

CREDIT CONTRACTS BILL

EXPLANATORY NOTE

This Bill is a major reform of the law relating to the provision of credit.

The Bill is based upon recommendations of the Contracts and Commercial Law Reform Committee, which are contained in the Committee's February 1977 Report entitled "Credit Contracts".

In its Report the Committee mentions the many disadvantages of the Moneylenders Act 1908 and recommends that the Act be repealed. However, in the Committee's opinion, the total abolition of legislation controlling the provision of credit would have most undesirable results, and accordingly the Committee proposes a number of new provisions that are of wider application, but generally less onerous, than the Moneylenders Act 1908.

The objects of the new provisions are—

- (a) To prevent oppressive credit contracts and conduct;
- (b) To ensure that all the terms of credit contracts are disclosed to debtors before they become irrevocably committed to them;
- (c) To ensure that the cost of credit is disclosed on a uniform basis in order to prevent deception and encourage competition; and
- (d) To prevent misleading credit advertisements.

In formulating the proposed provisions, the Committee was concerned to ensure that, unlike the present position, all persons who provide credit are subject to the same requirements.

Accordingly, the Bill repeals the Moneylenders Act 1908 and, in its place, proposes provisions to the following effect:

- (a) *Court empowered to re-open credit contracts*—The Court is empowered to examine, and make orders in respect of, a credit contract if it considers that the contract is "oppressive" or that a creditor has exercised a right under the contract in an oppressive manner or has induced a person to enter into the contract by oppressive means.

Guidelines are set out to assist the Court in deciding whether a contract, or conduct, is oppressive. These provisions are similar to provisions in the Moneylenders Act 1908 and the Hire Purchase Act 1971.

- (b) *Disclosure of terms of contract*—Creditors under "controlled credit contracts" (see *clause 16* below) are required to disclose certain particulars to the debtor at the following times:
 - (i) Either before, or within 14 working days after, making the contract ("initial disclosure");

(ii) Either before, or within 14 days after, modifying the contract (“modification disclosure”);

(iii) In the case of a revolving credit contract (e.g., a credit card), at regular intervals (“continuing disclosure”); and

(iv) Within 14 days of a request to do so (“request disclosure”).

If the creditor fails to do this then, unless the Court otherwise orders, the debtor is relieved from liability to pay some (or, in the case of initial disclosure, all) of the interest and other credit charges payable under the contract. These provisions are similar to provisions in the Moneylenders Act 1908 and the Hire Purchase Act 1971.

- (c) *Disclosure of finance rate*—One of the particulars that must be disclosed to the debtor is the finance rate of the contract. The finance rate is the rate that expresses the total cost of credit as a percentage per annum of the amount of credit—see *clause 22* below. This provision is similar to section 8 of the Hire Purchase Act 1971 (this section is not in force).
- (d) *Debtor’s reconsideration period*—If initial disclosure or modification disclosure is made later than the beginning of the third working day before the contract is made, the debtor may withdraw from the contract within 3 working days after disclosure is made. If disclosure has not been made, the debtor may withdraw at any time. These provisions are similar to provisions in the Door to Door Sales Act 1967.
- (e) *Misleading advertising*—Misleading advertising is prohibited, and restrictions are imposed on the advertising of interest rates and deferred payment arrangements.
- (f) *Court may prohibit persons from acting as financiers*—In certain circumstances the Court may prohibit a person from acting as a financier (i.e., a person who makes a practice of providing credit pursuant to credit contracts). This provision is in place of the licensing system used in the Moneylenders Act 1908.
- (g) *Other restrictions*—Certain contract terms relating to penalty rates are prohibited.

The provisions of the Bill are as follows:

Clause 1 relates to the Short Title and commencement. The Bill is to come into force on 1 August 1981.

Clause 2 defines terms used in the Bill.

Clause 3 defines the term “credit contract” as being a contract under which a person provides money or money’s worth, or forbears from requiring payment of money, in consideration of a promise by another person to pay in the future a sum of money exceeding the amount of the first-mentioned money or money’s worth.

The term includes a loan, a hire purchase or credit sale of property or services, a long-term lease of goods, a deferment of a debt, and an assignment (with recourse) of a debt, if the amount repaid exceeds the amount of credit provided.

If no interest or other credit charges are payable in respect of credit, the contract under which the credit is provided is not a credit contract.

A contract for the sale of land with a mortgage back to the seller is not a credit contract, but the mortgage is—see subclause (4) (b). On the other hand, where goods are purchased from a dealer with a loan arranged by the dealer, the sale and loan are deemed to be one credit contract—see subclause (5).

Collateral contracts are deemed to form part of credit contracts for the purposes of the Bill.

Subclause (3) provides that where, by virtue of any contract or arrangement, there is a transaction that is in substance or effect a credit contract, the contract or arrangement shall for the purposes of the Bill be deemed to be a credit contract.

Clause 4 states the application of the Bill to contracts made before its commencement, and provides that the Bill shall not apply in respect of a term of a credit contract if the term is not governed by the law of New Zealand.

Clause 5 provides that the Act binds the Crown.

PART I

OPPRESSIVE CREDIT CONTRACTS

Clause 6 defines the term “oppressive” as meaning oppressive, harsh, unjustly burdensome, unconscionable, or in contravention of acceptable standards of fair dealing.

Re-opening Credit Contracts

Clause 7 provides that where the Court considers that a credit contract is oppressive, or a creditor has exercised a right under the contract in an oppressive manner, or a creditor has induced a debtor or guarantor to enter into a contract by oppressive means, the Court may re-open the contract. The clause also provides that where a creditor refuses to agree to the early termination of the contract, or to vary or waive any term, he shall be deemed to be exercising a right under the contract, and the Court can therefore re-open the contract.

Clause 8 provides that, except as mentioned in *clause 9*, proceedings seeking the re-opening of a credit contract may be instituted at any time by any debtor or guarantor under the contract.

Clause 9 provides that proceedings seeking the re-opening of a credit contract may be instituted at any time earlier than one year after the date the last obligation to be performed under the contract was performed, but, except in certain circumstances, may not be instituted after that time.

Clause 10 provides that where the Court considers re-opening a credit contract, evidence regarding the circumstances of the making of the contract or the exercise of the right at the time it was made or exercised shall be admissible in evidence.

Guidelines for Re-opening Credit Contracts

Clauses 11 to 14 specify guidelines to assist the Court in deciding whether to re-open a credit contract. The guidelines provide that—

- (a) A credit contract, or the exercise of a right, shall not be considered to be oppressive if the contract, or the exercise of the right, would not have been considered oppressive at the time at which, and in the circumstances in which, the contract was made or the right was exercised:
- (b) A credit contract where the finance rate exceeds the prevailing finance rate for similar credit contracts by more than one half of that prevailing rate, shall be presumed to be oppressive unless the contrary is proved (this provision departs from the Law Reform Committee's recommendations):
- (c) Where credit provided under a contract is secured by a security over property, the contract shall, unless the contrary is proved, be presumed to be oppressive if it contains a term the effect of which is that the credit will become immediately repayable if a payment under the contract is overdue, or any other default continues, for a specified period of less than 1 month.

Powers of Court

Clause 15 provides that if the Court re-opens a credit contract, it may make such orders as it thinks necessary to remedy the matters that caused the Court to re-open the contract. The clause lists particular orders that may be made.

PART II

DISCLOSURE

Clause 16 defines the term "controlled credit contract" as being a credit contract—

- (a) Where the creditor is a financier; or
- (b) Which results from an introduction of one of the parties to the contract to another party by a paid adviser (being a person who acts for reward as an adviser to a party to the contract); or
- (c) That has been prepared by a paid adviser.

The term does not include a contract where all the debtors are financiers, or a contract that results from an offer of securities to the public within the meaning of the Securities Act 1978, or a contract to modify the terms of a controlled credit contract, or a contract that is entered into pursuant to a revolving credit contract (see *clause 19*).

Disclosure Required

Clause 17 relates to initial disclosure, and provides that a creditor who enters into a controlled credit contract shall ensure that disclosure of the contract to every debtor thereunder either—

- (a) Has been made before the contract is made; or
- (b) Will be made not later than the 14th working day after the day the contract is made—

in accordance with *clause 21*.

Where it is a term of a credit contract that another contract or a deed be entered into then, for the purposes of the disclosure provisions, the credit

contract shall be deemed to be made when the other contract or deed is made or the credit is provided, whichever is the earlier—see *clause 3 (4) (a) (ii)*.

Clause 18 relates to modification disclosure, and provides that a creditor who enters into a modification contract (see below) shall ensure that disclosure of the modification contract to every debtor thereunder either—

- (a) Has been made before the modification contract is made; or
- (b) Will be made not later the 14th working day after the day the modification contract is made—

in accordance with *clause 21*.

A modification contract is a contract that modifies the terms of a controlled credit contract, but does not include the variation of the interest rate pursuant to a provision in the contract, ordinary releases or partial releases of security, ordinary deferments of payments due under the contract, any waiver of rights by a creditor, and certain other contracts.

Clause 19 relates to continuing disclosure, and provides that a creditor under a revolving credit contract (see below) shall ensure that not later than the 14th working day after the end of each billing period (see below) during which credit has been provided, disclosure relating to the billing period is made to every debtor under the contract, in accordance with *clause 21*.

