

Establishment of National Credit Regulator

- 12.** (1) There is hereby established a body to be known as the National Credit Regulator, which—
- (a) has jurisdiction throughout the Republic; 25
 - (b) is a juristic person;
 - (c) is independent and subject only to the Constitution and the law;
 - (d) must exercise its functions in accordance with this Act;
 - (e) must be impartial; and
 - (f) must perform its functions— 30
 - (i) in as transparent a manner as is appropriate having regard to the nature of the specific function; and
 - (ii) without fear, favour, or prejudice.
- (2) Each organ of state must assist the National Credit Regulator to maintain its independence and impartiality, and to perform its functions effectively. 35
- (3) The National Credit Regulator is responsible to carry out the functions and exercise the powers—
- (a) set out in sections **12 to 18**; or
 - (b) assigned to it by or in terms of this Act, or any other national legislation.
- (4) In carrying out its functions, the National Credit Regulator may— 40
- (a) have regard to international developments in the field of consumer credit and consumer financing; or
 - (b) consult any person, organisation or institution with regard to any matter.
- (5) In respect to a particular matter within its jurisdiction or responsibility, the National Credit Regulator may exercise its responsibility by way of an agreement contemplated in section 17(4)(b). 45

Development of accessible credit market

13. The National Credit Regulator is responsible to—
- (a) promote and support the development, where the need exists, of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry to serve the needs of— **5**
 - (i) historically disadvantaged persons;
 - (ii) low income persons and communities; and
 - (iii) remote, isolated or low density populations and communities, in a manner consistent with the purposes of this Act;
 - (b) set appropriate conditions for the supplementary registration of credit providers wishing to enter into developmental credit agreements, in order to promote access to credit in the manner, and for the persons, contemplated in paragraph (a); **10**
 - (c) monitor the following matters and report to the Minister annually in respect of: **15**
 - (i) Credit availability, price and market conditions, conduct and trends;
 - (ii) market share, market conduct and competition within the consumer credit industry, the credit industry structure, including the extent of ownership, control and participation within the industry by historically disadvantaged persons; **20**
 - (iii) access to consumer credit by small businesses or persons contemplated in paragraph (a)(i) to (iii);
 - (iv) levels of consumer indebtedness and the incidence and social effects of over-indebtedness; and
 - (v) any other matter relating to the credit industry; and **25**
 - (d) conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry, including but not limited to proposals for legislative, regulatory or policy initiatives that would improve access to credit for persons contemplated in paragraph (a)(i) to (iii).

Registration functions of National Credit Regulator **30**

14. The National Credit Regulator is responsible to regulate the consumer credit industry by—
- (a) registering credit providers, credit bureaux and debt counsellors;
 - (b) suspending or cancelling any registration issued in terms of this Act, subject to section 57(2); and **35**
 - (c) establishing and maintaining the registries contemplated in sections 53 and 69(1) and by making information from those registries available to—
 - (i) each provincial credit regulator; and
 - (ii) other persons in the prescribed manner and form, subject to Part B of Chapter 4. **40**

Enforcement functions of National Credit Regulator

15. The National Credit Regulator must enforce this Act by—
- (a) promoting informal resolution of disputes arising in terms of this Act between consumers on the one hand and a credit provider or credit bureau on the other, without intervening in or adjudicating any such dispute; **45**
 - (b) receiving complaints concerning alleged contraventions of this Act;

- (c) monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted;
- (d) investigating and ensuring that national and provincial registrants comply with this Act and their respective registrations;
- (e) issuing and enforcing compliance notices; 5
- (f) investigating and evaluating alleged contraventions of this Act;
- (g) negotiating and concluding undertakings and consent orders contemplated in section 138(1)(b);
- (h) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act No. 89 of 1998); 10
- (i) referring matters to the Tribunal and appearing before the Tribunal, as permitted or required by this Act; and
- (j) dealing with any other matter referred to it by the Tribunal.

