



ANALYSIS

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1981, No. 27

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

[16 September 1981]

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 1981.

(2) This Act shall come into force on the 1st day of June 1982.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Approved superannuation scheme” means—

- (a) A superannuation scheme that, for the time being, is granted or is deemed to have been granted approval or interim approval under Part II of the Superannuation Schemes Act 1976:

(b) Any fund or arrangement if amounts paid thereto or in respect thereof are allowed as deductions for income tax purposes pursuant to section 149, section 151, or section 152 of the Income Tax Act 1976:

“Billing periods” means, in relation to a revolving credit contract, consecutive periods of 6 months each (or of such shorter duration as the creditor from time to time determines), the first of which commences with the commencement of the contract (or with the commencement of this Act, if the contract commenced before this Act):

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

(a) The lowest price at which a person could have purchased that property or those services from the vendor, bailor, or provider thereof on the basis of payment in full at the time the contract was made; or

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

“Continuing disclosure” has the meaning assigned to it in section 18 of this Act:

“Controlled credit contract” has the meaning assigned to it in section 15 of this Act:

“Court” means the High Court or a District Court that has jurisdiction under section 45 of this Act:

“Credit” means—

(a) In relation to a credit contract of the kind specified in section 3 (1) (a) of this Act (other than a contract to which paragraph (c) of this definition applies), the money or money’s worth provided or agreed to be provided:

(b) In relation to a credit contract of the kind specified in section 3 (1) (b) of this Act, the money payment of which is forborne or agreed to be forborne:

(c) In relation to a credit contract of the kind specified in paragraph (d) or paragraph (e) of section 3 (1) of this Act, the cash price of the property, services, or goods:

“Credit advertisement” has the meaning assigned to it in section 34 of this Act:

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

“Creditor”, in relation to a credit contract, means a person who provides or agrees to provide credit pursuant to the contract; and includes—

(a) If the rights of such a person are transferred by assignment (whether absolutely or by way of mortgage) or operation of law, the person for the time being entitled to those rights; and

(b) If a person enters into the contract in his own name as creditor, or holds security under the contract in his own name, or obtains in his own name the rights of a creditor under the contract, on behalf of or as nominee for any other person or persons, the person who so enters into the contract or holds security or obtains the rights:

“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:

“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 16 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:

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

“Disclosure documents” means documents prepared for the purposes of section 21 of this Act:

“Finance rate” has the meaning assigned to it in section 6 of this Act:

“Financier” means any person who—

(a) Carries on the business of providing credit (whether or not the business is his only business or his principal business); or

(b) Makes a practice of providing credit in the course of a business carried on by him; or

(c) 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:

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

“Government agency” means any Department or instrument of the Executive Government of New Zealand; and, without limiting the generality of the foregoing provisions of this definition, includes—

(a) A body corporate or corporation sole (whether called a corporation, commission, council, board, authority, or by any other name) that has been established or constituted by a public Act of Parliament and that is named in that Act; and

(b) A body corporate or organisation that is controlled or wholly owned by the Crown or by any such Department, instrument, body corporate, corporation sole, or organisation:

“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, or who assumes liability for performing the obligations of a debtor under the contract; and “guarantee” has a corresponding meaning:

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

“Initial disclosure” has the meaning assigned to it in section 16 (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 provided by a percentage; and “interest rate” has a corresponding meaning:

“Local authority” means a body that is a local authority for the purposes of Part I of the Local Authorities Loans Act 1956, whether by virtue of section 2 of that Act or of any Order in Council thereunder or by virtue of any other Act:

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

(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

(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:

(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:

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

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

(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 17 (2) of this Act:

“Oppressive” has the meaning assigned to it in section 9 of this Act:

“Paid adviser” means a person who, in respect of a credit contract, acts for reward as an adviser to, or as a trustee, nominee, or agent of, one or more of the parties to the contract; but does not include a person who is an employee of one or more of the parties:

“Party”, in relation to a credit contract, means any person who is a creditor, debtor, guarantor, or dealer under or in respect of the contract:

“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:

“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:

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

“Revolving credit contract” means a controlled credit contract where it is contemplated at the time the contract is entered into that credit will be provided under the contract from time to time, but does not include a contract for the provision of a known or determinable amount of credit by instalments of a known or determinable amount:

Provided that this definition shall be read subject to regulations made under section 47 (1) (c) of this Act:

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

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

“Total cost of credit” and “cost of credit” have the meaning assigned to them in section 5 of 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

(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.

(2) For the purposes of this Act, two bodies corporate are related if—

(a) One of the bodies is a subsidiary of the other; or

(b) There is another body corporate to which each of the bodies is related by virtue of paragraph (a) of this subsection.

3. Meaning of “credit contract”—(1) In this Act, the term “credit contract” means—

(a) A contract under which a person provides or agrees to provide money or money’s worth in consideration of a promise by another person to pay, or to procure the payment of, in the future and in respect of the provision, a sum or sums of money exceeding in aggregate the amount of the first-mentioned money or money’s worth; or

- (b) A contract under which a person forbears or agrees to forbear from requiring payment of money owing to him in consideration of a promise by another person to pay, or to 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, without limiting the generality of paragraphs (a) and (b) of this subsection, includes—
- (c) 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
- (d) 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
- (e) 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
- (f) 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;—
- but, subject to subsection (4) of this section and to section 4 of this Act, does not include—
- (g) A contract of indemnity against loss or a policy within the meaning of section 41 of the Life Insurance Act 1908; or

- (h) A lease of, or an agreement to lease, any real property (whether with or without an option to purchase); or
 - (i) A contract for the sale of property, or the provision of services, to a person if the total amount payable under the contract by the person (other than any amount payable solely as a result of a default in payment by him) is the agreed price of the property or services and is to be paid within 2 months from the date the contract is made.
- (2) In subsection (1) of this section, the term “promise” includes a conditional promise.
- (3) For the purposes of determining whether a contract is a credit contract within the meaning of this section,—
- (a) Incidental services provided pursuant to the contract, and legal services relating to the contract, shall not be included as money’s worth provided, or agreed to be provided, under the contract; and
 - (b) The following amounts shall not be included as part of the sum or sums of money promised to be paid in the future:
 - (i) Any reasonable amount payable for incidental services to the promisor, or for incidental services to any property sold or bailed under the contract or over which security is taken by or pursuant to the contract:
 - (ii) Any reasonable amount payable as a result of a default under the contract by the promisor:
 - (iii) Any reasonable amount payable as a result of damage to property while in the possession of the promisor:
 - (iv) Any reasonable amount payable for surveys, inspections, or valuations of property required for the purposes of the contract:
 - (v) Any reasonable amount payable for legal services relating to the contract (other than for the collection of money):
 - (vi) Any amount required to be paid by virtue of any enactment:
 - (vii) In the case of a contract of bailment where the bailee has the right to cancel the bailment, any amounts that cease to be payable under the contract upon the bailee exercising that right:
 - (viii) Any amount of a kind specified in regulations made under section 47 (1) (a) of this Act.