The term “revolving credit contract” is defined as a controlled credit contract under which—

- (a) Credit is provided from time to time, other than the provision of a fixed or determinable amount of credit by instalments; or
- (b) The debtor is obliged to make regular payments but is not limited as to the maximum amount that he may pay at any time, and the cost of credit is calculated on the amount of credit outstanding from time to time.

The term “billing period” is defined as a period of not more than 3 months that is specified in the contract as a billing period, or (where billing periods are not specified in the contract) a period of 1 month.

Clause 20 relates to request disclosure, and provides that if a debtor or guarantor under a controlled credit contract requests a creditor to do so and tenders a specified fee, the creditor shall ensure that, not later than the 14th working day after the fee is received, disclosure of the contract is made to the debtor or guarantor in accordance with *clause 21*. However, a creditor need not comply with such a request if disclosure of the information has been made to the person making the request during the 3 months preceding the receipt of the request by the creditor.

Method and Content of Disclosure

Clause 21 provides that disclosure (whether initial, modification, continuing, or request) shall be made by giving, or sending by post, to each person to whom disclosure is to be made, disclosure documents that comply with *clause 22*.

Clause 22 provides that disclosure documents shall contain the information specified in the Second Schedule to the Bill and shall not deceive, mislead, or confuse. Where the credit contract is written, a copy of the contract can be a disclosure document.

The Second Schedule specifies different information in respect of different types of disclosure.

In respect of initial disclosure, the following information is required:

- (a) The names and addresses of the creditors under the contract.
- (b) The amount of credit provided under the contract.
The Schedule contains provisions relating to contracts where the amount of credit is not known at the time the contract is made.
- (c) In the case of mortgages and long-term sale agreements of real property, the components of the total cost of credit (other than interest). In the case of other credit contracts (excluding revolving credit contracts), the total cost of credit.
Clause 2 defines the total cost of credit as the total of all money payable by the debtor by virtue of the contract, less the amount of credit provided pursuant to the contract and certain specified fees and charges (being fees or charges that are not normally regarded as being part of the cost of credit).
The Schedule contains provisions relating to contracts where the total cost of credit is not known at the time the contract is made.
- (d) The finance rate.
Clause 2 defines the term "finance rate" as the rate that expresses the total cost of credit as a percentage per annum of the amount of credit, being the nominal annual finance rate (if this is 15 percent or less) or the effective annual finance rate.
Both the nominal rate and the effective rate give a rate calculated on the basis that interest is payable only on the principal outstanding under the contract. However, unlike the nominal rate, the effective rate also takes into account the fact that the creditor is able to reinvest interest as soon as he receives it during the year and thus obtains a benefit by requiring payment of interest more frequently than once a year.
For the purposes of the Bill, a rate shall be deemed to be the effective annual finance rate if it is a rate that is correctly derived or calculated from tables, or in accordance with a method, approved by the Government Actuary or prescribed by regulations.
A finance rate that is not correct is deemed to be correct if the difference between the rate and the correct rate is not more than 1%.
The finance rate is not required to be stated in the case of a credit contract where the credit is provided for a period not exceeding 1 month.
- (e) The payments required to be made by the debtor.
- (f) All terms of the contract not otherwise disclosed, other than terms implied by law.
- (g) In the case of a deferred payment arrangement, the cash price of the property or services.
- (h) In the case of a deferred payment arrangement, a statement of the debtor's rights in the form set out in the Schedule.

In the case of modification disclosure, the Second Schedule requires a statement of the terms of the modification contract (other than those implied by law), the total cost of credit and finance rate (if these are increased by the contract), and the statement referred to in paragraph (h) above.

In the case of continuing disclosure, the Second Schedule requires, in respect of the billing period, the opening balance, the amount and date of each provision of credit during the period, the amount and date of each amount paid by the debtor during the period, the total cost of credit charged in respect of the period, the finance rate for the period, and the total amount of credit outstanding at the end of the period.

In the case of request disclosure, the Second Schedule requires details of amounts outstanding under the contract and, if requested by the debtor or guarantor, details of payments required under the contract, copies of the initial disclosure documents and any modification disclosure documents relating to the contract, and details of any alterations of the obligations of the debtor under the contract.

Debtor's Reconsideration Period

Clause 23 provides that if initial disclosure or modification disclosure has been made later than the beginning of the third working day preceding the day the contract is made, a debtor may, at any time earlier than the end of the third working day after disclosure is made, cancel the contract by acting in accordance with *clause 24*. If initial disclosure or modification disclosure has not been made, a debtor may cancel the contract at any time.

This clause does not apply in respect of initial disclosure if the credit is provided for a period not exceeding 1 month.

Clause 24 provides that a debtor may cancel a controlled credit contract or modification contract as follows:

- (a) In the case of a controlled credit contract that is—
 - (i) A deferred payment sale or a long term lease of goods where the debtor has taken possession of the goods or wishes to purchase them; or
 - (ii) A deferred payment sale of property or services and the debtor wishes to keep the property or services—
the debtor may cancel the contract by giving written notice of cancellation to a creditor or dealer under the contract within the time mentioned in *clause 23* and paying the cash price of the goods, property, or services within 14 working days after cancellation. If the cash price is not so paid, the contract is deemed not to have been cancelled:
- (b) In any other case the debtor may cancel the contract by giving written notice of cancellation, and returning all money and other property received pursuant to the contract, to a creditor or dealer under the contract.

This clause departs from the Law Reform Committee's recommendations.

Clause 25 provides that when a controlled credit contract or modification contract is cancelled, no party shall be obliged to perform it further and the creditor shall forthwith return money or property received by him pursuant to the contract (e.g. a deposit) less deductions for the following matters.

When a contract is cancelled, the debtor is liable to pay to the creditor interest on the credit provided for the period for which it was provided. The debtor is also liable to pay any legal fees and other reasonable expenses incurred by the creditor, and for any damage to property while in his possession, and for services provided pursuant to the cancelled contract.

Effect of Failure to Disclose

Clause 26 provides that where disclosure is required to be made, the creditor may not, without the consent of the Court, enforce the contract before disclosure is made.

Clause 27 provides that if initial disclosure is not made by the end of the 14th working day after the day the contract is made, then, unless the Court otherwise orders, the liability of the debtor and any guarantor under the contract to pay the total cost of credit shall be extinguished, but otherwise the contract shall continue in full force and effect.

Clause 28 provides that if modification disclosure is not made by the end of the 14th working day after the day the modification contract is made, then, unless the Court otherwise orders, the liability of the debtor and any guarantor to pay the part of the total cost of credit that relates to the period from the day the modification contract is made until the day on which disclosure is made shall be extinguished, but otherwise the contract shall continue in full force and effect.

Clause 29 provides that if continuing disclosure is not made by the end of the 14th working day after the end of a billing period, then, unless the Court otherwise orders, the liability of the debtor and any guarantor to pay the part of the total cost of credit that relates to that billing period shall be extinguished, but otherwise the contract shall continue in full force and effect.

Clause 30 provides that if request disclosure is not made by the end of the 14th working day after the day the fee is received by the creditor, then, unless the Court otherwise orders, the liability of the debtor and any guarantor (or the liability of the guarantor only, if the request is made by a guarantor) to pay the part of the total cost of credit that relates to the period from the day the fee is received until the day on which disclosure is made shall be extinguished, but otherwise the contract shall continue in full force and effect.

Clause 31 provides that where instalments of principal and interest are payable under a credit contract and the debtor's liability to pay the cost of credit, or part thereof, has been extinguished pursuant to any of the above-mentioned clauses, the debtor shall continue to pay the instalments until the credit has been repaid in full, but so much of each instalment as represents part of the cost of credit for which liability has been extinguished shall be regarded as a repayment of the credit.

Powers of Court

Clause 32 empowers the Court to grant relief from *clauses 27 to 30*.

PART III

ADVERTISING

Clause 33 defines the term "credit advertisement".

Clause 34 provides that no credit advertisement shall contain any information, sound, image, or other matter, that is likely to deceive, mislead, or confuse with regard to any material particular.

Clause 35 provides that no credit advertisement shall state a rate of interest or charges at which credit may be provided unless it also states the finance rate.

Clause 36 provides that no credit advertisement advertising deferred payment sales of property or services shall state the deposit payable in respect of the property or services unless it also states the cash price thereof.

Clause 37 relates to offences in respect of *clauses 34 to 36*.

PART IV

PROHIBITION OF CERTAIN FINANCIERS AND TERMS

Clause 38 empowers a District Court to prohibit or restrict a person from acting as a financier. An order cannot be made under this section in respect of a person unless the person—

- (a) Has been convicted of an offence against the Bill, or of a crime involving dishonesty; or
- (b) Has acted as a creditor in an oppressive manner; or
- (c) Has failed more than once to comply with any of *clauses 17 to 20 and 34 to 36*; or
- (d) In the opinion of the Court, is not a fit and proper person to act as a financier.

Any person may apply to a District Court for an order under this section; but the Court may make an order for the payment of any party's costs by any other party to the proceedings.

