



Republic of Namibia
Annotated Statutes

Credit Agreements Act 75 of 1980 (RSA)

(RSA GG 7073)

applied to South West Africa as of 27 May 1981 by AG Proc. 17/1981 (OG 4472)
(see section 30 of Act as substituted by that Proclamation)

APPLICABILITY TO SOUTH WEST AFRICA: Section 30 of the Act, as substituted by the Credit Agreements Proclamation, AG 17 of 1981 (OG 4472), states “This Act shall be called the Credit Agreements Act, 1980, and shall come into operation on the date on which the Credit Agreements Proclamation, 1981, of the Administrator-General is published in the *Official Gazette*.” Section 1 of the Credit Agreements Proclamation, AG 17 of 1981, states “Subject to the provisions of this Proclamation, the Credit Agreements Act, 1980 (hereinafter referred to as the Act), shall apply to the territory of South West Africa.” This wording did not make subsequent amendments to the Act automatically applicable to South West Africa.

TRANSFER TO SOUTH WEST AFRICA: Section 4 of the Credit Agreements Proclamation, AG 17 of 1981 (OG 4472), made certain amendments to the Act which had the effect of transferring the administration of the Act to South West Africa. AG 17 of 1981 satisfies the definition of a “transfer proclamation” in section 1 of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (“a proclamation by the Administrator-General by which the administration of the affairs of the territory in relation to any matter is transferred from a Minister of the Republic to the Administrator-General”). Furthermore, as noted above, the terms of the application of the Act to South West Africa did not make subsequent amendments to the Act automatically applicable to South West Africa. There were two amendments to the Act in South West Africa after the date of transfer and prior to Namibian independence – the *Credit Agreements Amendment Act 9 of 1985* (RSA GG 9642) and the *Credit Agreements Amendment Act 53 of 1987* (RSA GG 10920) – neither of which applied to South West Africa because neither was expressly made so applicable.

as amended by

Credit Agreements Proclamation, AG 17 of 1981 (OG 4472)

came into force on date of publication: 27 May 1981

Credit Agreements Amendment Act 3 of 2016 (GG 6043)

came into force on date of publication: 20 June 2016

ACT

To provide for the regulation of certain transactions in terms of which movable goods are purchased or leased on credit or certain services are rendered on credit; for the repeal of the Hire Purchase Act, 1942; and for incidental matters.

(Afrikaans text signed by the State President)

(Assented to 4 June 1980)

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Schedule: LAWS REPEALED

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

- [AG 17 of 1981 makes the following substitutions throughout the Act:**
- (a) "Administrator-General" for "Minister" and "Minister of Finance";
 - (b) "Secretary for Economic Affairs" for "Secretary for Commerce and Consumer Affairs";
 - (c) "Official Gazette" for "Gazette"; and
 - (d) "territory" for "Republic".]

Definitions

1. In this Act, unless the context otherwise indicates -

"cash price", in relation to a credit agreement which is -

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- (a) a credit transaction in terms of which a service is rendered, means the cash price at which the credit receiver may obtain that service from the credit grantor;
- (b) a leasing transaction, means the cash price at which the goods leased in terms of that leasing transaction are normally sold by the credit grantor on the date on which that leasing transaction is entered into or, if the credit grantor is not a trader normally selling any such goods, the reasonable money value of those goods as agreed upon between the credit grantor and the credit receiver;

“credit agreement” means -

- (a) a credit transaction or a leasing transaction;
- (b) a transaction which or transactions which together have the same import as a transaction referred to in paragraph (a), irrespective of the form of the first-mentioned transaction or transactions and irrespective of whether any such transaction or transactions are subject to a resolutive or suspensive condition;

“credit grantor” means -

- (a) a seller, or a person who renders a service, in terms of a credit transaction, and includes a person to whom the rights or the rights and obligations of any such seller or any such person so rendering a service have passed by assignment, cession, delegation or otherwise;
- (b) a lessor in terms of a leasing transaction, and includes a person to whom the rights or the rights and obligations of any such lessor have passed by assignment, cession, delegation or otherwise;