(4) 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 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. Collateral contracts and linked transactions—

(1) Where it is a term of a credit contract that another contract or a deed be entered into, the following provisions shall apply:

(a) Any part of that other contract or deed that relates to the provision of credit to, or the payment of money by, a debtor under the credit contract shall be deemed to form part of the credit contract for the purposes of Part I of this Act:

(b) If the other contract or deed is to be entered into for the purpose of giving security for the credit provided under the credit contract—

(i) The whole of that other contract or deed shall be deemed to form part of the credit contract for the purposes of this Act (whether or not it is entered into at the same time as the credit contract is made); and

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

(2) Notwithstanding section 3 of this Act and subsection (1) of this section, 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 be entered into, for the purposes of this Act, that term shall be deemed not to form part of the contract of sale but, together with the agreement or deed, shall be deemed to be a separate credit contract made at the time when the agreement or deed is entered into.

(3) Where a loan made pursuant to a credit contract is used to pay the whole or part of the amount payable under a contract for the provision of goods or services, and the loan has been made or arranged by or on behalf of the provider of the goods or services, then, for 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.

5. Definition of "total cost of credit"—(1) In this Act, the terms "total cost of credit" and "cost of credit", in relation to a credit contract, mean the total of all money and money's worth that the debtor has paid or provided or is or may become liable to pay or provide either by virtue of the contract, or to or for the benefit of the creditor in respect of the contract, less the following amounts:

- (a) The amount of credit provided pursuant to the contract:
 - (b) The amounts specified in section 3 (3) (b) of this Act (and for the purposes of this paragraph that provision shall be read as if the reference to the promisor were a reference to the debtor):
 - (c) Any amount of a kind specified in regulations made under section 47 (1) (b) of this Act.
- (2) For the purposes of calculating the total cost of credit of a credit contract, and without limiting regulations made under section 47 (1) (e) of this Act,—
- (a) Where the amount of credit is not known at the time the calculation is made and—
 - (i) The credit is not to exceed a known maximum amount, the amount of credit shall be deemed to be that maximum amount; or
 - (ii) There is no such maximum amount, the amount of credit shall be deemed to be the amount that, in the opinion of the creditor, is likely to be the amount of credit:
 - (b) Where the period for which credit is provided is not known at the time the calculation is made and—
 - (i) The period is not to be less than a stated minimum period, the period shall be deemed to be that minimum period; or
 - (ii) There is no such minimum period, the period shall be deemed to be 12 months:
 - (c) Where an interest rate, or the amount or rate of any other component of the total cost of credit,—
 - (i) Is known as at the time the calculation is made but may vary during the period of the contract, the rate or amount shall be deemed to be the rate or amount as at the time the calculation is made; or

- (ii) Is not known as at the time the calculation is made, the rate or amount shall be deemed to be the rate or amount that, in the opinion of the creditor, is likely to be the rate or amount:
- (d) Where the contract does not specify the day when credit will be provided, or an amount will be paid by the debtor, under the contract, and this day is not known at the time the calculation is made, the day shall be deemed to be the day that, in the opinion of the creditor, is likely to be the day of such provision or payment.

6. Definition of “finance rate”—(1) In this Act, the term “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—

- (a) The annual finance rate, as defined in the First Schedule to this Act, for that contract (which may be rounded to the nearest quarter of one percent); or
- (b) A rate that is correctly derived or calculated from tables, or in accordance with a formula, prepared and published by the Government Actuary for the purposes of giving the annual finance rate (as so defined) for that kind of contract.

(2) Paragraphs (a) to (d) of section 5 (2) of this Act, and any regulations made under section 47 (1) (e) of this Act, shall apply for the purposes of calculating the finance rate of a credit contract.

7. Conflict of laws—Nothing in this Act shall apply in respect of a credit contract, or part of a credit contract, if the contract or part is not governed by the law of New Zealand.

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

PART I

RE-OPENING OF OPPRESSIVE CREDIT CONTRACTS

9. Meaning of “oppressive”—In this Act, the term “oppressive” means oppressive, harsh, unjustly burdensome, unconscionable, or in contravention of reasonable standards of commercial practice.

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

- (a) A credit contract, or any term thereof, is oppressive;
or
- (b) A party under a credit contract has exercised, or intends to exercise, a right or power conferred by the contract in an oppressive manner; or
- (c) A party under a credit contract has induced another party to enter into the contract by oppressive means—

the Court may re-open the contract.

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

(3) Where, with the knowledge 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 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—

and the creditors under the contracts are either the same person or related bodies corporate, the Court may re-open all or any of those other contracts (whether or not it considers that any of paragraphs (a) to (c) of subsection (1) of this section apply in respect thereof).

11. Guidelines for re-opening credit contracts—(1) No credit contract or term of a credit contract, or act performed pursuant to or in relation to a credit contract, shall be considered to be oppressive if the contract, term, or act would not have been considered oppressive at the time at which, and in the circumstances in which, it was made or performed.

(2) In deciding whether paragraphs (a) to (c) of section 10 (1) of this Act apply in respect of a credit contract and whether to re-open the contract under that section, the Court shall have regard to—

- (a) All the circumstances relating to the making of the contract, the exercise of the right or power conferred by the contract, or the inducement to enter the contract, as the case may be; and
- (b) Such of the following matters as are applicable (if any):
 - (i) Whether the finance rate for the contract, or any amount payable by the debtor under the contract (whether or not on default by the debtor), is oppressive:
 - (ii) Where a debtor is in default under the contract, whether the time given to the debtor by or pursuant to the contract to remedy the default is oppressive having regard to the likelihood of loss to the creditor:
 - (iii) Where the creditor has required, as a condition of early repayment of the credit outstanding under the contract, that the debtor pay interest for a period subsequent to the date of repayment, whether the amount of interest is oppressive having regard to the expenses of the creditor and the likelihood that the amount repaid can be reinvested on similar terms:
 - (iv) Where the creditor has refused to release part of any security relating to the contract or has agreed to such a release subject to conditions, whether the refusal is, or the conditions are, oppressive having regard to the amount of the credit and the extent of the security that would remain after the release; and
- (c) Such other matters as the Court thinks fit.

