

(6 May 2016 – to date)

NATIONAL CREDIT ACT 34 OF 2005

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

REGULATIONS MADE IN TERMS OF THE NATIONAL CREDIT ACT, 2005 (ACT NO. 34 of 2005)

Published under Government Notice R489 in Government Gazette 28864, dated 31 May 2006.

Commencement date: 31 May 2006.

As amended by:

Government Notice R1209 in Government Gazette 29442. Commencement date: 30 November 2006.

Government Notice R604 in Government Gazette 30713. Commencement date: 29 May 2008.

Government Notice R202 in Government Gazette 38557, dated 13 March 2015. Commencement date: 13 September 2015 [see Government Notice 756 in Gazette No. 39127 dated 21 August 2015].

Government Notice 1080 in Government Gazette 39379 dated 6 November 2015. Commencement date: 6 May 2016.

Publisher's Note:

GNR 202 of 2015 does not specify which regulations are being amended and neither does it specify that the definitions under regulation 1 should be inserted. We have used our own discretion in doing these amendments as it would seem that it was intended to amend the regulations made under GNR 489 of 2006.

By virtue of the power vested in me by section 171 of the National Credit Act, 2005, I, Mandisi Mphahla, Minister of Trade and Industry, hereby make the regulations as set out below.

Mandisi Mphahla, MP

Minister of Trade and Industry

NATIONAL CREDIT REGULATIONS, 2006

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Prepared by:



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CHAPTER 1
INTERPRETATION AND APPLICATION OF ACT

1. Definitions

In these Regulations, any word or expression defined in the Act bears the same meaning as in the Act and-

"accounting officer" means a person appointed and fulfilling the duties and responsibilities as set out in the Close Corporations Act, 69 of 1984;

"annual financial statements" means the annual financial statements as required for each specific registrant in terms of applicable legislation. Registrants who are not required by statute to submit annual financial statements must conform with the requirements as set out in the Close Corporations Act 69 of 1984 when required to submit such annual financial statements;

"auditor" means a person appointed and fulfilling the duties and responsibilities as set out in the Companies Act, 61 of 1973;

"Credit Cost Multiple" means the ratio of the total cost of credit to the advanced principal debt, that is, the total cost of credit divided by the advanced principal debt expressed as a number to two decimal places;

(Definition of "Credit Cost Multiple" inserted by regulation 1 of GNR 202 of 2015)

"Credit Record" means the consumer's payment profile including, adverse information on a credit profile held by a credit bureau;

(Definition of "Credit Record" inserted by regulation 1 of GNR 202 of 2015)

"debt counselling" means performing the functions contemplated in section 86 of the Act;

"debt counsellor" means a neutral person who is registered in terms of section 44 of the Act offering a service of debt counselling;

"delivered" unless otherwise provided for, means sending a document by hand, by fax, by e-mail, or registered mail to an address chosen in the agreement by the proposed recipient, if no such address is available, the recipient's registered address. Where notices or applications are required to be delivered to the National Consumer Tribunal, such delivery shall be done in terms of the Tribunal's Rules. Where notices or applications are required to be delivered to the National Credit Regulator, such delivery shall be done by way of hand, fax, e-mail or registered mail to the registered address of the National Credit Regulator;

"Discretionary Income" means Gross Income less statutory deductions such as, income tax, unemployment insurance fund, maintenance payments and less Necessary Expenses (at a minimum as defined herein); less all other committed payment obligations as disclosed by a consumer including, such as may appear from the applicant's credit records as held by any Credit Bureau which income is the amount available to fund the proposed credit Instalment;

(Definition of "Discretionary Income" inserted by regulation 1 of GNR 202 of 2015)

"general management or control" when referring to juristic persons means the directors of a company registered in terms of the Companies Act 61 of 1973, the members of a close corporation, registered in terms of the Close Corporations Act 69 of 1984, for all other juristic persons, the individuals who perform a similar function(s) to the board of directors;

"Gross Income" means all income earned without deductions from whatever source;

(Definition of "Gross Income" inserted by regulation 1 of GNR 202 of 2015)

"Joint Consumers" means consumers that are co-principal debtors who are jointly and severally liable with regard to the same credit agreement and apply jointly for the credit agreement excluding the surety or a credit guarantor under a credit guarantee;

(Definition of "Joint Consumers" inserted by regulation 1 of GNR 202 of 2015)

"Ministerial Notice" means a notice published by the Minister in the *Government Gazette*, in terms of the Act or these Regulations; and

"National Credit Regulator" means the National Credit Regulator established in terms of section 12 of the Act;

(Definition of "National Credit Regulator" inserted by regulation 1 of GNR 202 of 2015)

"Necessary Expenses" means the consumer's minimum living expenses including maintenance payments if applicable as determined in accordance with Regulation 23A(9) excluding monthly debt repayment obligations in terms of credit agreements as reflected on the prospective consumer's credit profile held by a credit bureau;

(Definition of "Necessary Expenses" inserted by regulation 1 of GNR 202 of 2015)

"Payment Profile" refers to the consumer's payment history in respect of a particular transaction; and

(Definition of "Payment Profile" inserted by regulation 1 of GNR 202 of 2015)

"the Act" means the National Credit Act, 2005 (Act No. 34 of 2005) as amended.

(Definition of "the Act" substituted by regulation 1 of GNR 202 of 2015)

2. Application of Act

An application by the consumer in terms of section 4(1)(d) of the Act for exemption of a credit agreement, in terms of which the credit provider is situated outside the Republic, must be submitted to the Minister by completing Form 1.

3. Extension of prescribed time periods

Where a particular number of business days are prescribed, the National Credit Regulator, may on good cause shown, extend the number of days.

CHAPTER 2

REGISTRATION REQUIREMENTS, CRITERIA AND PROCEDURES

Part A

Registration requirements for all registrants

4. Application for registration

Prepared by:

- (1) A person who applies for registration in terms of section 45 of the Act must submit to the National Credit Regulator:
 - (a) A completed application in -
 - (i) Form 2, if applying for registration as a credit provider;
 - (ii) Form 3, if applying for supplementary registration as a provider of developmental credit;
 - (iii) Form 4, if applying for registration as a debt counsellor; or
 - (iv) Form 5, if applying for registration as a credit bureau.
 - (v) Form 46, if applying for registration as a payment distribution agent;
(Regulation 4(1)(a)(v) inserted by GNR 202 of 2015)
 - (vi) Form 47, if applying for registration as an alternative dispute resolution agent."
(Regulation 4(1)(a)(vi) inserted by GNR 202 of 2015)
 - (b) Any additional documents required in the relevant application form; and
 - (c) The applicable application fee as set out in a Ministerial Notice.
- (2) A person who applies at the same time for registration as a credit provider and for supplementary registration as a provider of developmental credit must satisfy the requirements for both applications.
- (3) A person who applies for registration must provide any information required by the National Credit Regulator in terms of section 45(2) of the Act, within 15 business days after the request is delivered to the applicant.
- (4) The National Credit Regulator must not register an applicant as a payment distribution agent if the information available at the time of considering the application indicates that the applicant was, but not limited to:-
 - (a) found guilty in criminal proceedings or liable in civil proceedings by a court of law or breach of fiduciary duty, taking into account the seriousness of the conduct, surrounding circumstances, explanations offered, the relevance of the offence or liability to the role applied for such as:
 - (i) whether the person has been the subject of any adverse finding or any settlement in civil proceedings related to financial or business management;

- (ii) misconduct or fraud; or
- (iii) license or registration certificate issued by a regulatory authority has been suspended, withdrawn or cancelled.

(b) Without formal qualifications, experience and competencies as prescribed in the Regulations.

(Regulation 4(4) added by GNR 202 of 2015)

5. Disqualification of natural persons from registration

If a natural person who exercises general management or control over the registrant, whether alone or in conjunction with others, becomes disqualified from individual registration in terms of section 46(3) of the Act, that person must provide the National Credit Regulator and the registrant with notification by completing Form 6 and submitting it within 30 business days of becoming disqualified.

6. Conditions of registration

The National Credit Regulator may propose any conditions on the registration of an applicant as contemplated in section 48(3) of the Act by delivering a notice contained in Form 7 to the applicant by hand or registered mail.

7. Review of conditions of registration

A registrant may on application to the National Credit Regulator in terms of section 49(1)(a) of the Act, apply for the review or variation of any condition of registration by submitting:

- (a) a completed Form 8; and
- (b) the application fee as set out in Schedule 2.

8. Certificate of registration

A registration certificate or duplicate registration certificate issued in terms of section 52(1) of the Act must be in Form 9 and must specify the information contained in section 52(2) as well as the following additional information:

- (a) identity number of the registrant in the case of a natural person, or the registration number in the case of a juristic person; provided that in the case of a partnership, the words "trading in partnership" must be specified;
- (b) registration number of the registrant issued by the National Credit Regulator;

- (c) signature of a duly authorised representative of the National Credit Regulator,
- (d) certificate number;
- (e) date on which the certificate was issued.

Part B
Cancellation of registration

9. Voluntary cancellation of registration

A registrant may voluntarily cancel its registration by submitting a completed Form 10 to the National Credit Regulator.

Part C
Debt Counsellor

10. Further criteria for registration as a debt counsellor

A person who applies for registration as a debt counsellor must meet the following further requirements-

- (a) Education:
 - (i) a Grade 12 certificate or equivalent Level 4 qualification issued by the South African Qualifications Authority; and
 - (ii) successful completion of a debt counselling course approved by the National Credit Regulator and provided by an institution approved by the National Credit Regulator.
- (b) Experience and Competence:
 - (i) a minimum of two years working experience in any of the following fields-
 - (aa) consumer protection, complaints resolution or consumer advisory service;
 - (bb) legal or para-legal services;
 - (cc) accounting or financial services;
 - (dd) education or training of individuals;

- (ee) counselling of individuals; or
- (ff) general business environment,
- (ii) demonstrated ability to:
 - (aa) manage his/her own finances at the time of applying for registration; and
 - (bb) provide counselling or transfer skills.

Payment distribution agent

10A. Criteria for registration as a payment distribution agent

- (1) A person who applies for registration as a payment distribution agent in terms of section 44A of the Act must submit to the National Credit Regulator:-
 - (a) a completed application in Form 46;
 - (b) any additional information required in the application form; and
 - (c) the applicable application fee as set out in the schedule.
- (2) Any person who applies for registration must provide any information required by the National Credit Regulator in terms of section 45(2), within fifteen (15) business days after the request is delivered to the applicant.
- (3) The National Credit Regulator must not register a person as a payment distribution agent unless that person complies with the following requirements:-
 - (a) Education
 - (i) maintain and impose appropriate qualification requirements for its employees or contractors who will have authority to represent it in any function of its business of collection and payment distribution;
 - (ii) a successful payment distribution training programme approved by the National Credit Regulator and provided by an accredited institution;
 - (iii) a training programme completed within six (6) months after the payment distribution agent has been registered by the National Credit Regulator; and

(iv) comply with the training programme after registration as a payment distribution agent.

(b) Experience

(i) The payment distribution agency must have an executive director:-

(aa) responsible for the day to day operations, with five (5) years experience in dealing with the business of collecting, distributing payments, accounting or financial services;

(bb) who is a person with good record of managing the finances of a company; and

(cc) responsible for the day to day management of applications.