“credit receiver” means -

- (a) a purchaser, or a person to whom a service is rendered, in terms of a credit transaction, and includes a person to whom the rights or the rights and obligations of any such purchaser or any person to whom a service is so rendered, have passed by assignment, cession, delegation or otherwise;
- (b) a lessee in terms of a leasing transaction, and includes a person to whom the rights or the rights and obligations of any such lessee have passed by assignment, cession, delegation or otherwise;

“credit transaction” means -

- (a) a transaction, including an instalment sale transaction, in terms of which goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future;
- (b) a transaction in terms of which a person renders a service against payment to him by the person to whom the service is rendered of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future;

“goods” means movable goods;

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“initial payment” means the amount to be paid by the credit receiver on the date of a credit agreement which is a credit transaction;

“initial rental” means the amount to be paid by the credit receiver on the date of a credit agreement which is a leasing transaction;

“instalment sale transaction” means a transaction in terms of which -

- (a) goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
- (b) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or
- (c) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that transaction;

“leasing transaction” means a transaction in terms of which a lessor leases goods to a lessee against payment by the lessee to the lessor of a stated or determinable sum of money -

- (a) at a stated or determinable future date; and
- (b) in whole or in part in instalments over a period in the future,

and includes a transaction by which it is agreed at the time of the conclusion of the transaction that the debtor or any person on his behalf, shall at any stage –

- (i) during or after the expiry of the lease; or
- (ii) after the termination of the transaction

become the owner of those goods or retain the possession or use or enjoyment of those goods;

[definition of “leasing transaction” substituted with amendment markings by Act 3 of 2016; punctuation changes not indicated by amendment markings]

[definition of “Minister” deleted by AG 17 of 1981]

“service” does not include a service rendered or provided by a person in the practising of a profession in respect of which his name has in terms of any law, excluding a regulation been entered into a roll or register;

[definition of “service” amended by AG 17 of 1981]

“State” includes the Administrator-General;

[definition of “State” inserted by AG 17 of 1981]

“territory” means the territory of South West Africa.

[The definition of “territory” is inserted by AG 17 of 1981. The full stop at the end should be a semicolon.]

“this Act” includes any regulation or notice made or issued thereunder.

Application of Act

2. (1) The provisions of this Act shall apply to such credit agreements or categories of credit agreements as the Administrator-General may determine from time to time by notice in the *Official Gazette*: Provided that the Administrator-General shall not have any power to apply such provisions to credit agreements in terms of which -

(a) a person purchases or hires goods for the sole purpose of business activities;

[paragraph (a) substituted with amendment markings by Act 3 of 2016]

(b) the State is the credit grantor.

(2) The Administrator-General may at any time by notice in the *Official Gazette* exempt any person or category of persons from any of or all the provisions of this Act on such conditions and to such extent as he may deem fit.

(3) When the Administrator-General intends to revoke or amend any notice referred to in subsection (2), he shall publish a notice in the *Official Gazette* which shall contain the revocation or amendment in question and in which all interested persons are requested to lodge in writing within the period determined in the last-mentioned notice any objections and representations in connection with that revocation or amendment with the Secretary for Economic Affairs.

(4) Any revocation or amendment referred to in subsection (3) shall come into operation on a date fixed by the Administrator-General by notice in the *Official Gazette*, which date shall not be earlier than 60 days after the expiry of the period referred to in subsection (3): Provided that the Administrator-General may in such notice alter such revocation or amendment in accordance with any objections or representations lodged in respect thereof in terms of subsection (3), without complying with the provisions of that subsection in respect of the revocation or amendment so altered.

Regulations

3. (1) The Administrator-General may by regulation in the *Official Gazette* or, if that regulation is to be applied only to any particular person or persons, sent by registered mail or delivered by hand to such person or persons -

(a) prescribe the maximum period within which the full price under a credit agreement shall be paid;

(b) prescribe the portion of the cash price or any other consideration which shall be paid or delivered as an initial payment or initial rental in terms of a credit agreement;

(c) prescribe the manner in which the price of any goods or service shall be displayed or advertised;

(d) generally, prescribe any such conditions as he may find fit in regard to any credit agreement.