12. Provisions relating to re-opening proceedings—Notwithstanding any other enactment or rule of law, proceedings seeking the re-opening of a credit contract may be instituted in the Court by any party to the contract at any time earlier than 6 months after the date the last obligation to be performed under the contract is performed; but may not be so instituted at any other time:

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

- (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

(b) Amounts owing under the contract were paid from credit provided pursuant to another credit contract or other credit contracts—
and the creditors under the contracts are either the same person or related bodies corporate, proceedings seeking the re-opening of any of those contracts may be instituted at any time earlier than 6 months after the date the last obligation to be performed under any of those contracts was performed.

13. Evidence—(1) In any proceedings where the Court considers re-opening a credit contract pursuant to section 10 (1) (a) of this Act, evidence regarding the terms on which credit was available from other persons at the time the contract was made shall be admissible in evidence.

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

(3) In any proceedings where the Court considers re-opening a credit contract pursuant to section 10 (1) (c) of this Act, evidence regarding the inducements offered by other persons at the time the inducement was offered shall be admissible in evidence.

14. 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—

- (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
- (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
- (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, altered, complied with, or performed; or

- (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 a party has parted with the security, order him to indemnify the other party or parties to the contract; or
- (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 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.

(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) Whether or not any party to the contract has assigned his rights thereunder or any of them.

PART II

DISCLOSURE

15. Meaning of “controlled credit contract”—(1) In this Act the term “controlled credit contract” means a credit contract—

- (a) Where the creditor, or one of the creditors, for the time being is a financier acting in the course of his business; or
 - (b) Which results from an introduction of one of the parties to the contract to another such party by a paid adviser; or
 - (c) That has been prepared by a paid adviser;—
- but does not include—

- (d) A contract where every debtor for the time being is—
 - (i) A financier by virtue of either paragraph (a) or paragraph (c) of the definition of that term; or
 - (ii) The Crown, a local authority, or a Government agency; or
 - (iii) A body corporate that has a paid up capital of not less than \$1,000,000; or a body corporate that is related to such a body; or
 - (e) A contract where every party to the contract for the time being is a body corporate that is related to every other such party to the contract; or
 - (f) A contract if the total amount of credit outstanding under that contract and under all other contracts between the same creditor and debtor is or will be not less than \$250,000; or
 - (g) A contract that results from an offer of securities to the public within the meaning of sections 2 and 3 of the Securities Act 1978; or
 - (h) A contract the only effect of which is to modify the terms of a controlled credit contract; or
 - (i) A contract entered into pursuant to a revolving credit contract; or
 - (j) A contract entered into pursuant to an approved superannuation scheme; or
 - (k) A contract that forms part of a transaction involving the export from New Zealand, or the import into New Zealand, of goods or services and that is entered into for the purpose of facilitating the export or import of those goods or services; or
 - (l) An agreement to which sections 5 and 7 of the Door to Door Sales Act 1967 apply; or
 - (m) A contract of a kind specified in regulations made under section 47 (1) (d) of this Act.
- (2) For the avoidance of doubt, it is hereby declared that where a person's account with a bank is debited and—
- (a) The effect of the debit is to put the account into overdraft, or to increase the amount of an overdraft beyond an agreed limit; and
 - (b) The creation of the overdraft, or the increase in the limit, has not been agreed between the bank and the person before the debit of the account,—
- neither the debiting of the account nor the creation, or increase, of the overdraft shall constitute a controlled credit contract, whether or not the bank knows at the time the

account is debited that the debit would have that effect and whether or not the bank makes a charge (whether interest or otherwise) relating to the creation or increase of the overdraft.

Disclosure Required

16. Disclosure at commencement of contract—(1) Every creditor who enters into a controlled credit contract shall 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 15th working 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 for the time being thereunder in accordance with section 20 of this Act.

17. Disclosure of modification of contract—(1) Every creditor under a controlled credit contract who enters into a modification contract shall ensure that modification disclosure either—

- (a) Has been made before the modification contract is made; or
- (b) Will be made not later than the end of the 15th working day after the day the modification contract is made.

(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 20 of this Act.

18. Continuing disclosure of revolving credit contract—(1) Every creditor for the time being under a revolving credit contract shall ensure that, not later than the end of the specified period after the end of each billing period during which credit has been provided under the contract or the whole or part of the cost of credit has become due, disclosure relating to the billing period is made to every debtor for the time being under the contract in accordance with section 20 of this Act (in this Act called “continuing disclosure”).

- (2) In this section, the term “specified period” means—
- (a) In relation to a billing period of 3 months or less, 20 working days:
 - (b) In relation to any other billing period, 45 working days.

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

- (a) Makes written request of a creditor under the contract to disclose to him the whole or any part of the information and documents specified in Part IV of the Second Schedule to this Act; and
- (b) Tenders to the creditor the fee specified in clause 6 of that Part of that Schedule,—

the creditor shall ensure that, not later than the end of the 15th working day after the day the fee is received by the creditor, disclosure of the information or documents requested is made to the debtor or guarantor in accordance with section 20 of this Act (in this Act called “request disclosure”):

Provided that a creditor need not comply with such a request if disclosure of the information or documents requested 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

20. 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 the last place of residence or business known to the creditor or 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 21 of this Act:

Provided that where that place of residence or business or address is the same for 2 or more persons, disclosure documents given or sent to any of those persons shall be deemed to have been given or sent to all those persons.

(2) For the purposes of sections 22 and 24 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 4th working day after the day on which the documents are posted.

(3) For the purposes of sections 25 to 28 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.

(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.

21. Disclosure documents—(1) Disclosure documents shall consist of one or more legible documents (which may be or include a copy of the contract) that—

- (a) In the case of initial disclosure, modification disclosure, and continuing disclosure, 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
- (b) In the case of request disclosure, contain the information and documents requested; and
- (c) Are not likely to deceive or mislead a reasonable person with regard to any particular that is material to the contract; and
- (d) Comply with any regulations made under this Act that relate thereto.