(c) Competence

(i) A person applying to be registered as a payment distribution agent must:-

(aa) have sufficient human, financial and operational resources to carry out the functions of payment distribution agent efficiently and effectively;

(bb) put in place adequate resources, systems and procedures to carry out the functions of payment distribution efficiently and effectively;

(cc) comply with the Broad-based Black Economic Empowerment Act, 2003 (Act 53 of 2003) as amended;

(dd) be registered with the South African Revenue Services and have a valid tax clearance certificate;

(ee) be a company incorporated in terms of the Companies Act, 2008 (Act 71 of 2008) or Close Corporations Act, 1984 (Act 69 of 1984) or Cooperatives Act 2005 (Act 14 of 2005);

(ff) have a board of directors consisting of not less than three (3) non-executive directors, one of whom must be independent, with qualifications and experience of not less than two (2) years in the accounting, auditing or legal profession;

(gg) have a director who-

(i) is not under the age of eighteen (18) years;

- (ii) is not subject to an order of mental unfitness or disordered;
- (iii) was not removed from office of trust on account of misconduct relating to fraud or the misappropriation of money, whether in the Republic or equivalent jurisdictions;
- (iv) was not a director or member of a governing body of an entity at the time that such entity :-
 - (aa) was involuntarily deregistered in terms of public Regulation;
 - (bb) brought the consumer credit industry into disrepute; or
 - (cc) acted with disregard for consumer rights generally.
- (4) A person applying for registration as a payment distribution agent must not have been convicted during the previous five (5) years, in the Republic or elsewhere, of:-
 - (a) theft, fraud, forgery, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), or comparable legislation of another jurisdiction; and
 - (b) 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.
- (5) A payment distribution-agent must have a minimum capital amount of five million (R5m)for investment in the establishment and operation of the payment distribution agency and proof of this amount must be provided in the form of a bank guaranteed cheque to the National Credit Regulator at the time of application.
- (6) A person applying for registration as a payment distribution agent must have sufficient insurance to compensate consumers and credit providers in the event of loss or damage: -
 - (a) The compensatory value as stipulated in sub-regulation 10A(6) shall be equivalent to the aggregate amount collected for distribution occasioned by the conduct of the payment distribution agent.
- (7) A person applying for registration as a payment distribution agent who conducts a debt counselling business must: -
 - (a) demonstrate that the businesses of debt counselling and payment distribution will be operationally independent of each other and managed independently by different persons; and

- (b) demonstrate that the payment distribution is not made in respect of consumers under debt review in his or her debt counselling business.

Transitional period for a payment distribution agent already registered

- (8) A payment distribution agent that is already registered must: -
 - (a) commit to train his or her employees in line with the training courses or programmes approved by the National Credit Regulator or with an institution accredited by the National Credit Regulator; and
 - (b) comply to training programme of its employees within a period of six (6) months after he or she has been registered, failure which shall constitute a prohibited conduct in accordance with the Act.

Duties and obligations of a payment distribution agent

- (9) Payment distribution agent must: -
 - (a) implement, maintain and utilise an electronic payment distribution system that offers the functionality determined by the National Credit Regulator in its conditions of registration and any guidelines that may be issued by the National Credit Regulator from time to time;
 - (b) comply with the reporting requirements to consumers, credit providers, debt counsellors and the National Credit Regulator in the manner and form determined by the National Credit Regulator in its conditions of registration and any guidelines that may be issued by the National Credit Regulator from time to time;
 - (c) on a monthly basis provide a statement to the consumer reflecting the following information:-
 - (i) date of receipt of payment;
 - (ii) amount of payment received;
 - (iii) names of the consumer's credit providers who received payments during the relevant month and the actual amounts paid;
 - (v) undistributed funds;
 - (vi) outstanding balances under the debt re-arrangement plan, court, or tribunal order as the case may be, reflecting a disclaimer to the effect that the outstanding balances may be

adjusted from time to time after the debt counsellor has provided the payment distribution agent with updated transactions from credit providers including, interests;

- (vii) fees of the payment distribution agent;
- (viii) payments made to the debt counsellor; and
- (ix) payments made to the credit providers.

(Publisher's note: Numbering of subparagraphs as per Government Gazette.)

- (d) provide a monthly statement referred to in sub-regulation 8(c) [sic], in a manner chosen by the consumer which may be in the form of an e-mail, short message service (sms), multi-media messaging service (mms), fax or written statement;

(Publisher's note: The reference to sub-regulation 8(c) in paragraph (d) is incorrect. Paragraph 9(c) seems to be meant.)

- (e) comply with any other requirements that may be imposed by the National Credit Regulator in its conditions of registration and any guidelines that may be issued by the National Credit Regulator from time to time;
- (f) deposit monies collected from consumers into a trust account opened at a registered bank and distribute the monies to the credit providers and debt counsellors;
- (g) distribute monies received within five (5) days of receipt, failure which reasons must be submitted to the National Credit Regulator.
- (h) open a separate trust account with a registered bank into which interest earned on monies collected from consumers is deposited. The National Credit Regulator must:-
 - (i) open a trust account into which all interest earned on monies held by the payment distribution agent is deposited;
 - (ii) transfer interest accrued from these monies to the trust account stipulated in sub-regulation 10A(9)(h)(i)r; and
 - (iii) develop a policy on the usage of trust account funds for approval by the Minister of Trade and Industry.

(Regulation 10A inserted by GNR 202 of 2015)

Alternative disputes resolution agent

Prepared by:

10B. Criteria for registration as an alternative dispute resolution agent

- (1) A person who applies for registration as an alternative dispute resolution agent in terms of section 134A of the Act must submit to the National Credit Regulator: -
 - (a) a completed application in Form 47;
 - (b) the applicable registration fee as set out in the schedule; and
 - (c) any additional information required in the application form.

- (2) An application for registration as an alternative dispute resolution agent must contain: -
 - (a) an overview of an applicant's capabilities and background in providing alternative dispute resolution services including, a description of the applicant's track record in handling the clerical aspects of expedited alternative dispute resolution proceedings, if any;
 - (b) a list of names and qualifications of personnel providing alternative dispute resolution services, whom the applicant for alternative dispute resolution services proposes to include on its list of adjudicators;
 - (c) a description of the screening requirements the applicant for alternative dispute resolution services has used in selecting adjudicators to be included on its list; and
 - (d) an indication whether it intends to make exclusive use of adjudicators who are residents or citizens of the Republic of South Africa;
 - (e) a description of training and educational measures the applicant for alternative dispute resolution services proposes to employ for listed adjudicators with respect to credit related disputes;
 - (f) a commitment by the National Credit Regulator not to prevent or discourage any of its adjudicators from serving as adjudicators for other providers;
 - (g) a proposed schedule for the alternative dispute resolution services, its programme for administering disputes under these Regulations including, a statement regarding the administrative capacity to manage disputes on a monthly basis.

- (3) To be accredited as an alternative dispute resolution agent, an applicant must-
 - (a) have a track record and a detailed plan for providing alternative dispute resolution services;

- (b) propose a list of at least five (5) highly qualified neutral persons from the public and private sectors that are experts in consumer law, credit law, commercial law, cultural, religious and personal rights who have agreed to serve as adjudicators;
- (c) show how it shall ensure that the listed adjudicators are trained concerning these Regulations;
- (d) state whether it intends to make exclusive use of adjudicators who are citizens or residents of the Republic of South Africa;
- (e) indicate a familiarity with international and foreign jurisdictions accredited dispute resolution mechanisms and processes and indicate its plan to provide an international benchmark for a process that is unique to the Republic of South Africa;
- (f) have a statement of any requested limitations on the number of disputes the alternative dispute resolution agent handles, either during a start-up period or on a permanent basis;
- (g) have a description of how the alternative dispute resolution agent proposes to administer disputes including, its interactions with parties to the dispute, the National Credit Regulator, and other approved providers; a description of how the alternative dispute resolution agent intends to publish decisions of adjudicators in disputes it administers and a commitment to provide the National Credit Regulator with copies of all decisions of adjudicators not published.
- (h) demonstrate in its plan that the National Credit Regulator understands these Regulations; and
- (i) show that both the alternative dispute resolution agent and its panel of adjudicators are representative of women, disabled and historically disadvantaged individuals where such representativeness is assessed in terms of the Codes of Good Practice for Broad Based Black Economic Empowerment, as such Codes may be amended from time to time.

(Regulation 10B inserted by GNR 202 of 2015)

11. Receiving of funds by a debt counsellor

A debt counselor[sic] must not collect and distribute monies on behalf of consumers.

(Regulation 11 substituted by GNR 202 of 2015)

Part D

Compliance procedures

12. Appointment of inspectors and investigators

Prepared by:

The Chief Executive Officer of the National Credit Regulator must issue an inspector or investigator appointed in terms of section 25 of the Act with a certificate prescribed in Form 11.

13. Notice to unregistered persons who are conducting registered activities

A notice in terms of section 54(1) of the Act must be in Form 12 and contain the following information in addition to the requirements set out in section 54(3):

- (a) the provisions contained in the Act which require that the person or association be registered to engage in that activity;
- (b) the date of the notice;
- (c) the section of the Act in terms of which the notice has been issued, together with a description of the section; and
- (d) a statement of the right to object to the notice in terms of section 56 of the Act.

14. Compliance notice to registrants

A compliance notice issued in terms of section 55 of the Act must be in Form 13 and contain the following information in addition to the information set out in section 55(3):

- (a) the section of the Act in terms of which the notice has been issued, together with a description of the section;
- (b) the date of the notice;
- (c) a statement of the right to object to the notice in terms of section 56 of the Act.

15. Objection to notices

An application to review a notice issued in terms of section 54 or 55 of the Act must be in Form 14.

16. Administrative fines

- (1) For the purposes of section 151(4)(b) of the Act:
 - (a) the annual turnover of a credit bureau is the total amount of fees and income generated during the immediately preceding financial year in respect of activities relating to the National Credit Act undertaken by the credit bureau;

- (b) the annual turnover of a debt counsellor is the total amount of fees and income generated during the immediately preceding financial year in respect of activities relating to the National Credit Act undertaken by the debt counsellor.
- (2) For the purpose of calculating the annual turnover of the previous financial year in respect of subsection 1 above, the National Credit Regulator will require the following information:
- (a) audited financial statements in the case of a juristic person;
- (b) in cases where no such financial statements are available, the Chief Executive Officer of the registrant is required to provide a statement to the Tribunal certifying the annual turnover of the registrant based upon all information available at the time that such a statement is made;
- (c) in cases where no such financial statements are required by law, the statistical returns as set out in Regulation 64.

CHAPTER 3 CONSUMER CREDIT POLICY

Part A Credit Information

17. Retention periods for credit bureau information

- (1) The consumer credit information as per the following table must be displayed and used for purposes of credit scoring or credit assessment for a maximum period from the date of the event, as indicated:

Categories of Consumer Credit Information		Description	Maximum period
1.	Details and results of complaints lodged by consumers	Number and nature of complaints lodged and whether a complaint was rejected. No information may be displayed on complaints that were upheld.	6 months
2.	Enquiries	Number of enquiries made on a consumer's record, including the name of the entity / person who made the enquiry and a contact person if available	1 year
3.	Payment Profile	Factual information pertaining to the payment profile of the consumer	5 years
4.	Adverse classifications of enforcement action	Classification related to enforcement action taken by a credit provider	1 year or within the period prescribed in

Categories of Consumer Credit Information	Description	Maximum period
		section 71A
5.	Adverse classifications of consumer behaviour	Subjective classifications of consumer behaviour 1 year or within the period prescribed in section 71A
6.	Debt Restructuring	As per section 86 of the Act, an order given by the Court or Tribunal Within the period prescribed in section 71(1) of the Act or until a clearance certificate is issued
7.	Civil court judgments	Civil court judgments including default judgments The earlier of 5 years or until the judgment is rescinded by a court or abandoned by the credit provider in terms of section 86 of the Magistrates Court Act, 32 of 1944 or within the period prescribed in section 71A of the Act
8.	Maintenance judgments in terms of the Maintenance Act 99 of 1998	As per the court judgment until the judgment is rescinded by a court
9.	Sequestration order	As per court order 5 years or until rehabilitation order is granted
10.	Rehabilitation order	As per court order 5 years
11.	Administration Order	As per the court order 5 years or until order is rescinded by court

(Regulation 17 deleted and replaced by Schedule 2 of Government Notice R1209 in Government Gazette 29442 dated 30 November 2006)

(Regulation 17 deleted and replaced by GNR 202 of 2015)

18. Maintenance and retention of consumer credit information by credit bureaux

- (1) Records of consumer credit information must be maintained in accordance with the following standards:

- (a) identified by the consumer's identity number or passport number, or where no identity number or passport number is available for a particular person, any other reasonable method to identify the record;
 - (b) collected, processed and distributed in a manner that ensures that the records remain confidential and secure;
 - (c) protected against accidental, unlawful destruction and unlawful intrusion;
 - (d) protected against loss or wrongful alteration, and
 - (e) protected against unauthorised disclosure or access by any unauthorised person.
- (2) The credit bureau must take all reasonable steps to ensure that all records are kept up to date.
- (3) Consumer credit information relating to the following subjects may not be contained on the records of the credit bureau:
- (a) race;
 - (b) political affiliation;
 - (c) medical status or history;
 - (d) religion or thought, belief or opinion;
 - (e) sexual orientation, except to the extent that such information is self-evident from the record of the consumer's marital status and list of family members; and
 - (f) membership of a trade union, except to the extent that such information is self-evident from the record of the consumer's employment information.
- (4) The prescribed purposes, other than for purposes contemplated in the Act, for which a report may be issued in terms of section 70(2)(g), are:
- (a) an investigation into fraud, corruption or theft, provided that the South African Police Service or any other statutory enforcement agency conducts such an investigation;
 - (b) fraud detection and fraud prevention services;
 - (c) considering a candidate for employment in a position that requires honesty in dealing with cash or finances;

