)(a). Parties to proceedings may agree in writing to service of notices and documents by way of fax or email only, in which event service in terms of rule 30(1) will not be required.

(Rule 30(2) amended by Regulation 29(2) of GNR 203 of 2015)

- (3) Proof of service in terms of:
- (a) rule 30(1)(a), must be by -
 - (i) a signed acknowledgment of receipt by the party, a representative of the party, or a person who is 16 years or older residing or employed at premises occupied or utilised by the party; or
 - (ii) an affidavit by the person who served the document if the person to whom it was delivered refused to sign for it;
 - (b) rule 30(1)(b), must be the postal agent's receipt with the tracking code of the document;
 - (c) rule 30(2), must be a copy of the transmission report, to be followed subsequently with proof in terms of rules 30(3)(a) or (b).
- (4) The Tribunal may serve documents in accordance with rule 31.

(Rule 30(4) substituted by Regulation 29(3) of GNR 203 of 2015)

(5) If any party cannot serve a document or notice in accordance with these rules, it may apply to the Tribunal in Form T1.r30 for an order of substituted service.

(Rule 30(5) amended by Regulation 29(4) of GNR 203 of 2015)

31. Delivery of documents

(1) Subject to these rules, a document or notice that is not required by the rules to be served on a person, may be delivered to that person -

- (a) at a physical address;
- (b) by registered mail;
- (c) by fax; or
- (d) by e-mail.

(2) Documents sent by fax or e-mail must include all of the following information on a cover page or cover message:

- (a) the name, address and telephone number of the sender;
- (b) the name of the person to whom it is addressed;
- (c) the date and time of transmission;
- (d) the total number of pages sent;
- (e) the name and telephone number of the person to contact if transmission is flawed; and
- (f) the manner in which and person to whom an acknowledgment of receipt should be sent.

(3) If the rules require that a certified copy of a document be filed with the Tribunal, that document must be filed in hard copy format, either by delivery to the physical address of the Tribunal or by registered mail to the postal address of the Tribunal

(Rule 31(3) amended by Regulation 21 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(4) If a document is delivered to the Tribunal later than the closing time specified in rule 2(1), the next business day will be recorded as the date of filing of that document.

32. Confidential information

(1) Confidential information includes any information containing or consisting of -

- (a) trade secrets;
- (b) financial, commercial, scientific or technical information, if disclosure of the information is likely to cause harm to the commercial or financial interests of a person; or
- (c) information supplied in confidence by a person, if the disclosure of the information could reasonably be expected to-

- (i) put that person at a disadvantage in contractual or other negotiations; or
- (ii) prejudice that person in commercial competition.

(2) Any alleged confidential information forming part of an application, response or other written submission to the Tribunal must be contained in a separate annexure and clearly marked 'confidential'.

(Rule 32(2) substituted by Regulation 22 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(3) Subject to an eventual finding that information is not confidential, information marked as confidential may be excluded from documents required to be served on parties under Table 2.

(Rule 32(3) substituted by Regulation 22 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(4) When submitting any information claimed to be confidential, such person will include a written statement setting out the grounds for the claim of confidentiality.

(Rule 32(4) added by Regulation 22 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(5) Within 10 business days of submission of the confidentiality claim, the Tribunal must notify such person as to whether or not the Tribunal will treat the information submitted as confidential.

(Rule 32(5) added by Regulation 22 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(6) If the Tribunal has notified such a person that the information will not be treated as confidential, it may not make the information available to any other party at a time earlier than 5 days after having notified such person in terms of sub rule (5)

(Rule 32(6) added by Regulation 22 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

33. Representation of parties

(1) A party to a matter may act in person or appoint a representative.

(2) A person appointed as representative must notify the Registrar and the other parties to the matter by providing them with the following particulars -

(a) name;

(b) postal address and address for service of documents;

(c) telephone and fax numbers;

(d) e-mail address;

(e) Tribunal Reference Number of the matter; and

(f) name of the person represented.

(3) A party who terminates a representative's authority to act in a matter must notify the Registrar and the other parties, and-

(a) if that party will from then act in person, provide the details as listed in rules 33(2)(b) to 33(2)(e).