(2) Different regulations may be made under subsection (1) in respect of different credit agreements, kinds of credit agreements, goods, services, classes or groups of goods or services, credit grantors or credit receivers or categories of credit grantors or credit receivers.

Furnishing of information to prospective credit receivers

4. Any prospective credit grantor or his manager, agent or employee shall, before entering into a credit agreement at a place not being his business premises, in writing draw the attention of a prospective credit receiver to the provisions of section 13.

Requirements in respect of and contents of credit agreements

5. (1) Subject to the provisions of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968), any credit agreement shall -

[Act 73 of 1968 has been re-named the Usury Act.]

- (a) be reduced to writing and signed by or on behalf of every party thereto;
- (b) state the names of the credit grantor and the credit receiver and their business or residential addresses or, if they do not have such addresses, any other address in the territory;
- (c) state the amount paid or to be paid as an initial payment or as initial rental;
- (d) contain a description whereby the goods or service to which that credit agreement relates, and any goods delivered to the credit grantor as payment, may be readily identified;
- (e) if it is an instalment sale transaction, state the conditions, if any, as to the reservation and passing of the ownership of the goods to which that credit agreement relates;
- (f) if it is an instalment sale transaction or a leasing transaction, state the conditions, if any, as to the right of the credit grantor to the return of the goods to which that credit agreement relates;
- (g) contain a reference to the provisions of section 13;
- (h) be in the official language which the credit receiver may request in writing.

(2) No person shall be a party to a credit agreement which does not comply with a requirement referred to in subsection (1): Provided that a credit agreement which does not comply with any such requirement shall not merely for that reason be invalid.

(3) If after delivery to the credit receiver of goods to which a credit agreement relates, the credit grantor and the credit receiver agree that those goods or any part thereof shall be replaced by any other goods, the goods to be described in terms of subsection (1)(d) in that credit agreement shall, as from the date on which those goods are or any part thereof is replaced, be the goods to which that credit agreements relates.

(4) The addresses stated in terms of subsection (1)(b) in a credit agreement, shall for all the purposes of that credit agreement serve as *domicilium citandi et executandi* of the parties thereto, and any notice of any change of any such address shall be given in writing by the party concerned and delivered by hand or sent by registered mail by him to the other parties, and in such a case the changed address being so given notice of shall serve as *domicilium citandi et executandi* of the party who gave such notice.

Invalid provisions relating to credit agreements

6. (1) A credit agreement or any other agreement or document shall not contain a provision having the effect that -

- (a) a person agrees to enter into a credit agreement;
- (b) a person acting on behalf of the credit grantor in connection with the conclusion of any credit agreement or the negotiations preceding the conclusion of a credit agreement, is appointed as or deemed to be the agent of the credit receiver;
- (c) the credit grantor is exempted from liability for any act, omission or representation by any person acting on his behalf;
- (d) the liability of the credit grantor in terms of any guarantee or warranty which would, but for such provision, be implied in a credit agreement, is excluded or restricted;
- (e) the credit grantor or any person acting on his behalf is authorized to enter upon any premises for the purpose of taking possession of goods to which a credit agreement relates, or is exempted from liability for any such entry;
- (f) the credit receiver chooses a *domicilium citandi et executandi* at any address other than an address referred to in section 5(4);
- (g) the credit receiver agrees to forfeit any moneys paid by him in terms of a credit agreement or any claim in respect of the goods or service in question if he fails to comply with any term of the credit agreement before such goods are delivered or such service is rendered to him;
- (h) the credit receiver is prohibited from resiling from the credit agreement and from claiming repayment of any amount paid by him in terms of the credit agreement if without any reluctance on his part to accept performance in accordance with such credit agreement, the goods in question have not been delivered or the service in question has not been rendered to him within 30 days after the date of the credit agreement;
- (i) the period of the credit agreement is left undetermined;
- (j) the credit receiver guarantees and warrants that the credit agreement was signed on the business premises of the credit grantor;
- (k) the credit receiver acknowledges that the credit grantor or any person on his behalf did not make any representations or give any warranties before the conclusion of or in connection with the credit agreement;
- (l) the credit receiver acknowledges that he has inspected any goods to which such credit agreement relates.