(Regulation 18(4)(c) amended and replaced by GNR 202 of 2015)

(d) an assessment of the debtors book of a business for the purposes of:

(i) the sale of the business or debtors book of that business; or

(ii) any other transaction that is dependant upon determining the value of the business or debtors book of that business;

(e) setting a limit in respect of the supply of goods, services or utilities;

(Regulation 18(4)(e) deleted and replaced by Schedule 2 of Government Notice R1209 in Government Gazette 29442 dated 30 November 2006)

(f) assessing an application for insurance;

(g) verifying educational qualifications and employment;

(h) obtaining consumer information to distribute unclaimed funds, including pension funds and insurance claims;

(i) tracing a consumer by a credit provider in respect of a credit agreement entered into between the consumer and the credit provider;

(j) developing a credit scoring system by a credit provider or credit bureau;

(5) Should a report be required for a purpose set out in sub-regulation (4)(c) or (e) to (g), the consent of the consumer must be obtained prior to the report being requested;

(6) In addition to the consumer credit information contemplated in section 70(1) of the Act, a registered credit bureau may receive, compile and report only the following information in respect of a consumer:

(a) status and history of outstanding obligations and payments in respect of goods, services or utilities supplied to consumers;

(Regulation 18(6)(a) deleted and replaced by Schedule 2 of Government Notice R1209 in Government Gazette 29442 dated 30 November 2006)

(b) information that is relevant for the purpose of credit fraud detection and prevention;

(c) payments made by a consumer in respect of a debt, where the debt has been ceded or sold by the credit provider to another party;

- (d) information that is not related to and not intended for the purpose of providing consumer credit, provided that the consumer's consent has been obtained to use the information for such purpose and to submit, compile and report such information;
- (7) In addition to the sources of consumer credit information contemplated in section 70(2) of the Act, a registered credit bureau may receive consumer credit information in respect of a consumer from any person, provided the originating source of the information is one of the following persons:
- (a) An organ of state, a court or judicial officer;
 - (b) Any person who supplies goods, services or utilities to consumers, whether for cash or on credit;
- (Regulation 18(7)(b) deleted and replaced by Schedule 2 of Government Notice R1209 in Government Gazette 29442 dated 30 November 2006)*
- (c) A person providing long term and short term insurance;
 - (d) Entities involved in fraud investigation;
 - (e) Educational institutions;
 - (f) Debt collectors to whom book debt was ceded or sold by a credit provider;
 - (g) Other registered credit bureaux.
- (8) The maximum fees that may be charged for assessing and inspecting any file or information as contemplated in section 72(1)(b)(ii) of the Act is set out in Schedule 2.

19. Submission of consumer credit information to credit bureau

- (1) The information submitted to a credit bureau must contain the following information in respect of a consumer:
- (a) Initials and surname or full names and surname;
 - (b) SA identity number, or if the consumer does not have an identity number, the passport number and date of birth;
- (2) In as far as it is available, the following information should be included when consumer information is submitted to a credit bureau:
- (a) Residential address and telephone number;

- (b) Details of employer and place of work, if self employed or unemployed, a statement to that effect.
- (3) All sources of information as set out in section 70(2) of the Act and Regulation 18(7) must take reasonable steps to ensure that the information reported to the credit bureau is accurate, up-to-date, relevant, complete, valid and not duplicated.
- (4) All sources of information as set out in section 70(2) of the Act and Regulation 18(7) must give the consumer at least 20 business days notice of its intention to submit the following adverse information concerning that person to a credit bureau:
- (a) classification of consumer behaviour, including classifications such as 'delinquent', 'default', 'slow paying', 'absconded' or 'not contactable';
- (b) classifications related to enforcement action taken by the credit provider, including classifications such as handed over for collection or recovery, legal action, or write-off.
- (5) No source of information as set out in section 70(2) of the Act and Regulation 18(7) may submit information to a credit bureau that has prescribed in terms of the Prescription Act 68 of 1969.
- (6) No source of information as set out in section 70(2) of the Act and Regulation 18(7) may submit adverse or other information to a credit bureau in respect of a debt that has prescribed in terms of the Prescription Act 68 of 1998.
- (Regulation 19(6) added by GNR 202 of 2015)*
- (7) No source of information shall submit consumer credit information comprising adverse information to a credit bureau, unless the required minimum monthly or such other instalment payments have not been paid for a minimum period of at least three (3) consecutive billing cycles.
- (Regulation 19(7) added by GNR 202 of 2015)*
- (8) No source of information shall submit consumer credit information comprising adverse information to a credit bureau without giving the consumer the notice contemplated in Regulation 19(4).
- (Regulation 19(8) added by GNR 202 of 2015)*
- (9) No source of information shall submit consumer credit information comprising adverse information if any arrears owing on an account are settled within the period of the notice contemplated in Regulation 19(4) or if the consumer has disputed liability for the outstanding amounts, within the period contemplated in Regulation 20(2).
- (Regulation 19(9) added by GNR 202 of 2015)*

- (10) Upon settlement of the amount in arrears which forms the subject matter of the adverse information, the source of data must in its next data of submission to the credit bureaus, advise such credit bureaus that the arrear amounts have been settled, the credit bureau must update the consumer's credit records within seven(7) days of being notified as such.

(Regulation 19(10) added by GNR 202 of 2015)

- (11) Upon the settlement of the capital amount of a judgment debt and administration order, the source of data must advise the credit bureaus that the judgment or order has been settled within the period prescribed in section 71(A) of the Act and the credit bureaus must update the consumer's credit record within seven(7) days of being notified.

(Regulation 19(11) added by GNR 202 of 2015)

- (12) A consumer credit record may not be accessed by an employment agency, recruitment consultant, staffing company or employer unless they certify that any and all requests for consumer credit records relate to positions requiring honesty in dealing with cash or finances and the job descriptions of such positions are clearly outlined.

(Regulation 19(12) added by GNR 202 of 2015)

- (13) A credit provider must submit credit information to the credit bureaus in the manner and form prescribed by the National Credit Regulator through conditions of registration and any guidelines that may be issued by the National Credit Regulator from time to time.

(Regulation 19(13) added by GNR 202 of 2015)

Part B

Consumer rights

20. Right to access and challenge credit records and information

- (1) When a consumer requests a credit report, the report must disclose the same information that will be displayed to other parties when such report is provided.
- (2) If the accuracy of the consumer credit information has been challenged by a consumer in terms of section 72(3)(a) and (b) of the Act, the person to whom the challenge has been made must take the steps set out in section 72(3) within 20 business days after the filing of the challenge.
- (3) If the information is removed in terms of section 72(3)(b), the credit bureau must inform the consumer and all parties to whom the information has been reported in the previous 20 business days as well as all other registered credit bureaux.

Part C

Credit marketing practices

21. Required content for advertising practices

- (1) If an advertisement refers only to the availability of credit, and no reference is made to costs, interest rate or monthly instalment, no further disclosure of cost of credit, interest rate or monthly repayment is required.
- (2) If an advertisement discloses only the interest rate or the maximum and minimum rates where a range is applicable and no reference is made to other costs of credit, no further information has to be disclosed, but the advertisement must indicate that an initiation fee and service fee will be charged, if applicable;
- (3) If an advertisement, other than an advertisement referred to in sub-regulation (2), discloses a monthly instalment, or any other cost of credit, the advertisement must also disclose the following:
 - (a) instalment amount;
 - (b) number of instalments;
 - (c) total amount of all instalments, including interest, fees and compulsory insurance;
 - (d) interest rate; and
 - (e) residual or final amount payable (if any)
- (4) A statement of comparison of credit cost, as described in section 76(4)(d) of the Act, must contain all the information as set out in sub-regulation (3), for each alternative being compared.
- (5) If an advertisement is for specific goods to be purchased on credit, services to be rendered on credit or a specific amount of credit obtainable and reference is made to repayment amounts or cost of credit, all the information as contained in sub-regulation (3) must also be disclosed.
- (6) Any of the following statements or phrases, or any wording that has substantially the same meaning, may not form part of any advertisement or direct solicitation for credit -
 - (a) "no credit checks required";
 - (b) "blacklisted consumers welcome";
 - (c) "free credit"
- (7) If any of the following qualitative statements to the cost of credit or any wording that has substantially the same meaning, is made,

- (a) "cheap credit";
- (b) "affordable credit";
- (c) "low cost credit"

specific information must be disclosed on the cost of credit, as per sub-regulation (2) or sub-regulation (3).

- (8) A direct solicitation may not contain the expressions "loan guaranteed", "pre-approved" or similar statements except when the credit granted is not subject to any credit assessment after acceptance by the consumer.

22. Required format for advertising practices

- (1) The information required to be disclosed in terms of regulation 21(2) and 21(3) must be:
 - (a) of no smaller font size than the average font size used in the advertisement;
 - (b) displayed together.
- (2) The disclosure of the information in terms of regulation 21(2) and 21(3) for purposes of television advertisements may be a combination of visual and audio disclosure provided that equal prominence is given to all the information required, equivalent to the prominence given to all other elements of the advertisement.
- (3) Audio advertisements must provide equal prominence to all the information to be disclosed in terms of regulation 21(2) and 21(3), equivalent to the prominence given to all other elements of the advertisement.

Part D

Over-indebtedness, reckless lending and debt counselling

23. Reckless lending

Any credit extended in terms of-

- (a) a school loan or a student loan;
- (b) an emergency loan;

- (c) a public interest credit agreement;

must be reported by the credit provider to the National Credit Register within 30 business days of signature thereof, alternatively at the end of the month in which the agreement was concluded, by completing and submitting Form 15.

23A. Criteria to conduct affordability assessment

Application

- (1) These Regulations apply to:-
 - (a) current, prospective and joint consumers;
 - (b) all credit providers; and
 - (c) all credit agreements to which this Act applies, subject to Regulation 2.
- (2) These Regulations do not apply to a credit agreement in respect of which the consumer is a juristic person and do not apply to:-
 - (a) a developmental credit agreement;
 - (b) a school loan or a student loan;
 - (c) a public interest credit agreement;
 - (d) a pawn transaction;
 - (e) an incidental credit agreement;
 - (f) an emergency loan;
 - (g) a temporary increase in the credit limit under a credit facility;
 - (h) a unilateral credit limit increase in terms of sections 119(1)(c);119(4); and 119(5) of the Act under a credit facility;
 - (i) a pre-existing credit agreement in terms of Schedule 3 Item 4(2) of the Act;
 - (j) any change to a credit agreement and/or any deferral or waiver of an amount under an existing credit agreement in accordance with section 95 of the Act; and

- (k) mortgage credit agreements that qualify for the Finance Linked Subsidy Programs developed by the Department of Human Settlements and credit advanced for housing that falls within the threshold set from time to time.

Existing financial means and prospects

- (3) A credit provider must take practicable steps to assess the consumer or joint consumer's discretionary income to determine whether the consumer has the financial means and prospects to pay the proposed credit instalments.
- (4) A credit provider must take practicable steps to validate gross income, in relation to:-
 - (a) consumers that receive a salary from an employer:
 - (i) latest three(3) payslips; or
 - (ii) latest bank statements showing latest three(3) salary deposits;
 - (b) consumers that do not receive a salary as contemplated in (a) above by requiring:
 - (i) latest three(3) documented proof of income; or
 - (ii) latest three(3) months bank statements;
 - (c) consumers that are self-employed, informally employed or employed in a way through which they do not receive a payslip or proof of income as contemplated in (a) or (b) above by requiring:
 - (i) latest three (3) months bank statements; or
 - (ii) latest financial statements.
- (5) Where the consumer's monthly gross income shows material variance, the average gross income over the period of not less than three (3) pay periods preceding the credit application must be utilised.
- (6) The consumer must accurately disclose to the credit provider all financial obligations to enable the credit provider to conduct the affordability assessment.
- (7) The consumer must provide authentic documentation to the credit provider to enable the credit provider to conduct the affordability assessment.

