REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT ACT

IRIPHABHULIKHI YASENINGIZIMU AFRIKA

UMTHETHO OCHIBIYELA IZIKWELETI ZIKAZWELONKE

No 19, 2014

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

__________ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the National Credit Act, 2005, so as to amend certain definitions; to provide for the alteration of the governance structure of the National Credit Regulator; to empower the Chief Executive Officer to delegate certain functions to other officials of the National Credit Regulator; to provide for the registration of payment distribution agents; to tighten measures relating to debt counsellors and the conduct of their practices as debt counsellors; to allow registrants to voluntarily cancel their registration; to empower the Minister to issue a notice for the removal of adverse consumer credit information; to provide for automatic removal of adverse consumer credit information; to empower the National Consumer Tribunal to declare a credit agreement reckless; to provide for the registration and accreditation of alternative dispute resolution agents; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 34 of 2005

1. Section 1 of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the deletion of the definition of 'Board';

(b) by the insertion after the definition of ''Cabinet'' of the following definition:

'' **'code of conduct'** except in respect of the industry code of conduct contemplated in section 76, means a code regulating the interaction between or among persons conducting business within an industry;'';

(c) by the deletion of the definition of 'member of the Board';

(d) by the substitution for the definition of ''mortgage'' of the following definition:

'' **'mortgage'** means a mortgage bond registered by the registrar of deeds over immovable property that serves as continuing covering security for a mortgage agreement;'';

(e) by the substitution for the definition of ''mortgage agreement'' of the following definition:

'' **'mortgage agreement'** means a credit agreement that is secured by **[a pledge of immovable property]** the registration of a mortgage bond by the registrar of deeds over immovable property;'';

INCAZELO EJWAYELEKILE:

[ ]	Amagama acasiswe ngombhalo ogqamile akubakaki abayisikwele abonisa okukhiswayo/okususiwe emthethweni osebenzayo.
________	Amagama adwetshelwe ngomugqa ogqamile akhombisa okufakelwayo emthethweni osebenzayo.

UMTHETHO

Uchibiyela uMthetho weziKweleti kaZwelonke, wezi-2005, ukuze uchibiyele izincazelo ezithile; ukhuthaza uMphathi oMkhulu ukuba adlulisele imisebenzi ethile kwabanye abasebenzi boPhiko Olulawula iziKweleti kuZwelonke; uhlinzekela ngokubhalisa abaqoqa izikweleti kumakhasimende; ukuqinisa izinyathelo ezihambisana nabaluleki bezikweleti nokuqhuba umsebenzi wabo njengabaluleki bezikweleti; ukuvumela abaluleki bezikweleti ukuba bazisule ngokwabo ukubhalisa kwabo; ukukhuthaza uNgqongqoshe ukuba akhiphe isaziso sokususa imininingwane engelona usizo, ukuhlinzekela ngokususa imininingwane yamakhasimende engelona usizo; ukukhuthaza iNkundla yeziKweleti kaZwelonke ukuba imise izivumelwano zezikweleti zobudedengu; ukuhlinzekela ngokubhalisa nokugunyaza Ngezinye iziThunywa eziXazulula iziNgxabano; nokuhlinzekela ngezinye izindaba ezihambisana nawo.

UZOMISWA iPhalamende laseNingizimu Afrika, ngale ndlela elandelayo:—

Ukuchibiyela isigaba soku-1 soMthetho wama-34 wezi-2005

1. Isigaba soku-1 soMthetho weziKweleti kaZwelonke, wezi- 2005 (kulokhu obizwa ngokuthi uMthethongqangi), uyachitshiyelwa—

(a) ngokususa incazelo 'iBhodi';

(b) ngokushutheka ngemuva kwencazelo ''iKhabhinethi'' le ncazelo elandelayo:

'' **'inkambiso yokuziphatha'** ngaphandle kwenkambiso yokuziphatha ezimbonini evezwe esigabeni sama-76, ichaza inkambiso elawula ukuxhumana phakathi noma kubantu abaqhuba umsebenzi embonini;''

(c) ngokususa incazelo 'ilungu leBhodi';

(d) ngokufaka endaweni yencazelo ''isibambiso sempahla'' le ncazelo elandelayo:

'' **'isibambiso sempahla'** sichaza isibambiso sempahla esibhaliswe unobhala wobunikazi empahla engaphatheki esiyisibambiso sesivumelwano sesibambiso sempahla;'';

(e) ngokufaka endaweni yencazelo ''isivumelwano sesibambiso sempahla'' le ncazelo elandelayo:

'' **'isivumelwano sesibambiso sempahla'** sichaza isivumelwano sesikweleti esenziwa **[isifungo ngempahla engaphatheki]** ngokubhalisa isibambiso sebhondi kunobhala obhalisa ubunikazi empahleni engaphatheki;'';

(f) by the insertion after the definition of ''pawn transaction'' of the following definition:

'' **'payment distribution agent'** means a person who on behalf of a consumer, that has applied for debt review in terms of this Act, distributes payments to credit providers in terms of a debt re-arrangement, court order, order of the Tribunal or an agreement;'';

(g) by the substitution for the definition of ''prohibited conduct'' of the following definition:

'' **'prohibited conduct'** means an act or omission in contravention of this Act**[, other than an act or omission that constitutes an offence under this Act, by—**

(a) **an unregistered person who is required to be registered to engage in such an act; or**

(b) **a credit provider, credit bureau or debt counsellor]**;''; and

(h) by the substitution in the definition of ''secured loan'' for paragraph *(b)* of the following paragraph:

''*(b)* retains, or receives a pledge **[or cession of the title]** to any movable property or other thing of value as security for all amounts due under that agreement;''.

Amendment of section 17 of Act 34 of 2005

2. Section 17 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

''The National Credit Regulator **[may]** must—'';

(b) by the substitution in subsection (4)*(b)* for the words preceding subparagraph (i) of the following words:

''*(b)* **[negotiate agreements]** enter into a valid agreement with any regulatory authority to—'';

(c) by the deletion in subsection (4) of the word ''and'' at the end of paragraph *(c)*;

(d) by the insertion in subsection (4) of the word ''and'' at the end of paragraph *(d)*;

(e) by the addition in subsection (4) of the following paragraph:

''*(e)* notify the Registrar of Banks designated in terms of the Banks Act, 1990 (Act No. 94 of 1990), within the agreed time frame, of its intention to investigate a bank as defined in the Banks Act, 1990.''; and

(f) by the substitution in subsection (5) for paragraph *(a)* of the following paragraph:

''*(a)* **[may negotiate agreements]** must enter into a valid agreement with the National Credit Regulator, as anticipated in subsection **[4]**(4)*(b)*; and''.

Repeal of sections 19, 20, 21 and 22 of Act 34 of 2005

3. Sections 19, 20, 21 and 22 of the principal Act are hereby repealed.

Amendment of section 23 of Act 34 of 2005

4. Section 23 of the principal Act is hereby amended—

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

''(1) The Minister must appoint a suitably qualified and experienced person as Chief Executive Officer of the National Credit Regulator, who **[—**

(a) **with the advice, and subject to the oversight, of the Board; and**

(b) **is accountable to the Board]**

must be responsible for all matters pertaining to the functions of the National Credit Regulator.'';

(f) ngokushutheka ngemuva kwencazelo ‘‘ukuthengiselana impahla’’ kwafakwa le ncazelo elandelayo:

‘‘ **‘ukukhokhela uphiko oluqoqa imali kumakhasimende’** kuchaza umuntu omele ikhasimende, ofake isicelo sokuba kubuyekezwe isikweleti ngokwemigomo yalo Mthetho, ahambise imali ekhokhwayo kulowo ohlinzekela ngesikweleti ngokwemigomo yamalungiselelo esikweleti, umyalelo wenkantolo, umyalelo weNkundla noma isivumelwano;’’;

(g) ngokufaka endaweni yencazelo ‘‘ukuziphatha ngendlela engafanele’’ kwafakwa le ncazelo elandelayo:

‘‘ **‘ukuziphatha ngendlela engafanele’** kucaza ukuziphatha noma isenzo sokwaphula lo Mthetho**[, okungesona isenzo noma ukwenza okuyicala ngaphansi kwalo Mthetho, okwenziwa—**

(a) **umuntu ongabhalisile okufanele ngabe ukubhalisele ukwenza lokhu; noma**

(b) **onikezela ngesikweleti, isikhungo sezikweleti noma umluleki wezikweleti]**;’’; futhi

(h) ngokufaka endaweni yencazelo ‘‘imalimboleko enesibambiso’’ endimeni *(b)* le ndima elandelayo:

‘‘*(b)* ukugcina, noma ukwamukela isifungo **[noma ukunikezela ngobunikazi]** bempahla ephathekayo noma ngenye into enenani eyisibambiso semali okufanele ikhokhwe ngaphansi kwaleso sivumelwano;’’.

Ukuchibiyela isigaba se-17 soMthetho wama-34 wezi-2005

2. Ngakho-ke isigaba se-17 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(4) emagameni andulela indima *(a)* lawa magama alandelayo:

‘‘UMlawuli weziKweleti kaZwelonke **[anga]** kufanele—’’;

(b) ngokufaka endaweni yesigatshana sesi-(4)*(b)* emagameni andulela indimana (i) lawa magama alandelayo:

‘‘*(b)* **[ukubonisana ngezivumelwano]** ukwenza isivumelwano nophiko olulawulayo—’’;

(c) ngokususa esigatshaneni sesi-(4) igama ‘‘kanye’’ ekupheleni kwendima *(c)*;

(d) ngokushutheka esigatshaneni sesi-(4) igama ‘‘kanye’’ ekupheleni kwendima *(d)*;

(e) ngokwengeza esigatshaneni sesi-(4) le ndima elandelayo:

‘‘*(e)* azise uNobhala wamaBhange oqokwe ngokwemigomo ye-*Banks Act, 1990 (Act No. 94 of 1990)*, singakapheli isikhathi okuvunyelwene ngaso, ngezinjongo zayo zokuphenya ibhange njengoba kuchaziwe i-*Banks Act, 1990.*’’; futhi

(f) ngokufaka endaweni yesigatshana sesi-(5) sendima *(a)* le ndima elandelayo:

‘‘*(a)* **[angaxoxisana ngezivumelwano]** kufanele enze isivumelwano noMlawuli weziKweleti kaZwelonke, njengoba kulindelekile esigatshaneni sesi**[4]**(4)*(b)*; futhi’’.