Clause 39 provides that, except as mentioned below, no credit contract shall contain a term the effect of which is that, in the event of failure to comply with a term of the contract, the finance rate will be increased from, or will not be reduced to, the finance rate disclosed to the debtor. The clause does, however, permit a contract to contain a term the effect of which is that, if a debtor fails to comply with a term of the contract, the finance rate may be increased by not more than 2 percent for the period of default.

Clause 40 provides that no credit contract shall contain a term the effect of which is that the credit outstanding under the contract will become immediately payable to a creditor, or the finance rate will be increased, if an application is made to the Court under *clause 8* or *clause 38* or if any of *clauses 26 to 30* apply in respect of the contract.

PART V

MISCELLANEOUS

Clause 41 provides that nothing in the Bill shall affect the rights of any bona fide assignee, or holder for value without notice, of a credit contract; but that, unless the contrary is proved, an assignee, or holder for value, of a credit contract shall be presumed to have full knowledge of all matters concerning the contract.

Clause 42 prohibits contracting out of the provisions of the Bill.

Clause 43 provides that contravention of the Bill shall not make a contract illegal.

Clause 44 relates to evidence regarding the approval by the Government Actuary of tables and methods for calculating the effective annual finance rate.

Clause 45 empowers the making of regulations prescribing requirements relating to disclosure documents.

PART VI

CONSEQUENTIAL REPEALS AND AMENDMENTS

Clause 46 repeals the Moneylenders Act 1908 and amendments and regulations relating thereto.

Clause 47 makes consequential amendments to the Hire Purchase Act 1971.

Clause 48 consequentially amends the Bills of Exchange Act 1908 to provide that a holder who has taken a bill drawn as part of a credit contract shall not be a holder in due course of the bill in relation to the debtor under the contract, unless the holder proves that at the time he took the bill he was unaware of its having been drawn as part of such a contract.

Clause 49 repeals the provisions of the Pawnbrokers Act 1908 that limit the rate of interest that a pawnbroker may charge.

Hon. Mr McLay

CREDIT CONTRACTS

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A BILL INTITULED

An Act to reform the law relating to the provision of credit under contracts of various kinds in order to—

- (a) Prevent oppressive contracts and conduct;
- (b) Ensure that all the terms of contracts are disclosed to debtors before they become irrevocably committed to them;
- (c) Ensure that the cost of credit is disclosed on a uniform basis in order to prevent deception and encourage competition; and
- (d) Prevent misleading credit advertisements;

and to repeal the Moneylenders Act 1908

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Credit Contracts Act 1980.

(2) This Act shall come into force on the 1st day of August 1981.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Billing periods” means, in relation to a revolving credit contract,—

5 (a) The periods specified in the contract as the billing periods (being equal periods of not more than 3 months); or

(b) Where billing goods are not specified in the contract, periods of one month:

“Cash price”, in relation to property sold or bailed or services provided under a contract, means—

10 (a) The price at which a person might purchase the property or services for cash at the time the contract is made; or

15 (b) If there is no such price, the fair market value of the property or services at the time the contract is made:

“Continuing disclosure” has the meaning assigned to it in section 19 of this Act:

“Controlled credit contract” has the meaning assigned to it in section 16 of this Act:

20 “Court” means the High Court or a District Court that has jurisdiction under the District Courts Act 1947:

25 “Credit” means money or money’s worth provided or forborne by a person in consideration of a promise to him by another person to pay, or to procure the payment of, in the future and in respect of the provision or forbearance, a sum or sums of money exceeding in aggregate the amount of the first-mentioned money or money’s worth:

30 “Credit advertisement” has the meaning assigned to it in section 33 of this Act:

“Credit contract” has the meaning assigned to it in section 3 of this Act:

35 “Creditor”, in relation to a credit contract, means a person who provides or agrees to provide credit pursuant to the contract; and, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, includes the person for the time being entitled to those rights:

40 “Dealer”, in relation to a credit contract, means any person who acted on behalf of a creditor in any negotiations or other matters preceding the making

of the contract; and, in the case of a deferred payment disposition of property, includes a person (other than a creditor, debtor, or guarantor) who assigns or procures the assignment of the property to a creditor for the purpose of enabling the creditor to enter into the deferred payment disposition: 5

“Debtor”, in relation to a credit contract, means a person to whom credit is, or is to be, provided pursuant to the contract; and, except in section 17 of this Act, if the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, includes the person for the time being entitled to those rights: 10

“Deferred payment disposition” means a credit contract of the kind specified in paragraph (b) or paragraph (c) of section 3 (1) of this Act: 15

“Disclosure documents” means documents prepared for the purposes of, and that comply with, section 22 of this Act:

“Finance rate”, in relation to a credit contract, means the rate that expresses the total cost of credit as a percentage per annum of the amount of credit and that is— 20

(a) The nominal annual finance rate, as defined in the First Schedule to this Act, for that contract, if this is 15 percent or less; or 25

(b) The effective annual finance rate, as defined in the First Schedule to this Act, for that contract— and, for the purposes of this Act, a rate shall be deemed to be the effective annual finance rate for a credit contract if it is a rate that is correctly derived or calculated from tables, or in accordance with a method, approved by the Government Actuary or prescribed by regulations made under this Act, for the purposes of giving the effective annual finance rate (as so defined) for that kind of contract: 30 35

“Financier” means any person who makes a practice of providing credit pursuant to credit contracts; and includes a person who makes a practice of entering into credit contracts in his own name as creditor on behalf of or as trustee or nominee for any other person: 40

“Goods” means chattels personal other than money and things in action:

5 “Guarantor”, in relation to a credit contract, means a person who guarantees the performance of a debtor’s obligations under the contract or who indemnifies a creditor against any loss which he may incur in respect of that contract:

“Holding company” has the same meaning as in section 158 of the Companies Act 1955:

10 “Initial disclosure” has the meaning assigned to it in section 17 (2) of this Act:

“Interest”, in relation to a credit contract, means any part of the total cost of credit that is arrived at by multiplying the amount of credit by a percentage; and “interest rate” has a corresponding meaning:

15 “Modification contract” means a contract that modifies the terms of a controlled credit contract; but does not include—

20 (a) The exercise of any power, or the determination (whether by agreement or otherwise) of any amount, date, interest rate, or other particular, pursuant to a provision of a controlled credit contract; or

25 (b) A contract to do any one or more of the following things only and that does not have the effect of increasing the finance rate for the controlled credit contract:

(i) To release the whole or part of any security given by or pursuant to the credit contract:

30 (ii) To reduce the amount of credit outstanding under the credit contract, or to increase that amount by adding thereto any part of the total cost of credit that has not been paid by the debtor in accordance with the credit contract:

35 (iii) To alter the total cost of credit payable under the credit contract:

(iv) To alter the period for which credit is provided:

40 (v) To alter the number, frequency, or amounts of payments to be made by the debtor under the credit contract or the times when, and the places where, the payments are to be made; or

(c) A contract if the only consideration provided thereunder by a debtor or guarantor is payment of the

creditor's legal fees or other expenses relating to the contract (being fees and expenses that are reasonable in the circumstances):

"Modification disclosure" has the meaning assigned to it in section 18 (2) of this Act: 5

"Oppressive" has the meaning assigned to it in section 6 of this Act:

"Paid adviser", in relation to a credit contract, means any person who acts for reward as an adviser to, or as a trustee, nominee, or agent of, one or more of the parties to the contract: 10

"Property" means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property: 15

"Real property" includes leasehold interests in land, and shares in a flat or office owning company within the meaning of section 2 of the Companies Amendment Act 1964: 20

"Re-opened credit contract" means a credit contract that has been re-opened pursuant to section 7 of this Act: 25

"Request disclosure" has the meaning assigned to it in section 20 of this Act:

"Revolving credit contract" means—

(a) A controlled credit contract under which credit is provided from time to time, other than a contract for the provision of a fixed or determinable amount of credit by instalments; or 30

(b) A controlled credit contract under which—

(i) The debtor is obliged to make regular payments in reduction of the credit provided but is not limited as to the maximum amount that he may pay at any one time or during any period; and 35

(ii) The cost of credit is calculated on the amount of credit outstanding from time to time: 40

"Services" includes benefits of any kind but does not include the provision of credit:

"Subsidiary" has the same meaning as in section 158 of the Companies Act 1955:

“Security” includes a charge, mortgage, pledge, and reservation of ownership:

“Total cost of credit” or “cost of credit”, in relation to a credit contract, means the total of all money which the debtor has paid or is or may become liable to pay by virtue of the contract less the following amounts:

5

(a) The amount of credit provided pursuant to the contract:

10

(b) The amount of any fees or charges payable pursuant to any enactment:

15

(c) The amount of any charges for surveys, inspections, or valuations of property, or for legal services relating to the contract (being charges that are reasonable in the circumstances):

(d) The amount of any charges for services to the debtor if the creditor has not required that the services be performed by a person nominated or specified by the creditor:

20

(e) The amount of any charges payable as a result of a default by a debtor or as a result of damage to property while in the possession of a debtor:

25

(f) Any amount of a kind specified for the purposes of this definition by regulations made under this Act:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, and Waitangi Day; and

30

(b) A day in the period commencing with the 25th day of December in any year, and ending with the 2nd day of January in the following year.