(Rule 33(3)(a) amended by Regulation 23 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 33(3)(a) amended by Regulation 30 of GNR 203 of 2015)

(b) if another representative has been appointed, provide details as listed in rule 33(2).

(4) On receipt of a notice under rule 33(2) or rule 33(3), the address given in that notice will become the party's address for all notification and service required in that matter.

(5) A party does not need to be represented by a legal representative before the Tribunal.

34. Condonation of late filing and non-compliance with rules

(1) A party may apply to the Tribunal in Form Tl.r34 for an order to:

(a) condone late filing of a document or application;

- (b) extend or reduce the time allowed for filing or serving;
 - (c) condone the non-payment of a fee; or
 - (d) condone any other departure from the rules or procedures.
- (2) The Tribunal may grant the order on good cause shown.

35. Payments and remittances

- (1) The payment of fees specified in Table 2, or fines imposed by the Tribunal under section 151 of the Act or of remittances in terms of section 127(6) of the Act must be by cash deposit or electronic transfer into the designated bank account of the Tribunal specified in rule 5.
- (2) A payment must be identified with a payment reference chosen by the payer.
- (3) A copy of the deposit slip or a printout of the transfer record must be appended to any document in which proof of payment is required.
- (4) Subsequent to the payment of a fine or remittance, but no later than 3 business days after the payment, a payment advice in the form of T1.r35 with a copy of the deposit record must be delivered to the Tribunal.

(Rule 35(4) substituted by Regulation 24 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

36. Access to Tribunal records

- (1) Tribunal records may be inspected by arrangement with the Registrar.
- (2) A person may, by arrangement with the Tribunal, obtain a copy of a transcript of a hearing of the Tribunal upon payment of the required fee in terms of sub-rule (4).
- (3)

(Rule 36(3) deleted by Regulation 25 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

- (4) The Registrar may charge a fee of:
- (a) R2.00 per A4 page for copies of Tribunal documents; and
 - (b) R45.00 for the Registrar's certification of the correctness of copies of documents.

37. Powers of the Chairperson to deviate from certain rules

- (1) The Chairperson may on good cause shown, and in keeping with the requirements of justice, expediency and the objects of the Act and the CPA:
- (a) direct that the Registrar
 - (i) accept documents:
 - (aa) at a different location to that in rule 2(2);
 - (bb) outside of the hours specified in rule 2(1);
 - (ii) waive any fee:
 - (aa) payable by a consumer in respect of an application;
 - (bb) payable in an application to limit obligations in respect of frivolous, vexatious or wholly unreasonable requests;

(b) direct that any time permitted for lodgement of an answering affidavit to an application, a replying affidavit or any other action in response to an application or referral, be shortened or extended;

(c) direct that a matter be heard by telephone or video conferencing.

(Rule 37(1) amended by Regulation 26 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(2) The Chairperson may delegate any of these powers to a member.

(Rule 37(2) amended by Regulation 31(1) of GNR 203 of 2015)

38. Forms

(1) Forms prescribed for purposes of these rules are contained in the schedule 1 at the end of the Rules

(Rule 38(1) amended by Regulation 27 of General Notice 428 in Government Gazette 34405 dated 29 June 2011)

(Rule 38(1) amended by Regulation 32 of GNR 203 of 2015)

(2) If a prescribed form of words or expression is used in conjunction with other information in a document the document must be designed in such a manner that the prescribed form or words or expression are:

(a) clearly distinguishable from the other information in that document; and

(b) at least as prominent, in respect of size and legibility as the other information in that document.

(3) If a prescribed form is used in conjunction with another prescribed form, each must clearly be distinguishable from the other.

(4) If a form is prescribed by these rules-

(a) It is sufficient if a person required to prepare such document does so in a form that satisfies all the substantive requirements as to content and design of the prescribed form; and

(b) Any deviation from the prescribed form does not invalidate the document unless the deviation-

(i) fail to satisfy the requirements set out in paragraph (a);

(ii) negatively affects the substance of the document; or

(iii) is deceptive or misleading.

39. Short title

These Regulations are called the Regulations for matters relating to the functions of the Tribunal and Rules for the conduct of matters before the National Consumer Tribunal.

(Rule 39 amended by Regulation 33 of GNR 203 of 2015)