Ukuchithwa kwesigaba se-19, 20, 21, nama-22 zoMthetho wama-34 wezi-2005

3. Ngakho-ke isigaba se-19, 20, 21, nama-22 zoMthethongqangi zichithiwe.

Ukuchibiyela isigaba sama-23 soMthetho wama-34 wezi-2005

4. Ngakho-ke isigaba sama-23 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

‘‘(1) UNgqongqoshe kufanele aqoke umuntu ofanele futhi abe nolwazi lomsebenzi wokuba uMphathi oMkhulu woMlawulu weziKweleti kaZwelonke, **[—**

(a) **ngezeluleko, futhi nangokuphatha, eBhodini; futhi**

(b) **abhekele iBhodi]**

kufanele abhekele izindaba eziphathelene nemisebenzi yoMlawuli weziKweleti kuZwelonke.’’;

(b) by the deletion of subsection (2); and

(c) by the addition of the following subsections:

"(3) The Chief Executive Officer is the accounting authority for the National Credit Regulator, and as such is responsible for—

(a) all income and expenditure of the National Credit Regulator;

(b) all revenue collected by the National Credit Regulator;

(c) all assets, and the discharge of all duties and liabilities of the National Credit Regulator; and

(d) proper and diligent implementation of this Act in order to achieve the objects stipulated in this Act.

(4) The Chief Executive Officer may—

(a) assign management and other duties to employees with appropriate skills to assist the National Credit Regulator in the management, or control of the National Credit Regulator; and

(b) delegate, with or without conditions, any of the powers or functions of the Chief Executive Officer to any suitably qualified employee of the National Credit Regulator, but such delegation does not divest the Chief Executive Officer of responsibility for the exercise of any power or performance of any duty.

(5) The Minister may appoint a person who is suitably qualified and experienced, as a Deputy Chief Executive Officer to assist the Chief Executive Officer in carrying out the functions of the National Credit Regulator.".

Amendment of section 25 of Act 34 of 2005

5. Section 25 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"The Chief Executive Officer or any employee duly authorised by the Chief Executive Officer—".

Amendment of section 26 of Act 34 of 2005

6. Section 26 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(4) To be eligible for appointment or designation as a member of the Tribunal, and to continue to hold that office, a person must—

(a) not be subject to any disqualification set out in subsection (5); and

(b) have submitted to the Minister a written declaration stating that the person—

(i) is not disqualified in terms of subsection (5); and

(ii) does not have any interests referred to in subsection (5)*(b)*."; and

(b) by the addition of the following subsections:

"(5) A person may not be a member of the Tribunal if that person—

(a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;

(b) personally or through a spouse, partner or associate—

(i) has or acquires a direct or indirect financial interest in a registrant; or

(ii) has or acquires an interest in a business or enterprise, which may conflict or interfere with the proper performance of the duties of a member of the Tribunal;

(c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate;

(b) ngokususa isigatshana sesi-(2); futhi

(c) ngokwengeza lesi sigatshana esilandelayo:

"(3) UMphathi oMkhulu unegunya lokwengamela uMlawuli weziKweleti zikaZwelonke, futhi ubhekele—

(a) yonke imali engenayo nezindleko zoMlawuli weziKweleti zikaZwelonke;

(b) yonke imali eyenziwe eqokwe uMlawuli weziKweleti zikaZwelonke;

(c) yonke impahla, nemisebenzi kanye nezikweleti zoMlawuli weziKweleti zikaZwelonke; futhi

(d) nokusebenzisa loMthetho ngendlela efanele futhi enenkuthalo ukuze kuzuzwe izinjongo ezibalulwe kulo Mthetho.

(4) UMphathi oMkhulu anga—

(a) thwesa umsebenzi wokuphatha neminye imisebenzi kubasebenzi abanamakhono afanele ukuze basize uMlawuli weziKweleti zikaZwelonke; futhi

(b) athwese ngemibandela noma ngaphandle kwemibandela, amandla noma imisebenzi yoMphathi oMkhulu kumsebenzi ofanele onguMlawuli weziKweleti zikaZwelonke, kodwa ukuyidlulisa akuphuci uMphathi oMkhulu isibophezelo sokusebenzisa lawo mandla nokuqhuba lowo msebenzi.

(5) UNgqongqoshe angaqoka umuntu ofanele futhi onolwazi lomsebenzi ukuba aphe iBamba loMphathi oMkhulu ukuba asize uMphathi oMkhulu ukuqhuba imisebenzi yoMlawuli weziKweleti zikaZwelonke.".

Ukuchibiyela isigaba sama-25 soMthetho wama-34 wezi-2005

5. Ngakho-ke isigaba sama-25 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) emagameni andulela indima *(a)* lawa magama alandelayo:

"UMphathi oMkhulu noma umsebenzi ogunyazwe uMphathi oMkhulu—".

Ukuchibiyela isigaba sama-26 soMthetho wama-34 wezi-2005

6. Ngakho-ke isigaba sama-26 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(4) isigatshana esilandelayo:

"(4) Ukuze umuntu akwazi ukuqokwa noma ukuqashwa njengelungu leNkundla, futhi nokuqhubeka nokubamba leso sikhundla, lowo muntu kufanele—

(a) kungabi umuntu ongafanele njengoba kuveziwe esigatshaneni sesi-(5); futhi

(b) kube umuntu osethumele kuNgqongqoshe isiqiniseko esibhaliwe esiveza ukuthi lowo muntu—

(i) akayena umuntu ongafanele ngokwemigomo yesigatshana sesi-(5); futhi

(ii) akanayo intshisekelo evezwe esigatshaneni sesi-(5)*(b)*."; futhi

(b) ngokwenegza lezi zigatshana ezilandelayo:

"(5) Umuntu akufanele abe ilungu leNkundla uma lowo muntu—

(a) enesikhundla eqenjini, emkhandlwini, enhlanganweni noma egatsheni elihambisana nezombusazwe;

(b) yeba noma umlingani wakhe, noma asebenzisana naye—

(i) wathola noma ethola inzuzo yezimali ngqo noma ngenye indlela kulokho okubhalisiwe; noma

(ii) athola noma ethola inzuzo ebhizinisini noma embonini, engenza kube nokushayisana kwezifiso noma kube nokungenelela ekuqhutshweni kwemisebenzi ngendlela efanele kumalungu eNkundla;

(c) wamenyezelwa inkantolo njengomuntu osehlulekile ukukhokha izikweleti zakhe noma ehluleka ukukhokha izikweleti zakhe futhi lokho kuyimbangela yokuba kudliwe impahla yalowo muntu;

(d) has ever been, or is, removed from an office of trust on account of a guilty finding in respect of a complaint of misconduct related to fraud or the misappropriation of money;

(e) is subject to an order of a competent court holding that person to be mentally unfit or disordered;

(f) within the previous 10 years has been, or is, convicted in the Republic or elsewhere of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), an offence under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), or an offence involving dishonesty; or

(g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1996, took effect, and sentenced to imprisonment without the option of a fine.

(6) For the purpose of subsection (5)*(b)*, a financial interest does not include an indirect interest held in any fund or investment if the person contemplated in that subsection has no control over the investment decisions of that fund or investment.

(7) A member of the Tribunal must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in subsection (5)*(b)*.

(8) A member of the Tribunal must not—

(a) engage in any activity that may undermine the integrity of the Tribunal;

(b) attend, participate in or influence the proceedings of the Tribunal, if, in relation to the matter before the Tribunal, that member has an interest—

   (i) contemplated in subsection (5)*(b)*; or

   (ii) that precludes that member from performing the functions of a member of the Tribunal in a fair, unbiased and proper manner;

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's functions as a member of the Tribunal; or

(d) divulge any information referred to in paragraph *(c)* to any third party, except as required as part of that person's official functions as a member of the Tribunal.

(9) If, at any time, it appears to a member of the Tribunal that a matter being considered by the Tribunal during proceedings concerns an interest of that member referred to in subsection (8)*(b)*, that member must—

(a) immediately and fully disclose the nature of that interest to the members present; and

(b) withdraw from the proceedings to allow the remaining members to discuss the matter and determine whether the member should be prohibited from participating in any further proceedings concerning that matter.

(10) The disclosure by a member of the Tribunal in terms of subsection (9)*(a)*, and the decision by the Tribunal in terms of subsection (9)*(b)*, must be expressly recorded in the records of the proceedings in question.

(11) Proceedings of the Tribunal, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are binding despite—

(a) a member of the Tribunal failing to disclose an interest as required by subsection (9); or

(b) a member of the Tribunal, having an interest, attending or participating in those proceedings.".

Amendment of section 29 of Act 34 of 2005

7. Section 29 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph *(a)* of the following paragraph:

"*(a)* must remove the Chairperson or any other member of the Tribunal from office if that person becomes subject to any of the disqualifications referred to in section **[20(2)]** 26(5); and".

(d) wake wakhishwa noma ekhishiwe esikhundleni ngoba watholwa enecala lokungaziphathi kahle okuhambisana nenkohlakalo noma ukukhwabanisa izimali;

(e) esalinde umyalelo enkantolo efanele ozomemezela ukuthi lowo muntu akaphilile kahle ekhanda noma uphazamisekile;

(f) eminyakeni eli-10 walahlwa icala, noma elahlwe icala eRiphabhuliki noma kwenye indawo lokuntshontsha, ukukhwabanisa, ukwenza imifanekiso engeyiyo noma ukuguqula okubhaliwe, ukuqamba amanga efungile, icala elingaphansi kwe-*Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)*, icala ngaphansi kwe-*Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001)*, noma icala eliphathelene nokungathembeki; noma

(g) walahlwa elinye icala ngemuva kokuqala ukusebenza koMthethosisekelo waseRiphabhuliki yaseNingizimu Afrika, 1996, waboshwa wanganikezwa ithuba lokuba akhokhe inhlawulo.

(6) Ngokwesigatshana sesi-(5)*(b)*, inzuzo yemali ayibandakanyi inzuzo etholwe ngenye indlela esikhwameni noma emalini etshaliwe uma umuntu ovezwe kuleso sigatshana engalawuli isinqumo semali etshaliwe nama yaleso sikhwama.

(7) Ilungu loNkundla kufanele ngokushesha lazise uNgqongqoshe ngokubhalwe phansi ngemuva kokuthola inzuzo, noma uma lizothola inzuzo evezwe esigatshaneni sesi-(5)*(b)*.