(2) The provisions of subsection 1(a), (g), (h), (k) and (l) shall not apply to any credit agreement providing for the goods in question to be imported into the territory as per order of or be manufactured according to the requirements of the prospective credit receiver.

(3) No credit grantor shall require or induce any credit receiver to acknowledge the receipt of any goods or service to which any credit agreement relates unless those goods have in

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fact been delivered or such service has in fact been rendered by the credit grantor to the credit receiver.

(4) No person shall be a party to a credit agreement or any other agreement or document in terms of which or which has the effect that -

- (a) an earlier credit agreement is cancelled and substituted by a later credit agreement in terms of which the goods or service, or any part thereof, to which that earlier agreement relates, and any other goods or service, are sold, rendered or leased to the credit receiver concerned; and
- (b) any money or other consideration paid or delivered in terms of that earlier credit agreement to the credit grantor concerned, shall serve as an initial payment or as initial rental in respect of the goods or service to which that later credit agreement relates.

(5) No credit agreement shall be binding until the credit receiver has paid at least the initial payment or initial rental prescribed by regulation.

(6) No person shall be a party to a credit agreement in terms of which the period within which the full price is payable, exceeds the appropriate prescribed period.

(7) For the purpose of subsection (5) -

- (a) payment of the initial payment or initial rental may be effected wholly or partly in goods;
- (b) payment in goods to the extent that the value placed thereon for the purposes of such payment exceeds a reasonable price for those goods, shall not be regarded as payment;
- (c) no credit grantor shall make any money available or cause any money to be made available by any other person to a credit receiver for the purpose of making any payment out of such money in respect of a credit agreement, and no credit receiver shall receive or make any payment out of money obtained directly or indirectly from or through the credit grantor or any other person whose business or part of whose business it is, by arrangement with a credit grantor, to make money available for payment in terms of a credit agreement: Provided that the provisions of this paragraph shall not be so construed as to prohibit -
 - (i) any payment in terms of a credit agreement by a credit receiver out of money paid or owing to the credit receiver by the credit grantor as emoluments; or
 - (ii) a credit receiver from making arrangements with any banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or any other financial institution to obtain money to pay any balance owing by a credit receiver but not yet claimable in terms of a credit agreement.

**[The Banks Act 23 of 1965 has been replaced
by the Banking Institutions Act 2 of 1998.]**

Inducement to enter into credit agreements

7. Any prospective credit grantor or his manager, agent or employee shall not, as an inducement to enter into any credit agreement, directly or indirectly offer, give or promise any

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benefit to any prospective credit receiver unless such benefit, in the ordinary course of events, will constitute a condition of the credit agreement

Obligation of credit receiver to furnish certain information

8. (1) If at any time during the currency of any credit agreement the credit receiver or any other person who is or was in possession of any goods to which the credit agreement relates or who knows where such goods are, is requested in writing by or on behalf of the credit grantor or verbally or in writing by any deputy sheriff or messenger of the court, he shall, in accordance with the provisions of subsection (2), notify the person making the request -

- (a) of his residential and business addresses;
- (b) of the premises where such goods are normally kept, and of the name and address of the landlord, if any, of those premises;
- (c) if those goods are no longer in his possession, of the name and address of the person in whose possession they are or to whom they were handed over, and of the place where they are kept.

(2) Any notice in terms of subsection (1) shall -

- (a) in the event of a request by or on behalf of the credit grantor, be sent by registered mail to the person who made the request or, if that person agrees thereto, be given by furnishing verbal information to him, within seven days of the receipt of such request;
- (b) in the event of a request made by any deputy sheriff or messenger of the court, be given forthwith by furnishing verbal information to him.