(2) Notwithstanding subsection (1) of this section, disclosure documents need not contain any information, statement, or other matter that is contained in a legible document that has previously been given, or sent by post to the last place of residence or business known to the creditor or to an address specified by the person for this purpose, to each person to whom disclosure is to be made:

Provided that—

- (a) Where that place of residence or business or address is the same for 2 or more persons, a document given or sent to any of those persons shall be deemed to have been given or sent to all those persons;
- (b) This subsection shall not apply in respect of disclosure documents relating to request disclosure.
- (3) This section shall be read subject to any regulations made under section 47 (1) (g) of this Act.

Debtor's Reconsideration Period

22. Debtor may cancel credit contract in certain circumstances—(1) A debtor under a controlled credit contract (other than a contract to which subsection (2) of this section applies), or modification contract, may cancel the controlled credit contract or modification contract, as the case may be, by—

- (a) Giving written notice of cancellation; and
- (b) Returning any credit and other property received by a debtor pursuant to the contract—

to a creditor or dealer under the contract, not later than the end of the third working day after the day initial disclosure or modification disclosure (as the case may be) of the contract is made (or at any time if disclosure has not been made).

(2) A debtor under a controlled credit contract that is—

- (a) 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 I 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
- (b) A deferred payment disposition comprising a sale of property by auction; or
- (c) A deferred payment disposition of property that the debtor wishes to keep, or of services that the debtor wishes to obtain—

may cancel the credit provisions of the contract by—

- (d) Giving written notice of cancellation to a creditor or dealer under the contract not later than the end of the third working day after the day initial disclosure of the contract is made (or at any time if disclosure has not been made); and
- (e) Paying the cash price (or the balance of the cash price after deducting any amount already paid by the debtor) of the property or services, and returning any other property received by a debtor pursuant to the contract, to a creditor or dealer under the contract not later than the end of the 15th working day after the day the notice is given pursuant to paragraph (d) of this subsection.

- (3) For the purposes of this section,—
- (a) Written notice of cancellation may be expressed in any way that shows the intention of the debtor to cancel or withdraw from the contract or from the credit provisions thereof, as the case may be:
 - (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 or employee thereof; or
 - (ii) By posting it by registered mail to the last known place of residence or business of the creditor or dealer or any agent thereof:
 - (c) Written notice of cancellation may be given, property may be returned, and a cash price paid, by an agent acting on behalf of a debtor.
- (4) This section shall not apply in respect of initial disclosure of a controlled credit contract if the credit is provided for a specified period not exceeding 2 months and no part of the credit is used, with the knowledge of the creditor, to pay amounts owing to the creditor or a related body corporate under another credit contract.

23. Effect of cancellation—(1) When a controlled credit contract or modification contract is cancelled pursuant to section 22 (1) 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:
- (b) Subject to paragraphs (e) to (g) of this subsection, every creditor shall forthwith—
 - (i) Return any property received by him pursuant to the contract to the party from whom it was received; and
 - (ii) Ensure that all security over property given by a debtor or guarantor pursuant to the contract is released (except to the extent that the security secures obligations of the debtor arising otherwise than under the contract):
- (c) Subject to paragraphs (e) to (g) 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:

- (d) In the case 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:
 - (e) In the case of a controlled credit contract (other than a contract to which section 25 of this Act applies), 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:
 - (f) Unless the contract otherwise provides, the debtor shall be liable to pay to the creditor—
 - (i) The amount of any legal fees and other expenses necessarily incurred by the creditor in relation to the contract and the cancellation thereof (being fees and expenses that are reasonable in the circumstances); and
 - (ii) Where property returned to a creditor or dealer pursuant to section 22 of this Act has been damaged while in the possession of a debtor, the cost of repairing the damage:
 - (g) Where incidental services have been provided pursuant to the contract, the party or parties who obtained the services shall be liable to pay a reasonable amount therefor to the party or parties who provided the services.
- (2) Where the credit provisions of a controlled credit contract are cancelled pursuant to section 22 (2) of this Act, paragraphs (b), (c), (e), (f), and (g) of subsection (1) of this section shall apply in respect of the contract, except that—
- (a) The creditor need not return the cash price paid pursuant to section 22 (2) (e) of this Act, or any property forming part thereof; and
 - (b) The creditor's obligation to provide the property or services to which the cash price relates shall continue.

Penalties for Failure to Disclose

24. 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,

subject to sections 31 to 33 of this Act, no person (other than a debtor under the contract) may,—

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

Provided that nothing in this section shall limit any rights that a person has in respect of a bill of exchange.

25. Penalty for failure to make initial disclosure—(1) If initial disclosure of a controlled credit contract is not made in accordance with section 16 (1) of this Act (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33 of this Act,—

- (a) The liability of every debtor and guarantor under the contract to pay an amount equal to the specified amount shall be extinguished and every provision of the contract to the contrary shall be of no effect; and
 - (b) Subject to paragraph (a) of this subsection, the contract shall have the same force and effect as if this subsection did not apply thereto.
- (2) In this section, the term “specified amount” means the smaller of the following amounts:
- (a) An amount equal to three times the part of the total cost of credit that relates to the period from the day the contract is made until the earlier of the following days:
 - (i) The day on which initial disclosure is made:
 - (ii) The day that is 8 months after the day the contract is made:
 - (b) The total cost of credit payable under the contract.

26. Penalty for failure to make modification disclosure—(1) If modification disclosure is not made in accordance with section 17 (1) of this Act (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33 of this Act,—

- (a) The liability of every debtor and guarantor under the credit contract to pay an amount equal to the specified amount shall be extinguished and every provision of the contract to the contrary shall be of no effect; and

- (b) Subject to paragraph (a) of this subsection, the contract shall have the same force and effect as if this subsection did not apply thereto.
- (2) In this section, the term “specified amount” means the smaller of the following amounts:
 - (a) An amount equal to three times the part of the total cost of credit payable under the modified credit contract that relates to the period from the day the modification contract is made until the earlier of the following days:
 - (i) The day on which modification disclosure is made:
 - (ii) The day that is 8 months after the day the modification contract is made:
 - (b) The total cost of credit payable under the modified credit contract in respect of the period from the day the modification contract is made until the day on which the modified credit contract expires.