(8) Ilungu leNkundla akufanele—

(a) lizibandakanye nomsebenzi ungabukela phansi ubuqotho beNkundla yeziKweleti zikaZwelonke;

(b) lithamele, lizibandakanye noma lichaphazele okuqhutshwa iNkundla, uma, odabeni oludingidwa iNkundla, lelo lungu linenzuzo eliyitholayo—

  (i) evezwe esigatshaneni sesi-(5)*(b)*; noma

  (ii) oluvimbela lelo lungu ukuba liqhube imisebenzi yobulungu beNkundla ngendlela efanele, engacwasi futhi engachemile;

(c) lisebenzise ngasese, inzuzo, imininingwane eyimfihlo eliyithole ngesikhathi liqhuba imisebenzi njengelungu leNkundla; noma

(d) lidalule imininingwane evezwe endimeni *(c)* kumuntu wesithathu, ngaphandle uma kufanele njengengxenye yalelo lungu yokuqhuba imisebenzi yeNkundla.

(9) Nomanini uma, ilungu leNkundla libona ukuthi udaba oludingidwa iNkundla luthinta inzuzo yalelo lungu evezwe esigatshaneni sesi-(8)*(b)*, lelo lungu kufanele—

(a) ngokushesha lidalule ngokugcwele umsuka wenzuza kumalungu akhona; futhi

(b) lihoxe kokudingidwayo ukuze linikeza amalungu akhona ithuba lokudingida udaba futhi anqume ukuthi ngabe lelo lungu kufanele linqatshelwe ukuba ingxenye yalokho okudingidwayo esikhathini esizayo.

(10) Okudalulwe ilungu leNkundla ngokwemigomo yesigatshana sesi-(9)*(a)*, kanye nesinqumo seNkundla ngokwemigomo yesigatshana sesi-(9)*(b)*, kufanele kurikhodwe kumarekhodi alokho obekwenziwa.

(11) Okuqhutshwa iNkundla, nesinqumo esithathwe amalungu amaningi akhona anelungelo lokuthatha leso sinqumo, kuyisibophezelo ngaphandle uma—

(a) ilungu leNkundla lihluleka ukudalula inzuzo njengoba kufanele ngokwesigatshana sesi-(9); noma

(b) ilungu leNkundla elinenzuzo, lithamele noma liyingxenye yalokhu okudingidwayo.''.

Ukuchibiyela isigaba sama-29 soMthetho wama-34 wezi-2005

7. Ngakho-ke isigaba sama-29 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(5) sendima *(a)* le ndima elandelayo:

''*(a)* kufanele asuse uSihlalo noma elinye ilungu leNkundla esikhundleni uma kungasafanele njengoba kuveziwe esigabeni sama-**[20(2)]** 26(5); futhi''.

Amendment of section 32 of Act 34 of 2005

8. Section 32 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"(2) If, during a hearing in which a member of the Tribunal is participating, it appears to that member that the matter concerns a financial or other interest of that member contemplated in section **[20(2)*(b)*]** 26(5)*(b)*, that member must—".

Substitution of section 34 of Act 34 of 2005

9. The following section is hereby substituted for section 34 of the principal Act:

"**Remuneration and benefits**

34. (1) The Minister may, in consultation with the Minister of Finance, determine salary, allowances, benefits or any other terms and conditions of employment for members of the Tribunal.

(2) The salary, allowances or benefits of a member of the Tribunal may not be reduced during the term of office of such a member.".

Amendment of section 40 of Act 34 of 2005

10. Section 40 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A person must apply to be registered as a credit provider if **[—**

(a) **that person, alone or in conjunction with any associated person, is the credit provider under at least 100 credit agreements, other than incidental credit agreements; or**

***(b)*]** the total principal debt owed to that credit provider under all outstanding credit agreements, other than incidental credit agreements, exceeds the threshold prescribed in terms of section 42(1).".

Amendment of section 42 of Act 34 of 2005

11. Section 42 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[On the effective date, and at intervals of not more than five years, the]** The Minister, by notice in the *Gazette*, must determine a threshold **[of not less than R500 000,]** for the purpose of determining whether a credit provider is required to be registered in terms of section 40(1).".

Insertion of section 44A in Act 34 of 2005

12. The following section is hereby inserted in the principal Act after section 44:

"**Registration of payment distribution agents**

44A. (1) A person may apply to the National Credit Regulator to be registered as a payment distribution agent.

(2) *(a)* A person must not offer or engage in the services of a payment distribution agent, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as a payment distribution agent in terms of this Chapter.

(b) A consumer is not obliged to make use of the services of a payment distribution agent.

Ukuchibiyela isigaba sama-32 soMthetho wama-34 wezi-2005

8. Ngakho-ke isigaba sama-32 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(2) emazwini andulela indima *(a)* lawa mazwi alandelayo:

"(2) Uma, ngesikhathi kusalalelwe udaba lelo lungu leNkundla liyingxenye yalo, kuvela kulelo lungu ukuthi lolo daba luthinta imali noma inzuzo yalelo lungu elivezwe esigabeni sama-**[20(2)*(b)*]** 26(5)*(b)*, lelo lungu kufanele—".

Ukushintsha isigaba sama-34 soMthetho wama-34 wezi-2005

9. Ngakho-ke lesi sigaba esilandelayo sitshintshiwe esigabeni sama-34 soMthethongqangi:

"**Amaholo kanye nenzuzo**

34. (1) UNgqongqoshe, ngokuxoxisana noNgqongqoshe wezeziMali, anganquma umholo, izibonelelo, inzuzo noma eminye imigomo nemibandela yokuqashwa kwamalungu eNkundla.

(2) Umholo, izibonelelo noma inzuzo yamalungu eNkundla ngeke kuhliswe uma lelo lungu lisaqhuba umsebenzi.".

Ukuchibiyela isigaba sama-40 soMthetho wama-34 wezi-2005

10. Ngakho-ke isigaba sama-40 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

"(1) Umuntu kufanele afake isicelo sokubhaliswa njengonikezela ngesikweleti uma **[—**

(a) **lowo muntu, ngokwakhe noma ehlangene nabanye abantu abaxhumene, enikezela ngesikweleti ngaphansi kwezivumelwano zezikweleti ezingaphansi kwe-100, okungezona lezo zivumelwano ezihambisana nalezo; noma**

***(b)*]** isikweleti sesihlangene saleyo mali ekweletwa onikezela ngesikweleti ngaphansi kwazo zonke izivumelwano zezikweleti ezisasele, ngaphandle kwezivumelwane zezikweleti ezihambisana nazo, zidlula inani elinqunyiwe esigabeni sama-42(1).".

Ukuchibiyela isigaba sama-42 soMthetho wama-34 wezi-2005

11. Ngakho-ke isigaba sama-42 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

"(1) **[Ngosuku olunqunyiwe, futhi ngemikhawulo engadlulile eminyakeni emihlanu]** UNgqongqoshe kufanele asebenzise isaziso kuSomqulu, ukunquma isamba **[esingekho ngaphansi kwama-R500 000,]** ngenjongo yokunquma ukuthi onikezela ngesikweleti kufanele yini abhaliswe ngokwemigomo yesigaba sama-40(1).".

Ukushutheka isigaba sama-44A soMthetho wama-34 wezi-2005

12. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-44:

"**Ukubhaliswa kwezithunywa eziqoqa imali kumakhasimende**

44A. (1) Umuntu angafaka isicelo kuMlawuli weziKweleti kaZwelonke ukubhalisa njengesithunywa esiqoqa imali kumakhasimende.

(2) *(a)* Umuntu akufanele anikezele noma azibandakanye nemisebenzi yezithunywa eziqoqa imali kumakhasimende, noma aziveze emphakathini njengogunyaziwe ukunikezela ngalolu sizo, ngaphandle uma lowo muntu ebhalisiwe ngokwemigomo yalesi Sahluko.

(b) Ikhasimende alibophezelekile ukusebenzisa usizo lophiko oluqoqa izikweleti kumakhasimende.

(3) In addition to the requirements of section 46, an applicant for registration as a payment distribution agent must satisfy any prescribed education, experience or competency requirements.

(4) Payment distribution agents must—

(a) maintain fidelity insurance and trust accounts; and

(b) submit such financial accounts as may reasonably be required by the National Credit Regulator for purposes of a financial audit.

(5) No credit provider shall have any direct or indirect interest which is inconsistent with the objects of this Act, in the management or control of the business operations of a payment distribution agent or debt counselling business.

(6) Any natural or juristic person who operated as a payment distribution agent prior to the commencement of the National Credit Amendment Act, 2014, must comply with subsection (1) within a period of 12 months from the date of commencement.''.

Amendment of section 45 of Act 34 of 2005

13. Section 45 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

''(3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant **[,]** subject to section 48 unless the National Credit Regulator after subjecting the applicant to a fit and proper test or any other prescribed test, is of the view that there are other compelling grounds that disqualify the applicant from being registered in terms of this Act.''; and

(b) by the addition of the following subsections:

''(4) The Minister may prescribe the criteria to be considered in conducting a fit and proper test contemplated in subsection (3).

(5) The Minister may prescribe—

(a) the criteria for registration;

(b) the duties and obligations of a registrant; and

(c) the fees that may be charged by a registrant.''.

Amendment of section 46 of Act 34 of 2005

14. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

''(2) A natural person may not be registered as a credit provider, debt counsellor or payment distribution agent if that person is an unrehabilitated insolvent.''; and

(b) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

''(3) A natural person may not be registered as a credit provider **[or]**, debt counsellor, or payment distribution agent, if that person—''.

Amendment of section 48 of Act 34 of 2005

15. Section 48 of the principal Act is hereby amended—

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

''If a person qualifies to be registered as a credit provider, the National Credit Regulator must further **[consider the application, relating to]** apply the following criteria in respect of the application:'';

(3) Ukwengeza kuzimfanelo zesigaba sama-46, ofake isicelo sokubhaliswa njengesithunywa esiqoqa imali kumakhasimende kufane ahlangabezane nezimfanelo zeziqu, ulwazi lomsebenzi noma nolwazi olunqunyiwe.

(4) Uphiko olukhokha izikweleti kufanele—

(a) lube nomshwalensi othembekile nama-akhawuntu okulondoloza; futhi

(b) luthumele lawo ma-akhawunti ezimali adingwa uMlawuli weziKweleti zikaZwelonke ukuze ucubungulwe ngokwezimali.

(5) Akekho umuntu onikezela ngesikweleti okufanele abe nenzuzo engahambisana nezinjongo zalo Mthetho, ngokuphatha noma ukulawula ukusebenza kwebhizinisi kophiko olukhokha izikweleti.

(6) Umuntu noma igatsha osebenza njengegatsha elikhokha izikweleti ngaphambi kokuqala ukusebenza koMthetho kaZwelonke weziKweleti, wezi- 2014, kufanele alandele isigatshana soku-(1) zingakapheli izinyanga eziyu-12 kusukela ngosuku owaqala ngalo ukusebenza.''.