3. Meaning of “credit contract”—(1) In this Act, the term “credit contract” means a contract under which a person provides or agrees to provide money or money’s worth, or forbears or agrees to forbear from requiring payment of money owing to him, in consideration of a promise to him by another person to pay, or to procure the payment of, in the future and in respect of the provision or forbearance, a sum or sums of money exceeding in aggregate the amount of the first-mentioned money or money’s worth; and includes—

(a) A contract under which a person lends or agrees to lend money in consideration of a promise by another person to pay, or to procure the payment of, in the

future and in respect of the loan, a sum or sums of money exceeding in aggregate the amount of the loan; and

- (b) A contract under which a person sells or agrees to sell property or provides or agrees to provide services (whether or not possession of the property is given, or the services are provided, before all money payable under the contract has been paid) in consideration of a promise by another person to pay, or to procure the payment of, in the future and in respect of the sale or provision, a sum or sums of money exceeding in aggregate the cash price of the property or services; and 5
- (c) A contract under which a person bails or agrees to bail goods (whether or not with an option to purchase) in consideration of a promise by another person to pay, or to procure the payment of, in the future and in respect of the bailment or option, a sum or sums of money exceeding in aggregate the cash price of the goods; and 10 20
- (d) A contract under which a person forbears or agrees to forbear from requiring payment of any money owing to him in consideration of a promise by another person to pay, or procure the payment of, in the future and in respect of the forbearance, a sum or sums of money exceeding in aggregate the amount of the first-mentioned money; and 25
- (e) A contract under which a person releases or assigns or agrees to release or assign (whether absolutely or by way of mortgage), with recourse upon himself, a right to receive money in the future in consideration of a promise by another person to pay a lesser sum of money either immediately or at a time earlier than the maturity of the released or assigned right; 30 35

but does not include—

- (f) A contract of indemnity against loss or a policy within the meaning of section 41 of the Life Insurance Act 1908, unless that contract or policy is deemed to be or to form part of a credit contract by virtue of subsection (3) or subsection (4) of this section; 40
or
- (g) A lease of, or an agreement to lease, any real property (whether with or without an option to purchase),

unless the lease or agreement is deemed to be or to form part of a credit contract by virtue of subsection (3) or subsection (4) of this section.

5 (2) In subsection (1) of this section, the term “promise” includes a conditional promise.

(3) Where, by virtue of any contract or contracts (none of which by itself constitutes a credit contract) or any arrangement, there is a transaction that is in substance or effect a credit contract, the contract, contracts, or arrangement
10 shall for the purposes of this Act be deemed to be a credit contract made at the time when the contract, or the last of those contracts, or the arrangement, was made, as the case may be.

(4) For the purposes of this Act,—

15 (a) Subject to paragraph (b) of this subsection, where it is a term of a credit contract that another contract (other than a contract for the provision of credit pursuant to a revolving credit contract) or a deed be entered into,—

20 (i) That other contract or deed shall be deemed to form part of the credit contract; and

(ii) For the purposes of Part II of this Act only, the credit contract shall be deemed to be made when the other contract or deed is made or the credit is
25 provided pursuant to the credit contract (whichever is the earlier):

(b) Where it is a term of a contract of sale of real property that credit be provided and that a separate agreement or deed relating to the credit
30 be entered into, that term shall be deemed not to form part of the contract of sale but, together with the agreement or deed, to be a separate credit contract made at the time when the agreement or deed is entered into.

35 (5) Where a loan that is a credit contract is used to pay the whole or part of the amount payable under a contract for the provision of property (other than real property) or services, and the loan has been made or arranged by or on behalf of the provider of the property or services, then, for
40 the purposes of this Act, the contracts shall together be deemed to be a deferred payment disposition made when the last of them is made and the provider shall be deemed to be a dealer acting on behalf of the lender.

4. Application of Act—(1) Subject to subsections (2) to (5) of this section, this Act shall apply in respect of every credit contract, whether made before or after the commencement of this Act.

(2) Sections 13 and 39 of this Act shall not apply in respect of a credit contract made before, and not modified since, the commencement of this Act. 5

(3) Sections 17, 23, and 27 of this Act shall not apply in respect of a controlled credit contract made before the commencement of this Act. 10

(4) Sections 18, 23, and 28 of this Act shall not apply in respect of a modification contract made before the commencement of this Act.

(5) Nothing in this Act shall apply in respect of a term of a credit contract if the term is not governed by the law of New Zealand. 15

5. Act to bind the Crown—This Act binds the Crown.

PART I

OPPRESSIVE CREDIT CONTRACTS

6. Meaning of “oppressive”—In this Act, the term “oppressive” means oppressive, harsh, unjustly burdensome, unconscionable, or in contravention of acceptable standards of fair dealing. 20

Re-opening Credit Contracts

7. Re-opening credit contracts—(1) Where, in any proceedings (whether or not instituted pursuant to this Act), the Court considers that— 25

(a) A credit contract, or any term thereof, is oppressive; or

(b) A creditor under a credit contract has exercised, or intends to exercise, a right or power conferred by the contract in an oppressive manner; or 30

(c) A creditor or dealer under a credit contract has induced a debtor or guarantor to enter into the contract by oppressive means— 35

the Court may re-open the contract.

(2) Where a creditor under a credit contract refuses to agree to the early termination of the contract, or to vary or waive any term of the contract, he shall, for the purposes of this Act, be deemed to be exercising a right or power under the contract. 40

(3) In deciding whether to re-open a credit contract, the Court shall have regard to sections 11 to 13 of this Act, and to all the circumstances relating to the making of the contract or the exercise of the right or power, as the case
5 may be.

(4) Where, with the knowledge and consent of the creditor under a re-opened credit contract,—

(a) The credit provided pursuant to the contract was used (whether in whole or in part) to pay amounts
10 owing under another credit contract or other credit contracts; or

(b) Amounts owing under the contract were paid from credit provided pursuant to another credit contract or other credit contracts—

15 the Court may re-open all or any of those other contracts.

8. Proceedings may be instituted to re-open credit contracts—Subject to section 9 of this Act, proceedings seeking the re-opening of a credit contract may be instituted in the Court at any time by any debtor or guarantor under the
20 contract.

9. Time limit for instituting re-opening proceedings—Notwithstanding any other enactment or rule of law, proceedings seeking the re-opening of a credit contract may be instituted pursuant to section 8 of this Act at any time
25 earlier than one year after the date the last obligation to be performed under the contract was performed; but may not be so instituted later than one year after that date:

Provided that where, with the knowledge and consent of the creditor under a credit contract,—

30 (a) The credit provided pursuant to the contract was used (whether in whole or in part) to pay amounts owing under another credit contract or other credit contracts; or

35 (b) Amounts owing under the contract were paid from credit provided pursuant to another credit contract or other credit contracts—

proceedings seeking the re-opening of any of those contracts may be instituted at any time earlier than one year after the date the last obligation to be performed under any
40 of those contracts was performed.

10. Evidence—(1) In any proceedings where the Court considers re-opening a credit contract pursuant to section 7 (1) (a) of this Act, evidence regarding the purpose, effect, and circumstances of the making of the contract at the time it was made, or regarding the terms on which credit was available from other creditors at the time the contract was made, shall be admissible in evidence. 5

(2) In any proceedings where the Court considers re-opening a credit contract pursuant to section 7 (1) (b) of this Act, evidence regarding the purpose, effect, and circumstances of the exercise of the right or power at the time it was exercised or intended to be exercised, or regarding the exercise of such rights or powers by other creditors at that time, shall be admissible in evidence. 10

Guidelines for Re-opening Credit Contracts 15

11. Time and circumstances in which contract made or power exercised to be considered—A credit contract or a term thereof, or the exercise of a right or power conferred by a credit contract, shall not be considered to be oppressive if the contract or term, or the exercise of the right or power, would not have been considered oppressive at the time at which, and in the circumstances in which, the contract was made, or the right or power was exercised, as the case may be. 20

12. Excessive finance rate—A credit contract where the finance rate exceeds the prevailing finance rate for similar credit contracts by more than one half of that prevailing rate, shall be presumed to be oppressive unless the contrary is proved. 25

13. Acceleration of debtor's obligation on default—Where the repayment of credit provided under a credit contract is secured by a security over property, the contract shall, unless the contrary is proved, be presumed to be oppressive if it contains a term the effect of which is that any of the credit outstanding under the contract will become immediately payable to the creditor if a payment under the contract is overdue, or any other default under the contract continues, for a specified period that is less than one month. 30 35

14. Guidelines not to limit Court's power—Nothing in sections 12 and 13 of this Act shall limit the Court's power to consider any credit contract, or the exercise of any right or power under a credit contract, to be oppressive.