27. Penalty for failure to make continuing disclosure— If continuing disclosure that is required to be made in respect of a billing period is not made in accordance with section 18 of this Act (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33 of this Act,—

- (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
- (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 request disclosure—(1) If request disclosure of a controlled credit contract is not made in accordance with section 19 of this Act (whether or not the disclosure is subsequently made), then, subject to sections 31 to 33 of this Act, the following provisions shall apply in respect of the contract:

- (a) If the request is made by a debtor, the liability of every debtor and guarantor under the contract to pay an amount equal to the specified amount shall be extinguished and every provision of the contract to the contrary shall be of no effect:
 - (b) If the request is made by a guarantor, the liability of the guarantor to pay an amount equal to the specified amount 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:
 - (c) Subject to paragraphs (a) and (b) of this subsection, the contract shall have the same force and effect as if this subsection did not apply thereto.
- (2) In this section, the term "specified amount" means—
- (a) Where the request relates to a revolving credit contract, an amount equal to three times the total cost of credit payable under the contract in respect of the last completed billing period before the request is made; and
 - (b) In any other case, an amount equal to three times the part of the total cost of credit payable under the contract in respect of the period from the day the specified fee is received by the creditor until the earliest of the following days:
 - (i) The day on which request disclosure is made:
 - (ii) The day that is 8 months after the day the specified fee is so received:
 - (iii) The day the contract expires.

29. Penalties to take effect at end of contract—Where—

- (a) A credit contract requires a debtor or guarantor to pay instalments during the period of the contract (whether the instalments comprise repayments of part of the credit provided or payments of part of the cost of credit, or both); and
 - (b) The liability of the debtor or guarantor to pay an amount is extinguished pursuant to any of sections 25, 26, and 28 (1) (a) of this Act—
- then, unless all parties to the contract otherwise agree after the liability is extinguished, the debtor or guarantor shall continue to pay the instalments required by the contract until there has been paid in full to the creditor the amount arrived

at by deducting the amount for which liability has been extinguished from the total of the credit provided and the cost of credit.

30. Debtor's rights of recourse against creditor—Where—

- (a) The liability of a debtor or guarantor to pay an amount under a credit contract has been extinguished pursuant to any of sections 25 to 28 of this Act; but
- (b) The debtor or guarantor remains liable to pay the amount, or part thereof, under a bill of exchange drawn as part of, or pursuant to, the credit contract—

the debtor or guarantor may recover from any creditor under the credit contract (other than the holder of the bill), any such amount paid by him under the bill as if that amount were a debt due to him by the creditor.

Relief from Penalties for Failure to Disclose

31. Relief for inadvertent non-disclosure—Sections 24 to 28 of this Act shall not apply in respect of a failure to make initial disclosure, modification disclosure, continuing disclosure, or request disclosure of a controlled credit contract or modification contract (as the case may be) if the creditor shows that—

- (a) The failure was due to inadvertence or to events outside the control of the creditor; and
- (b) Disclosure was made as soon as reasonably practicable after the failure was discovered by the creditor or brought to his notice; and
- (c) Where disclosure documents relating to the contract state as the finance rate of the contract a rate that is less than the correct finance rate, the creditor has reduced the finance rate of the contract to the rate disclosed in those documents; and
- (d) The creditor has compensated or offered to compensate the debtor under the contract for any prejudice caused the debtor by the failure.

32. Power of Court to reduce penalty—(1) The Court may, on the application of a creditor under a credit contract, order—

- (a) That any of sections 24 to 28 of this Act shall not apply in respect of a credit contract, or modification contract, or any class or classes of such contracts; or
 - (b) That an amount for which liability has been extinguished pursuant to any of those sections be reduced to an amount specified by the Court.
- (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:
 - (c) The extent to which a debtor or guarantor has been prejudiced by the non-disclosure:
 - (d) Such other matters as the Court thinks fit.
- (3) Any order under this section may be made on such terms and conditions as the Court thinks fit.

33. Penalties may be altered by agreement—Sections 24 to 28 of this Act, or any of them or any part thereof, shall not apply in respect of a failure to disclose (or shall apply only to the extent agreed) if every debtor and guarantor under the contract to which the failure relates so agrees in writing after receiving written notice of the failure and of his rights that arise from the failure.

PART III

ADVERTISING

34. 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 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.

35. Misleading advertisements prohibited—No credit advertisement shall contain any information, sound, image, or other matter, that is likely to deceive or mislead a reasonable person with regard to any particular that is material to the provision of credit.

36. Restrictions on advertising interest rates—No credit 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.

37. Restrictions on advertising of deferred payment dispositions—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.

38. Offences—If a credit advertisement contravenes any of sections 35 to 37 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:

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

39. Power to order certain persons not to act as financiers—

(1) Where—

(a) A person—

(i) 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

(ii) Is, or has been, a creditor under a credit contract that has been re-opened pursuant to section 10 of this Act; or

(iii) Has failed, more than once, to comply with any of sections 16 to 19, and 35 to 37 of this Act; or

(iv) Was a director or principal officer of a body corporate at the time the body corporate committed such an offence, or was such a creditor, or did so fail; and

- (b) In the opinion of a District Court, the person is not a fit and proper person to enter into controlled credit contracts as a financier—
- a District Court may make an order prohibiting or restricting the person from doing all or any of the following things:
- (c) Providing credit under controlled credit contracts of the kind specified in section 15 (1) (a) of this Act, either alone or in partnership with any person and whether or not through agents:
 - (d) Acting as a director or taking part directly or indirectly in the management or control of any company or business that provides credit under controlled credit contracts of the kind specified in section 15 (1) (a) of this Act:
 - (e) 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 controlled credit contracts involving the provision of credit by the financier.
- (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
 - (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 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) 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 3 months or to a fine not exceeding \$5,000, or to both.

40. Penalty rates—(1) Except as provided in subsections (2) and (3) of this section, no credit contract shall contain a term to the effect that, if a debtor fails to comply with a

term of the contract, an amount payable by the debtor under the contract (whether or not expressed in terms of an interest rate) will be increased, or will not be reduced, to another amount.