(3) If at any time during the currency of any credit agreement -

- (a) the credit receiver changes his residential or business address;
- (b) the goods to which the credit agreement relates, or any part thereof, are removed from the place where the goods are ordinarily kept;
- (c) the credit receiver loses or parts with the possession of the goods to which the credit agreement relates, or any part thereof,

the credit receiver shall within 14 days notify by registered post the credit grantor -

- (i) in a case contemplated in paragraph (a), of the new address;
- (ii) in a case contemplated in paragraph (b), of the premises to which the goods in question, or part thereof, were removed, and of the name and address of the landlord, if any, of such premises;
- (iii) in a case contemplated in paragraph (c), of the name and address of the person in whose possession the goods in question are or to whom they were handed over, and of the place where they are kept.

Limitation of cession by credit receiver of certain periodical amounts

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9. (1) Any amount exceeding 25% of a periodical amount payable in terms of a service contract or towards the maintenance of any person, shall not be subject to any cession or hypothecation to secure any payment in terms of one or more than one credit agreement, and any such cession or hypothecation shall be invalid to the extent to which it exceeds the said 25%.

(2) Any person entitled to any periodical amount referred to in subsection (1) who, to secure any payment in terms of any credit agreement, has granted to any other person authority to receive or to collect such payment or any portion thereof, may at any time revoke such authority.

Negotiable instruments

10. No credit grantor shall accept any post-dated negotiable instrument as an initial payment or initial rental in terms of a credit agreement.

Limitation of right of credit grantor to enforce certain provisions of credit agreement

11. No credit grantor shall, by reason of the failure of the credit receiver to comply with any obligation in terms of any credit agreement, be entitled to claim the return of the goods to which the credit agreement relates unless the credit grantor by letter, handed over to the credit receiver and for which an acknowledgement of receipt has been obtained or posted by prepaid registered mail to the credit receiver at his address stated in the credit agreement in terms of section 5(1)(b) or the address changed in accordance with section 5(4), has notified the credit receiver that he so failed and has required him to comply with the obligation in question within such period, being not less than 30 days after the date of such handing over or such posting, as may be stated in the letter, and the credit receiver has failed to comply with such requirement: Provided that should the credit receiver have failed on two or more occasions to comply with obligations in terms of any credit agreement and the credit grantor has given notice as aforesaid, the said period shall be reduced to 14 days.

Right of credit receiver to reinstatement after return of goods to credit grantor

12. (1) If the credit grantor, otherwise than by order of court, has recovered possession of any goods to which any credit agreement relates, the credit receiver, except where he has himself terminated the credit agreement, shall be entitled, against payment within a period of 30 days after the credit grantor recovered possession of such goods of the amounts, if any, which are then claimable and unpaid in terms of the credit agreement and of the reasonable costs incurred by the credit grantor in connection with the return of those goods, to the return of those goods at the place of business of the credit grantor or, if the credit receiver so requests or the credit grantor has no place of business, at the premises on which those goods are kept, and to be reinstated in his rights and obligations in terms of the credit agreement.

(2) No credit grantor shall fail to return the goods in question to the credit receiver in accordance with subsection (1).

(3) No credit grantor shall require or induce any credit receiver to sign any document in terms of which the credit receiver terminates a credit agreement and agrees to return to the credit grantor the goods to which such credit agreement relates before expiry of the period of 30 days referred to in section 11.

Termination of credit agreement by credit receiver

13. (1) When any credit agreement in respect of which the initiative emanated from any credit grantor or his manager, agent or employee, is signed by any credit receiver at a place

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other than the business premises where the credit grantor or his manager, agent or employee ordinarily carries on business, the credit receiver may within five days after the date of the credit agreement terminate it by notice in writing delivered or sent by prepaid registered mail to the credit grantor, and by tendering the return of any goods delivered to him in terms of the credit agreement.

(2) The period of five days contemplated in subsection (1) shall be calculated with the exclusion of the day upon which the credit agreement was entered into and of any Saturday, Sunday or public holiday.

(3) When any credit agreement is terminated by any credit receiver in accordance with subsection (1), the credit grantor shall within 10 days of the date upon which the relevant notice of termination was delivered or sent to him by mail, refund to such credit receiver the amount of all payments made to him in terms of the credit agreement.