Ukuchibiyela isigaba sama-45 soMthetho wama-34 wezi-2005

13. Ngakho-ke isigaba sama-45 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo:

''(3) Uma isicelo silandele imibandela yalo Mthetho futhi ofake isicelo ehlangabezana nenqubo evezwe kulo Mthetho yokubhalisa, uMlawuli weziKweleti kaZwelonke, ngemuva kokucubungula isicelo, kufanele abhalise ofake isicelo **[,]** ngokulandela isigaba sama-48 ngaphandle uma uMlawuli weziKweleti kaZwelonke ngemuva kokuhlola ubuqotho noma olunye uhlobo lokuhlola okunqunyiwe; noma uma esenze uphenyo, wabona ukuthi kunezizathu ezenza ofake isicelo kungafanele afake isicelo futhi ezenza lowo ofake isicelo ukuba abe ngumuntu ongafanele ukubhalisa ngokwemigomo yalo Mthetho.''; futhi

(b) ngokwengeza lezi zigatshana ezilandelayo:

''(4) UNgqongqoshe anganquma inqubo ezolandelwa ukunquma abafanele nabalungele abavezwe esigatshanenii sesi-(3).

(5) UNgqongqoshe anganquma—

(a) inqubo yokubhalisa;

(b) imisebenzi nezibophezelo zababhalisayo; kanye

(c) nemali engakhokhwa ababhalisayo.''.

Ukuchibiyela isigaba sama-46 soMthetho wama-34 wezi-2005

14. Ngakho-ke isigaba sama-46 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

''(2) Umuntu ngeke abhalise njengomuntu ohlinzekela ngesikweleti, umeluleki wezikweleti noma oqoqa imali kumakhasimende uma lowo muntu wamenyezelwa inkantolo njengosehlulekile ukukhokha izikweleti.''; futhi

(b) ngokufaka endaweni yesigatshana sesi-(3) emagameni andulela indima *(a)* lawa magama alandelayo:

''(3) Umuntu ngeke abhalise njengomuntu ohlinzekela ngesikweleti [**noma**], umeluleki wezikweleti, noma oqoqa imali kumakhasimende, uma lowo muntu—''.

Ukuchibiyela isigaba sama-48 soMthetho wama-34 wezi-2005

15. Ngakho-ke isigaba sama-48 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) emagameni andulela indima *(a)* lawa magama alandelayo:

''Uma umuntu ekufanele ukubhaliswa njengonikezela ngesikweleti, uMlawuli kaZwelonke weziKweleti kufanele futhi **[abheke isicelo, esihambisana]** asebenzise le nqubo elandelayo kuleso sicelo:'';

(*b*) by the substitution in subsection (1) for paragraph (*b*) of the following paragraph:

"(*b*) the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness and compliance with a prescribed code of conduct as well as affordability assessment regulations made by the Minister on the recommendation of the National Credit Regulator **[, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority]**; and"; and

(*c*) by the addition of the following subsection:

"(1A) The Minister may prescribe criteria and measures to determine the outcome of affordability assessments provided for in this section.".

Insertion of section 48A in Act 34 of 2005

16. The following section is hereby inserted in the principal Act after section 48:

"**Code of Conduct**

48A. (1) The Minister may prescribe a code of conduct contemplated in section 48(1)(*b*), only after the National Credit Regulator has—

(*a*) published the proposed code of conduct for public comment;
(*b*) considered any submissions made during the public comment period;
(*c*) consulted with—
  (i) persons conducting business within the relevant industry; and
  (ii) relevant accredited persons; and
(*d*) made any revisions to the proposed industry code as published for comment.

(2) A code of conduct must be consistent with the purposes of this Act.

(3) The National Credit Regulator—

(*a*) must monitor the effectiveness of any code of conduct issued in terms of this Act; and
(*b*) may reasonably require persons conducting business within the relevant industry to provide information necessary for the purposes of—
  (i) monitoring in terms of paragraph (*a*); or
  (ii) reviewing the effectiveness of a prescribed code of conduct relative to the purposes of this Act.

(4) A registrant must not, in the ordinary course of business, contravene an applicable code of conduct as contemplated in section 48(1)(*b*).".

Amendment of section 49 of Act 34 of 2005

17. Section 49 of the principal Act is hereby amended—

(*a*) by the deletion in subsection (1) of the word "or" at the end of paragraph (*c*);
(*b*) by the substitution in subsection (1) for the full stop at the end of paragraph (*d*) of the following words "; or"; and
(*c*) by the addition in subsection (1) of the following paragraph:

"(*e*) if the National Credit Regulator, on compelling grounds, deems it necessary for the attainment of the purposes of this Act and efficient enforcement of its functions.".

Amendment of section 51 of Act 34 of 2005

18. Section 51 of the principal Act is hereby amended—

(*a*) by the deletion in subsection (1) of the word "and" at the end of paragraph (*b*);

(b) ngokufaka endaweni yesigatshana soku-(1) sendima *(b)* lezi zindima ezilandelayo:

“*(b)* izibophezelo, uma zikhona, ezenziwe ofake isicelo noma ohambisana nofake isicelo ezimayelana nokulwisana nesikweleti kanye nokulandela inkambiso yokuziphatha enqunyiwe nezimiso zomthetho zamandla ahloliwe ezimiswe uNgqongqoshe ngokulandela iziphakamiso zoMlawuli weziKweleti zikaZwelonke **[, kubalwa nokuthi ngabe ofake isicelo noma umuntu ohambisana nofake isicelo uyayilandela inkambiso yokuziphatha egunyazwe umlawuli noma umkhandlu olawulayo]**; futhi”; kanye

(c) ngokwengeza lesi sigatshana esilandelayo:

“(1A) UNgqongqoshe anganquma inqubo nezinyathelo ukuze anqume umphumela wokuhlolwa kwamandla okuthenga ovezwe kulesi sigaba.”.

Ukushutheka isigaba sama-48A kuMthetho wama-34 wezi-2005

16. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-48:

“**Inkambiso yokuziphatha**

48A. (1) UNgqongqoshe anganquma inkambiso yokuziphatha evezwe esigabeni sama-48(1)*(b)*, kuphela uma uMlawuli weziKweleti zikaZwelonke ese—

(a) shicilele inkambiso yokuziphatha ehlongozwayo ukuze umphakathi uphawule;

(b) cubungule izethulo ezethuliwe ngesikhathi kulalelwe imibono yomphakathi;

(c) xhumene—

(i) nabantu abaqhuba ibhizinisi kuleyo mboni eqondene; kanye

(ii) nabantu abaqondene abagunyaziwe; futhi

(d) buyekeze inkambiso yezimboni ehlongozwayo eshicilelwe ukuze kutholwe imibono.

(2) Inkambiso yokuziphatha kufanele ihambisane nezinjongo zalo Mthetho.

(3) UMlawuli weziKweleti zikaZwelonke—

(a) kufanele aqaphe ukusebenza kwenkambiso yokuziphatha ekhishwe ngokwemigomo yalo Mthetho; futhi

(b) angacela abantu uma kufanele abaqhuba ibhizinisi kuleyo mboni eqondene ukuba bahlinzekele ngemininingwane efanele ukuze—

(i) kuqashwe ngokwemigomo yendima *(a)*; noma

(ii) ukubuyekezwa kokusebenza kwenkambiso yokuziphatha ehambisana nezinjongo zalo Mthetho.

(4) Unobhala uma kuqhutshwa ibhizinisi ngendlela ejwayelekile, akufanele aphule inkambiso yokuziphatha esebenzayo njengoba kuveziwe esigabeni sama-48(1)*(b)*.”.

Ukuchibiyela isigaba sama-49 soMthetho wama-34 wezi-2005

17. Ngakho-ke isigaba sama-49 soMthethongqangi sichitshiyelwe—

(a) ngokususa esigatshaneni soku-(1) igama “kanye” ekupheleni kwendima *(c)*;

(b) ngokushutheka esigatshaneni soku-(1) kungqi ekupheleni kwendima *(d)* kwafakwa lawa magama alandelayo “; noma”; futhi

(c) ngokwengeza isigatshana soku-(1) sale ndima elandelayo:

“*(e)* uma uMlawuli weziKweleti zikaZwelonke, futhi kunezizathu eziphoqayo, ebona ukuthi kufanele ukuze kufezwe izinjongo zalo Mthetho futhi nokubophezela imisebenzi yakhe.”.

Ukuchibiyela isigaba sama-51 soMthetho wama-34 wezi-2005

18. Ngakho-ke isigaba sama-51 soMthethongqangi sichitshiyelwe—

(a) ngokususa esigatshaneni soku-(1) igama “futhi” ekupheleni kwendima *(b)*;

(b) by the insertion in subsection (1) of the word "and" at the end of paragraph *(c)*; and

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

"*(d)* a penalty for late renewal of registration by registrants which must be imposed by the National Credit Regulator on a registrant who fails to pay his or her prescribed registration renewal fees within 30 days from the date on which such fees were payable.".

Amendment of section 52 of Act 34 of 2005

19. Section 52 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph *(b)* of the following paragraph:

"*(b)* **[subject to timely payment of the prescribed registration renewal fees,]** remains in effect until—

(i) the registrant is deregistered; **[or]**

(ii) the registration is cancelled in terms of this Act**[.]**; or

(iii) it has lapsed on the last day upon which the prescribed renewal fee should have been paid in terms of section 51(1)*(c)*.".

Insertion of section 58A in Act 34 of 2005

20. The following section is hereby inserted in the principal Act after section 58:

"**Additional requirements for cancellations**

58A. (1) A registrant who voluntarily requests that his or her registration be cancelled must—

(a) submit a notice in the prescribed manner and form, and an affidavit to the National Credit Regulator, stating—

(i) the registrant's intention to voluntarily cancel his or her registration;

(ii) reasons for such cancellation; and

(iii) the date on which the cancellation shall take effect;

(b) attach to the said notice proof that all the affected consumers, credit providers and all credit bureaux have been notified about the intended cancellation; and

(c) attach to the said notice the registration certificate issued to that registrant by the National Credit Regulator.

(2) A registrant whose registration has been cancelled in accordance with subsection (1) must, in the prescribed manner and form, submit an affidavit to the National Credit Regulator stating that the consumers referred to subsections (1)*(b)* have been transferred to another registrant chosen by the consumer.

(3) A credit provider who voluntarily requests that his or her registration be cancelled shall, in the prescribed manner and form, submit a cancellation notice to the National Credit Regulator accompanied by—

(a) the registration certificate that was issued to that credit provider; and

(b) an affidavit from the accounting officer, auditor or authority of such credit provider, confirming that the registered activities have ceased.

(4) The Minister may prescribe the procedure for the hand over and transfer of records of consumers where the registrant ceases to operate for any reason, including cancellation of registration, lapsing of registration, death or incapacity.".