5

Powers of Court

- 15. Power of Court on re-opening contract**—(1) If the Court re-opens a credit contract, it may at any time make such orders as it thinks necessary to remedy the matters that caused the Court to re-open the contract; and, without limiting the foregoing provisions of this section, may—
- 10 (a) Order that an account be taken, and re-open any account already taken, in respect of any transaction between the parties to the contract; or
- 15 (b) Vest in any party to the contract, or direct any such party to transfer or assign to any other such party or to deliver to him the possession of, the whole or any part of any property that is the subject of the contract or is the whole or part of the consideration for it; or
- 20 (c) Direct any party to the contract to pay to any other such party such sum as the Court thinks fit; or
- (d) Order that any obligation outstanding under the contract be extinguished, revised, or altered; or
- 25 (e) Order that the contract or any term thereof, or any security in respect of the contract, shall be set aside, either wholly or in part or revised or altered, and if the creditor has parted with the security order him to indemnify the other party or parties to the contract; or
- 30 (f) Direct any party to the contract to do or refrain from doing in relation to any other party any act or thing.
- (2) Without limiting subsection (1) of this section, where it appears to the Court that any person has shared in the
- 35 profits of, or has any beneficial interest in (whether prospective or otherwise) a re-opened credit contract (whether or not the person is a party to the contract) the Court may make such orders in respect of that person as it thinks fit.
- 40 (3) Any order under this section may be made on such terms and conditions as the Court thinks fit.

- (4) The powers of the Court under this section may be exercised—
- (a) Whether or not the time for performance of any term of the contract has arrived; and
 - (b) Whether or not any statement or settlement of account relating to the contract has been given, or any agreement purporting to end the contract has been made; and
 - (c) Subject to section 41 of this Act, whether or not any party to the contract has assigned his rights there- 10
under or any of them.

PART II

DISCLOSURE

16. Meaning of “controlled credit contract”—In this Act, the term “controlled credit contract” means a credit con- 15
tract—

- (a) Where the creditor, or one of the creditors, for the time being is a financier; or
- (b) Which results from an introduction of one of the parties to the contract to another such party by a 20
paid adviser; or
- (c) That has been prepared by a paid adviser;—
but does not include—
- (d) A contract where all the debtors for the time being are financiers; or 25
- (e) A contract that results from an offer of securities to the public within the meaning of the Securities Act 1978; or
- (f) A contract the only effect of which is to modify the terms of a controlled credit contract; or 30
- (g) A contract entered into pursuant to a revolving credit contract.

Disclosure Required

17. Disclosure at commencement of contract—(1) Every creditor who enters into a controlled credit contract shall 35
ensure that initial disclosure of the contract either—

- (a) Has been made before the contract is made; or
- (b) Will be made not later than the end of the 14th work-
ing day after the day the contract is made.

(2) In this Act, the term “initial disclosure”, in relation to a controlled credit contract, means disclosure of the contract to every debtor thereunder in accordance with section 21 of this Act.

5 **18. Disclosure of modification of contract**—(1) Every creditor under a controlled credit contract who enters into a modification contract that modifies the terms of the controlled credit contract shall ensure that modification disclosure of the modification contract either—

10 (a) Has been made before the modification contract is made; or

(b) Will be made not later than the end of the 14th working day after the day the modification contract is made.

15 (2) In this Act, the term “modification disclosure”, in relation to a modification contract, means disclosure of the modification contract to every debtor for the time being under the controlled credit contract to which the modification contract relates, in accordance with section 21 of this
20 Act.

19. Continuing disclosure of revolving credit contract—
Every creditor for the time being under a revolving credit contract shall ensure that, not later than the end of the 14th working day after the end of each billing period during
25 which credit has been provided, or the debtor has become liable to pay part of the cost of credit, under the contract, disclosure relating to the billing period is made to every debtor for the time being under the contract in accordance with section 21 of this Act (in this Act called “continuing
30 disclosure”).

20. Disclosure on request—If, while a controlled credit contract is in force, a debtor or guarantor under the contract—

35 (a) Makes written request of a creditor under the contract to disclose details of the contract to him; and

(b) Tenders to the creditor the fee specified in clause 5 of Part V of the Second Schedule to this Act,—

40 the creditor shall ensure that, not later than the end of the 14th working day after the day the fee is received by the creditor, disclosure of the controlled credit contract is made to the debtor or guarantor in accordance with section 21 of this Act (in this Act called “request disclosure”):

Provided that a creditor need not comply with such a request if disclosure of the details required to be disclosed has been made to the person making the request during the 3 months preceding the receipt of the request by the creditor.

Method and Content of Disclosure

5

21. Method of disclosure—(1) Subject to subsections (2) and (3) of this section, initial disclosure, modification disclosure, continuing disclosure, and request disclosure shall each be made by giving, or sending by post to an address specified by the person for this purpose, to each person to whom disclosure is to be made, disclosure documents that comply with section 22 of this Act. 10

(2) For the purposes of section 23 of this Act, when disclosure is made by sending disclosure documents to a person by post, the disclosure shall be deemed to be made to the person on the day on which the documents are received by him or on his behalf. 15

(3) For the purposes of sections 27 to 30 of this Act, when disclosure is made by sending disclosure documents to a person by post, the disclosure shall be deemed to be made to the person on the day on which the documents are posted. 20

(4) Where disclosure that is required to be made to more than one person is made to those persons on different days, it shall for the purposes of this Act be deemed to be made to all those persons on the last such day. 25

22. Disclosure documents—Disclosure documents shall consist of one or more legible documents (which may be or include a copy of the contract) that—

- (a) Contain all the information, statements, and other matters specified in the Second Schedule to this Act as disclosure requirements in respect of that kind of disclosure and contract; and 30
- (b) Are not likely, and contain no misdescription or error that is likely, to deceive, mislead, or confuse with regard to any particular that is material to the contract; and 35
- (c) Comply with this Act, and all regulations made thereunder.

Debtor's Reconsideration Period

23. Debtor may cancel contract before, and within 3 days of, disclosure—(1) If initial disclosure of a controlled credit contract, or modification disclosure of a modification contract, has not been made, a debtor under the contract may cancel the controlled credit contract or modification contract, as the case may be, at any time by acting in the manner prescribed in section 24 of this Act.

(2) If initial disclosure of a controlled credit contract, or modification disclosure of a modification contract, has been made later than the beginning of the third working day preceding the day the contract is made, a debtor under the contract may, at any time earlier than the end of the third working day after the day the disclosure is made, cancel the controlled credit contract or modification contract, as the case may be, by acting in the manner prescribed in section 24 of this Act.

(3) This section shall not apply in respect of initial disclosure of a controlled credit contract if—

- (a) The credit is provided for a specified period not exceeding one month; and
- (b) No credit contract between the creditor and the debtor (or any of the debtors, if more than one) was in existence at any time during the 30 days preceding the day the credit is provided.

24. Method of cancellation—(1) For the purposes of section 23 of this Act, the manner of cancellation of a controlled credit contract or modification contract shall be as follows:

- (a) In the case of a controlled credit contract that is—
- (i) A deferred payment disposition of goods where the debtor has taken possession of the goods, after receiving the statement of rights referred to in clause 8 of Part II of the Second Schedule to this Act and signing an acknowledgment to the effect that he has received the statement and taken possession of the goods; or

- (ii) A deferred payment disposition of property or services and the debtor wishes to keep the property or obtain the services—
 the debtor (or his agent) shall give written notice of cancellation to a creditor or dealer under the contract, and comply with section 25 (f) of this Act: 5
- (b) In any other case, the debtor (or his agent) shall give written notice of cancellation, and return all property received by a debtor pursuant to the contract, to a creditor or dealer under the contract. 10
- (2) For the purposes of this section and section 25 of this Act,—
- (a) Written notice of cancellation may be expressed in any way that indicates the intention of the debtor to cancel or withdraw from the contract: 15
- (b) Written notice of cancellation may be given, property may be returned, and a cash price paid, to a creditor or a dealer—
- (i) By giving it to the creditor or dealer or any agent thereof; or 20
- (ii) By leaving it at, or sending it by registered post to, the usual or last known place of abode or business of the creditor or dealer or any agent thereof. 25

25. Effect of cancellation—When a controlled credit contract or modification contract is cancelled pursuant to section 23 of this Act, the following provisions shall apply in respect of the contract—

- (a) No party to the contract shall be obliged or entitled to perform it further (except that, if the cash price of property or services has been paid or is payable pursuant to paragraph (f) of this section, the obligation to provide that property or those services shall continue): 30 35
- (b) Subject to paragraphs (e) to (h) of this section, every creditor shall forthwith—
- (i) Return any property (other than any cash price referred to in paragraph (f) of this section) received by him pursuant to the contract to the party from whom it was received; and 40
- (ii) Release all security over property given in his favour pursuant to the contract:

- 5 (c) Subject to paragraphs (e) to (h) of this section, no debtor or guarantor under the contract shall be liable to pay any part of the cost of credit or other charges provided for in the contract, and the creditor shall repay any part thereof already received by him:
- 10 (d) In the case of cancellation of a modification contract, the credit contract to which the modification contract relates shall continue to have the same force and effect as if the modification contract had not been made:
- 15 (e) In the case of cancellation of a controlled credit contract (other than where the liability to pay the cost of credit has been extinguished pursuant to section 27 of this Act), the debtor shall be liable to pay to the creditor interest (at the same rate that would have been payable over that period if the contract had not been cancelled) on the amount of credit provided to the debtor for the period during which it was provided:
- 20 (f) In the case of cancellation of a controlled credit contract to which section 24 (1) (a) of this Act applies, the debtor (or his agent) shall pay the cash price (or the balance of the cash price after deducting any amount already paid by the debtor) of the property or services to a creditor or dealer under the contract not later than the end of the 14th working day after the day the contract is cancelled. If the cash price (or balance thereof) is not so paid, the contract shall be deemed not to have been cancelled:
- 25 (g) Subject to the provisions of the contract, the debtor shall be liable to pay to the creditor—
- 30 (i) The amount of any legal fees and other expenses incurred by the creditor in relation to the contract (being fees and expenses that are reasonable in the circumstances); and
- 35 (ii) Where property returned to a creditor or dealer pursuant to section 24 of this Act has been damaged while in the possession of a debtor, the cost of repairing the damage:
- 40

- (h) Where services have been performed pursuant to the contract, the party or parties who obtained the services shall be liable to pay the fair market value thereof to the party or parties who provided the services. 5

Effect of Failure to Disclose

26. Enforcement of contract before disclosure prohibited— Where initial disclosure, continuing disclosure, or request disclosure of, or modification disclosure relating to, a controlled credit contract is required by this Act to be made, 10
no person (other than a debtor under the contract) may, without the consent of the Court,—

- (a) Enforce the contract; or
(b) Enforce any right to recover property to which the contract relates; or 15
(c) Enforce any security given pursuant to the contract— before the disclosure is made.