Research and public information 15

16. (1) The National Credit Regulator is responsible to increase knowledge of the nature and dynamics of the consumer credit market and industry, and to promote public awareness of consumer credit matters, by—

- (a) implementing education and information measures to develop public awareness of the provisions of this Act; 20
- (b) providing guidance to the credit market and industry by—
 - (i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act; or
 - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act; 25
- (c) monitoring socio-economic patterns of consumer credit activity within the Republic, and in particular identifying factors concerning—
 - (i) over-indebtedness; and
 - (ii) the patterns, causes and consequences of over-indebtedness;
- (d) conducting reasonable periodic audits of registered credit providers in respect of historical data relative to credit applications and credit agreements in order to— 30
 - (i) establish demographic patterns of the credit market;
 - (ii) investigate socio-economic trends in the credit market, particularly among persons contemplated in section 13(a); and 35
 - (iii) detect patterns of possible discriminatory practices;
- (e) monitoring trends in the consumer credit market and industry with respect to—
 - (i) the needs of persons contemplated in section 13(a); and
 - (ii) the promotion of black economic empowerment and ownership within the industry; 40
- (f) monitoring trends in the market—
 - (i) for credit insurance, patterns of sale of credit insurance, costs of credit insurance, performance of credit insurance in meeting the obligations of consumers, and loss ratios of insurers in respect of credit insurance; and 45
 - (ii) for alternative dispute resolution agents, the patterns and costs of services, impartiality and neutrality of such agents, and the impact of such agents on the incidence and cost of debt enforcement and consumers' access to redress in the market; and

- (g) over time, reviewing legislation and public regulations, and reporting to the Minister concerning matters relating to consumer credit.
- (2) For the purposes of exercising its responsibilities in terms of subsection (1)(f)(i), the National Credit Regulator may—
 - (a) require an insurer to provide periodic synoptic reports of aggregate information relating to credit insurance policies issued by it, in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and 5
 - (b) make further reasonable requests for information from an insurer related to the information contemplated in paragraph (a). 10

Relations with other regulatory authorities

- 17. (1) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator—
 - (a) may engage with that provincial credit regulator in co-operative activities of research, publication, education, staff development and training; and 15
 - (b) in consultation with the Minister, may—
 - (i) engage with that provincial credit regulator in staff exchanges or secondments; or
 - (ii) provide technical assistance or expertise to that provincial credit regulator. 20
- (2) At the request of the relevant MEC of a province, or a provincial credit regulator, the National Credit Regulator may engage with that provincial credit regulator in co-operative activities to detect and suppress prohibited conduct, if there are reasonable grounds to believe that any such conduct may be occurring within the province, or across its provincial boundaries. 25
- (3) At the direction of the Minister, the National Credit Regulator must engage with any relevant provincial credit regulator in co-operative activities to detect and suppress prohibited conduct occurring within the province or across its provincial boundaries.
- (4) The National Credit Regulator may— 30
 - (a) liaise with any regulatory authority on matters of common interest;
 - (b) negotiate agreements with any regulatory authority to—
 - (i) co-ordinate and harmonise the exercise of jurisdiction over consumer credit matters within the relevant industry or sector; and
 - (ii) ensure the consistent application of the principles of this Act; 35
 - (c) participate in the proceedings of any regulatory authority; and
 - (d) advise, or receive advice from, any regulatory authority.
- (5) A regulatory authority that, in terms of any public regulation, exercises jurisdiction over consumer credit matters within a particular industry or sector—
 - (a) may negotiate agreements with the National Credit Regulator, as anticipated in subsection 4(b); and 40
 - (b) may exercise its jurisdiction by way of such an agreement in respect of a particular matter within its jurisdiction.
- (6) The National Credit Regulator may request a provincial credit regulator to submit any report or information related to the activities of that provincial credit regulator to the National Credit Regulator. 45

(7) The President may assign to the National Credit Regulator any duty of the Republic to exchange information with a similar foreign agency in terms of an international agreement relating to the purpose of this Act.