Rights of credit receiver upon non-compliance with credit agreement

14. If a credit receiver fails to comply with any obligation in terms of any credit agreement or if any other contingency occurs which in terms of such credit agreement entitles the credit grantor to take action against the credit receiver, and such credit agreement is not terminated or rescinded, such credit receiver shall, subject to the provisions of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968), not be bound to make any payment or to the performance of any other act whereby the credit grantor would be placed in a better financial position than that in which he would have been if the credit receiver had carried out the obligation in question or if such contingency had not occurred.

[Act 73 of 1968 has been re-named the Usury Act.]

Rights of parties to credit agreement which is instalment sale transaction, after return of goods

15. If the goods to which a credit agreement which is an instalment sale transaction relates, are returned to the credit grantor, and the value thereof at such return exceeds the amount still owing in terms of that credit agreement, as calculated in accordance with the provisions of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968), the credit grantor shall pay the difference to the credit receiver.

[Act 73 of 1968 has been re-named the Usury Act.]

Valuation of goods

16. (1) If a credit agreement which is an instalment sale transaction is terminated or rescinded, and the goods in question are returned to the credit grantor, the value of those goods for the purposes of this Act shall be the value as at the date on which those goods are returned to the credit grantor, placed thereon by a competent and unbiased person designated by the credit grantor: Provided that -

- (a) if those goods are thereafter sold or leased at an amount exceeding the amount so placed thereon, the amount so exceeding shall be deemed to be the value of those goods for the purposes of this Act;
- (b) the credit grantor, with due regard to any reasonable costs -
 - (i) shall pay to the credit receiver in terms of the terminated or rescinded agreement; or

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- (ii) when applicable, shall set off against any amount still owing by the credit receiver in terms of the terminated or rescinded agreement,

an amount equal to the difference between the value placed thereon as aforesaid and the amount exceeding as aforesaid.

(2) The provisions of subsection (1) shall not derogate from the power of a court to determine the value of goods if the credit grantor concerned fails to cause it to be done in accordance with those provisions.

Power of court

17. (1) In any proceedings instituted by a credit grantor for the return of goods to which a credit agreement which is an instalment sale transaction relates, the court may, without derogating from any other power, make an order providing for the return of such goods, or any part thereof, to the credit grantor on condition that -

- (a) the amount then still owing by the credit receiver in terms of that credit agreement be reduced by an amount equal to the value of the goods to be so returned to the credit grantor; or
- (b) if such value exceeds the amount then still owing as aforesaid, the credit grantor shall pay to the credit receiver an amount equal to the difference between such value and the amount then still owing as aforesaid.

(2) The court shall, in addition to any other power, have the power, after the institution of any proceedings referred to in subsection (1) and pending the termination thereof, upon application of the credit grantor, to make such orders as the court may deem just in order to have the goods in question valued or protected from damage or depreciation, including orders restricting or prohibiting the use of such goods or as to the custody thereof.

Automatic interdict against removal or use of goods

18. (1) When summons is issued by any credit grantor in any proceedings in connection with or arising from any credit agreement, he may include in such summons a notice whereby any person is prohibited from using the goods in question or removing them from the place where they are when the summons is served or allowing them to be used or removed from such place by any person other than the plaintiff or a deputy sheriff or a messenger of the court.

(2) A notice referred to in subsection (1) shall have the effect of an interdict restraining any person having knowledge thereof, from using or removing any such goods or allowing them to be used or removed.

(3) Any person affected by a notice referred to in subsection (1) may apply to the court to have it set aside.

(4) No person shall ignore or fail to comply with any notice referred to in subsection (1).