27. Penalty for failure to make initial disclosure within 14 days— If initial disclosure of a controlled credit contract is not made by the end of the 14th working day after the 20
day the contract is made (whether or not the disclosure is subsequently made), then, unless the Court otherwise orders,—

- (a) The liability of every debtor and guarantor under the contract to pay the total cost of credit shall be 25
extinguished and every provision of the contract to the contrary shall be of no effect; and any part of that cost received by a creditor shall be regarded as a repayment of the credit provided under the contract; and 30
(b) Subject to paragraph (a) of this section, the contract shall have the same force and effect as if this section did not apply thereto.

28. Penalty for failure to make modification disclosure within 14 days— If modification disclosure of a modification 35
contract is not made by the end of the 14th working day after the day the contract is made (whether or not the disclosure is subsequently made), then, unless the Court otherwise orders,—

- (a) The liability of every debtor and guarantor under the contract to pay any part of the total cost of credit provided for in the modified credit contract in respect of the period from the day the modification contract is made until the day on which modification disclosure is made, shall be extinguished and every provision of the contract to the contrary shall be of no effect; and any part of that cost received by a creditor shall be regarded as a repayment of the credit provided under the modified credit contract; and
- (b) Subject to paragraph (a) of this section, the contract shall have the same force and effect as if this section did not apply thereto.

15 **29. Penalty for failure to make continuing disclosure within 14 days**—If continuing disclosure that is required to be made in respect of a billing period is not made by the end of the 14th working day after the end of the period (whether or not the disclosure is subsequently made), then, unless the Court otherwise orders,—

- 20 (a) The liability of every debtor and guarantor under the revolving credit contract to pay any part of the total cost of credit provided for in the contract in respect of that billing period shall be extinguished and every provision of the contract to the contrary shall be of no effect; and any part of that cost received by a creditor shall be regarded as a repayment of the credit provided under the contract; and
- 25 (b) Subject to paragraph (a) of this section, the contract shall have the same force and effect as if this section did not apply thereto.
- 30

35 **30. Penalty for failure to make request disclosure within 14 days**—If request disclosure of a controlled credit contract is not made by the end of the 14th working day after the day the specified fee is received by a creditor (whether or not the disclosure is subsequently made), then, unless the Court otherwise orders, the following provisions shall apply in respect of the contract:

- 40 (a) If the request is made by a debtor, the liability of every debtor and guarantor under the contract to pay any part of the total cost of credit provided for in the contract in respect of the period from the day

the specified fee is so received until the day on which request disclosure is made, shall be extinguished and every provision of the contract to the contrary shall be of no effect; and any part of that cost received by a creditor shall be regarded as a repayment of the credit provided under the contract: 5

(b) If the request is made by a guarantor, the liability of the guarantor to pay any part of the total cost of credit provided for in the contract in respect of the period from the day the specified fee is so received until the day on which request disclosure is made, shall be extinguished and every provision of the contract to the contrary shall be of no effect; and the creditor shall forthwith repay to the guarantor any part of that cost already received from the guarantor: 10

(c) Subject to paragraphs (a) and (b) of this section, the contract shall have the same force and effect as if this section did not apply thereto. 15

31. Debtor's obligations if foregoing sections apply—Where a credit contract requires the debtor to pay instalments (other than instalments comprising payments of part of the cost of credit only) and the debtor's liability to pay the cost of credit, or part thereof, has been extinguished pursuant to any of sections 27, 28, and 30 of this Act, then, notwithstanding any other provision of this Act, the debtor shall continue to pay those instalments until the credit has been repaid in full, but so much of each instalment as represents part of the cost of credit for which liability has been extinguished shall be regarded as a repayment of the credit. 20 25 30

Powers of Court

32. Power of Court to grant relief—(1) The Court may, on the application of a creditor under a credit contract, order that any of sections 27 to 30 of this Act shall not apply in respect of the contract, or any modification contract relating thereto. 35

(2) In deciding whether to make such an order, the Court shall have regard to the following matters:

- (a) Whether the creditor is a financier:
- (b) The extent of, and the reasons for, the non-disclosure: 40
- (c) The extent to which a debtor or guarantor has been prejudiced by the non-disclosure:

- (d) Any other circumstances relating to the non-disclosure.
- (3) Any order under this section may be made on such terms and conditions as the Court thinks fit.

PART III

5

ADVERTISING

33. **Meaning of “credit advertisement”**—In this Act, the term “credit advertisement” means any information, sound, image, or other matter (or any combination thereof) that is communicated to the public (whether by newspaper or
10 magazine, broadcasting by radio or television, cinematograph film, brochure, pamphlet, notice, circular, or any other means) and that notifies or implies the availability of credit.

34. **Misleading advertisements prohibited**—No credit
15 advertisement shall contain any information, sound, image, or other matter, that is likely to deceive, mislead, or confuse with regard to any particular that is material to the provision of credit.

35. **Restrictions on advertising interest rates**—No credit
20 advertisement shall state a rate of interest or charges at which credit may be provided under a credit contract unless it also states with equal prominence, and describes as such, the finance rate for that contract.

36. **Restrictions on advertising of deferred payment dis-**
25 **positions**—No credit advertisement advertising deferred payment dispositions of property or services shall state the deposit payable in respect of the property or services unless it also states with equal prominence, and describes as such, the cash price of the property or services.

37. **Offences**—If a credit advertisement contravenes any
30 of sections 34 to 36 of this Act, every person whom the advertisement states or implies is a person from or through whom credit can be obtained commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000:

35 Provided that a person shall not be convicted under this section in respect of any such contravention if he proves—

- (a) That neither he, nor any person acting on his behalf, had any knowledge of the advertisement before it was made; or

- (b) That he took all steps reasonably possible on his part to stop the communication of the advertisement to the public.

PART IV

PROHIBITION OF CERTAIN FINANCIERS AND TERMS 5

38. Power to order certain persons not to act as financiers—(1) Where a person—

- (a) Has been convicted of an offence against this Act, or of a crime involving dishonesty (as defined in section 2 (1) of the Crimes Act 1961); or 10
- (b) Has acted as a creditor in an oppressive manner; or
- (c) Has failed, more than once, to comply with any of sections 17 to 20 and 34 to 36 of this Act; or
- (d) In the opinion of the Court, is not a fit and proper person to act as a financier— 15

a District Court may make an order prohibiting or restricting the person (and, where the person is a body corporate, any director or officer thereof) from doing all or any of the following things:

- (e) Acting as a financier, either alone or in partnership with any person and whether or not through agents: 20
- (f) Being engaged in the management or control of any business as a financier:
- (g) Being in the employ, or acting as agent, of a financier in any capacity that allows the person to take any part in the negotiation of credit contracts on behalf of the financier: 25
- (h) Acting as a director or taking part directly or indirectly in the management of any company that acts as a financier. 30

(2) Any person may apply to a District Court for an order under this section.

(3) An order under this section—

- (a) May be for a specified period of time or without any time limit, and may be made on such other terms and conditions as the District Court thinks fit; and 35
- (b) May be cancelled or varied at any time by the District Court.

(4) In any proceedings under this section the District Court may make an order for the payment by any party to the proceedings of the whole or any part of the full costs (including reasonable costs incurred between solicitor and client, fees, and other expenses) incurred in respect thereof by any other party to the proceedings, and in any such case the costs so 40

awarded shall be recoverable as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.

5 (5) Any person who acts in contravention of an order made under this section shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000, or to both.

10 **39. Penalty rates**—(1) Subject to subsection (2) of this section, no credit contract shall contain a term the effect of which is that, in the event of failure to comply with a term of the contract, the finance rate under the contract will be increased from, or will not be reduced to, the finance rate disclosed to the debtor pursuant to Part II of this Act.