Existing financial obligations

- (8) A credit provider must make a calculation of the consumer's existing financial means, prospects and obligations as envisaged in sections 78(3) and 81(2)(a)(iii) of the Act.
- (9) The credit provider must utilise the minimum expense norms table below, broken down by monthly gross income when calculating the existing financial obligations of consumers.
- (10) The methodology in the table requires for:
- credit providers to ascertain gross income;
 - statutory deductions and minimum living expenses to be deducted to arrive at a net income, which must be allocated for payment of debt instalments; and
 - when existing debt obligations are taken into account, the credit provider must calculate discretionary income to enable the consumer to satisfy any new debt.

Table 1: Minimum Expense Norms

Minimum	Maximum	Minimum monthly Fixed Factor	Monthly Fixed Factor = % of Income Above Band minimum
R0.00	R800.00	R0.00	100%
R800.01	R6,250.00	R800.00	6.75%
R6,250.01	R25,000.00	R1,167.88	9.00%
R25,000.01	R50,000.00	R2,855.38	8.20%
R50,000.01	Unlimited	R4,905.38	6.75%

- (11) The credit provider may however on an exceptional basis, where justified, accept the consumer's declared minimum expenses which are lower than those set out in table 1 provided the questionnaire set out in the Schedule, as issued from time to time, is completed by the consumer or joint consumers.
- (12) When conducting the affordability assessment, the credit provider must: -
- calculate the consumer's discretionary income;
 - take into account all monthly debt repayment obligations in terms of credit agreements as reflected on the consumer's credit profile held by a registered credit bureau; and
 - take into account maintenance obligations and other necessary expenses.

Debt re-payment history as a Consumer under Credit Agreements

Prepared by:

- (13) A credit provider must take into account the consumer's debt repayment history as a consumer under credit agreements, as envisaged in section 81(2)(a) and must ensure that this requirement is performed: -
- (a) within seven (7) business days immediately prior to the initial approval of credit or the increasing of an existing credit limit; and
 - (b) within fourteen (14) business days with regards to mortgages.

Avoiding double counting in calculating the Discretionary Income

- (14) Where a credit agreement is entered into on a substitutionary basis in order to settle off one or more existing credit agreement, a credit provider must: -
- (a) record that the credit being applied for is to replace other existing credit agreement/s; and
 - (b) take practicable steps to ensure that such credit is properly used for such purposes.

Disclosure of the credit cost multiple and the total cost of credit

- (15) A credit provider must: -
- (a) disclose to the consumer the credit cost multiple and total cost of credit in the pre-agreement statement and quotation;
 - (b) ensure that the credit cost multiple disclosures for credit facilities is based on one year of full utilisation up to the credit limit proposed;
 - (c) ensure that the attention of the prospective consumer is drawn to the credit cost multiple and that the cost of credit as disclosed, is understood by the prospective consumer;
 - (d) disclose a total cost of credit which includes but not limited to, the following items:-
 - (i) the principal debt;
 - (ii) interest;
 - (iii) initiation fee, if any;
 - (iv) service fee aggregated to the life of a loan; and

- (v) credit insurance aggregated to the life of a loan, as set out in section 106 of the Act.

Outcome of Affordability Assessment

- (16) A consumer who is aggrieved by the outcome of affordability assessment may at any time lodge a complaint in terms of section 134 or 136 with the credit provider for dispute resolution.
- (17) The credit provider must attempt to resolve the complaint within fourteen (14) business days after receiving notification of the complaint from the ombud in terms of section 134.
- (18) If the grievance is not addressed by the credit provider within the period referred to in sub-regulation 10A (15) above, the consumer can approach the National Credit Regulator.
- (19) The National Credit Regulator must resolve the complaint within seven (7) business days.
- (20) If the National Credit Regulator issues a notice of non-referral in response to a complaint, the consumer may refer the matter directly to the National Consumer Tribunal, subject to its rules of procedure.

(Regulation 23A inserted by GNR 202 of 2015)

24. Application for debt review

- (1) A consumer who wishes to apply to a debt counsellor to be declared over-indebted must:
 - (a) Submit to the debt counsellor a completed Form 16; or
 - (b) Provide the debt counsellor with the following information:
 - (i) personal details, including:
 - (aa) name, initials and surname; identity number, if the consumer does not have an identity number, the passport number and date of birth;
 - (bb) postal and physical address;
 - (cc) contact details.
 - (ii) all income, inclusive of employment income and other sources of income (specify).
 - (iii) monthly expenses, inclusive of, but not limited to:

- (aa) taxes;
 - (bb) unemployment insurance fund;
 - (cc) pension;
 - (dd) medical aid;
 - (ee) insurance;
 - (ff) court orders;
 - (gg) other (specify).
- (iv) List of all debts, disclosing monthly commitment, total balance outstanding, original amount and amount in arrears (if applicable) inclusive of, but not limited to:
- (aa) home loans;
 - (bb) furniture retail;
 - (cc) clothing retail;
 - (dd) personal loans;
 - (ee) credit card;
 - (ff) overdraft;
 - (gg) educational loans;
 - (hh) business loans;
 - (ii) car finances and leases;
 - (jj) sureties signed;
 - (kk) other (specify).
- (v) Living expenses, inclusive of, but not limited to:
- (aa) groceries;

- (bb) utility and continuous service;
 - (cc) school fees;
 - (dd) transport costs;
 - (ee) other (specify).
- (vi) A declaration and undertaking to commit to the debt restructuring.
 - (vii) A consent that a credit bureau check may be done.
 - (viii) Confirmation that the information is true and correct.
- (c) Submit to the debt counsellor the documents specified in Form 16.
 - (d) Pay the debt counsellor's fee, if any, provided that such fee may not exceed the maximum fee prescribed in Schedule 2.
- (2) Within five business days after receiving an application for debt review in terms of section 86(1) of the Act, a debt counsellor must deliver a completed Form 17.1 to all credit providers that are listed in the application and every registered credit bureau.
 - (3) The debt counsellor must verify the information provided in terms of subsection (1) above by requesting documentary proof from the consumer, contacting the relevant credit provider or employer or any other method of verification.
 - (4) In the event that a credit provider fails to provide a debt counsellor with corrected information within five business days of such verification being requested, the debt counsellor may accept the information provided by the consumer as being correct.
 - (5) A notice contemplated in sub-regulation (2) must be sent by fax, registered mail or e-mail provided that the debt counsellor keeps a record of the date, time and manner of delivery of the notice.
 - (6) Within 30 business days after receiving an application in terms of section 86(1) of the Act, a debt counsellor must make a determination in terms of section 86(6).
 - (7) When assessing the consumer's application in terms of section 86(6)(a) of the Act, the debt counsellor must refer to section 79 and further consider the following:

- (a) A consumer is over-indebted if his/her total monthly debt payments exceed the balance derived by deducting his/her minimum living expenses from his/her net income;
 - (b) Net income is calculated by deducting from the gross income, statutory deductions and other deductions that are made as a condition of employment;
 - (c) Minimum living expenses are based upon a budget provided by the consumer, adjusted by the debt counsellor with reference to guidelines issued by the National Credit Regulator.
- (8) In making a determination that a particular debt is reckless, as per section 86(6)(b) of the Act, a debt counsellor must refer to section 80 of the Act and further consider the following;
- (a) the level of indebtedness of the consumer after that particular agreement was entered into; and
 - (b) whether, when that particular credit agreement was entered into, the total debt obligations including the new agreement exceeded the net income reduced by minimum living expenses;
 - (c) the consumers' bank statement, salary or wage advice and records obtained from a credit bureau;
 - (d) any guidelines published by the National Credit Regulator proposing evaluative mechanisms, models and procedures in terms of section 82 of the Act;
- (9) Any arrangement made by the debt counsellor with credit providers must be reduced to writing and signed by all credit providers mentioned, the debt counsellor and the consumer.
- (10) After completion of the assessment, the debt counsellor must submit form 17.2 to all the affected credit providers and all registered credit bureaux within 5 business days;
- (11) When making a determination in terms of sections 79(3)(b)(ii) and 80(3)(b)(ii), the value of a credit guarantee is 0.

25. Letter of rejection

If a debt counsellor finds that a consumer is not over-indebted and makes a finding in terms of section 86(7)(a) of the Act, the debt counsellor must provide the consumer with a letter of rejection, containing the following information:

- (1) Consumer's full names, surname and identity number, if the consumer does not have an identity number, the passport and date of birth;
- (2) Name, contact details and NCR registration number of debt counsellor;

- (3) The basis for finding the consumer not to be over-indebted, including -
 - (a) calculated income considered;
 - (b) statutory and other deductions considered;
 - (c) living expenses considered;
 - (d) other debts considered.
- (4) A copy of the assessment form;
- (5) A statement advising the consumer of his/her right to approach the court in terms of section 86(9) within 20 business days for an order to be declared over-indebted, have agreements declared reckless and/or restructuring of his/her debt obligations;
- (6) A statement advising the consumer that the application for debt review will be removed from all registered credit bureaux within 5 business days which will result in credit providers being entitled to take legal steps against the consumer.

26. Debt restructuring by court order

- (1) An application in terms of section 86(9) of the Act must be submitted to court within 20 business days after the debt counsellor has provided the consumer with a letter of rejection.
- (2) The court may on application by the consumer and good cause shown, extend the 20 business day period.
- (3) When making an application as contemplated in section 86(9), a consumer must complete Form 18.

27. Clearance Certificate

A debt counsellor must issue a clearance certificate in Form 19 if the consumer has fully satisfied all the debt obligations under every credit agreement that was subject to the debt re-arrangement order or agreement, in accordance with that order or agreement

CHAPTER 4 CONSUMER CREDIT AGREEMENTS

Part A Pre-agreement disclosure

28. Pre-agreement statement and quotation for small agreements

- (1) The pre-agreement statement and quotation given to a consumer in terms of section 92(1) of the Act must comply with the following requirements:
 - (a) The pre-agreement statement and quotation may be contained in one document or in two separate documents;
 - (b) The pre-agreement statement and quotation must be in the format set out in Form 20;
 - (c) For purposes of electronic or telephone originated pre-agreement statements and quotation for small agreements, the electromagnetic recording and transcribing of documents will be sufficient, provided that the consumer is supplied with copies of the documents within a reasonable time.
- (2) If any section of the pre-agreement statement and quotation as prescribed in this section does not apply to the particular type of credit agreement, such section may be omitted from the statement.
- (3) If any category of fee or charge that is provided for is not levied by the credit provider, or if no security, insurance or similar requirements are made by the credit provider, the sections dealing with such matters may be omitted.
- (4) The following definitions will apply to Form 20, in respect of credit facilities that meet the criteria for small agreements:
 - (a) Credit advanced must reflect the total value of the credit facility;
 - (b) Instalment must reflect the minimum instalment required per the agreement, on the assumption that the total amount of the facility is utilized on the first day of the agreement; and
 - (c) Total of all instalments must reflect the total of all instalments plus the full repayment of the facility at the end of 12 months or at the end of the term of the agreement, whichever is the earliest.

29. Pre-agreement statement and quotation for intermediate or large agreements

- (1) The quotation given to the consumer in terms of section 92(2) of the Act must comply with the following requirements:

- (a) the quotation must be in the format set out in Form 20.1, or may be in the format of Form 20 if the Credit Provider provides both small and intermediate credit agreements with similar features, or in any other form complying with (c) and (d) below;
- (b) the quotation may be contained in the same document as the pre-agreement statement or in a separate document, provided that if the quotation is included in the same document as the pre-agreement statement, the quotation must be on the first page of that document;
- (c) the quotation must be in a bordered text box and headed "Quotation";
- (d) the information required to be disclosed in the quotation is:
 - (i) principal debt;
 - (ii) proposed distribution of principal debt with reference to items listed in section 102(1)(b) to (f) of the Act and specify any other;
 - (iii) other ongoing credit costs;
 - (iv) service fee and whether it is paid monthly, annually or on any other basis as prescribed in section 101(1)(c) of the Act;
 - (v) initiation fee;
 - (vi) rand value of interest;
 - (vii) residual or final amount payable (if any);
 - (viii) total cost of the proposed agreement;
 - (ix) annual interest rate;
 - (x) state the basis for any costs payable under section 121(3)(b)(i) of the Act, if applicable;
 - (xi) state the reasonable rental to be charged in terms of section 121(3)(b)(ii) of the Act if applicable;
 - (xii) Number of installments *[sic]* to be paid;
 - (xiii) Installment *[sic]* amount.