Orders as to committal for contempt of court and emolument attachment and garnishee orders

19. No court shall make -

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- (a) an order for committal for contempt of court;
- (b) an emoluments attachment order;
- (c) a garnishee order;
- (d) an order referred to in section 65A (1) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), or in rule 45(12)(j) of the Uniform Rules of Court published under section 43(2)(a) of the Supreme Court Act, 1959 (Act No. 59 of 1959),

[The Supreme Court Act 59 of 1959 has been replaced by the Supreme Court Act 15 of 1990, in terms of which new Rules of the Supreme Court have been issued.]

for the purpose of enforcing compliance with any judgement or order of court for payment by any credit receiver of any amount payable in terms of, or as a result of the termination or rescission of, or as damages for the breach of, a credit agreement which is an instalment sale transaction, or in terms of any novation of any claim for such amount unless the credit grantor concerned has satisfied the court that -

- (i) the goods in question cannot be recovered by him by reason of the fact that without any fault on his part those goods have been destroyed or become lost;
- (ii) the credit receiver is no longer in possession of those goods and the credit grantor cannot locate the whereabouts thereof in the territory;
- (iii) those goods have been seized under the Customs and Excise Act, 1964 (Act No. 91 of 1964), and that it is unlikely that the credit grantor will obtain possession thereof.

[The Customs and Excise Act 91 of 1964 has been replaced by the Customs and Excise Act 20 of 1998.]

Limitation on entry into credit agreements

20. When any administration order referred to in section 74(1) of the Magistrates' Courts Act, 1944, has been granted to any person whose gross monthly income is less than R250, no credit grantor or his manager, agent or employee shall, as long as such administration order remains in force, without the consent in writing of the administrator concerned enter into any credit agreement with such person if the price payable in terms of that credit agreement exceeds R100.

Jurisdiction

21. For the purposes of this Act in relation to civil proceedings, section 28(1)(d) of the Magistrates' Courts Act, 1944, shall not apply unless the credit receiver concerned at the relevant time does no longer reside in the territory.

Waiver of rights by credit receiver

22. The waiver by any credit receiver of any right under this Act, shall be invalid.

Offences and Penalties

[The word "penalties" should not be capitalised.]

23. Any person who contravenes or fails to comply with any provision of this Act, commits an offence and is liable to a fine not exceeding N\$50 000 or an amount equal to the deposit payable as required by the Act, whichever amount is higher or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.

[Section 23 is substituted with amendment markings by Act 3 of 2016. The amendment markings are incomplete. There should be a comma after the word "higher" to correctly offset the phrase "whichever amount is higher".]

Act or omission by managers, agents or employees

24. (1) Whenever any manager, agent or employee or any credit grantor does or omits to do any act which it would be an offence under this Act for the credit grantor to do or omit to do, unless it is proved that -

- (a) in doing or omitting to do that act, such manager, agent or employee was acting without the connivance or the permission of the credit grantor;
- (b) all reasonable steps were taken by the credit grantor to prevent any such act or the omission to do any such act; and
- (c) the act or omission charged, whether lawful or unlawful, was not within the scope of the authority or in the course of the employment of such manager, agent or employee,

the credit grantor shall be presumed himself to have done or omitted to do that act, and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any such act or omission shall not of itself be sufficient proof that he took all reasonable steps to prevent such act or omission.

(2) Whenever any manager, agent or employee of any credit grantor does or omits to do any act which it would be an offence under this Act for the credit grantor to do or omit to do, such manager, agent or employee shall be liable to be convicted and sentenced in respect thereof as if he were the credit grantor.

Evidence

25. (1) Any document purporting to be an affidavit issued by an inspector referred to in section 26 and stating the cash price at which any particular person on any particular date or during any particular period -

- (a) sold or leased or would have sold or leased any particular goods; or
- (b) rendered or would have rendered any particular service,

shall upon mere production by any person in any proceedings resulting from or arising out of any credit agreement, be *prima facie* proof of the actual cash price of such goods or service.

(2) An allegation in a charge sheet or an indictment in any prosecution for an offence under this Act that -

- (a) any person belongs to a particular category of persons;
- (b) goods to which any credit agreement relates, belong to any particular class or group of goods;

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- (c) any service to which any credit agreement relates, belongs to any particular class or group of services;
- (d) any credit agreement belongs to any particular or specified kind;
- (e) the provisions of this Act apply to the goods or service in question,

shall be sufficient proof of the facts therein alleged unless the contrary is proved.