Amendment of section 71 of Act 34 of 2005

21. Section 71 of the principal Act is hereby amended by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

(b) ngokwengeza esigatshaneni soku-(1) igama ''futhi'' ekupheleni kwendima *(c)*; futhi

(c) ngokwengeza esigatshaneni soku-(1) le ndima elandelayo:

''*(d)* inhlawulo ekhokhwe sekudlule isikhathi yokuvuselela ukubhalisa kwababhalisayo okufanele ithweswe uMlawuli weziKweleti zikaZwelonke kobhalisayo ohlulekile ukukhokha imali enqunyiwe yokuvuselela ukubhalisa zingakapheli izinsuku ezingama-30 kusukela ngosuku okwakufanele le mali ikhokhwe ngalo.''.

Ukuchibiyela isigaba sama-52 soMthetho wama-34 wezi-2005

19. Ngakho-ke isigaba sama-52 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana sesi-(4) sendima *(b)* le ndima elandelayo:

''*(b)* **[uma kukhokhwe kusenesikhathi imali enqunyiwe yokuvuselela ukubhalisa,]** uyaqhubeka nokusebenza kuze—

(i) kubhaliswe lowo obhalisayo; **[noma]**

(ii) kuhoxiswe ukubhaliswa ngokwemigomo yalo Mthetho**[.]**; noma

(iii) sekuphele isikhathi ngosuku lokugcina okwakufanele kukhokhwe ngalo imali yokuvuselela enqunyiwe ngokwemigomo yesigaba sesi-51(1)*(c)*.''.

Ukushutheka isigaba sama-58A kuMthetho wama-34 wezi-2005

20. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-58:

''**Ezinye izimfanelo zokusula**

58A. (1) Obhalisile ozicelela ngokwakhe ukuba asulwe kufanele—

(a) athumele isaziso ngendlela nangefomu enqunyiwe, kanye nencwadi efungelwe kuMlawuli weziKweleti kaZwelonke, esibeka—

(i) injongo yobhalisile yokuzisulela ukubhaliswa ngokwakhe;

(ii) izizathu zokusula; kanye

(iii) nosuku okufanele ukusulwa kwenziwe ngalo;

(b) afake kuleso saziso ubufakazi bokuthi wonke amakhasimende athintekayo, abahlinzekela ngezikweleti nabophiko lwezikweleti bazisiwe ngale njongo yokusula; futhi

(c) afake kuleso saziso isitifiketi sokubhalisa esanikezwa lowo obhalisile esinikezwa uMlawuli weziKweleti kaZwelonke.

(2) Obhalisile osesuliwe ngokulandela isigatshana soku-(1) kufanele, ngendlela nangesimo esinqunyiwe,athumele incwadi efungelwe kuMlawuli weziKweleti kaZwelonke ebeka ukuthi amakhasimende avezwe esigatshaneni soku-(1)*(b)* asedluliselwe komunye obhalisile okhethwe ikhasimende.

(3) Ohlinzekela ngezikweleti ozicelela ukuba asulwe kufanele, ngendlela enqunyiwe, athumele isaziso sokusula kuMlawuli weziKweleti kaZwelonke esihambisana—

(a) nesitifiketi sokubhalisa esakhishelwa lowo ohlinzekela ngezikweleti; futhi

(b) nencwadi efungelwe evela kobhekele izimali, umcwaningimabhuku noma uphiko lwalowo ohlinzekela ngezikweleti, eqinisekisa ukuthi ukubhaliswa kwaleyo misebenzi sekusuliwe.

(4) UNgqongqoshe anganquma inqubo yokudlulisa nokunikezela ngamakhasimende uma obhalisile eyeka ukusebenza ngesizathu esithile, kubalwa esokusula ukubhalisa, ukuphelelwa isikhathi kokubhaliswa, ukudlula emhlabeni noma engasakwazi ukuqhuba umsebenzi.''.

Ukuchibiyela isigaba sama-71 soMthetho wama-34 wezi-2005

21. Ngakho-ke isigaba sama-71 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1), (2), (3) nesesi-(4) lezi zigatshana ezilandelayo ngokulandelana:

"(1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter, **[may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement]** must be issued with a clearance certificate by a debt counsellor within seven days after the consumer has—

(a) satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or

(b) demonstrated—

(i) financial ability to satisfy the future obligations in terms of the re-arrangement order or agreement under—

(aa) a mortgage agreement which secures a credit agreement for the purchase or improvement of immovable property; or

(bb) any other long term agreement as may be prescribed;

(ii) that there are no arrears on the re-arranged agreements contemplated in subparagraph (i); and

(iii) that all obligations under every credit agreement included in the re-arrangement order or agreement, other than those contemplated in subparagraph (i), have been settled in full.

(2) A debt counsellor must for the purposes of the demonstration envisaged in subsection (1) *(b)*, apply such measures as may be prescribed.

(3) If a debt counsellor **[refuses]** decides not to issue or fails to issue a clearance certificate as contemplated in subsection **[(2)*(b)*(i)]** (1), the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection **[(2)*(b)*(i)]** (1), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer.

(4) *(a)* A **[consumer to whom a clearance certificate is issued in terms of this section may]** debt counsellor must within seven days after the issuance of the clearance certificate, file a certified copy of that certificate, with the national register established in terms of section 69 of this Act **[or any credit bureau]** and all registered credit bureaux.

(b) If the debt counsellor fails to file a certified copy of a clearance certificate as contemplated in subsection (1), a consumer may file a certified copy of such certificate with the National Credit Regulator and lodge a complaint against such debt counsellor with the National Credit Regulator.".

Insertion of section 71A of Act 34 of 2005

22. The following section is hereby inserted in the principal Act after section 71:

"**Automatic removal of adverse consumer credit information**

71A. (1) The credit provider must submit to all registered credit bureaux within seven days after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was the subject of—

(a) an adverse classification of consumer behaviour;

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

(c) an adverse listing recorded in the payment profile of the consumer; or

(d) a judgement debt.

(2) The credit bureau must remove any adverse listing contemplated in subsection (1) within seven days after receipt of such information from the credit provider.

(3) If the credit provider fails to submit information regarding a

"(1) Ikhasimende elinesikweleti esesihlelwe kabusha ngokwemigomo yeNgxenye D yalesi Sahluko, **[lingafaka isicelo kumeluleki wezikweleti noma nini licele isitifiketi sokusulwa kwamarekhodi esikweleti mayelana namalungiselelo okuhlela kabusha isikweleti]** kufanele linikezwe isitifiketi sokusulwa kwamarekhodi esikweleti ngumeluleki wezikweleti zingakapheli izinsuku eziyisikhombisa ngemuva kokuba ikhasimende—

(a) lilandele zonke izibophezelo ezingaphansi kwesivumelwano sesikweleti mayelana nomyalelo wokuhlela kabusha leso sikweleti, ngokulandela umyalelo waleso sikweleti noma isivumelwano; noma

(b) liveze—

(i) amandla okukwazi ukukhokha izibophezelo ngokwemigomo yomyalelo wokuhlela kabusha noma isivumelwane esingaphansi kwaso—

(aa) isivumelwane sempahla esiqikelela isivumelwane sesikweleti sokuthenga noma sokwenza ngcono impahla engaphatheki; noma

(bb) esinye isivumelwane eside esinganqunywa;

(ii) ukuthi ayikho imali engakakhokhwa ezivumelwaneni ezihlelwe kabusha ezivezwe endimaneni (i); futhi

(iii) ukuthi zonke izibophezelo ezingaphansi kwesivumelwane sesikweleti zifakiwe kumyalelo wokuhlela kabusha noma esivumelwaneni, okungesona leso esivezwe endimaneni (i), zakhokhwa.

(2) Umeluleki wezikweleti ngenjongo yokuveza okubekwe esigatshaneni soku-(1) *(b)*, usebenzisa lezo zinyathelo ezinganqunywa.

(3) Uma umeluleki wezikweleti **[enqaba]** enquma ukuba angasikhiphi noma ehluleka ukukhipha isitifiketi sokusula njengoba kuveziwe esigatshaneni sesi-**[(2)*(b)*(i)]** (1), ikhasimende lingafaka isicelo eNkundleni ukuba kubuyekezwe isinqumo, futhi uma iNkundla igculisekile ngokuthi ikhasimende lifanele ukuthola isitifiketi ngokwemigomo yesigatshana sesi-**[(2)*(b)*(i)]** (1), iNkundla ingakhipha umyalelo wokuba umeluleki wezikweleti akhiphe isitifiketi sokusula ikhasimende.

(4) *(a)* **[Ikhasimende elinikezwe isitifiketi sokusulwa ngokwemigomo yalesi sigaba lina]** Umeluleki wezikweleti kufanele zingakapheli izinsuku eziyisikhombisa kukhishwe isitifiketi sokusulwa, athumele ikhophi yaleso sitifiketi, kuregista kazwelonke ngokwemigomo yesigaba sama-69 salo Mthetho **[noma nesikhungo sezikweleti]** nazo zonke izikhungo zezikweleti ezibhalisiwe.

(b) Uma umeluleki wezikweleti ehluleka ukuthumela ikhophi efungelwe yesitifiketi sokusulwa esivezwe esigatshaneni soku-(1), ikhasimende lingathumela ikhophi efungelwe kuMlawuli weziKweleti kaZwelonke uthi afake nesikhalazo mayelana nalowo meluleki wezikweleti kuMlawuli weziKweleti kaZwelonke.".

Ukushutheka isigaba sama-71A soMthetho wama-34 wezi-2005

22. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba sama-71:

"**Ukuzisukela kwemininingwane yezikweleti zamakhasimende**

71A. (1) Ohlinzekela ngezikweleti kufanele athumelele zonke izikhungo zezikweleti zingakapheli izinsuku eziyisikhombisa ngemuva kokuphothulwa kwesibophezelo sekhasimende ngesivumelwano sesikweleti, imininingwane emayelana nokuphothulwa kwesibophezelo esingaphansi kwesivumelwano sesikweleti mayelana—

(a) nokuchazwa okungekuhle kokuziphatha kwekhasimende;

(b) izinyathelo zokubophezela ukuziphatha okungekuhle ezithathelwe ikhasimende;

(c) uhlu olurekhodiwe lwendlela amakhasimende akhokha ngayo; noma

(d) isikweleti esikhishelwe isinqumo.

(2) Uphiko lwezikweleti kufanele lisuse okusohlwini okungekuhle okuvezwe esigatshaneni soku-(1) zingakapheli izinsuku eziyisikhombisa ngemuva kokuthola leyo mininingwane kohlinzekela ngezikweleti.