- (2) For purposes of electronic or telephone originated quotation or pre-agreement statement for intermediate and large agreements, the electromagnetic recording and subsequent transcribing of the quote or pre-agreement statement will be sufficient, provided that the consumer is supplied with a copy of the quote or pre-agreement statement within a reasonable time.
- (3) The following definitions will apply to Form 20.1, in respect of credit facilities
 - (a) Credit advanced must reflect the total value of the credit facility;
 - (b) Instalment must reflect the minimum instalment required per the agreement, on the assumption that the total amount of the facility is utilized on the first day of the agreement; and
 - (c) Total amount repayable per Part C must reflect the total of all instalments plus the full repayment of the facility at the end of 12 months or at the end of the term of the agreement, whichever is the earliest.

Part B

Form of credit agreements

30. Prescribed form for small agreements

- (1) A document that records a small credit agreement must contain all the information as reflected in Form 20.2.
- (2) The information listed in Form 20.2 may be disclosed in the order of choice of the credit provider.
- (3) For purposes of electronic or telephone originated small agreements, the electromagnetic recording and transcribing of the agreement will be sufficient, provided that the consumer is supplied with a copy of the agreement within a reasonable time.

31. Requirements for intermediate or large agreements

- (1) The following requirements are prescribed in terms of section 93 of the Act in respect of all categories of intermediate and large agreements including developmental credit agreements:
 - (a) All the information that is disclosed in a credit agreement must be comprehensive, clear, concise and in plain language;
 - (b) The credit agreement may be set out in one or more documents, provided that if it is set out in more than one document, the document signed by the consumer, must incorporate all other documents by clear reference and a copy of all documents must be given to the consumer;

- (c) The lettering of the credit agreement must be legible and clear enough to ensure that it remains legible and clear if photocopied or faxed;
 - (d) The lettering of the matters that are required to be disclosed in terms of sub-regulation (2) must be given equal prominence to the body of the rest of the document;
 - (e) If the quotation does not form part of the credit agreement, the information that is required to be disclosed in the quotation must be disclosed in the credit agreement on the first page of the agreement in a bordered tabular format titled "Cost of Credit";
 - (f) In the Cost of Credit table, the credit provider must also disclose the information prescribed in sub-regulation (2)(j) and (k).
- (2) Intermediate and large agreements must contain the following information, if applicable:
- (a) The type of agreement;
 - (b) The credit provider's name, contact details and registration number with the National Credit Regulator;
 - (c) Cost of credit reflecting the following:
 - (i) The amount of the principal debt, including the amount deferred in terms of the credit agreement as well as the nature and amount of the following fees and charges where they have been included in the principal debt in terms of the credit agreement:
 - (aa) the cost of an extended warranty agreement;
 - (bb) delivery, installation and initial fuelling charges, limited to the actual cost of these items;
 - (cc) connection fees, levies or charges;
 - (dd) taxes, license or registration fees.
 - (ii) If the amount deferred in terms of the credit agreement is not ascertainable, the maximum amount deferrable;
 - (iii) The proposed distribution of the principal debt and to whom each amount is to be paid;
 - (iv) If the distribution of the amount deferred in terms of the credit agreement is subject to conditions, such conditions;

- (v) If the credit is provided by the supplier of goods, immovable property or services, the cash price of such goods, immovable property or services.
- (vi) The amount of any initiation fee;
- (vii) The option of having the initiation fee paid upfront;
- (viii) The amount of any service fee;
- (ix) The basis upon which service fee is payable, if annual, an indication that it will be added to the outstanding balance;
- (x) The annual rate at which interest is levied in respect of the agreement, expressed as a percentage and calculated in accordance with Regulation 40;
- (xi) The rand amount of interest charges over the term of the agreement, based on the rate at inception of the agreement in the case of a variable interest rate;
- (xii) Whether the interest rate is fixed or variable, and if variable, the reference rate to which the interest rate is fixed;
- (xiii) The nature of any insurance contract entered into, pursuant to section 106 of the Act;
- (xiv) The nature of any additional insurance contract entered into, pursuant to section 106 of the Act;
- (xv) The cost to the consumer of the insurance provided;
- (xvi) The amount of any fee, commission, remuneration or benefit receivable by the credit provider or any other person in relation to the insurance;
- (xvii) The consumer's right to waive a policy proposed by the credit provider and substitute a policy of the consumer's own choice, subject to section 106 of the Act;
- (xviii) The cost of additional insurance and whether such cost is charged by monthly or annual premiums;
- (xix) The amount of any default administration charges which may be imposed on default by the consumer or the manner in which such charges will be calculated;
- (xx) The circumstances in which such default administration charges will be imposed;

- (xxi) The amount of any collection costs which may be charged in respect of the enforcement of a consumer's monetary obligations in terms of the credit agreement or the manner in which such costs will be calculated;
 - (xxii) The circumstances in which such collection costs will be charged.
-
- (d) All fees levied by me credit provider must be disclosed in the agreement together with the date on which they will be levied and any other information relating to the charging of such fees;
 - (e) If the amounts that have to be disclosed are not ascertainable, the credit provider must disclose such amounts based on estimated information, provided that such estimates are reasonable in the circumstances of the proposed credit agreement;
 - (f) If the amounts disclosed are based on estimated information, the credit provider must clearly disclose this to the consumer by indicating which amounts are based on estimated information and disclosing such estimated information;
 - (g) The sum of the amounts disclosed in respect of the initiation fee, service fee, interest and cost of credit insurance, provided that, to the extent that any amount is not ascertainable, the credit provider must clearly indicate the method of calculating the amount;
 - (h) The sum of the principal debt, initiation fee, service fee, interest and cost of credit insurance, provided that, to the extent that any amount is not ascertainable, the credit provider must clearly indicate the method of calculating the amount;
 - (i) If the interest rate or credit fees and charges that are payable in terms of the agreement may be changed, a statement to that effect must be disclosed together with the manner and the timeframes within which the consumer must be notified of any changes to the interest rate or fees and charges in accordance with section 104 of the Act;
 - (j) The amount of the repayment(s) or if not a fixed or determinable amount, the method of calculating the repayment amount;
 - (k) If fixed or determinable -
 - (i) the number of repayments;
 - (ii) the frequency of the repayments;
 - (iii) when the first repayment is due;

- (iv) if all repayment amounts are not equal, how will they differ;
- (v) the total amount of all repayments;
- (vi) the term or duration of the agreement;

- (l) The frequency with which the consumer will be provided with a statement of account;
- (m) The manner in which the statement will be provided;
- (n) If the credit provider has taken any form of security or mortgage in respect of the repayment of the loan, a description of the security or asset mortgaged;
- (o) Details of the implications of default by the consumer;
- (p) Details of the process that will be followed on default;
- (q) A statement notifying the consumer as comprehensively as reasonably possible about the information sharing practices in credit reporting, which must contain the following information:
 - (i) confirmation by the consumer that the credit provider may transmit to the credit bureau data about the application, opening and termination of an account;
 - (ii) the fact that information on non-compliance with terms and conditions of the credit agreement is transferred to the credit bureau;
 - (iii) the name and contact details of the credit bureau or credit bureaux to which the information is transferred;
 - (iv) the fact that the credit bureau provides a credit profile and possibly a credit score on credit worthiness of the person subject to the record;
- (r) A statement of the consumer's right to:
 - (i) contact the credit bureau;
 - (ii) have the credit record disclosed; and
 - (iii) correct inaccurate information;
- (s) If applicable, the consumer's right to rescind the credit agreement in terms of section 121 of the Act;

- (t) The right of the consumer to terminate the credit agreement in terms of section 122 of the Act;
 - (u) A statement of the consumer's or guarantor's right to settle the agreement together with an explanation of the manner in which the amount required to settle the credit agreement is calculated in terms of section 125 of the Act;
 - (v) The right of the credit provider to terminate the credit agreement in terms of section 123 of the Act;
 - (w) A statement of the consumer's rights to:
 - (i) resolve a complaint by way of alternative dispute resolution;
 - (ii) file a complaint with the National Credit Regulator; or
 - (iii) make an application to the Tribunal;
 - (x) If applicable, the consumer's obligations to disclose the location of goods in terms of section 97 of the Act;
 - (y) If applicable, the consumer's right to surrender goods in terms of section 127 of the Act together with a description of the process to be followed in surrendering goods in terms of section 127 of the Act;
 - (z) If applicable and as prescribed in terms of section 94 of the Act, the contact number at which a consumer may report the loss or theft of a card, personal identification number or other device and the extent of the consumer's liability for purchases charged to that facility after the card, personal identification code or number or other device has been lost or stolen;
 - (AA) A statement of the consumer's right to prepay any amount under a credit agreement in terms of section 126 of the Act;
 - (BB) A statement of the consumer's right to apply to a debt counsellor to be declared over-indebted in terms of section 86 of the Act, and the process to be followed;
 - (CC) Contact details of the National Credit Regulator and the Tribunal, and in the case of the credit provider being a regulated financial institution, the contact details of the adjudicator responsible for that institution.
- (3) If any item set out in this regulation is dependant on the portion or amount of the credit utilised by the consumer, the maximum utilisation must be assumed for purposes of the required disclosure.

- (4) For purposes of electronic or telephone originated documents, the electromagnetic recording and transcribing of the documents will be sufficient, provided that the consumer is supplied with copies of the agreement within a reasonable time.

32. Unlawful provisions of a credit agreement

The following common law rights or remedies that are available to a consumer may not be waived in a credit agreement:

- (a) *Exceptio errore calculi*;
- (b) *Exceptio non numerate pecuniae*.
- (c) *Exceptio non causa debiti*

33. Credit Insurance

- (1) If a credit provider proposes the purchase of a particular policy as envisaged in section 106(4) of the Act, such credit provider will disclose to the consumer the information set out in Form 21;
- (2) If a consumer exercises the right under section 106(4)(a) to substitute an insurance policy of the consumer's choice, the credit provider may require the consumer in terms of section 106(6)(a) and 106(6)(b) to complete Form 22 and Form 23;
- (3) A credit provider is permitted to include the information as set out in Forms 21, 22 and 23 in its credit agreement, provided that the consumer's attention is drawn to the contents of these provisions.

34. Disclosure of location of goods

- (1) In respect of a credit agreement to which section 97 of the Act applies, the consumer must disclose any changes concerning the matters listed in section 97(2) in writing to the credit provider within 10 business days after the change and deliver it to the credit provider;
- (2) When disclosing such a change, the consumer must complete Form 24 or provide the following information to the credit provider:
 - (a) name of the consumer;
 - (b) a reference number or account number provided by the credit provider;
 - (c) the date upon which the change was effective; and

- (d) the date of the disclosure.
- (3) On request by the credit provider, messenger of the court or the deputy sheriff, as contemplated in section 97(3), the consumer -
- (a) must provide the information in writing by completing Form 25; or
 - (b) may otherwise provide the information orally.

35. Statement of account

A statement of account in respect of a small agreement must be in Form 26 or must contain the following information:

- (a) The details of the credit provider, including:
 - (i) the name of the credit provider
 - (ii) the trading name of the credit provider, if any
 - (iii) the credit provider's registration number issued by the National Credit Regulator
 - (iv) the physical address and postal address of the credit provider
 - (v) the telephone number of the credit provider
 - (vi) where relevant, the details of the bank account into which the consumer's payment must be made, including name of bank, account number, branch code and reference number;
- (b) The details of the consumer, including
 - (i) the consumer's name
 - (ii) the consumer's account number or reference number
 - (iii) the consumer's address;
- (c) The date of the statement;
- (d) The period covered by the statement;

- (e) Details of the agreement including (if applicable):
 - (i) the principal debt
 - (ii) the annual rate of interest
 - (iii) the installment *[sic]* amount
 - (iv) the frequency of the installment *[sic]*
 - (v) the balance outstanding at the date of statement
 - (vi) whether the account is in arrears, and if so, the amount of such arrears;

- (f) A summary of the transactions that occurred during the period of the statement, including the total amount debited or credited to the account in respect of the following:
 - (i) payments received
 - (ii) fees levied
 - (iii) interest accrued
 - (iv) insurance costs levied
 - (v) collection costs levied
 - (vi) default administration costs levied
 - (vii) legal fees incurred;

- (g) A detailed statement of each transaction that occurred during the period of the statement including the following:
 - (i) closing balance from the previous statement
 - (ii) the date of each transaction
 - (iii) a description of the transaction
 - (iv) the amount of the transaction and whether it is a debit or credit on the account

- (v) a running total
- (vi) the closing balance.