(8) The National Credit Regulator may liaise with any foreign or international authorities having any objects similar to the functions and powers of the National Credit Regulator. 5

Reporting requirements of National Credit Regulator

18. (1) In addition to any other advice or reporting requirements set out in this Part, the National Credit Regulator is responsible to—

(a) advise the Minister on matters of national policy relating to consumer credit and on the determination of national norms and standards regarding consumer protection in terms of this Act that should apply generally throughout the Republic; 10

(b) recommend to the Minister changes to bring about uniformity in the legislation in the various provinces in relation to consumer protection in terms of this Act; 15

(c) report to the Minister annually on—

(i) the volume and cost of different types of consumer credit products, and market practices relating to those products; and

(ii) the implications for consumer choice and competition in the consumer credit market; 20

(d) enquire into and report to the Minister on any matter concerning the purposes of this Act; and

(e) advise the Minister in respect of any matter referred to it by the Minister.

(2) The Minister must table in Parliament any report submitted in terms of— 25

(a) section 13(c) or section 16(1)(g); or

(b) any other provision of this Part, if that report deals with a substantial matter relating to the purposes of this Act.

Governance of National Credit Regulator

19. (1) The National Credit Regulator is governed by a Board, consisting of— 30

(a) a member designated by the Cabinet member responsible for finance, to serve until substituted by that Cabinet member;

(b) a member designated by the Cabinet member responsible for housing matters, to serve until substituted by that Cabinet member;

(c) a member designated by the Cabinet member responsible for social development matters, to serve until substituted by that Cabinet member; 35

(d) a Chairperson appointed by the Minister;

(e) a Deputy Chairperson appointed by the Minister; and

(f) not more than six other members, at least two of whom must be knowledgeable on consumer matters, appointed by the Minister. 40

(2) The Chairperson, Deputy Chairperson and members contemplated in subsection (1)(f) each serve for a period of not longer than five years determined by the Minister in each case at the time of their appointment.

(3) The persons contemplated in subsection (2) must each have applicable knowledge or experience of matters connected with the purpose of this Act. 45

(4) The Board must—

(a) guide the strategic development of the National Credit Regulator;

- (b) oversee and ensure the efficient and effective use of the resources of the National Credit Regulator;
- (c) ensure that the National Credit Regulator is in compliance with all its legal requirements and reporting and financial accountability obligations; and
- (d) provide advice to the Chief Executive Officer concerning the exercise of the functions and powers of the National Credit Regulator. 5

(5) The Board may refer to the Minister any matter concerning the functioning of the National Credit Regulator.

Qualifications for Board membership

20. (1) To be eligible for appointment or designation as a member of the Board, and to continue to hold that office, a person must — 10

- (a) not be subject to any disqualification set out in subsection (2); and
- (b) have submitted to the Minister a written declaration stating that the person—
 - (i) is not disqualified in terms of subsection (2); and
 - (ii) does not have any interests referred to in subsection (2)(b). 15

(2) A person may not be a member of the Board 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 20
 - (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 Board;
- (c) is an unrehabilitated insolvent or becomes insolvent and the insolvency results in the sequestration of that person's estate; 25
- (d) has ever been, or is, removed from an office of trust on account of misconduct in respect of 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 30
- (g) has been convicted of any other offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine. 35

(3) For the purpose of subsection (2)(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. 40