(3) Uma ohlinzekela ngezikweleti ehluleka ukuthumela imininingwane emayelana nokukhokha evezwe esigatshaneni soku-(1), ikhasimende

settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the National Credit Regulator.

(4) For the purposes of this section—

(a) **'adverse classification of consumer behaviour'** means classification relating to consumer behaviour and includes a classification such as ''delinquent'', ''default'', ''slow paying'', ''absconded'', or ''not contactable''; and

(b) **'adverse classification of enforcement action'** means classification relating to enforcement action taken by the credit provider, including a classification such as ''handed over for collection or recovery'', ''legal action'', or ''write-off''.''.

Amendment of section 73 of Act 34 of 2005

23. Section 73 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

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

(a) the nature of, time-frame, form and manner in which consumer credit information held by credit bureaux must be reviewed, verified, corrected or removed; **[and]**

*(a*A*)* the manner in which a registered auditor may confirm that the consumer credit information referred to in paragraph *(a)* has been reviewed, verified, corrected or removed; and

(b) the time frame and schedule for the exercise by consumers of their rights in terms of section 72(1)**[,**

within a period of one year after the regulations being promulgated].''.

Amendment of section 82 of Act 34 of 2005

24. Section 82 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

''(1) **[Subject to subsections (2)*(a)* and (3), a]** A credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 81, provided that any such mechanism, model or procedure results in a fair and objective assessment and must not be inconsistent with the affordability assessment regulations made by the Minister.

(2) The Minister must, on recommendation of the National Credit Regulator, make affordability assessment regulations.''; and

(b) by the deletion of subsections (3) and (4).

Amendment of section 83 of Act 34 of 2005

25. Section 83 of the principal Act is hereby amended—

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

''**[Court may suspend reckless credit agreement]** Declaration of reckless credit agreement'';

(b) by the substitution for subsection (1) of the following subsection:

''(1) Despite any provision of law or agreement to the contrary, in any court or Tribunal proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be, may declare that the credit agreement is reckless, as determined in accordance with this Part.'';

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

lingafaka isikhalazo kuMlawuli weziKweleti kaZwelonke mayelana nohlinzekela ngezikweleti.

(4) Ngokwalesi sigaba—

(a) **'ukuchazwa kokuziphatha kwekhasimende'** kuchaza ukuchazwa okuhambisana nendlela yokuziphatha kwekhasimende futhi kubandakanya ukuchaza ''ukungalaleli umthetho'', ''ukungakhokhi'', ''ukukhokha kabi'', ''ukubalekela ukukhokha'', noma ''ukungatholakali''; futhi

(b) **'ukuchazwa kwezinyathelo zokubophezela'** kuchaza ukuchazwa okuhambisana nezinyathelo zokubophezela ezithathwe ohlinzekela ngezikweleti, kubandakanya ukuchazwa ''kokunikezelwa ukuze kukhokhwe noma kutholwe imali'', ''izinyathelo zomthetho'', noma ''ukusulwa''.''.

Ukuchibiyela isigaba sama-73 soMthetho wama-34 wezi-2005

23. Ngakho-ke isigaba sama-73 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigaba esilandelayo:

''(1) UNgqongqoshe **[kufanele, zingakapheli izinyanga eziyisithupha ngemuva kosuku lokuqala lokusebenza,]** noma nini, anganquma—

(a) indlela, isikhathi, isimo okufanele kubuyekezwe, kucutshungulwe, kulungiswe noma kususwe ngayo imininingwane egcinwe isikhungo sezikweleti; [**kanye]**

*(a*A) indlela okufanele umcwaningimabhuku obhalisiwe aqinisekise ukuthi imininingwane yesikweleti yekhasimende evezwe endimeni *(a)* ibuyekeziwe, icutshungulwa, ilungiswe noma isuswe; kanye

(b) isikhathi nohlelo lokuba amakhasimende asebenzise amalungelo awo ngokwemigomo yesigaba sama-72)1)**[,**

ungakapheli unyaka owodwa ngemuva kokumiswa kwezimiso zomthetho].'';

Ukuchibiyela isigaba sama-82 soMthetho wama-34 wezi-2005

24. Ngakho-ke isigaba sama-82 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) nesesi-(2) lezi zigatshana ezilandelayo ngokulandelana:

''(1) **[Ngokwesigatshana sesi-(2)*(a)* nesesi-(3),]** Onikezela ngesikweleti anganquma amakhambi okuhlola noma izindlela nenqubo ezosetshenziswa ukuhlangabezana nezibophezelo ezihloliwe ngaphansi kwesigaba sama-81, inqobo nje uma lelo khambi, indlela noma inqubo izoholela ekuhloleni ngendlela engachemile futhi efanele futhi kufanele ingashayisani nezimiso zomthetho zamandla okuthenga ezimiswe uNgqongqoshe.

(2) UNgqongqoshe ngezincomo zoMlawuli weziKweleti kaZwelonke, kufanele amise izimiso zomthetho zamandla okuthenga ezihloliwe.''; futhi

(b) ngokususa isigatshana sesi-(3) nesesi-(4).

Ukuchibiyela isigaba sama-83 soMthetho wama-34 wezi-2005

25. Ngakho-ke isigaba sama-83 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesihloko lesi sihloko esilandelayo:

''**[Inkantolo ingamisa isivumelwano sesikweleti esinobudedengu]** Ukumenyezelwa kwesivumelwano sesikweleti esinobudedengu'';

(b) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

''(1) Nakuba kunombandela womthetho noma isivumelwano esishayisana nalokhu, kokuqhutshwa inkantolo noma iNkundla lapho kucutshungulwa khona isivumelwano sesikweleti, inkantolo noma iNkundla, noma okunye kwalokhu, ingamemezela ukuthi isivumelwano sesikweleti sinobudedengu, njengoba kunqunyiwe ngokulandela le Ngxenye.'';

(c) ngokufaka endaweni yesigatshana sesi-(2) emagameni andulela indima *(a)* lawa magama alandelayo:

"If a court or Tribunal declares that a credit agreement is reckless in terms of section 80(1)*(a)* or 80(1)*(b)*(i), the court or Tribunal, as the case may be, may make an order—";

(d) by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

"If a court or Tribunal, as the case may be, declares that a credit agreement is reckless in terms of section 80(1)*(b)*(ii), the court or Tribunal, as the case may be—";

(e) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

"*(a)* must further consider whether the consumer is over-indebted at the time of those **[court]** proceedings; and";

(f) by the substitution in subsection (3) for the words preceding subparagraph (i) of paragraph *(b)* of the following words:

"if the court or Tribunal, as the case may be, concludes that the consumer is over-indebted, the said court or Tribunal may make an order—"; and

(g) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"Before making an order in terms of subsection (3), the court or Tribunal, as the case may be, must consider—".

Amendment of section 86 of Act 34 of 2005

26. Section 86 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section **[129]** 130 to enforce that agreement.";

(b) by the substitution for subsections (10) and (11) of the following subsections, respectively:

"(10) *(a)* If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may, at any time at least 60 business days after the date on which the consumer applied for the debt review, give notice to terminate the review in the prescribed manner to—

[*(a)*] (i) the consumer;

[*(b)*](ii) the debt counsellor; and

[*(c)*](iii) the National Credit Regulator**[,**

at any time at least 60 business days after the date on which the consumer applied for the debt review][.]; and

(b) No credit provider may terminate an application for debt review lodged in terms of this Act, if such application for review has already been filed in a court or in the Tribunal.";

(11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the **[Magistrate's Court]** court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.".

Amendment of section 89 of Act 34 of 2005

27. Section 89 of the principal Act is hereby amended—

(a) by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"Uma inkantolo noma iNkundla imemezela ukuthi isivumelwano sesikweleti sinobudedengu ngokwemigomo yesigaba sama-80(1)*(a)* noma sama-80(1)*(b)*(i), inkantolo noma iNkundla, noma okunye kwalokhu, ingakhipha umyalelo—";

(d) ngokufaka endaweni yesigatshana sesi-(3) emagameni andulela indima *(a)* lawa magama alandelayo:

"Uma inkantolo noma iNkundla, noma omunye wabo, ememezela ukuthi isivumelwano sesikweleti sinobudedengu ngokwemigomo yesigaba sama-80(1)*(b)*(ii), inkantolo noma iNkundla, noma omunye wabo—";

(e) ngokufaka endaweni yesigatshana sesi-(3) sendima *(a)* le ndima elandelayo:

"*(a)* kufanele abheke futhi ukuthi ngabe ikhasimende libishe ezikweletini ngesikhathi kuqhutshwa lezo zinyathelo **[zenkantolo]**; futhi";

(f) ngokufaka endaweni yesigatshana sesi-(3) emagameni andulela indima (*i*) endimeni *(b)* lawa magama alandelayo:

"Uma inkantolo noma iNkundla, noma omunye wabo, ephothula ngokuthi ikhasimende libishe ezikweletini, leyo nkantolo noma iNkundla ingakhipha umyalelo—"; futhi

(g) ngokufaka endaweni yesigatshana sesi-(4) emagameni andulela indima *(a)* lawa magama alandelayo:

"Ngaphambi kokukhipha umyalelo ngokwemigomo yesigatshana sesi-(3), inkantolo noma iNkundla, noma omunye wabo, kufanele abheke—".

Ukuchibiyela isigaba sama-86 soMthetho wama-34 wezi-2005

26. Ngakho-ke isigaba sama-86 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(2) lesi sigatshana esilandelayo:

"(2) Isicelo ngokwemigomo yalesi sigaba ngeke sifakwe, futhi asisebenzi, esivumelwaneni sesikweleti esithile uma, ngesikhathi kufakwa leso sicelo, ohlinzekela ngesikweleti ngaphansi kwaleso sivumelwano sesikweleti waqhubeka wathatha izinyathelo ezivezwe esigabeni **[se-129]** se-130 ukubophezela leso sivumelwano.";

(b) ngokufaka endaweni yesigatshana se-(10) nese-(11) lezi zigatshana ezilandelayo, ngokulandelana:

"(10) *(a)* Uma ikhasimende lingakhokhile ngaphansi kwesivumelwano sesikweleti esisabuyekezwa ngokwemigomo yalesi sigaba, ohlinzekela ngesikweleti mayelana naleso sivumelwano sesikweleti, noma nini zingakapheli izinsuku ezingama-60 zokusebenza ngemuva kosuku ikhasimende elafaka ngalo isicelo sokubuyekezwa kwesikweleti, anganikeza isaziso ukumisa ukubuyekezwa ngendlela enqunyiwe—

[*(a)*] (i) kukhasimende;

[*(b)*] (ii) umeluleki wezikweleti; kanye

[*(c)*] (iii) noMlawuli weziKweleti kaZwelonke **[, noma nini zingakapheli izinsuku zokusebenza ezingama-60 ngemuva kosuku ikhasimende elafaka ngalo isicelo sokubuyekezwa kwesikweleti] [.]**; futhi

(b) Ohlinzekela ngesikweleti ngeke amise ukubuyekezwa kwesikweleti okufakiwe ngokwemigomo yalo Mthetho, uma leso sicelo sokubuyekeza sesifakwe enkantolo noma eNkundleni.";

(11) Uma ohlinzekela ngesikweleti onikeze isaziso sokumisa ukubuyekezwa kwesikweleti njengoba kuveziwe esigatshaneni se-(10) eqhubeka nokubophezela isivumelwano ngokwemigomo yeNgxenye C yeSahluko sesi-6, **[iNkantolo kaMantshi]** inkantolo elalele lolo daba ingakhipha umyalelo wokuba kuqalwe ukubuyekezwa kwesikweleti ngokulandela imibandela inkantolo ebona ifanele kulezo zimo.".