36. Changes to interest

A notice by the credit provider to the consumer of a change in a variable interest rate as contemplated in section 104(3)(a) of the Act, must also provide the following information:

- (a) the date on which the change took effect, or will take effect;
- (b) total interest payable under the agreement in Rand value, if ascertainable;
- (c) monthly interest payable in Rand value, if ascertainable.

37. Consumer's right to rescind a credit agreement

A notice by the consumer to the credit provider to terminate a credit agreement in terms of section 121(2) of the Act must be given in writing and delivered by hand, fax, e-mail or registered mail to an address specified in the agreement, alternatively the credit provider's registered address.

38. Charges to other accounts

A notice to a consumer of a charge or series of charges to be made to another account as contemplated in section 124(2) of the Act must be given to the consumer in Form 27 before the charge or first charge of the series will be made, or must be recorded electromagnetically, transcribed and delivered to the consumer and must include the following information:

- (a) a reference to the written direction by the consumer authorising the charge or series of charges, as contemplated in sections 124(1) and 90(2)(n) of the Act;
- (b) the account against which the charge or series of charges will be made;
- (c) the obligation that the charge or series of charges is intended to satisfy;
- (d) the account to which that obligation relates;
- (e) whether the charge is a single charge or a series of charges;
- (f) the amount or amounts of the charge, and the method of calculation; and
- (g) the date on which the charge or first charge in the series will be effected.

CHAPTER 5 INTEREST AND FEES

Part A Interpretation

39. Definitions

In this Chapter-

- (1) **"Deferred amount"** means any amount payable in terms of a credit agreement the payment of which is deferred and upon which interest is calculated, or any fee, charge or increased price is payable by reason of the deferment, and
- (a) the deferred amount includes
 - (i) any obligation of the consumer that is deferred as per section 8(3) and section 8(4) of the Act;
 - (ii) in respect of incidental credit agreements,
 - (aa) the amount on which a supplier of goods or services charges interest or a late payment fee, per section 5(2)(a), or
 - (bb) the lower price in respect of the agreements referred to in section 5(2)(b);
 - (iii) the amounts referred to in section 101(1)(b) to section 101(1)(g) inclusive;
 - (iv) the amounts referred to in section 102(1)(b) to section 102(1)(f);
 - (b) the deferred amount is reduced by any amount paid towards the settlement of the deferred amount, or an amount credited to the deferred amount, at the time that such payment is made, or credit falls due, and
 - (c) the date from which an amount becomes part of the deferred amount, is the date upon which such an amount becomes due or may be levied, subject to the limitations specified in the Act and these regulations.
- (2) **"short term credit transaction"**
- (a) means a credit transaction

- (i) in respect of a deferred amount at inception of the agreement not exceeding R8,000; and
 - (ii) in terms of which the whole amount is repayable within a period not exceeding 6 months; and
- (b) in terms of which an amount of money was disbursed to the consumer, to be utilised at the sole discretion of the consumer, and
- (c) includes pawn transactions,
- (d) but does not include credit transactions in respect of which the agreement is conditional upon
- (i) the amount deferred being paid by the credit provider directly or indirectly to a person or juristic person that is related to the credit provider; or
 - (ii) the amount deferred being paid by the credit provider to a person or juristic person other than the consumer, except where such condition is introduced by the consumer.
- (3) **"unsecured credit transaction"** means a credit transaction in respect of which the debt is not supported by any pledge or other right in property or suretyship or any other form of personal security other than credit life insurance.

(Regulation 39(3) substituted by Government Notice R604 in Government Gazette 30713 dated 29 May 2008)

Part B

General Stipulations

40. Interest calculation

- (1) Interest may be calculated daily and may be added to the deferred amount monthly, at the end of the month, or
- (a) if interest is added to the deferred amount at an earlier day than the last day of the month,
 - (i) this earlier day may not be earlier than the date upon which the repayment is due as per the agreement; and

(ii) the rand amount of interest for the month must be calculated from the previous date when interest was added to the deferred amount, until this earlier day, and;

(iii) interest may not be added to the deferred amount more than once in every month;

(b) interest may be added to the deferred amount periodically as defined in the credit agreement, provided that such periods are no shorter than the number of days in the month during which such interest is added; or

(c) in the final month of a credit agreement, interest due may be added to the deferred amount on the final day of the agreement.

(2) The rand amount of interest for any particular day as referred to in (1),

(a) must be calculated as follows for any credit agreement other than short term credit transactions:

$$\frac{\text{Deferred amount for the day} \times \text{interest rate}}{\text{Number of days in the year}}$$

(b) must be calculated as follows for short term credit transactions:

$$\frac{\text{Deferred amount for the day} \times \text{monthly interest rate}}{\text{Number of days in the month}}$$

(c) Where:

(i) the deferred amount for the day must be calculated as the average deferred amount for the day, or as the deferred amount at a particular time in the day, as defined per the credit agreement;

(ii) the interest rate must not exceed the maximum prescribed interest rate applicable to the category of credit agreement concerned;

(iii) number of days in the year may be interpreted as either 365, or as the actual number of days in the particular year;

(iv) For short term loans, the number of days in the month may be interpreted as either 30, or as the actual number of days in the particular month.

- (3) The rand amount of interest for any particular month must be calculated by adding the rand amounts of interest for all the days in that month;
- (4) The manner of calculation employed by any particular credit provider may differ from the manner prescribed above, provided that the amount calculated by the institution for any year may not differ by more than 0.1% from the amount that would have resulted if calculated as prescribed in this section.

41. Dates upon which fees become due and payable

- (1) Initiation fees may be levied on the date stipulated in the agreement, but not earlier than the date of approval of the credit application;
- (2) Monthly service fees may be levied at the end of the month to which they relate;
- (3) Annual service fees may be levied at the earlier of -
- (a) the end of the year to which such fees relate, or an annual date specified in the credit agreement, or
- (b) the termination of the agreement;
- (4) Transaction based service fees may be levied at the end of the month in which the transaction occurred;
- (5) In (2), (3) and (4) above, the respective fees may be added to the deferred amount at a different day than the last day of the month, provided that this day is no earlier than the day upon which interest is added to the deferred amount, as per regulation 40 above.

Part C

Interest applicable to different products

42. Maximum prescribed interest and initiation fees

- (1) The following maximum rates of interest will apply:

TABLE A				
Maximum Prescribed Interest Rate				
Credit type	Maximum Prescribed Interest Rate			
1. Mortgage agreements	RR + 12% per year			

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TABLE A				
Maximum Prescribed Interest Rate				
2. Credit facilities	RR + 14% per year			
3. Unsecured credit transactions	RR + 21% per year			
4. Developmental credit agreements	RR + 27% per year			
4.1 Small business				
4.2 Low income housing				
5. Short-term transactions	5% per month on the first loan and 3% per month on subsequent loans within a calendar year			
6. Other credit agreements	RR + 17% per year			
7. Incidental credit agreements	2% per month			

(Table A substituted by regulation 2 of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

Where,

- (a) RR indicates the reference rate, being the ruling SA Reserve Bank Repurchase Rate,
 - (b) The interest rate on short term credit transactions and incidental credit agreements must be disclosed as a monthly interest rate, in such disclosure as is required by the Act and these regulations.
- (2) The following maximum limits will apply to initiation fees:

Sub-sector	Maximum Initiation Fee
Mortgage agreements	(a) R1 100 per credit agreement, plus 10 % of the amount in excess of R10 000 (b) But never to exceed R5 250
Credit facilities	(a) R165 per credit agreement, plus 10% of the amount in excess of R1000 (b) But never to exceed R1 050
Unsecured credit transactions	(a) R165 per credit agreement, plus 10% of the amount in excess of R1 000 (b) But never to exceed R1 050

Prepared by:

TABLE B	
Sub-sector	Maximum Initiation Fee
Developmental credit agreements	
- For the development of a small business	(a) R275 per credit agreement, plus 10% of the amount in excess of R1 000 (b) But never to exceed R2 600
- For low income housing (unsecured)	(a) R550 per credit agreement, plus 10% of the amount in excess of R1 000 (b) But never to exceed R2 600
Short term credit transactions	(a) R165 per credit agreement, plus 10% of the amount in excess of R1 000 (b) But never to exceed R1 050
Other credit agreements	(a) R165 per credit agreement, plus 10% of the amount in excess of R1 000 (b) But never to exceed R1 050
Incidental credit agreements	Nil

(Table B substituted by regulation 3 of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

Where,

- (a) The amount of the agreement is the amount deferred in terms of the agreement.

43. Supplementary conditions on the application of the maximum initiation fee

The following supplementary conditions shall apply on the application of the maximum initiation fee:

- (1) An initiation fee may be charged at the registration of a replacement mortgage in respect of a transfer from one credit provider to another, without there being a transfer of ownership of the mortgaged property, only if-
 - (a) the transfer is done at the request of the consumer; and
 - (b) the levying of the fee and the amount of the fee has been disclosed to the consumer by the acquiring credit provider before the consumer has agreed to the transfer.
- (2) No initiation fee may be charged on credit agreements as envisaged in section 101(2).
- (3) Initiation fee may never exceed 15% of the principal debt.

- An initiation fee must only be charged when a new credit agreement is established with a consumer and must not be charged on a transactional basis where there is no new credit agreement with the consumer.

(Regulation 43?(no number) added by regulation 4 of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

44. Maximum service fee

The maximum monthly service fee, prescribed in terms of section 105(1) of the Act, is R60.

(Words preceding regulation 44(1) substituted by regulation 5(a) of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

- (1) Where an annual service fee is levied, the applicable limit is
 - (a) the monthly limit on the service fee, multiplied by 12, and
 - (b) where the period for which the fee is levied is less than 12 months, the monthly service fee multiplied by the number of months in such a period.
- (2) If a service fee is payable on a transaction basis, or on a combination of periodic and transaction bases, the total of such fees may not exceed the monthly or annual limit.
- (3) The service fee covers the cost of administering a credit agreement which is the operational cost of the credit provider such as rent, labour, communication, banking, processing of repayments and any other costs related to the administration of a credit agreement.

(Regulation 44(3) added by regulation 5(b) of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

- (4) A service fee must be charged for a calendar month in which it is due and payable and on a pro rata basis where the credit agreement was concluded during the course of that calendar month.

(Regulation 44(4) added by regulation 5(b) of Government Notice 1080 in Government Gazette 39379 dated 6 November 2015)

45. Periodic review of limitations on fees and interest rates

The National Credit Regulator must -

- (1) perform a review of interest rates and cost factors at intervals of no more than 3 years and advise the Minister of any changes that may be required;
- (2) when making a recommendation to the Minister in terms of this regulation, consider:

- (a) ruling interest rates and fees;
- (b) cost of providing such credit;
- (c) the choice available to consumers in the particular category of credit agreements, between different products and different credit providers; and
- (d) the impact upon access to finance for persons referred to in section 13(a) of the Act.

Part D
Other fees, costs and charges

46. Default Administration Charges

The credit provider may require payment by the consumer of default administration charges in respect of each letter necessarily written in terms of Part C of Chapter 6 of the Act. Such payment may not exceed the amount payable in respect of a registered letter of demand in undefended action in terms of the Magistrates' Courts Act, 1944 in addition to any reasonable and necessary expenses incurred to deliver such letter.

47. Collection Costs

For all categories of credit agreement, collection costs may not exceed the costs incurred by the credit provider in collecting the debt -

- (a) to the extent limited by Part C of Chapter 6 of the Act, and
- (b) in terms of -
 - (i) the Supreme Court Act, 1959,
 - (ii) the Magistrates' Court Act, 1944,
 - (iii) the Attorneys Act, 1979; or
 - (iv) the Debt Collector's Act, 1998,

which ever is applicable to the enforcement of the credit agreement.