(2) Notwithstanding any other enactment or rule of law, a credit contract may contain a term to the effect that, if a debtor fails to comply with any specified term of the contract by a specified time, the finance rate payable under the contract in respect of any specified period may be increased to a specified rate:

Provided that—

- (a) The specified time shall be not earlier than 14 days after the date compliance was due; and
- (b) The specified period shall be a period beginning not earlier than the due date of the last instalment that, at the time the rate is increased, has been paid by the debtor.

(3) For the avoidance of doubt, it is hereby declared that nothing in this section shall prevent the inclusion in a credit contract of a term to the effect that, if a debtor fails to pay an amount payable under the contract by the payment date specified in the contract, he shall be liable to pay to the creditor interest at a specified rate on the amount for the period during which it remains unpaid.

(4) If any term of a credit contract contravenes subsection (1) of this section, that term shall be read as if all references to the higher amount were omitted and as if the amount payable under the contract by the debtor were the lower amount, whether or not the debtor fails to comply with a term thereof.

(5) Nothing in this section shall limit Part I of this Act.

41. Termination by reason of application of Act—(1) No credit contract shall contain a term to the effect that—

- (a) All or part of the credit outstanding under the contract will become immediately payable to a creditor under the contract; or
- (b) The finance rate under the contract will be increased, or will not be reduced, to another rate—

if an application is made to the Court pursuant to section 12 or section 39 of this Act or if any of sections 24 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**

42. Provisions relating to assignment of credit contracts—Subject to the Bills of Exchange Act 1908 (as amended by section 50 of this Act), an assignee of a credit contract from a creditor shall take the contract subject to all equities, and to all rights and remedies under this Act that the debtor has or would have against the original creditor or any subsequent creditor.

43. 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 subject to the provisions of this section.

44. 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—

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

45. Jurisdiction of District Courts—(1) A District Court shall have jurisdiction to exercise any power conferred on a Court by Part I or Part II of this Act in any case where—

- (a) The occasion for the exercise of the power arises in the course of civil proceedings properly before the Court; or
- (b) The amount of credit provided under the contract is not more than \$12,000; or
- (c) The parties agree, in accordance with section 37 of the District Courts Act 1947, that a District Court shall have jurisdiction to exercise the power.

(2) For the purposes of section 43 of the District Courts Act 1947, an application made to a District Court under Part I or Part II of this Act shall be deemed to be an action.

46. 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 of calculating the finance rate of a 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.

47. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing kinds of amounts that, in addition to those specified in section 3 (3) (b) of this Act, shall not be included as part of the sum or sums of money promised to be paid in the future for the purposes of determining whether a contract is a credit contract:
- (b) Prescribing kinds of amounts that, in addition to those specified in paragraphs (a) and (b) of section 5 (1) of this Act, shall not be included as part of the total cost of credit of a credit contract:
- (c) Prescribing kinds of controlled credit contracts that shall be deemed to be, or not to be, revolving credit contracts for the purposes of this Act (whether or not the contracts are revolving credit contracts within the meaning of that term as defined in section 2 of this Act):
- (d) Prescribing kinds of credit contracts that, in addition to those specified in paragraphs (d) to (1) of section 15 (1) of this Act, shall not be controlled credit contracts for the purposes of this Act:
- (e) Prescribing rules, in addition to those specified in sections 5 (2) and 6 (2) of this Act, for the calculation of the total cost of credit or finance rate of credit contracts, or kinds of credit contracts; and any such rules may deem amounts, rates, or periods to be those specified in or calculated in accordance with the rules:
- (f) For the purposes of giving persons reasonable time to adapt procedures and equipment in order to comply with this Act, exempting any class of persons from any of the disclosure requirements specified in the Second Schedule to this Act for a period commencing with the commencement of this Act and ending on a specified date:

- (g) Prescribing 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:
 - (h) 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.
- (2) Every Order in Council made under this section and containing regulations made under paragraphs (a) to (f) of subsection (1) of this section shall—
- (a) Where the Order in Council is made on or before the 30th day of June in any calendar year, expire on the close of the 31st day of December in that calendar year, except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during any session held in that calendar year; and
 - (b) Where the Order in Council is made on or after the 1st day of July in any calendar year, expire on the close of the 31st day of December in the following calendar year, except so far as it is expressly validated or confirmed by an Act of the General Assembly passed during any session held in that calendar year or in the preceding calendar year.

PART VI

CONSEQUENTIAL REPEALS AND AMENDMENTS AND TRANSITIONAL PROVISIONS

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

- (a) The Moneylenders Act 1908:
- (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:
- (g) Section 2 (3) of the Chattels Transfer Amendment Act 1931:
- (h) The Chattels Transfer Amendment Act 1950:
- (i) So much of Part II of the First Schedule to the Summary Proceedings Act 1957 as relates to the Moneylenders Act 1908:
- (j) Section 3 (2) (c) of the Summary Proceedings Amendment Act 1961:

(k) Section 31 (b) of the Development Finance Corporation Act 1973.

(2) The Moneylenders Regulations 1934 are hereby revoked.

(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".

49. Amendments to Hire Purchase Act 1971—(1) Sections 8, 19, 37, 41, 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 1981:".

(3) Section 4 (1) of the Hire Purchase Act 1971 is hereby amended by inserting, after the word "then", the words " , unless the Court otherwise orders,".

(4) The Hire Purchase Act 1971 is hereby amended by inserting, after section 52, the following section:

"52A. Credit Contracts Act 1981 to apply to hire purchase agreements—The provisions of the Credit Contracts Act 1981 that apply to hire purchase agreements shall apply thereto in addition to the provisions of this Act, and neither Act shall limit the provisions of the other."

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

(a) By repealing Part I, and substituting the Part I set out in the Third Schedule to this Act:

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

(6) The Second Schedule to the Hire Purchase Act 1971 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 the word "also".

(7) The following enactments are hereby consequentially repealed:

- (a) So much of the Schedule to the Broadcasting Act 1976 as relates to the Hire Purchase Act 1971:
- (b) Section 2 (2) of the Hire Purchase Amendment Act 1972.

50. Amendments to Bills of Exchange Act 1908—Section 30 of the Bills of Exchange Act 1908 is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every holder of a bill is prima facie deemed to be a holder in due course; but if in an action on a bill it is admitted or proved—

“(a) That the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality; or

“(b) That the bill was drawn as part of, or pursuant to, a credit contract and that one or more of the provisions of the Credit Contracts Act 1981 have not been complied with, or that any of paragraphs (a) to (c) of section 10 (1) of that Act apply, in respect of the contract—

the burden of proof is shifted, unless and until the holder proves that,—

“(c) In any case to which paragraph (a) of this subsection applies, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill; and

“(d) In any case to which paragraph (b) of this subsection applies, value has been given for the bill in good faith and without knowledge of the non-compliance or any oppressiveness.”

