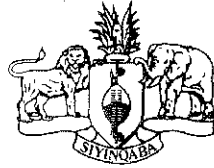


THE CONSUMER CREDIT (AMENDMENT) ACT, 2021

(Act No. 8 of 2021)



I ASSENT

MSWATI III
KING OF THE KINGDOM
OF ESWATINI

04th November, 2021

**AN ACT
ENTITLED**

AN ACT to amend the Consumer Credit Act, 2016 so as to bring it in harmony with the Central Bank Order, 1974, the Financial Institutions Act, 2005 and the Financial Services Regulatory Authority Act, 2010 and to provide for incidental matters.

ENACTED by the King and Parliament and the Kingdom of Eswatini.

Short title and Commencement.

1. (1) This Act may be cited as the Consumer Credit (Amendment) Act, 2021 and shall be read as one with the Consumer Credit Act, 2016.

(2) This Act shall come into force on the date of publication in the gazette.

Amendment of section 2.

2. Section 2 is amended by

- (a) deleting the definition of “Authority” and replacing it with the following new definition-

“Authority” means, -

- (i) in relation to matters relating to Banking Financial Institutions; the Central Bank of Eswatini as established by the Central Bank Order, 1974, or its successor;”
- (ii) in relation to matters relating to Non-Banking Financial Service Providers, the Financial Services Regulatory Authority as established by the Financial Services Regulatory Authority Act, 2010, or its successor;

- (b) deleting the definition of “Ombudsman” and replacing it with the following new definition-

“Ombudsman” means a person appointed as an Ombudsman under the Central Bank Order, 1974, or the Financial Services Regulatory Act, 2010 or their respective successive legislations”;

- (c) deleting the definition of "credit provider" and replacing it with the following new definition; "credit provider" means-
- (i) person licensed as a credit provider under this Act;
 - (ii) a licenced bank;
 - (iii) a licenced mortgage financier;
 - (iv) a supplier of goods or provider of services on a post-paid or instalment basis;
or
 - (v) any other person who is licensed under the Act.

- (d) deleting the definition of "unsecured credit" and replacing it with the following new definition:

"unsecured credit agreement" means a credit agreement in respect of which the debt is not supported by any pledge or other right in property or suretyship or any other form of personal security"

- (e) adding in alphabetical order the following new definitions-

(i) "controller" in relation to a financial services provider means a person who, in the opinion of the Authority, is in a position to control or exert significant influence over the operations of a financial services provider;

(ii) "Controlling interest" means when:

(a) a person owns, at least 50% of the outstanding shares of a given company plus one;

(b) a person or group owns a majority of voting shares in a company; or

(c) a person or a group's interest allows him or the group to veto or overturn decisions made by existing board members;

(iii) "Court" means the Magistrate's court established in terms of the Magistrate Court Act, 1938 or a Small Claims Court established in terms of the Small Claims Court Act, 2012 or the High Court established in terms of the High Court Act, 1954;

(iv) "Debt Collector" means a juristic or natural person who is in the business of recovering money owed by a debtor on delinquent credit agreements under this Act;

(iv) "Financial Institutions Act" means the Financial Institutions Act, No. 06 of 2005, or its successor;

(v) "Payment Distribution Agent" means a person who on behalf of a consumer, that has applied for debt review in terms of this Act, distributes payments to credit providers in terms of a debt re- arrangement, court order, or agreement;"

Amendment of section 4.

3. Section 4 of the Principal Act is amended by replacing the section with a new section 4 as follows-

“Administration of Act.

4. The Act shall be administered by-

- (a) the Central Bank of Eswatini in relation to matters relating to financial institutions licensed in terms of the Financial Institutions Act, 2005; and
- (b) the Financial Services Regulatory Authority in relation to matters relating to non-banking financial service providers.”

Amendment of section 5

4. Section 5 (1) of the Principal Act is amended by adding “or debt collection and payment distribution without a license” after the words “pawn broking”.

Amendment of section 6

5. Section 6 (1) of the Principal Act is amended by adding “or debt collection and payment distribution without a license” after the words “credit bureau business”.

Amendment of section 12.

6. Section 12 of the Principal Act is amended by deleting the section in its entirety and replacing it with the following new section 12-

“**Establishment of office of registrar of credit.**

12. There is established an office of the Registrar of Credit, which shall,

- (a) for purposes of matters relating to financial institutions licenced in terms of Financial Institutions Act, 2005, be under the Central Bank of Eswatini; and
- (b) for purposes of matters relating to Non-Banking Financial Service Providers, be under the Financial Services Regulatory Authority”.

Amendment of section 18.

7. Section 18 of the Principal Act is amended by deleting subsection (2) in its entirety and replacing it with the following new subsection (2)-

“(2) The Authority shall submit the report referred under subsection (1) to the Minister in terms of—

- (a) section 52 (1) (b) of the Central Bank Order,
- (b) section 45 of the Financial Institutions Act; or
- (c) section 27 of the Financial Services Regulatory Authority Act; or

(d) the relevant sections of their respective successors.”