48. Other Charges

If the credit provider is entitled to charge any amount referred to in section 102(1)(b) to (e) of the Act, the credit provider must not charge the consumer a higher price for any goods or services provided to or arranged for the consumer than the price charged by that credit provider for the same or substantially similar goods or services provided or arranged in the ordinary course of business on the basis of a cash transaction. If no similar goods or services are provided on the basis of cash transactions, the amount that may be charged may not exceed the actual cost at which the credit provider could procure the goods or services provided as per section 102(1) at fair market value in an arms length transaction.

Requirements and standards for training for registrants

(1) Payment distribution agent must be trained in the following areas:

- (a) risk management and fraud prevention;
- (b) the National Credit Act;
- (c) financial management;
- (d) accounting;
- (e) business management;
- (f) customer service;
- (g) governance and compliance; and
- (h) computer literacy.

(2) Credit providers must be trained in the following areas:

- (a) National Credit Act;
- (b) governance and compliance;
- (c) customer service;
- (d) risk management;
- (e) computer literacy;
- (f) financial management;

- (g) business management; and
 - (h) economics.
- (3) Debt counselors must be trained on the National Credit Act and on the basic principles of the following areas:
- (a) financial management;
 - (b) business management;
 - (c) customer service;
 - (d) debt counseling;
 - (e) economics;
 - (f) governance and compliance;
 - (g) accounting; and
 - (h) bookkeeping.
- (4) Alternative Dispute Resolution Agent must be trained on the National Credit Act, Consumer Protection Act and on the basic principles of the following areas:
- (a) Alternative dispute resolution
 - (b) financial management;
 - (c) business management;
 - (d) governance and compliance
 - (e) customer service.

(Regulation ? inserted by GNR 202 of 2015)

(Publisher's Note: The above new regulation appears to have been inserted in Chapter 5, but has no number, which makes the placement impossible to pinpoint.)

CHAPTER 6 DISPUTE RESOLUTION

49. Failed alternative dispute resolution

If an alternative dispute resolution agent fails to resolve a dispute as envisaged in section 134(5) of the Act, a certificate in Form 28 must be completed by the alternative dispute resolution agent.

50. Initiating a complaint to the National Credit Regulator

- (1) A consumer may lodge a complaint against a credit provider by:
 - (a) submitting a completed Form 29 to the National Credit Regulator by fax, mail or e-mail; or
 - (b) contacting the National Credit Regulator telephonically.
- (2) Telephonic and e-mail originated complaints may be lodged only by the complainant, not by another person on behalf of the complainant.
- (3) If a person completes and submits Form 29 on behalf of complainant, the complaint must be accompanied by a written consent signed by the complainant.
- (4) A third party may act on behalf of a complainant only if the complainant has consented in writing.
- (5) A consent contemplated in sub-regulation (4) must contain the following:
 - (a) name of the third party;
 - (b) name of the credit provider,
 - (c) full name and signature of the complainant;
 - (d) date of signing of the agreement to which the complaint relates; and
 - (e) details of the complaint.

51. Initiating applications to Tribunal

An application initiated by the National Credit Regulator to the Tribunal in terms of section 137 of the Act must be in Form 30 and accompanied by -

- (a) the documents specified in Form 30; and
- (b) any additional information that the Tribunal considers appropriate in the circumstances.

52. Notice of non-referral

A notice of non-referral issued in terms of sections 139(1)(a) or 140(1)(a) of the Act must be in Form 31.

53. Application for referral to a different consumer court or the Tribunal

An application to the Tribunal for an order that a matter be referred to a different consumer court or to the Tribunal in terms of section 140(4) of the Act must be in Form 32 and accompanied by -

- (a) the documents specified in Form 32; and
- (b) any additional information that the Tribunal considers appropriate in the circumstances.

54. Referral to the Tribunal

(1) An application to the Tribunal for an order in terms of section 141(2)(a) of the Act must be in Form 33 and accompanied by -

- (a) the documents specified in Form 33; and
- (b) any additional information that the Tribunal considers appropriate in the circumstances.

(2) A referral to the Tribunal, whether by the National Credit Regulator in terms of section 140(1) of the Act or by a complainant in terms of subsection 141(1), must be in Form 32.

Non-compliance in terms these Regulations

(1) These Regulations are binding to the extent of their application; non-adherence with these Regulations will be dealt with in terms of the remedies and procedures under the National Credit Act.

(Regulation ? inserted by GNR 202 of 2015)

(Publisher's Note: The above new regulation appears to have been inserted in Chapter 6, but has no number, which makes the placement impossible to pinpoint.)

**CHAPTER 7
RECORD KEEPING AND REGISTERS**

**Part A
Record-keeping**

55. Records of registered activities to be retained by registrants

Prepared by:

(1) In addition to any records that must be kept in terms of the Act, a registrant must maintain the following records relating to its registered activities, which records may be kept in electronic format,

(a) Debt Counsellors, in respect of each consumer:

- (i) application for debt review;
- (ii) copy of all documents submitted by the consumer;
- (iii) copy of rejection letter (if applicable);
- (iv) debt restructuring proposal;
- (v) copy of any order made by the tribunal and/or the court;
- (vi) copy of clearance certificate;

(b) Credit Providers, in respect of each consumer:

- (i) application for credit;
- (ii) application for credit declined;
- (iii) reasons for decline of application for credit
- (iv) pre-agreement statement and quote;
- (v) credit agreement entered into with consumer;
- (vi) documentation in support of steps taken in terms of section 81(2) of the Act;
- (vii) record of payments made;
- (viii) documentation in support of any steps taken after default by consumer;

(c) Credit Providers, in respect of operations:

- (i) record of income, expenses and cash flow;
- (ii) credit transaction flows;

- (iii) management accounts and financial statements;
- (d) Credit Bureaux,
 - (i) All documents relating to disputes, inclusive of but not limited to:
 - a. documents from the consumer;
 - b. documents from the entity responsible for disputed information;
 - c. documents pertaining to the investigation of the dispute;
 - (ii) Correspondence addressed to and received from sources of information as set out in section 70(2) of the Act and Regulation 18(7) pertaining to issues of disputed information.
- (2) Records that are required to be maintained in terms of the Act must be -
 - (a) maintained in paper or electronic format;
 - (b) readily accessible for a period of three years, subject to regulation 56.
- (3) A record that is kept in electronic format must be reproduced in paper form within a period of five business days after a request by the National Credit Regulator.
- (4) If a person has appointed a third party to maintain the person's records, as required by this Act-
 - (a) that appointment does not absolve that person of any responsibility to maintain the records in accordance with the Act; and
 - (b) that person must ensure that any records maintained by the third party will be available without any undue delay.
- (5) All records must be kept for a period of three years from the earlier of the date on which the registrant created, signed or received the document.

56. Time for keeping records of credit applications and agreements by credit providers

The records required to be kept in terms of section 170 of the Act must be maintained for three years -

- (a) from the date of termination of the credit agreement; or

- (b) in the case of an application for credit that is refused or not granted for any reason, from date of receipt of the application.

Part B

Registers

57. National record of registration

- (1) The register maintained by the National Credit Regulator as required in terms of section 53 of the Act must include the following information as set out in Form 34:
 - (a) the registrant's registration number with the National Credit Regulator;
 - (b) the registrant's full name;
 - (c) the registrant's trading name, if applicable;
 - (d) the registrant's identity number or registration number;
 - (e) the activities which the registrant is permitted to engage in;
 - (f) date of registration;
 - (g) conditions of registration, if any;
 - (h) whether the registration has been altered, and details thereof, if applicable;
 - (i) the registrant's contact details, including:
 - (i) physical address;
 - (ii) telephone number;
 - (iii) fax number;
 - (iv) e-mail address;
 - (v) contact person;
- (2) The National Credit Regulator must maintain a register of all persons whose registration has been cancelled, which register must include the following information:

- (a) the person's registration number with the National Credit Regulator;
 - (b) the person's full name;
 - (c) the person's trading name, if applicable;
 - (d) the person's identity number or registration number;
 - (e) date of registration;
 - (f) date of cancellation of registration;
 - (g) reasons for cancellation of registration;
 - (h) any conditions of registration, if applicable;
 - (i) whether the registration had been altered, and details thereof, if applicable; and
 - (j) the person's contact details, including:
 - (i) physical address;
 - (ii) telephone number;
 - (iii) fax number;
 - (iv) e-mail address; and
 - (v) contact person.
- (3) The National Credit Regulator must maintain a register of all registrants registered with a Provincial Regulator and must include the information as set out in Form 34.1.
- (4) The National Credit Regulator must permit any person to inspect the register, whether at the office of the National Credit Regulator, or on its website, at no cost.
- (5) Any person may obtain copies of permitted information as provided for in section 14(c)(ii) upon completing Form 35 and after making payment of the fees set out in Schedule 2.

58. Register of marketing options

- (1) The register maintained by a credit provider as required in terms of section 74(7) of the Act must contain the following records as set out in Form 36:
 - (a) the consumer's name and account number;
 - (b) the consumer's contact details;
 - (c) the options selected by the customer; and
 - (d) the date upon which the consumer selected the options;
- (2) The register must be maintained in written or electronic format, provided that the format is accessible for inspection by the National Credit Regulator;
- (3) The records contained in the register must be maintained in the register until the consumer account is closed;
- (4) If the consumer selects any of the options provided for in section 74(6), the records of earlier selections must be retained for a period of 3 years.

59. Register of Agents

- (1) The register maintained by a credit provider as required in section 163(2)(b) of the Act must reflect the following records as set out in Form 37:
 - (a) the name and address of the agent;
 - (b) the identity number of the agent, alternatively CIPRO or other official registration number;
 - (c) the date of appointment of the agent; and
 - (d) a description of the activities which the agent is authorised to conduct.
- (2) The register must be maintained in written or electronic format, provided that the format is accessible for inspection by the National Credit Regulator.
- (3) If an agent's appointment has been terminated, the credit provider must:
 - (a) retain the records relating to that agent for a period of not less than *[sic]* 12 months from the date of termination of appointment;
 - (b) ensure that the reason for termination is stated on the record.

60. Other Registers to be kept by Registrants

In addition to any registers that must be kept in terms of the Act and the information specified in regulation 55, a registrant must maintain the following information relating to its registered activities in a register, which register may be kept in electronic format:

- (1) Debt Counsellors, in respect of each consumer:
 - (a) consumer's full names and surname;
 - (b) consumer's identity number or, if the consumer does not have an identity number, passport number and date of birth;
 - (c) date of application for debt review;
 - (d) date of rejection letter issued (if applicable);
 - (e) status of the case:
 - (i) applied;
 - (ii) under assessment;
 - (iii) restructured;
 - (iv) process of payment;
 - (v) settled; or
 - (vi) defaulted.
 - (f) date of clearance certificate issued;
 - (g) if the consumer exits the debt restructuring prior to the debt being settled in full, the reasons for doing so.
- (2) Credit Providers, in respect of each consumer:
 - (a) consumer's full names and surname;

- (b) consumer's identity number or, if the consumer does not have an identity number, passport number and date of birth;
 - (c) date the loan was granted, amount, installment *[sic]* amount and number of installments *[sic]*;
 - (d) defaults in respect of each agreement;
 - (e) date on which agreement was terminated, and whether such termination was as a result of-
 - (i) settlement;
 - (ii) court judgment;
 - (iii) written off as bad debt by the credit provider;
 - (iv) transfer or cession;
 - (v) other (specify).
- (3) Credit Bureaux, in respect of each consumer on whom information is retained:
- (a) source of the information;
 - (b) date of submission of information;
 - (c) contents of information that was submitted;
 - (d) to whom was the information released;
 - (e) for what purpose was the information released;
 - (f) when was the information released;
 - (g) what information was released.

61. Identity card of agents

An identification card provided to an agent in terms of section 163(2) of the Act must be in Form 38.

CHAPTER 8

Prepared by:

COMPLIANCE AND REPORTING

Part A

Registered credit providers' compliance reports

62. Statutory Reporting

- (1) A credit provider must submit the following to the National Credit Regulator -
 - (a) Compliance Report
 - (b) Statistical Returns
 - (c) Annual Financial and Operational Return
 - (d) Assurance Report
- (2) Any information that is required to be reported to the National Credit Regulator must be accurate and complete, and must fairly present the activities and status of the credit provider;
- (3) Any financial information that is required to be reported to the National Credit Regulator must be prepared in accordance with generally accepted accounting practice as applied by that entity in the preparation of its financial statements;
- (4) If requested by the National Credit Regulator, an analysis of any item contained in the forms prescribed in these regulations must be furnished to the National Credit Regulator within 20 business days after such request.