Powers of inspectors

26. (1) Any inspector furnished with inspection authority in writing by the Secretary for Economic Affairs or by an official authorized by him, may conduct an investigation to gather such information as such Secretary or official may require or to determine whether the provisions of this Act are being or have been complied with, and may for that purpose -

- (a) at all reasonable times enter any place in respect of which he has reason to believe that -
 - (i) there are on or in it any goods, books or other documents;
 - (ii) it is connected with any goods, service, books or other documents,to which the provisions of this Act are applicable;
- (b) order any person who has or had goods in his possession or under his control, or who renders or has rendered any service to which any credit agreement relates or may relate, or the manager, agent or employee of such person -
 - (i) to produce to him any book, record or other document in the possession or under the control of such person or his manager, agent or employee;
 - (ii) to furnish him at such place and in such manner as he may specify, with such information in respect of such book, record or other document as he may desire;
- (c) examine or make extracts from or copies of any such book, record or other document;
- (d) seize and retain any such book, record or other document to which any prosecution under this Act may relate: Provided that the person from whose possession or custody books or other documents were taken, shall, as long as such books or other documents are in the possession or custody of the inspector concerned, at his request be allowed, at his own expense and under the supervision of such inspector, to make copies of or take extracts from such books or other documents at any reasonable time.

(2) No person shall -

- (a) fail on demand to put at the disposal of any inspector referred to in subsection (1), anything in his possession or under his control or on his premises which may relate to any inspection;
- (b) fail to comply with any order given under subsection (1)(b);

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(c) hinder or obstruct any inspector referred to in subsection (1) in the exercise of his powers under this section;

(d) falsely hold himself out to be an inspector referred to in subsection (1).

(3) Any inspector referred to in subsection (1) shall issue a receipt to the owner or person in control of anything seized and retained under this section.

(4) Any inspector referred to in subsection (1) who exercises any power or performs any duty or function under this section, shall be subject to the orders and control of the Secretary for Economic Affairs or an official authorized by him.

(5) Any inspector referred to in subsection (1) who exercises any power in terms of this section shall, at the request of any person affected by the exercise of such power, produce the inspection authority in writing furnished to him in accordance with subsection (1).

(6) Any inspector referred to in subsection (1) shall not exercise his powers under this section in respect of a banking institution registered under the Banks Act, 1965 (Act No. 23 of 1965), or any other financial institution unless he beforehand obtained the permission in writing of the Administrator-General.

[The Banks Act 23 of 1965 has been replaced
by the Banking Institutions Act 2 of 1998.]

Repayment of certain money by credit grantor

27. Any repayment by any credit grantor in terms of this Act shall be made within 21 days after he has been requested therefor in writing by the credit receiver.

Secrecy

28. No person shall in respect of any business undertaking disclose any information which came to his knowledge in the performance of his duties or functions under this Act, except -

(a) for the purpose of performing his duties or functions in terms of this Act; or

(b) when required in respect of criminal proceedings by order of any competent court or in terms of any law.

Repeal of laws

29. The laws specified in the Schedule are hereby repealed.

Short title and commencement

30. This Act shall be called the Credit Agreements Act, 1980, and shall come into operation on the date on which the Credit Agreements Proclamation, 1981, of the Administrator-General is published in the *Official Gazette*.

[section 30 substituted by AG 17 of 1981]

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Schedule

LAWS REPEALED

Number and year of Act	Title
Act No. 36 of 1942.....	Hire Purchase Act, 1942
Act No. 46 of 1954.....	Hire Purchase Amendment Act, 1954
Act No. 14 of 1957.....	Hire Purchase Amendment Act, 1957
Act No. 50 of 1959.....	Hire Purchase Amendment Act, 1959
Act No. 30 of 1965.....	Hire Purchase Amendment Act, 1965
Act No. 79 of 1970.....	Hire Purchase Amendment Act, 1970
Act No. 73 of 1972.....	Hire Purchase Amendment Act, 1972