Conflicting interests of members of Board

- 21.** (1) A member of the Board must promptly inform the Minister in writing after acquiring an interest that is, or is likely to become, an interest contemplated in section 20(2)(b). 5
- (2) A member of the Board must not—
- (a) engage in any activity that may undermine the integrity of the National Credit Regulator; 5
 - (b) attend, participate in or influence the proceedings during a meeting of the Board, if, in relation to the matter before the Board, that member has an interest — 10
 - (i) contemplated in section 20(2)(b); or
 - (ii) that precludes that member from performing the functions of a member of the Board in a fair, unbiased and proper manner;
 - (c) vote at any meeting of the Board in connection with a matter contemplated in paragraph (b); 15
 - (d) 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 Board; or
 - (e) divulge any information referred to in paragraph (d) to any third party, except as required as part of that person's official functions as a member of the Board.
- (3) If, at any time, it appears to a member of the Board that a matter being considered by the Board at a meeting concerns an interest of that member referred to in subsection 2(2)(b), that member must— 20
- (a) immediately and fully disclose the nature of that interest to the meeting; and
 - (b) withdraw from the meeting 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. 25
- (4) The disclosure by a member of the Board in terms of subsection (3)(a), and the decision by the Board in terms of subsection (3)(b), must be expressly recorded in the minutes of the meeting in question.
- (5) Proceedings of the Board, and any decisions taken by a majority of the members present and entitled to participate in those decisions, are valid despite the fact that— 30
- (a) a member of the Board failed to disclose an interest as required by subsection (3); or
 - (b) a member of the Board who had such an interest attended those proceedings, participated in them in any way, or directly or indirectly influenced those proceedings. 35

Resignation, removal from office and vacancies

- 22.** (1) A member of the Board appointed in terms of section 19(1)(d), (e) and (f) may resign by giving to the Minister—
- (a) one month written notice; or 40
 - (b) less than one month written notice, with the approval of the Minister.
- (2) A member of the Board designated in terms of section 19(1)(a), (b) and (c) may resign by giving written notice jointly to the Minister and the relevant member of the Cabinet responsible for the designation of that member.
- (3) The Minister, after taking the steps required by subsection (4), may remove a member of the Board appointed in terms of section 19(1)(d), (e) and (f), only if that member has— 45
- (a) become disqualified in terms of section 20(2);
 - (b) acted contrary to section 21(2);
 - (c) failed to disclose an interest or withdraw from a meeting as required by section 21(3); or 50
 - (d) neglected to properly perform the functions of their office.
- (4) Before removing a person from office in terms of subsection (3), the Minister must afford the person an opportunity to state a case in defence of their position.

(5) Upon the expiry of the first term of office of a member of the Board appointed in terms of section 19(1)(d), (e) and (f), the member may be re-appointed to a further term, subject to section 19.

(6) A person may not be appointed in terms of section 19(1)(d), (e) and (f), to serve for more than two terms as a member of the Board.

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Appointment of Chief Executive Officer

23. (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, is responsible for all responsibilities pertaining to the functions of the National Credit Regulator; and 10

(b) is accountable to the Board.

(2) The Chief Executive Officer is an *ex officio* member of the Board, but may not vote at its meetings.

Conflicting interests

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24. The Chief Executive Officer, and each other employee of the National Credit Regulator, must not—

(a) engage in any activity that may undermine the integrity of the National Credit Regulator;

(b) participate in any investigation, hearing, or decision concerning a matter in respect of which that person has a direct financial interest or any similar personal interest; 20

(c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the National Credit Regulator; or 25

(d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the National Credit Regulator.

Appointment of inspectors and investigators

25. (1) The Chief Executive Officer—

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(a) may appoint any suitable employee of the National Credit Regulator, or any other suitable person employed by the State, as an inspector; and

(b) must issue each inspector with a certificate in the prescribed form stating that the person has been appointed as an inspector in terms of this Act.

(2) When an inspector performs any function in terms of section 139 or Chapter 8, the inspector must— 35

(a) be in possession of a certificate of appointment issued to that inspector in terms of subsection (1); and

(b) show that certificate to any person who—

(i) is affected by the inspector's actions in terms of this Act; and

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(ii) requests to see the certificate.

(3) When exercising powers in terms of this Act, an inspector is a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law.

(4) The Chief Executive Officer may appoint or contract with any suitably qualified person to conduct research, audits, inquiries or other investigations on behalf of the National Credit Regulator. 45

(5) A person appointed in terms of subsection (4) is not an inspector within the meaning of this Act.