Amendment of section 24.

8. Section 24 of the Principal Act is amended by adding subsection (4) to read as follows-

“24 (4) Where a customer returns after the five-day expiry period and the terms of the pre-agreement and quotation have not changed, the parties should be allowed to enter into a credit agreement immediately without the requirement for another quotation”

Amendment of section 25.

9. Section 25 is amended in subsection (2)(a)(ii), by replacing subparagraph (ii) with the following new subparagraph (ii)-

“(ii) debt repayment history as reflected in the latest credit report of the consumer which shall be obtained from at least one credit bureau after consultation with the consumer;”

Amendment of section 26.

10. Section 26 is amended by replacing subsection (1) with the following new subsection (1);

“26. (1) Subject to subsections (2) a credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 25, provided that any such mechanism, model or procedure shall incorporate the requirements specified in section 25 (2) (a) and result in a fair and objective assessment.”

Amendment of section 44.

11. Section 44 of the Principal Act is amended in subsection (6) by adding the words “incurred by the insurance provider at the instance of the consumer” after the word “year”.

Amendment of section 61.

12. Section 61 is amended in subsection (1) by deleting the subsection and saving the paragraphs, and replacing the subsection with the following new subsection (1);

“61. (1) A person shall not qualify to be licensed under this Act if that person-”

Amendment of section 62.

13. Section 62 of the Principal Act is amended by replacing subsection (2) with the following new subsection (2)-

(a) “(2) A company or body corporate may not be licensed under this Act if any natural person who would be disqualified from individual licensing exercises general management or control of that juristic person, alone or in conjunction with others”.

(b) Section 62 of the Principal Act is amended in subsection (4) by adding the words “or the Financial Institutions Act” after the word “Act”.

Amendment of section 63.

14. Section 63 of the Principal Act is amended in subsection (4) by adding the words “or section 6 of the Financial Institutions Act” after the word “providers”.

Amendment of section 66.

15. Section 66 of the Principal Act is amended in subsection (2) paragraphs (b) and (c) by deleting the words “the Authority”, wherever they appear in the paragraphs, and replacing them with the words “Financial Services Regulatory Authority”.

Amendment of section 68.

16. Section 68 is amended as follows-

- (a) in subsection (2) paragraphs (b) and (c) by deleting the words “the Authority”, wherever they appear in the paragraphs, and replacing them with the words “Financial Services Regulatory Authority”; and
- (b) in subsection (3) by replacing the subsection with a new subsection (3) as follows-

“(3) A company or body corporate may not be licensed as a credit bureau if any person who has a controlling interest in the applicant is-

- (a) a debt collector, debt collection agency or a debt counsellor;
- (b) a credit provider or credit bureau;
- (c) a payment distribution agency;
- (d) a person who conducts a business whose licence has been revoked in terms of this Act; or
- (e) any other person licensed under this Act.

Amendment of section 70.

17. Section 70 is amended by inserting a new section 70 *bis* immediately after the section as follows-

“Pawn broker, Debt collection Agency and Payment Distribution Agency licence.

70 *bis*. (1) A person may, subject to section 61 and 62 apply for a pawn broker, debt collection agency and payment distribution agency licence.

(2) An application for a pawn broker licence, debt collection agency licence and payment distribution agency licence shall comply with the requirements set out in section 36 of the Financial Services Regulatory Act, 2010 and the provisions of this Act relating to credit providers”.

Amendment of section 72.

18. Section 72 of the Principal Act is amended by adding the words “or the Financial Institutions Act,2005” after the word “Act”.

Amendment of section 73.

19. Section 73 is amended by inserting a new section 73 *bis* immediately after the section as follows-

“Permissible Purpose.

73 *bis*. (1) A credit provider may make enquiries for credit information on a consumer from a credit bureau only for a permissible purpose.

- (2) For purposes of this Act permissible purpose shall include;
- (a) reviewing an application for credit or credit facility by any person or considering a person’s qualification to act as a guarantor for any credit;
 - (b) renewing, restructuring or monitoring of existing credit or credit facilities;
 - (c) carrying out employment checks on employees, prospective employees or employment in positions that require trust, honesty and entail the handling of cash and finances;
 - (d) assessing the creditworthiness of a prospective tenant for a lease or tenancy;
 - (e) considering applications for credit contracts or other post-paid services;
 - (f) taking actions in respect of debt collection, enforcement of a monetary judgment or enforcement of any other debt;
 - (g) providing credit scoring services by a credit bureau;
 - (h) carrying out know-your-customer checks on any person for any permissible purpose or as may be required by law; or
 - (i) such other purposes as the Minister may prescribe.”