63. Compliance Report

- (1) A credit provider must complete and submit a compliance report to the National Credit Regulator on an annual basis within 6 months after the financial year-end of the credit provider;
- (2) The National Credit Regulator must issue guidelines on the format and contents of this report.

64. Statistical Return

- (1) A credit provider whose annual disbursements exceed R 15 million must complete and submit the statistical return in Form 39 to the National Credit Regulator in respect of the quarters and by the due dates set out in the table below;

- (2) All other credit providers must complete and submit the statistical return in Form 39 to the National Credit Regulator by the 15th of February each year for the period 1 January to 31 December.

Quarters	Reporting period	Due Date for Statutory Reporting
Quarter 1	1 January - 31 March	15 May
Quarter 2	1 April - 30 June	15 August
Quarter 3	1 July - 30 September	15 November
Quarter 4	1 October-31 December	15 February

65. Annual Financial Statements

A credit provider must submit its annual financial statements including the auditor or accounting officer's report to the National Credit Regulator, within 6 months after the credit provider's financial year-end;

66. Annual Financial and Operational Return

A credit provider must submit an annual financial and operational return in Form 40 to the National Credit Regulator, within 6 months after the registered credit provider's financial year-end.

67. Responsibility for Assurance Engagement

- (1) A credit provider must require an accounting officer or auditor to conduct an assurance engagement in terms of regulation 68;
- (2) If a credit provider is not required by statute to appoint an accounting officer or auditor, the credit provider must appoint a member of one of the following professional bodies:
- (a) South African Institute of Chartered Accountants (SAICA)
 - (b) Commercial and Financial Accountants (CFA)
 - (c) South African Institute of Secretaries and Administrators (ICSA)
 - (d) Institute of Administration and Commerce (IAC)
 - (e) Chartered Institute of Management Accountants (CIMA),

to report on the credit provider's financial statements and to conduct the assurance engagement in terms of Regulations 68.

68. Assurance Engagement

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- (1) A credit provider must require the person appointed in terms of regulation 67 to perform an assurance engagement in accordance with guidelines to be issued by the National Credit Regulator and issue a report to the National Credit Regulator on the basis of that person's findings with regard to that engagement;
- (2) A credit provider must submit the report contemplated in (1) to the National Credit Regulator within 6 months after the credit provider's financial year-end.
- (3) The National Credit Regulator must issue guidelines in respect of-
 - (a) the procedures which the person must follow in performing such assurance engagement, and
 - (b) the format and content of the report which must be compiled based on the engagement.

Part B

Debt counsellor compliance reports

69. Annual compliance report and statistical return by debt counsellor

- (1) A compliance report submitted by a registered debt counsellor must be submitted in Form 41 to the National Credit Regulator by the 15th of February each year for the period 1 January to 31 December.
- (2) All registered debt counsellors must complete and submit the statistical return in Form 42 to the National Credit Regulator in respect of the quarters and by the due dates set out in the table below.

Quarters	Reporting period	Due Date for Statutory Reporting
Quarter 1	1 January - 31 March	15 May
Quarter 2	1 April - 30 June	15 August
Quarter 3	1 July - 30 September	15 November
Quarter 4	1 October-31 December	15 February

Part C

Credit bureau compliance reports

70. Annual compliance report by credit bureau

A compliance report submitted by a registered credit bureau in terms of section 52(6) of the Act must be submitted in Form 43 to the National Credit Regulator by the 15th of March each year for the period 1 January to 31 December.

71. Quarterly synoptic report by credit bureau

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- (1) A credit bureau must submit a quarterly report on:
- (a) The total number of complaints received;
 - (b) The nature of the complaint, classified as defined by the National Credit Regulator;
 - (c) Number of complaints that were found to be valid, partially valid and invalid, respectively;
 - (d) Number of complaints resolved and outstanding; and
 - (e) The nature and validity of complaints, in categories such as:
 - (i) inaccurate or incorrect information
 - (ii) insufficient or incomplete information
 - (iii) outdated information
 - (iv) double listing
 - (v) incorrect merging of information
 - (vi) consumer withdrew complaint;
- (2) In terms of section 70(5) of the Act, a registered credit bureau must submit to the National Credit Regulator periodical synoptic reports in Form 44 in respect of the quarters and by the due dates set out in the table below:

Quarters	Reporting period	Due Date for Reporting
Quarter 1	1 January - 31 March	15 May
Quarter 2	1 April - 30 June	15 August
Quarter 3	1 July - 30 September	15 November
Quarter 4	1 October-31 December	15 February

Part D Insurers' Periodic Synoptic Report

72. Submission of periodic synoptic report by insurers

- (1) Submission of period synoptic reports by insurers shall be done by completing Form 45 and submitting it to the National Credit Regulator.

Prepared by:

- (2) The synoptic report must be submitted in respect of the quarters, within 30 days after the end of the quarter, as set out below:

Quarters	Reporting period
Quarter 1	1 January - 31 March
Quarter 2	1 April - 30 June
Quarter 3	1 July - 30 September
Quarter 4	1 October-31 December

CHAPTER 9 TRANSITIONAL PROVISIONS

73. General preservation of regulations, rights, duties, notices and other instructions

A registration issued in terms of section 15A of the Usury Act 1968 (Act No. 73 of 1968) remains valid until the earlier of

- (1) the date when section 105 of the Act becomes effective;
- (2) date of deregistration, or
- (3) date of cancellation of such registration.

CHAPTER 10 PRESCRIBED FORMS

74. Forms

Forms prescribed for purposes of these Regulations are set out in Schedule 1 to the Regulations.

75. Use of Forms

- (1) 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 of 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.

- (2) If a prescribed form is used in conjunction with another prescribed form, each must clearly be distinguishable from the other.
- (3) A registrant may include its logo or letterhead on a prescribed Form, subject to sub-regulation (4).
- (4) If a form of document is prescribed by these regulations -
- (a) it is sufficient if a person required to prepare such a 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.

76. Electronic submission of Forms

Any Form that has to be submitted to the National Credit Regulator may be submitted electronically.

Schedule 1 PRESCRIBED FORMS

Form No.	Section	Description
1	4(1)(d)	Application for exemption by the Minister
2	45(1)	Application for registration as credit provider
3	41(1)	Application for supplementary registration
4	44(1)	Application for registration as debt counselor <i>[sic]</i>
5	43(1)	Application for registration as credit bureau
6	47(3)(a)	Notice when registrant becomes disqualified
7	48(3)	National Credit Regulator imposing conditions of registration
8	49(1)(a)	Registrant requesting new conditions
9	52(1)	Certificate of registration
10	58	Notice to cancel
11	25(1)(b)	Certificate to inspectors / investigators
12	54(1)	Notice of non-compliance to unregistered entities
13	55(1)	Compliance notice to registrants
14	56(1)	Objection notice
15	78(2)	Reporting to National Credit Regulator on loans excluded from reckless provisions

Prepared by:

Form No.	Section	Description
16	86(1)	Application for debt review
17.1	86(4)(b)	Notification to credit provider and credit bureau by debt counsellor of application for debt review
17.2		Notification to credit provider and credit bureau by debt counsellor of rejection or restructuring
18	86(9)	Application to court for debt review by consumer
19	71(2)(b)(i)	Clearance certificate
20	92(1)	Pre-agreement statement and quotation for small agreement
20.1	92(2)	Quotation for intermediate and large agreements
20.2	93(2)	Small agreements
21	106(5)(b)	Disclosure to consumer in respect of insurance
22	106(6)(a)	Authorisation by consumer to credit provider in respect of insurance
23	106(6)(b)	Nomination & authority granted by consumer to insurance company
24	97(2)	Notification of change to credit provider
25	97(3)	Notification of change
26	109(2)	Statement of account for small agreements
27	124(2)	Notice of charge to other account to consumer by credit provider
28	134(5)	Failed Alternative Dispute Resolution certificate
29	136(1)	Complaint form
30	137(1)	Application by National Credit Regulator to National Consumer Tribunal
31	139(1)(a)	Notice of non-referral
32	140(4)	Application to National Consumer Tribunal
33	141(2)(a)	Application to National Consumer Tribunal
34	53(1)	National Credit Regulator's register of registrant
34.1	53(1)(b)	National Credit Regulator's register of provincial registrants
35	14(c)(ii)	Request for info in registries
36	74(7)(a)	Register of marketing selection made by consumer
37	163(2)(b)	Register of Agents
38	163(2)(a)	Agents' Identity card
39		Credit provider's statistical return
40		Credit providers annual financial and operational return
41		Compliance return for debt counsellors
42		Statistical return for debt counsellors
43		Credit bureaux' annual compliance
44	70(5)(a)	Credit bureaux' synoptic report
45	16(2)(a)	Insurers' periodic synoptic report
46		Application form for registration as a payment distribution agent in terms of section 45 of the National Credit Act 34 of 2005, as amended
<i>(Form 46 added by GNR 202 of 2015)</i>		
47		Application form for registration as an alternative dispute resolution agent in terms

Prepared by:

Form No.	Section	Description
		of section 134A of the National Credit Act 34 of 2005, as amended
<i>(Form 47 added by GNR 202 of 2015)</i>		

DECLARATION OF CONSUMER'S NECESSARY EXPENSE QUESTIONNAIRE

*(Declaration added by GNR 202 of 2015)**(Copies of the above-mentioned forms can be provided upon request. Refer to website for contact details.)*

Schedule 2
PRESCRIBED FEES

1. A fee charged by a credit bureau in respect of a credit record may not exceed R20.00;
2. An application fee charged by a debt counsellor to a consumer when applying for debt restructuring may not exceed R50.00
3. The following fees may be charged by the National Credit Regulator in respect of copies of documents requested:
 - a. For every photocopy of an A4 size page, or part thereof, R1.50.
 - b. For every printed copy of an A4 size page, or part thereof, R1.00.
 - c. For a copy of the register in CD format, R70,00.
 - d. If applicable, the cost incurred by the National Credit Regulator in respect of postage.
4. A fee of R250.00 will be charged in respect of replacement copies of registration certificates.
5. The fees listed in items 1-4 are subject to an annual increase on each successive anniversary of the effective date, based on the inflation rate.
6. The fee payable by a registrant in respect of an application for review of conditions of registration as envisaged in regulation 6, is R1 000.00 per application.
7. A credit provider may charge search and production fees contemplated in section 65(4)(b) of the Act, not exceeding R5.00 for a replacement copy of any document required in terms of the Act, plus R1.00 per page for copies of each page of such document, the sum of which must not exceed R50.00.

*(Schedule 2 item 7 added by Government Notice R604 in Government Gazette 30713 dated 29 May 2008)***PAYMENT DISTRIBUTION FEES**

Prepared by:



8. Payment distribution fees applicable:

The fees which a payment distribution agent may recover in respect of payment distribution services rendered are as follows:

- A fee of R5.00 for each payment of between R100.00 and R200.00 distributed in respect of each credit agreement included in the consumer's debt re-arrangement plan;
- A fee of R10.00 for each payment between R201.00 and R500.00 distributed in respect of each credit agreement included in the consumer's debt re-arrangement plan;
- A fee of R15.00 for each payment exceeding R500.00 distributed in respect of each credit agreement included in the consumer's debt re-arrangement plan; and
- A fee of R3.00 is payable for any additional monthly statement requested by the consumer.

These amounts are inclusive of value added tax (VAT).

(Schedule 2 item 8? added by GNR 202 of 2015)

ALTERNATIVE DISPUTE RESOLUTION FEES

9. Fees prescribed in terms of section 51

The fees which a payment distribution agent must pay for application, registration and renewal are as follows:

- A non-refundable application fee of R500.00 payable upon submission of the application form;
- Initial registration fee of R100 000.00;
- Branch fee of R250.00 per location or premises; and
- Registration renewal fee of R100 000.00 payable annually by the date of anniversary of the registration

The fees which alternative dispute resolution agent must pay for application, registration and renewal are as follows:

- A non-refundable application fee of R500.00 payable upon submission of the application form;
- Initial registration fee of R20 000.00;

Prepared by:

- Branch fee of R250.00 per location or premises; and
- Registration renewal fee of R20 000.00 payable annually by the date of anniversary of the registration

These amounts are inclusive of value added tax (VAT).

(Schedule 2 item 9? added by GNR 202 of 2015)