51. Amendments to Door to Door Sales Act 1967—Section 6 (1) of the Door to Door Sales Act 1967 is hereby amended by inserting, after paragraph (b), the following paragraphs:

“(ba) The agreement shall also contain a statement showing—

“(i) The full name and full address of each vendor:

“(ii) Where applicable, the amount of the total cost of credit as defined in section 5 of the Credit Contracts Act 1981 and the amounts and descriptions of the components thereof separately:

“(iii) Where applicable, the finance rate for the contract as defined in section 6 of the Credit Contracts Act 1981 and calculated in accordance with the provisions of that Act:

“(iv) The cash price (as defined in section 2 of the Credit Contracts Act 1981) of the goods:

“(bb) The agreement shall also state the following particulars in respect of payments to be made by the purchaser pursuant to the contract:

“(i) The amount of each payment:

“(ii) The number and frequency of each payment:

“(iii) The dates when the payments are to be made, or a statement that enables the purchasers to determine those dates:

“(iv) The places where those payments are to be made:”.

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

(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.

53. Transitional provisions—(1) Subject to subsections (2) to (4) of this section and section 7 of this Act, this Act shall apply in respect of every credit contract, whether made before or after the commencement of this Act.

(2) Sections 16, 22, and 25 of this Act shall not apply in respect of a controlled credit contract made before the commencement of this Act.

(3) Sections 17, 22, and 26 of this Act shall not apply in respect of a modification contract made before the commencement of this Act.

(4) Section 40 of this Act shall not apply in respect of a credit contract made before the commencement of this Act.

SCHEDULES

FIRST SCHEDULE

Section 6

DEFINITION OF ANNUAL FINANCE RATE

1. Interpretation—(1) 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) 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) In determining the annual finance rate of a credit contract where—

(a) All instalments except one are of the same amount; and

(b) The difference between the amount of the different instalment and that of the other instalments is not more than 5 percent of the amount of the other instalments,—

the different instalment may be taken as being the same as the other instalments.

(3) For the purposes of clause 2 (a) of this Schedule, where a period between instalments is expressed to be—

(a) Six months, n may be taken as being 2:

(b) A quarter or 3 months, n may be taken as being 4:

(c) A calendar month, n may be taken as being 12:

(d) A fortnight, n may be taken as being 26:

(e) A week, n may be taken as being 52.

2. Definition of “annual finance rate”—A rate $r\%$ is the 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—

$$a = \frac{r}{100n}; \text{ and}$$

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

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

FIRST SCHEDULE—*continued*

- (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

Sections 19, 21

DISCLOSURE REQUIREMENTS

PART I

Section 21 (1) (a)

INITIAL DISCLOSURE OF CONTROLLED CREDIT CONTRACT

1. Name and address of creditor—(1) Except in any case to which subclause (2) of this clause applies, the full name and full address of each creditor.

(2) Where a person enters into a credit contract in his own name as creditor, or holds security under a credit contract in his own name, on behalf of or as nominee for any other person or persons, the full name and full address of the person entering into the contract or holding security.

2. Amount of credit—(1) The amount of credit, if this is known at the time the disclosure documents are prepared.

(2) Where the amount of credit is not known at the time the disclosure documents are prepared, 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) Subject to subclause (2) of this clause, the following information in respect of the credit contract:

(a) In the case of a credit contract that is a loan secured, or to be secured, by a mortgage over real property (other than a loan to which section 4 (3) of this Act applies), or a sale of, or an agreement to sell, real property, the amounts and descriptions of the components of the total cost of credit (other than interest):

(b) In any other case, the total cost of credit showing the amounts and descriptions of the components thereof separately (including interest).

(2) This clause shall not apply in the case of a revolving credit contract.

4. Finance rate—(1) Subject to subclauses (2) to (4) 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.

SECOND SCHEDULE—*continued*

(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 2 months, and no part of the credit is used, with the knowledge of the creditor, to pay amounts owing to the creditor or a related body corporate under another credit contract.

(4) This clause shall not apply in the case of a revolving credit contract.

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 the disclosure documents are prepared:

- (a) The amount of each payment;
- (b) The number and frequency of payments;
- (c) The dates when the payments are to be made, or a statement that enables the debtor to determine those dates;
- (d) The 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 of goods (other than a disposition to which section 22 (4) of this Act applies), the following statement, prominently set out:

Statement of Rights

The Credit Contracts Act 1981 gives you a right for a short time after the terms of this contract have been disclosed to you—

- (a) To cancel the contract (but you cannot do this if you have taken possession of the goods, or if you bought them at an auction);
or
- (b) To cancel the credit and pay the cash price for the goods.

How to cancel

If you want to cancel this contract, or cancel the credit and pay only the cash price for the goods, you must give written notice to the person who sold or leased you the goods that you want to cancel. If you intend to keep the goods and just repay the credit you must pay the cash price to the person who sold or leased you the goods within 15 working days after the day you give notice.

Saturdays, Sundays, and national public holidays are not counted as working days.

Time limits for cancellation

If the disclosure documents are handed to you directly you must give notice that you intend to cancel within three working days after you receive the documents.

If the documents are mailed to you, you must give the notice within seven working days after they were posted.

SECOND SCHEDULE—*continued**What you may have to pay if you cancel*

If you cancel the contract the person who sold or leased you the goods can charge you—

- (a) The amount of any legal fees or other expenses that he has had to pay (such as surveys, credit reports, etc.):
- (b) Charges for any incidental services he has provided (such as inspections, alterations, etc.).

If you only cancel the credit and decide to pay the cash price for the goods, you can be charged, in addition to (a) and (b) above—

- (c) Interest for the period from the day you received the goods until the day you pay the cash price.

IF THERE IS A DISPUTE REGARDING YOUR RIGHTS UNDER THE CREDIT CONTRACTS ACT 1981, OR IF YOU THINK THAT THE SELLER/LESSOR IS BEING UNREASONABLE IN ANY WAY, YOU SHOULD SEE A SOLICITOR IMMEDIATELY.