15 (2) Notwithstanding subsection (1) of this section and any other enactment or rule of law, a credit contract may contain a term the effect of which is that, if a debtor fails to comply with any specified term of the contract by the end of a specified period (being a period beginning not earlier than 3 months before, and ending later than 7 days after, the date 20 compliance was due), the finance rate payable under the contract in respect of that period may be increased to a specified rate (being a rate that is such that the difference between it and the finance rate otherwise payable under the contract is not more than 2).

25 (3) If any term of a credit contract contravenes subsection (1) of this section, that term shall be of no effect and the finance rate payable under the contract shall be that disclosed to the debtor pursuant to Part II of this Act.

30 **40. Termination by reason of application of Act**—(1) No credit contract shall contain a term the effect of which is that—

- (a) All or part of the credit outstanding under the contract will become immediately payable to a creditor under the contract; or
- 35 (b) The finance rate under the contract will be increased from, or will not be reduced to, the finance rate disclosed to the debtor pursuant to Part II of this Act—

40 if an application is made to the Court pursuant to section 8 or section 38 of this Act or if any of sections 26 to 30 apply in respect of the contract.

(2) Any term of a credit contract that contravenes subsection (1) of this section shall be of no effect.

PART V

MISCELLANEOUS

41. Provisions relating to assignment of credit contracts— 5
Nothing in this Act shall affect the rights of any bona fide assignee, or holder for value without notice, of a credit contract:

Provided that, unless the contrary is proved, an assignee, 10
or holder for value, of a credit contract shall be presumed to have full knowledge of all matters concerning the contract.

42. No contracting out—(1) The provisions of this Act shall have effect notwithstanding any provision to the contrary in any contract or agreement.

(2) Section 56 of the Sale of Goods Act 1908 shall be read 15
subject to the provisions of this section.

43. Application of law relating to illegal contracts—The fact that a contract has been entered into in contravention of any of the provisions of this Act or that an act which contravenes any of the provisions of this Act has been committed in the course of the performance of any contract shall not— 20

- (a) Make that contract illegal; or
- (b) Except as expressly provided in this Act, make that 25
contract or any provision of that contract unenforceable or of no effect.

44. Evidence of approval of tables, etc.—For the purposes of any proceedings, a certificate purporting to be signed by the Government Actuary and certifying that a table or method for calculating the effective annual finance rate of a 30
contract for the purposes of this Act has been approved by him shall be sufficient evidence, until the contrary is proved, of the matter so certified.

45. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of 35
the following purposes:

- (a) Prescribing the requirements as to or restrictions on the text of disclosure documents, the use of words or expressions therein, the layout or method of presentation thereof, or the size of type used therein:
- 5 (b) Providing for such other matters, not inconsistent with this Act, as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

PART VI

10 **CONSEQUENTIAL REPEALS AND AMENDMENTS**

46. **Repeal of Moneylenders Act 1908**—(1) The following enactments are hereby repealed:

- (a) The Moneylenders Act 1908:
 - 15 (b) The Moneylenders Amendment Act 1933:
 - (c) Section 55 of the Statutes Amendment Act 1936:
 - (d) The Moneylenders Amendment Act 1971:
 - (e) The Moneylenders Amendment Act 1973:
 - (f) The Moneylenders Amendment Act 1977:
 - 20 (g) Section 2 (3) of the Chattels Transfer Amendment Act 1931:
 - (h) So much of Part II of the First Schedule to the Summary Proceedings Act 1957 as relates to the Moneylenders Act 1908:
 - (i) Section 3 (2) (c) of the Summary Proceedings Amendment Act 1961:
 - 25 (j) Section 31 (b) of the Development Finance Corporation Act 1973.
- (2) The Moneylenders Regulations 1934 are hereby revoked.
- 30 (3) Section 80A (2) of the Property Law Act 1952 (as inserted by section 2 of the Property Law Amendment Act 1975) is hereby consequentially amended by omitting the words “section 8 of the Moneylenders Amendment Act 1933 or”.

35 47. **Amendments to Hire Purchase Act 1971**—(1) Sections 8, 19, 37, and 50 (1) (a) of the Hire Purchase Act 1971 are hereby repealed.

(2) Section 2 (1) of the Hire Purchase Act 1971 is hereby amended by repealing the definition of the term "Total cost of credit", and substituting the following definition:

"'Total cost of credit' or 'cost of credit' has the same meaning as in the Credit Contracts Act 1980:" 5

(3) The First Schedule to the Hire Purchase Act 1971 is hereby consequentially amended—

(a) By omitting from Part I the words "Total Cost of Credit' (D), represents a charge on (C) calculated on the reducing balance and expressed as a percentage per annum as %"; and 10

(b) By omitting from Part I the words "The Balance Payable is being debited to a variable credit account and a further cost will be the interest periodically payable at the rate of % per 15 in respect of the balances outstanding in that account. This rate of interest equals an effective rate of % per annum":

(c) By repealing paragraph (b) of Part II.

(4) The Second Schedule to the Hire Purchase Act 1971 20 is hereby consequentially amended—

(a) By repealing paragraph (8) (e):

(b) By omitting from the note the words "This docket may set out the percentage or the effective annual rate in accordance with section 8 of the Act" and 25 the word "also".

48. Amendments to Bills of Exchange Act 1908—Section 29 of the Bills of Exchange Act 1908 is hereby amended by adding the following subsection:

"(4) Notwithstanding any other provision of this Act or any 30 rule of law, a holder who has taken a bill drawn as part of, or pursuant to, a credit contract shall not be a holder in due course of the bill in relation to the debtor under the contract, unless the holder proves that at the time he took the bill he was unaware of its having been drawn as part of, or pursuant 35 to, such a contract; and, for the purposes of this subsection, the terms 'credit contract' and 'debtor' have the same meanings as in the Credit Contracts Act 1980."

49. Amendments to Pawnbrokers Act 1908—The following enactments are hereby repealed: 40

(a) Sections 15 and 16 of the Pawnbrokers Act 1908:

(b) So much of the Fifth Schedule to the Decimal Currency Amendment Act 1965 as relates to the Pawnbrokers Act 1908.

SCHEDULES

FIRST SCHEDULE

Section 2

DEFINITIONS OF EFFECTIVE ANNUAL FINANCE RATE
AND NOMINAL ANNUAL FINANCE RATE**1. Interpretation**—In this Schedule,—

“Instalment”, in relation to a credit contract, means any amount payable by the creditor or the debtor pursuant to the contract that represents an advance or repayment of the whole or part of the credit or a payment of the whole or part of the cost of credit, or both:

“Outstanding balance”, in relation to a period between instalments, means the total of—

(a) The amount of credit to be advanced by the creditor immediately before the beginning of the period (if any); and

(b) The outstanding balance during the previous period (if any); and

(c) The amount obtained in respect of the previous period (if any) pursuant to clause 2 (a), or clause 3 (a), as the case may be, of this Schedule;—

less any instalment payable by the debtor immediately before the beginning of the period:

“Period” and “period between instalments”, in relation to a credit contract, means a period from the time immediately after an instalment is payable to the time immediately before the next instalment is payable.

2. Definition of “effective annual finance rate”—A rate $r\%$ is the effective annual finance rate of a credit contract if—

(a) In respect of each period between instalments, an amount is obtained by multiplying the outstanding balance during the period by a fraction a where—

$$a = \left(1 + \frac{r}{100} x\right) - 1; \text{ and}$$

x is the number of days in the period divided by 365—

(which amount forms part of the outstanding balance during the next succeeding period); and

(b) The total of the outstanding balance during the final period between instalments and the amount obtained in respect of that period pursuant to paragraph (a) of this clause equals the amount of the final instalment.

3. Definition of “nominal annual finance rate”—A rate $r\%$ is the nominal annual finance rate of a credit contract if—

(a) In respect of each period between instalments, an amount is obtained by multiplying the outstanding balance during the period by a fraction a where—

$$a = \frac{rx}{100}; \text{ and}$$

FIRST SCHEDULE—*continued*

x is the number of days in the period divided by 365—
(which amount forms part of the outstanding balance during the next succeeding period); and

- (b) The total of the outstanding balance during the final period between instalments and the amount obtained in respect of that period pursuant to paragraph (a) of this clause equals the amount of the final instalment.

SECOND SCHEDULE

Section 22

DISCLOSURE REQUIREMENTS

PART I

GENERAL PROVISIONS

1. For the purposes of this Schedule, where a person enters into a credit contract in his own name as creditor on behalf of or as trustee or nominee for any other person, he shall be deemed to be the creditor.

2. For the purposes of calculating the total cost of credit of a contract, or any component thereof, for the purposes of this Act—

- (a) Where the amount of credit is not known at the time the contract is made and—
- (i) The credit is not to exceed a known maximum amount, the amount of credit shall be assumed to be that maximum amount; or
 - (ii) There is no such maximum amount, the amount of credit shall be assumed to be the amount that, in the opinion of the creditor, is likely to be the amount of credit:
- (b) Where the interest rate, or any other component of the total cost of credit, is not known at the time the contract is made, the interest rate or component shall be assumed to be the rate or component that, in the opinion of the creditor, is likely to be the rate or component:
- (c) Where the period for which credit is provided is not known at the time the contract is made, the period shall be assumed to be 12 months:
- (d) Where the amount of credit, or the interest rate or any other component of the total cost of credit, may vary during the term of the contract, the amount of credit, or interest rate, or component shall be assumed to be the amount or rate or component at the time the contract is made.