Ukuchibiyela isigaba sama-89 soMthetho wama-34 wezi-2005

27. Ngakho-ke isigaba sama-89 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(5) emagameni andulela indima *(a)* lawa magama alandelayo:

"If a credit agreement is unlawful in terms of this section, despite **[any provision of common law,]** any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that—"; and

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

Substitution of section 91 of Act 34 of 2005

28. The following section is hereby substituted for section 91 of the principal Act:

"**Prohibition of unlawful provisions in credit agreements and supplementary agreements**

91. (1) A credit provider must not directly or indirectly, by false pretences or with the intent to defraud, offer, require or induce a consumer to enter into or sign a credit agreement that contains an unlawful provision as contemplated in section 90.

(2) A credit provider must not directly or indirectly require or induce a consumer to enter into a supplementary agreement or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement.".

Amendment of section 100 of Act 34 of 2005

29. Section 100 of the principal Act is hereby amended by the addition of the following subsection:

"(3) A person who contravenes this section is guilty of an offence.".

Amendment of section 106 of Act 34 of 2005

30. Section 106 of the principal Act is hereby amended by the addition of the following subsection:

"(8) The Minister may, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit insurance that a credit provider may charge a consumer.".

Insertion of section 126B in Act 34 of 2005

31. The following section is hereby inserted in the principal Act after section 126A:

"**Application of prescription on debt**

126B. (1) *(a)* No person may sell a debt under a credit agreement to which this Act applies and that has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969).

(b) No person may continue the collection of, or re-activate a debt under a credit agreement to which this Act applies—

(i) which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969); and

(ii) where the consumer raises the defence of prescription, or would reasonably have raised the defence of prescription had the consumer been aware of such a defence, in response to a demand, whether as part of legal proceedings or otherwise.".

Amendment of section 129 of Act 34 of 2005

32. Section 129 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) Subject to subsection (4), a consumer may at any time before the

"Uma isivumelwano sesikweleti singekho emthethweni ngokwemigomo yalesi sigaba, nakuba **[kunombandela womthetho ojwayelekile,]** kunomunye umthetho noma umbandela wesivumelwano oshayisanayo, inkantolo kufanele ikhiphe umyalelo ofanele futhi ongenzeleli kubandakanya nomyalelo wokuba—"; futhi

(b) ngokususa isigatshana sesi-(5) sendima *(b)* no-*(c)*.

Ukushintsha isigaba sama-91 soMthetho wama-34 wezi-2005

28. Ngakho-ke lesi sigaba esilandelayo sifakwe endaweni yesigaba sama-91 soMthethongqangi:

"**Ukunqanda imibandela engekho emthethweni ezivumelwaneni zezikweleti nasezivumelwaneni ezihambisana nazo**

91. (1) Ohlinzekela ngesikweleti akufanele, azenze noma ngenhloso yokukhwabanisa, anikeze, acele noma anxenxe ikhasimende ukuba lenze noma lisayinde isivumelwano sesikweleti esinombandela ongekho emthethweni njengoba kuveziwe esigabeni sama-90.

(2) Ohlinzekela ngesikweleti akufanele acele noma anxenxe ikhasimende ukuba lenze isivumelwano esihambisana nesinye, noma lisayinde umqulu, onombandela ongekho emthethweni uma ufakwa esivumelwaneni sesikweleti.".

Ukuchibiyela isigaba se-100 soMthetho wama-34 wezi-2005

29. Ngakho-ke isigaba se-100 soMthethongqangi sichitshiyelwe ngokwengeza lesi sigatshana esilandelayo:

"(3) Umuntu owaphula lesi sigaba unecala.".

Ukuchibiyela isigaba se-106 soMthetho wama-34 wezi-2005

30. Ngakho-ke isigaba se-106 soMthethongqangi sichitshiyelwe ngokwengeza lesi sigatshana esilandelayo:

"(8) UNgqongqoshe ngokuxoxisana noNgqongqoshe wezeziMali, anganquma umkhawulo wesamba somshwalense wesikweleti ohlinzekela ngesikweleti angawukhokhisa ikhasimende.".

Ukushutheka isigaba se-126B kuMthetho wama-34 wezi-2005

31. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba se-126A:

"**Isicelo sesinqumo ngesikweleti**

126B. (1) *(a)* Akekho umuntu okufanele adayise isikweleti ngaphansi kwesivumelwano sesikweleti lo Mthetho osebenzayo kusona futhi ebesisuliwe ngokunqunyiwe ngaphansi kwe-*Prescription Act, 1969 (Act No. 68 of 1969)*.

(b) Akekho umuntu okufanele aqhubeke aqoqe , noma avuselele kabusha isikweleti ngaphansi kwesivumelwane sesikweleti lo Mthetho osebenzayo kusona—

(i) leso sikweleti esesicishiwe ngokunqunywe ngaphansi kwe-*Prescription Act, 1969 (Act No. 68 of 1969)*; futhi

(ii) lapho ikhasimende lizilwela kokunqunyiwe, noma belizozilwela kokunqunyiwe uma belinalo ulwazi ngalokho, mayelana nokuphoqelelwa, okuyingxenye yezinyathelo zomthetho noma okunye.".

Ukuchibiyela isigaba se-129 soMthetho wama-34 wezi-2005

32. Ngakho-ke isigaba se-129 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana sesi-(3) lesi sigatshana esilandelayo:

"(3) Ngokwesigatshana sesi-(4), noma nini ngaphambi kokuba

credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.''.

(b) by the substitution in subsection (4) for the words preceeding paragraph *(a)* of the following word:

''A **[consumer]** credit provider may not re-instate or revive a credit agreement after—''; and

(c) by the addition of the following subsections:

''(5) The notice contemplated in subsection (1)*(a)* must be delivered to the consumer—

(a) by registered mail; or

(b) to an adult person at the location designated by the consumer.

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

(7) Proof of delivery contemplated in subsection (5) is satisfied by—

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or

(b) the signature or identifying mark of the recipient contemplated in subsection (5)*(b)*.''.

Amendment of section 130 of Act 34 of 2005

33. Section 130 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86**[(9)]**(10), or section 129(1), as the case may be;''.

Amendment of section 134 of Act 34 of 2005

34. Section 134 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

''As an alternative to filing a complaint with the National Credit Regulator in terms of section 136, a person may refer a matter or a dispute following an allegation of a reckless credit agreement that could be the subject of such a complaint as follows:''.

Insertion of sections 134A and 134B in Act 34 of 2005

35. The following sections are hereby inserted in the principal Act after section 134:

''**Registration and accreditation of alternative dispute resolution agents**

134A. The National Credit Regulator must register and accredit alternative dispute resolution agents.

Deregistration of alternative dispute resolution agents

134B. (1) Subject to subsection (2), registration and accreditation in terms of section 134A may be cancelled by the Tribunal on application by the National Credit Regulator, if an alternative dispute resolution agent—

(a) fails to comply with any condition of its registration and accreditation; or

(b) contravenes this Act.

ohlinzekela ngesikweleti akhansele isivumelwane, ikhasimende lingalungisa lelo phutha laleso sivumelwane sesikweleti ngokuba likhokhele ohlinzekela ngesikweleti yonke imali okufanele liyikhokhe, ihambisana nezindleko ezinqunywe ohlinzekela ngesikweleti zokungakhokhi kanye nezindleko ezifanele zokubophezela isivumelwane kuze kufike esikhathini lapho kulungiswe khona lelo phutha lokungakhokhi.".

(b) ngokufaka endaweni yesigatshana sesi-(4) emagameni andulela indima (a*)* lawa magama alandelayo:

"**[Ikhasimende]** Ohlinzekela ngesikweleti ngeke abuyisele avuselele isivumelwano sesikweleti ngemuva—"; futhi

(c) ngokwengeza lezi zigatshana ezilandelayo:

"(5) Isaziso esivezwe esigatshaneni soku-(1)*(a)* kufanele sithunyelelwe ikhasimende—

(a) gencwadi eposini ebhalisiwe; noma
(b) kumuntu omdala osendaweni eqokwe ikhasimende.

(6) Ikhasimende kufanele libhale phansi ukuveza indlela esingathunyelwa ngayo njengoba kuveziwe esigatshaneni sesi-(5).

(7) Ubufakazi bokuthi sifikile obuvezwe esigatshaneni sesi-(5) bufakazelwa—

(a) isiqinisekiso esibhaliwe saseposini noma igatsha eligunyaziwe, ukufakazela ukufika eposini elifanele noma egatsheni lezamaposi; noma
(b) ngokusayinda noma ngophawu oluthile losamukele ovezwe esigatshaneni sesi(5)*(b)*.".

Ukuchibiyela isigaba se-130 soMthetho wama-34 wezi-2005

33. Ngakho-ke isigaba se-130 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) sendima *(a)* le ndima elandelayo:

"*(a)* okungenani sekudlule izinsuku zokusebenza eziyi-10 kusukela ngesikhathi ohlinzekela ngesikweleti athumela isaziso kukhasimende njengoba kuveziwe esigabeni sama-86**[(9)]**(10), noma se-129(1), noma kwesinye sazo;".

Ukuchibiyela isigaba se-134 soMthetho wama-34 wezi-2005

34. Ngakho-ke isigaba se-134 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) emagameni andulela indima *(a)* lawa magama alandelayo:

"Njengenye indlela yokufaka isikhalazo kuMlawulu weziKweleti kaZwelonke ngokwemigomo yesigaba se-136, umuntu angadlulisela udaba noma umbango olandela izinsolo zesivumelwano sesikweleti esinobudedengu okungaba umsuka waleso sikhalazo ngale ndlela elandelayo:".