PART II

Section 21 (1) (a)

MODIFICATION DISCLOSURE OF MODIFIED CREDIT CONTRACT

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

2. Total cost of credit—(1) Subject to subclause (2) of this clause 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) In the case of a credit contract that is a loan secured, or to be secured, by a mortgage over real property (other than a loan to which section 4 (3) of this Act applies), or 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):
- (b) In any other case, the total cost of credit, showing the amounts and descriptions of the components thereof separately (including interest).

(2) This clause shall—

- (a) Not apply in the case of a modification of a revolving credit contract; and
- (b) In any other case, apply only if an effect of the modification contract is to increase the total cost of credit under the credit contract.

3. Finance rate—(1) Subject to subclauses (2) and (3) of this clause, 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 I of this Schedule shall apply in respect of a modified credit contract as if the reference therein to a contract were a reference to a modified credit contract.

SECOND SCHEDULE—*continued*

- (3) This clause shall—
- (a) Not apply in the case of a modification of a revolving credit contract; and
- (b) In any other case, apply only if an effect of the modification contract is to—
- (i) Extend the period for which credit is provided under a contract to which clause 4 (3) of Part I of this Schedule applies; or
 - (ii) Increase the finance rate of the credit contract.

PART III

Section 21 (1) (a)

CONTINUING DISCLOSURE OF REVOLVING CREDIT CONTRACT

1. Opening and closing dates—The opening and closing dates of the billing period.

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

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

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

5. Charges not forming part of the cost of credit—The amount and a description of each charge payable under the contract that does not form part of the cost of credit and that has been charged during the billing period.

6. Cost of credit—The amounts of any components of the cost of credit that have been charged during the billing period, whether or not they relate to the provision of credit during that period.

7. Interest rate—(1) Where interest is payable under the contract, the rate or rates at which interest is payable at the time the disclosure documents are prepared (calculated on the same basis as the finance rate as if the interest was the only component of the cost of credit):

Provided that, where the interest rate is arrived at by adding a rate known by the debtor to a base rate determined by the creditor from time to time, only the base rate (calculated as aforesaid) at that time need be stated.

(2) Where an interest rate stated in accordance with subclause (1) of this clause is less than the finance rate for the billing period, a statement to the effect that the rate shown is less than the finance rate within the meaning of this Act.

(3) Where a base rate is stated in accordance with subclause (1) of this clause, a statement to the effect that the rate is a base rate and is not the finance rate within the meaning of this Act.

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

SECOND SCHEDULE—*continued*

PART IV

Section 19

REQUEST DISCLOSURE OF CONTROLLED CREDIT CONTRACT

1. Outstanding amounts—The following amounts (calculated as at a date specified by the creditor that is not more than 6 months before the date the request disclosure documents are prepared):

- (a) The amount of credit outstanding under the contract;
- (b) The part of the total cost of credit that is payable immediately (if any).

2. Finance rate under revolving credit contract—(1) In the case of a revolving credit contract, the finance rate for any billing period specified by the debtor or guarantor, being a billing period for which the cost of credit has been determined and ending during the period of 6 months preceding the day on which the request is made:

Provided that this subclause shall not apply in the case of a contract where the cost of credit does not vary with the amount of credit provided.

(2) For the purposes of this clause, any component of the cost of credit that relates to more than one billing period may be apportioned equally over the period to which the component relates (or, if this is not known, over the period since payment of the component was due).

3. Payments required—The information specified in clause 5 of Part I of this Schedule.

4. Details of alterations in terms—In the case of any 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,—

- (a) Details of the obligation; and
- (b) Where the finance rate has varied, the finance rate under the contract—

as at the time the disclosure documents are prepared:

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

5. Details of previous disclosure—(1) A copy of all initial disclosure documents and modification disclosure documents relating to the contract (other than documents already registered under the Land Transfer Act 1952).

(2) Any information, statement, or other matter previously required to be disclosed in respect of the contract but that was not disclosed because it was not known at the time disclosure was made.

6. Fees—(1) If the information specified in clause 1 or clause 2 of this Part of this Schedule has not previously been given to a debtor under the contract, the fee for disclosure of that information shall be the sum of \$5.

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

THIRD SCHEDULE

Section 49 (5) (a)

NEW PART I OF FIRST SCHEDULE TO HIRE PURCHASE ACT 1971

“PART I

FINANCIAL DETAILS TO BE SHOWN ON THE FIRST PAGE OF EVERY
HIRE PURCHASE AGREEMENT

Cash price	.....	.....	.....	\$.....
Charges (not comprised in the total cost of credit)—					
(a) Freight	.....	.....	.....	\$.....
(b) Installation	.....	.....	.....	\$.....
(c) Statutory fees	.....	.....	.....	\$.....
(d) Insurance (premium advanced by vendor)	.....	.....	.....	\$.....
(e) Other charges (specify)	.....	.....	.....	\$.....
Total Gross Cost	.....	.....	.....	\$.....	(A)
Less deposit—					
(a) Cash	.....	.....	.....	\$.....
(b) Trade-in allowance	.....	.....	.....	\$.....
				\$.....	(B)
Amount Financed, (A) — (B):				\$.....	(C)
<i>[Where credit is extended through a variable credit account, insert the following details:]</i>					
Charges (pertaining solely to terms transactions)—					
(a) Finance charge for	.....	.....	.....	\$.....
months	.....	.....	.....	\$.....
(b) Booking fee	.....	.....	.....	\$.....
(c) Maintenance and repairs	.....	.....	.....	\$.....
(d) Other charges (specify)	.....	.....	.....	\$.....
				\$.....	(D)
Balance Payable: (C) + (D):	.....	.....	.....	\$.....	(E)
Total Cost of Transaction, (A) + (D):	.....	.....	.....	\$.....	(F)
Additional Cost Over Cash Transaction (D)	.....	.....	.....	\$.....
<i>[Where credit is extended through a variable credit account, insert the following details:]</i>					
Charges (pertaining solely to terms transactions)—					
(a) Booking fee	.....	.....	.....	\$.....
(b) Maintenance and repairs	.....	.....	.....	\$.....
(c) Other charges (specify)	.....	.....	.....	\$.....
				\$.....	(D)
Balance Payable: (C) + (D):	.....	.....	.....	\$.....	(E)

This Act is administered in the Department of Justice.