Amendment of section 74.

20. Section 74 is amended as follows-

- (a) by inserting a new subsection (5) immediately after subsection (4) as follows-

“ (5) notwithstanding the provisions of subsection (1) a credit provider shall notify the consumer of their duty to submit credit data to the credit bureau through a format to be prescribed by the Minister.”

- (b) by inserting a new section 74 *bis* immediately after the section as follows-

“Responsibilities of Credit Providers.

74bis. A credit provider shall –

- (a) protect the integrity and confidentiality of credit information on a consumer;
- (b) provide credit information of its customers to a credit bureau in terms of this Act;
- (c) use the most appropriate medium, including but not limited to text messages, public notices and other mass media, to notify their existing or potential customers of the duty to submit their credit information to a credit bureau;
- (d) update or notify a credit bureau of any changes to the credit information of a consumer including any legal action in respect of the whole or any part of the credit information which it had provided to the credit bureau;
- (e) not furnish any information of a consumer to a credit bureau if the credit provider knows or has reasonable cause to believe that information is inaccurate, incomplete, misleading, false or outdated;
- (f) obtain a credit report from a credit bureau before granting any form of credit; and
- (g) notify both the credit bureau and the consumer in writing or any other electronic form of communication when a consumer of a credit agreement has settled or cleared the debt with the credit provider not later than fourteen (14) days after the period in which that clearance has been made”.

Amendment of section 75.

21. Section 75 is amended as follows -

- (a) in subsection (1)-
 - (i) by deleting paragraphs (a), (b) and (c), and replacing them with the following new paragraphs (a), (b) and (c) -
 - “(a) may receive, collate and compile credit information from credit providers and such other persons as may be prescribed;
 - (b) shall accept without charge the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;
 - (c) shall, where the information reported or submitted to it appears to be inaccurate, incomplete, misleading, or to contain any manifest error, take reasonable steps to verify the accuracy of such credit information;”
 - (ii) by deleting the word “regulations” which appears in paragraph (f) and replacing it with the phrase “Act or regulations”.
- (b) in subsection (2), by deleting the subsection in its entirety and replacing it with the following new subsection (2)-

“ (2) In addition to the consumer credit information contemplated in section 74, a credit bureau may receive, compile and report such relevant information as may be sourced from the following sources, provided the confidentiality of the consumer shall be maintained and such data acquisition is for permissible purposes-

- (a) public registries including business, collateral, vehicle registration and tax registries;
- (b) suppliers of goods on a post-paid or instalment payment basis;
- (c) suppliers of services on a post-paid or instalment payment basis; and
- (d) such other sources as may be prescribed.”

Amendment of section 76.

22. Section 76 is amended in subsection (1) by deleting the subsection in its entirety and replacing it with the following new subsection (1);

“ (1) The Financial Services Regulatory Authority shall establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the consumer credit information provided to it in terms of this Act.”

Amendment of section 77.

23. Section 77 is amended in subsection (1) by deleting the subsection in its entirety and replacing it with the following new subsection (1);

“ (1) A credit bureau shall submit, in the prescribed manner and form, such credit information as may be provided by credit providers in terms of this Act and required by the Financial Services Regulatory Authority for purposes of operationalizing the provisions of section 76.”

Amendment of section 79.

24. Section 79 is amended as follows-

- (a) in subsection (1) by deleting the subsection in its entirety and replacing it with the following new subsection (1);

“ (1) A credit provider shall, before submitting any information concerning a person to a credit bureau, notify the consumer of its duty to submit credit data to the credit bureau through a format to be prescribed by the Minister.”

- (b) by inserting the following new subsection (6) immediately after subsection (5) and renumber the subsequent sections;

“ (6) The Authority shall within fourteen (14) days of the receipt of the complaint referred to sub-section (5) review and resolve the complaint and inform parties of the outcome of the investigation in line with the needs of the client.”

Amendment of section 80.

25. Section 80 is amended by inserting the following new subsection (3) immediately after subsection (2) as follows-

“ (3) The Authority shall have unrestricted access to the database and records of a credit bureau for the purposes of performing its duties under this Act.”

Amendment of section 83.

26. Section 83 is amended in subsection (1) (a) by adding at the end of the paragraph the words “or administering the sanctions or remedial actions under the Financial Institutions Act,2005 or the Central Bank Order,1974 or their successors”.

Amendment of section 97

27. Section 97 is amended in subsection (2) (c) by replacing the words “a mortgage agreement” with the word “all forms of credit agreements”

Amendment of section 108.

28. Section 108 of the Principal Act is amended by deleting the section in its entirety.

Amendment of section 110.

29. Section 110 of the Principal Act is amended by-

- (a) inserting the words “or section 34 of the Financial Institution Act 2005” in between the word “Act” and the comma; and
- (b) replacing the words “not exceeding” with the words “at least”.