3. For the purposes of this Act, a finance rate that is not the correct rate shall be deemed to be correct if the difference between the rate and the correct rate is not more than 1.

4. For the purposes of determining the finance rate for a credit contract for the purposes of this Act—

- (a) Instalments shall be deemed to be equal if all instalments except one are of the same amount and the difference between the amount of that one instalment and the amount of each of the other instalments is not more than 5 percent of the amount of each of the other instalments; and

SECOND SCHEDULE—*continued*

- (b) Intervals shall be deemed to be equal if all intervals except one are of the same length and the difference between the length of that one interval and the length of each of the other intervals is not more than 5 percent of the amount of each of the other intervals.

PART II

INITIAL DISCLOSURE

1. **Name and address of creditor**—The full name and address of each creditor.

2. **Amount of credit**—(1) The amount of credit, if this is known at the time the contract is made.

(2) Where the amount of credit is not known at the time the contract is made, but—

- (i) The amount of credit is to be determined by the use of a formula or by reference to specific circumstances, a statement of the formula or circumstances; or
- (ii) The amount of credit is not to exceed a certain maximum amount, the maximum amount of credit.

3. **Total cost of credit**—(1) Except in the case of a revolving credit contract or a credit contract to which subclause (2) of this clause applies, the total cost of credit, showing the amounts and descriptions of the components thereof separately.

(2) In the case of a credit contract that is—

(a) A loan secured, or to be secured, by a mortgage over real property (other than a loan to which section 3 (5) of this Act applies);

or

(b) A sale of, or an agreement to sell, real property,—
the amounts and descriptions of the separate components of the total cost of credit (other than interest).

4. **Finance rate**—(1) Subject to subclauses (2) and (3) of this clause, the finance rate for the contract.

(2) Where a contract provides for different methods of payment of the total cost of credit (whether as alternative methods of payment or as methods applying at different periods during the term of the contract), different finance rates may be stated so long as the different methods of payment applicable thereto are also stated.

(3) Subclause (1) of this clause shall not apply in the case of a contract where the credit is provided for a specified period not exceeding one month, and no credit contract between the creditor and the debtor (or any of the debtors, if more than one) was in existence at any time during the 30 days preceding the date the credit is provided.

SECOND SCHEDULE—*continued*

5. Payments required—The following particulars in respect of payments to be made by the debtor pursuant to the contract, if they have been ascertained at the time disclosure is made:

- (a) The amount of each payment:
- (b) The number and frequency of payments:
- (c) The times when, and places where, the payments are to be made:

Provided that paragraphs (a) and (b) of this clause shall not apply in the case of a revolving credit contract.

6. Other terms of contract—All terms of the contract not disclosed pursuant to clauses 1 to 5 of this Part of this Schedule, other than terms implied by law.

7. Cash price—In the case of a deferred payment disposition, the cash price of the property or services.

8. Statement of rights—In the case of a deferred payment disposition (other than a disposition to which section 23 (3) of this Act applies), the following statement, prominently set out:

Credit Contracts Act 1980

The Credit Contracts Act 1980 contains a number of provisions for the purpose of ensuring that persons who obtain credit (whether by loan, hire purchase, credit card, or otherwise) do so on fair terms known to the person and that those who provide the credit act in a fair manner throughout the period of the contract.

Right of Cancellation

In particular, a person who obtains credit (a “debtor”) has a legal right to cancel the credit contract at any time before the end of the 3rd working day after the day he receives details of the contract from the person who provides the credit (the “creditor”).

If the credit contract involves—

- (a) The sale or a long term lease of goods, and the debtor has taken possession of the goods or wishes to purchase them; or
- (b) The sale of property or services and the debtor wishes to keep the property or services,—

the debtor may cancel the credit contract by advising the creditor (or any person acting on his behalf) in writing within the time mentioned above that he wishes to cancel, and paying the cash price (or the balance owing) to the creditor or any person acting on his behalf within 14 working days after cancellation. If the cash price is not so paid, the contract is deemed not to have been cancelled.

In any other case the debtor may cancel the contract by advising the creditor (or any person acting on his behalf) in writing within the 3 working days mentioned above that he wishes to cancel and returning to him within that time all money and other property received by the debtor under the contract.

SECOND SCHEDULE—*continued*

Written advice of cancellation can be given, and money and other property can be returned, to a creditor (or any person acting on his behalf) by delivering it to him personally or by leaving it at, or sending it by registered post to, the usual or last known home or place of business of the creditor or person.

If a debtor cancels a credit contract, the creditor must return any money and other property received by him under the contract, except that he is entitled to charge, in accordance with the Act, for interest on the credit provided for the period during which it was provided, and for any reasonable expenses incurred by him in relation to the contract, and for any services rendered to the debtor under the contract, and for any damage to property during the time it was in the debtor's possession.

PART III

MODIFICATION DISCLOSURE

1. Terms of modification contract—All the terms of the modification contract, other than those implied by law.

2. Total cost of credit—Where an effect of the modification contract is to increase the total cost of credit under the credit contract, the following information in respect of the modified credit contract (calculated as if the modified credit contract were a new contract commencing on the date from which the modification takes effect):

- (a) Except in the case of a revolving credit contract or a credit contract to which paragraph (b) of this clause applies, the total cost of credit, showing the amounts and descriptions of the components thereof separately:
- (b) In the case of a credit contract that is—
 - (i) A loan secured, or to be secured, by a mortgage over real property (other than a loan to which section 3 (5) of this Act applies); or
 - (ii) A sale of, or an agreement to sell, real property,—the amounts and descriptions of the separate components of the total cost of credit (other than interest).

3. Finance rate—(1) Subject to subclause (2) of this clause, where an effect of the modification contract is to increase the finance rate of the credit contract, the finance rate of the modified credit contract (calculated as if the modified credit contract were a new credit contract commencing on the date from which the modification takes effect).

(2) Clause 4 (2) of Part II of this Schedule shall apply in respect of a modified credit contract as if the reference therein to a credit contract were a reference to a modified credit contract.

4. Statement of rights—In the case of a deferred payment disposition, the following statement, prominently set out:

SECOND SCHEDULE—*continued**Credit Contracts Act 1980**Right of Cancellation*

A person who obtains credit (a "debtor") and who enters into a contract modifying the terms of the original credit contract to his disadvantage has a legal right to cancel the modification contract at any time before the end of the 3rd working day after the day he receives details of the modification contract from the person who provided the credit (the "creditor").

The debtor may cancel the modification contract by advising the creditor (or any person acting on his behalf) in writing within the time mentioned above that he wishes to cancel and returning to him within that time any money or other property received by the debtor under the modification contract.

Written advice of cancellation can be given, and money and other property can be returned, to a creditor (or any person acting on his behalf) by delivering it to him personally or by leaving it at, or sending it by registered post to, the usual or last known home or place of business of the creditor or person.

If a debtor cancels a modification contract, the creditor must return any money and property received by him under the modification contract, except that he is entitled to charge in accordance with the Act for any reasonable expenses incurred by him in relation to the contract, for damage to property while in the possession of the debtor, and for any services rendered to the debtor. The original credit contract will continue as before as if the modification contract had not been made.

PART IV

CONTINUING DISCLOSURE

1. Opening balance—The total amount of credit outstanding at the beginning of the billing period.

2. Details of credit provided—The amount and date of each provision of credit during the billing period.

3. Amounts paid—The amount and date of each amount paid by the debtor during the billing period.

4. Total cost of credit—The total cost of credit charged in respect of the billing period.

5. Finance rate—The finance rate for the billing period (being the finance rate that the total cost of credit disclosed pursuant to clause 4 of this Part of this Schedule bears to the amount of credit to which that cost relates).

6. Closing balance—The total amount of credit outstanding at the end of the billing period.

SECOND SCHEDULE—*continued*

PART V

REQUEST DISCLOSURE

1. Outstanding amounts—In respect of any credit contract other than a revolving credit contract, the following amounts (calculated as at a date that is not more than 6 months before the date the disclosure documents are prepared):

(a) The amount of credit outstanding:

(b) The part of the total cost of credit that is payable immediately (if any).

2. Payments required—The information specified in clause 5 of Part II of this Schedule, if requested by the debtor or guarantor.

3. Details of alterations in terms—In the case of any credit contract (other than a revolving credit contract) whose terms provide for variation of any obligation of the debtor under the contract or where any such obligation has been modified by contract, details of the obligation, and (where the finance rate has varied) of the finance rate under the contract, as at the time the disclosure documents are prepared, if requested by the debtor or guarantor.

4. Copies of other disclosure documents—A copy of all initial disclosure documents and modification disclosure documents relating to the credit contract requested by the debtor or guarantor (other than documents already registered under the Land Transfer Act 1952).

5. Fees—(1) If the information specified in clause 1 of this Part of this Schedule has not been given to a debtor under the contract during the 6 months before the date the request is received by the creditor, the fee for disclosure of that information shall be the sum of \$2.

(2) Subject to subclause (1) of this clause, the fee for disclosure shall be the amount of the expenses incurred by the creditor in making the disclosure (being an amount that is reasonable in the circumstances).