Ukushutheka isigaba se-134A soMthetho wama-34 wezi-2005

35. Ngakho-ke lesi sigaba esilandelayo sishuthekwe kuMthethongqangi ngemuva kwesigaba se-134:

"**Ukubhalisa nokugunyazwa kwezinye izithunywa ezisombulula umbango**

134A. UMlawuli weziKweleti kaZwelonke kufanele abhalise futhi agunyaze ezinye izithunywa ezisombulula umbango.

Ukusulwa kwezinye izithunywa ezisombulula umbango

134B. (1) Ngokwesigatshana sesi-(2), ukubhalisa nokugunyaza ngokwemigomo yesigaba se-134A kungahoxiswa iNkundla uma uMlawululi weziKweleti kaZwelonke, uma esinye isithunywa esisombulula umbango—

(a) sihluleka ukulandela umbandela wokubhaliswa nokugunyazwa kwawo; noma
(b) siphula lo Mthetho.

(2) If an alternative dispute resolution agent fails to comply with any condition of its registration or accreditation or contravenes this Act, and such alternative dispute resolution agent is also licensed by another regulatory authority, the National Credit Regulator may—

(a) impose conditions on the registration of such alternative dispute resolution agent consistent with its licence, if any;

(b) refer the matter to the regulatory authority that licensed such alternative dispute resolution agent, with a request that the regulatory authority review that licence in the circumstances; or

(c) at the request, or with the consent, of the regulatory authority that licensed that alternative dispute resolution agent, apply to the Tribunal for cancellation of the registration and accreditation.

(3) A regulatory authority to whom a matter has been referred to in terms of subsection (2)*(b)*—

(a) must conduct a formal review of the alternative dispute resolution agent's licence;

(b) to the extent permitted by the legislation in terms of which the alternative dispute resolution agent is licensed, may suspend that licence pending the outcome of that review; or

(c) may request, or consent to, the National Credit Regulator lodging an application with the Tribunal for cancellation of the registration.

(4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issued a licence to an alternative dispute resolution agent that is registered in terms of section 134A, to co-ordinate the procedures to be followed in taking any action in terms of subsections (2) and (3).

(5) The registration of an alternative dispute resolution agent is cancelled as of—

(a) the date on which the Tribunal issues an order; or

(b) in the case of a voluntary cancellation, the date specified by the said alternative dispute resolution agent in the notice of voluntary cancellation.

(6) An alternative dispute resolution agent whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.''.

Amendment of section 136 of Act 34 of 2005

36. Section 136 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) Any person may submit a complaint concerning an alleged contravention of this Act or a complaint concerning an allegation of reckless credit to the National Credit Regulator in the prescribed manner and form.''.

Amendment of section 163 of Act 34 of 2005

37. Section 163 of the principal Act is hereby amended—

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

''(1) A credit provider, debt counsellor or payment distributing agent must ensure that its employees or agents are trained in respect of the matters to which this Act applies.'';

(b) by the insertion after subsection (1) of the following subsections:

''(1A) The Minister must prescribe the requirements and standards for the training contemplated in subsection (1).

(1B) Until the regulations envisaged in subsection (1A) have been made, credit providers, debt counsellors and payment distributing agents must ensure that its employees or agents are trained to such an extent that they can contribute to the purpose of this Act.

(2) Uma esinye isithunywa esisombulula umbango sihluleka ukulandela umbandela wokubhaliswa nokugunyazwa kwaso noma saphula lo Mthetho, futhi leso sithunywa esisombulula umbango sinemvume egunyazwe omunye umkhandlu, uMlawuli weziKweleti kaZwelonke anga—

(a) thwesa imibandela yokubhaliswa kwesinye isithunywa esisombulula umbango ehambisana nemvume yaso, uma ikhona;

(b) adlulisele lolo daba ophikweni olulawulayo olwakhiphela leso sithunywa esisombulula umbango imvume, nesicelo sokuba uphiko olulawulayo lubuyekeze imvume kulezo zimo; noma

(c) uma eceliwe, noma ngemvume, yophiko olulawulayo eyakhiphela leso sithunywa esixazulula ingxabano imvume, ukuba lufake isicelo eNkundleni sokuhoxisa ukubhaliswa nokugunyazwa kwaso.

(3) Uphiko olulawulayo okudluliselwe kulona udaba ngokwemigomo yesigatshana sesi-(2)*(b)*—

(a) kufanele lubuyekeze ngokusemthethweni imvume yesinye isithunywa esisombulula umbango;

(b) ngendlela ehambisana nomthetho ngokwemigomo yemvume yesithunywa esisombulula umbango, lungamisa leyo mvume kusalindwe umphumela wesicelo sokubuyekeza; noma

(c) lungacela, noma luvumelane, noMlawuli weziKweleti kaZwelonke ofake isicelo eNkundleni yokuhoxisa ukubhalisa.

(4) UMlawuli weziKweleti kaZwelonke kufanele azame ukwenza isivumelwano njengoba kuveziwe esigabeni se-17(4) nophiko olulawulayo olukhipha izimvume zezinye izithunywa ezixazulula izingxabano ezibhaliswe ngokwemigomo yesigaba se-134A, ukuhlela inqubo ezolandelwa uma kuthathwa izinyathelo ngokwemigomo yesigatshana sesi-(2) nesesi-(3).

(5) Ukubhalisa esinye isithunywa esisombulula umbango kuyasulwa kusukela—

(a) ngosuku iNkundla eyakhipha ngalo umyalelo; noma

(b) uma sizisulela, ngosuku oluvezwe ilolo phiko lokusombulula umbango esazisweni sokuzisulela.

(6) Esinye isithunywa esisombulula umbango esesisuliwe akufanele sizibandakanye nomsebenzi wokubhalisa osemthethweni ngemuva kosuku esasulwa ngalo.''.

Ukuchibiyela isigaba se-136 somthetho wama-34 wezi-2005

36. Ngakho-ke isigaba se-136 soMthethongqangi sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigaba esilandelayo:

''(1) Noma ubani angathumela isikhalazo mayelana nezinsolo zokwaphula lo Mthetho noma isikhalazo mayelana nezinsolo zesivumelwano sesikweleti esinobudedengu kuMlawuli weziKweleti kaZwelonke ngendlela enqunyiwe.''.

Ukuchibiyela isigaba se-163 soMthetho wama-34 wezi-2005

37. Ngakho-ke isigaba se-163 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo:

''(1) Ohlinzekela ngesikweleti, umeluleki ngezikweleti noma abaqoqa imali kumakhasimende kufanele baqikelele ukuthi abasebenzi noma izithunywa ziqeqeshiwe mayelana nezindaba lo Mthetho osebenza ngazo.'';

(b) ngokushutheka ngemuva kwesigatshana soku-(1) lesi sigatshana esilandelayo:

''(1A) UNgqongqoshe kufanele anqume izimfanelo namazinga okuqeqesha okuvezwe esigatshaneni soku-(1).

(1B) Kuze kumiswe izimiso zomthetho ezivezwe esigatshaneni soku-(1A), abahlinzekela ngesikweleti, abaluleki ngeizkweleti nabaqoqa imali kumakhasimende kufanele baqikelele ukuthi abasebenzi noma izithunywa ziqeqeshiwe ngendlela engabamba iqhaza ezinjongweni zalo Mthetho.

(1C) A debt counsellor may only make use of agents for administrative tasks relating to debt review.''; and

(c) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

''*(b)* that person must disclose to the consumer in writing the amount of any fee or commission that will be paid if the agreement is concluded; and''.

Amendment of law

38. The laws specified in the Schedule hereto are hereby amended to the extent specified in that Schedule.

Short title and commencement

39. This Act is called the National Credit Amendment Act, 2014, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(1C) Umeluleki ngezikweleti angasebenzisa kuphela izithunywa emisebenzini yokungamela ehambisana nokubuyekezwa kwesikweleti.''; futhi

(c) ngokufaka endaweni yesigatshana sesi-(3) endimeni *(b)* le ndima elandelayo:

''*(b)* lowo muntu kufanele adalule kumakhasimende ngencwadi isamba semali noma sekhomishini ezokhokhwa uma kuphothulwa isivumelwano; futhi''.

Ukuchibiyela umthetho

38. Ngakho-ke imithetho evezwe ngeSithasiselo ichitshiyelwe ngendlela evezwe kuleso Sithasiselo.

Isihloko esifingqiwe nokuqala kwawo ukusebenza

39. Lo Mthetho ubizwa ngokuthi uMthetho oChibiyela iziKweleti zikaZwelonke, wezi-2014, futhi uzoqala ukusebenza ngosuku oluzonqunywa uMongameli ngesimememezelo kuSomqulu.

Schedule

No and year of Act	**Short title**	**Extent of Amendment**
Act No. 24 of 1936	Insolvency Act, 1936	1. The Insolvency Act is hereby amended by the insertion after section 8 of the following section: "**Debt review** **8A.** A debtor who has applied for a debt review must not be regarded as having committed an Act of insolvency.".
Act No. 68 of 2008	Consumer Protection Act, 2008	1. Section 71 of the Consumer Protection Act is hereby amended by the substitution for subsection (1) of the following subsection: "(1) Any person may file a complaint concerning a matter contemplated in section 69**[(1)]***(c)*(iv) **[or (2)*(b)*]** with the Commission in the prescribed manner and form, alleging that a person has acted in a manner inconsistent with this Act.".

Isithasiselo

Inombolo nonyaka woMthetho	**Isihloko esifingqiwe**	**Indlela ochitshiyelwe ngayo**
Act No. 24 of 1936	*Insolvency Act, 1936*	1. Ngakho-ke i-*Insolvency Act* ichitshiyelwe ngokushutheka ngemuva kwesigaba sesi-8 lesi sigaba esilandelayo: ‘‘**Ukubuyekeza izikweleti** **8A.** Okweletayo ofake isicelo sokuba kubuyekezwe isikweleti akufanele athathwe njengosehlulekile ukukhokha izikweleti.’’.
Act No. 68 of 2008	*Consumer Protection Act, 2008*	1. Ngakho-ke isigaba sama-71 se-*Consumer Protection Act* sichitshiyelwe ngokufaka endaweni yesigatshana soku-(1) lesi sigatshana esilandelayo: ‘‘(1) Noma ubani angafaka isikhalazo mayelana nodaba oluvezwe esigabeni sama-69**[**(**1**)**]***(c)*(iv) **[noma (2)*(b)*]** kwiKhomishana ngendlela enqunyiwe, ngezinsolo zokuba lowo muntu wenze okungahambisani nalo Mthetho.’’.