

CONSUMER CREDIT AMENDMENT ACT 2006

ARRANGEMENT OF SECTIONS

1. Short title and commencement
2. Section 2 amended
3. Section 6 amended
4. Section 7 amended
5. Section 10 amended
6. Section 11 amended
7. Section 12 amended
8. Section 14 amended
9. Section 15 amended
10. Section 18 amended
11. Section 19 amended
12. Section 21 amended
13. Section 24 amended
14. Section 25 amended
15. Section 27 amended
16. Section 30 amended
17. Section 31 amended
18. Section 34 amended
19. Section 36 amended
20. New section 36A added
21. Section 37 repealed and replaced
22. Section 39 amended
23. Section 44 amended
24. Section 51 amended
25. Section 52 repealed and replaced
26. Section 53 amended
27. Section 54 amended
28. Section 55 amended
29. Section 56 amended
30. Section 59 amended
31. Section 60 amended
32. Section 61 amended
33. Section 63 amended
34. New section 63A added
35. Section 65 amended

36. Section 67 amended
37. Section 73 amended
38. Section 76 amended
39. Section 78 amended
40. Section 79 amended
41. Section 80 amended
42. Section 87 amended
43. Section 99 amended
44. Section 116 amended
45. Section 118 amended
46. Section 123 amended
47. Section 124 amended
48. Section 131 amended
49. Section 133 amended
50. Section 137 amended
51. Section 139 amended
52. Section 142 amended
53. Section 145 amended
54. Section 147 amended
55. Section 151 amended
56. Section 152 amended
57. Section 157 amended
58. Section 163 amended
59. Section 164 amended
60. Section 175 amended
61. New section 178A added
62. Section 180 repealed and replaced
63. Section 181 amended
64. Section 183 amended
65. New section 183A added
66. Schedule 1 amended
67. New Schedule 1A added
68. Part 6 repealed
69. Consequential amendments

ACT NO. 1 OF 2006

I assent.

[L.S.]

J. I. ULUIVUDA
President

[22nd March 2006]

AN ACT**TO AMEND THE CONSUMER CREDIT ACT 1999**

ENACTED by the Parliament of the Fiji Islands—

Short title and commencement

1.—(1) This Act may be cited as the Consumer Credit Amendment Act 2006, and comes into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

(2) In this Act, the Consumer Credit Act 1999 is referred to as “the principal Act”.

Section 2 amended

2. Section 2 of the principal is amended—

- (a) by re-numbering the section as subsection (1);
- (b) by inserting next after the definition of “acceleration clause” the following definition—

“ “amount of credit” means the amount of a debt actually incurred, but does not include—

- (a) any interest charge under the contract; or
- (b) any fee or charge—
 - (i) that is to be or may be debited after credit is first provided under the contract; and

Consumer Credit—1 of 2006

- (ii) that is not payable in connection with the making of the contract or the making of a mortgage or guarantee related to the contract;”;
- (c) in the definition of “consumer” by inserting the word “natural” before the word “person”;
- (d) by deleting the definition of “credit” and substituting the following—
 - ““credit” means the right granted by one person (the creditor) to another person (the debtor) to defer payment of a debt, and includes the right granted by one person to another to incur a debt and defer its payment;”;
- (e) in the definition of “credit fees and charges”—
 - (i) by deleting paragraph (b) and substituting the following—
 - “(b) any fees or charges that are payable to or by a credit provider in connection with a credit contract in connection with which both credit and debit facilities are available if the fees or charges would be payable even if credit facilities were not available (not being annual fees or charges in connection with continuing credit contracts under which credit is ordinarily obtained by the use of a card); or”;
 - (ii) in paragraph (c), by deleting the words “and duties” and substituting the words “, or duties,”; and
 - (iii) by inserting next after paragraph (c) the following new paragraph—
 - “(d) enforcement expenses.”.
- (f) by deleting the definition of “interest” and substituting the following—
 - “ “interest” means the return or compensation for the use or retention by one person of a sum of money belonging to or owed to another;”;
- (g) by deleting the definition of “predominant”;
- (h) by inserting next after the definition of “regulations” the following new definitions—
 - ““related body corporate” means a body corporate that—
 - (a) is the holding company of another body corporate;
 - (b) is a subsidiary of another body corporate; or
 - (c) is a subsidiary of the holding company of another body corporate;

“retained credit fees and charges” means credit fees and charges retained by the credit provider, other than credit fees and charges passed on to (or retained in reimbursement of an amount paid to)—

- (d) a third party that is not a related body corporate of the credit provider; or
 - (e) a financial institution that is such a related body corporate in respect of the provision of banking services that are provided to the credit provider by the financial institution on the same terms as those services are ordinarily provided to customers who are not associated with the financial institution;” and
- (i) by inserting next after subsection (1) the following new subsection—
- “(2) For the purposes of this Act, a person is “associated” with a credit provider if—
- (a) the person and the credit provider are related bodies corporate; or
 - (b) the person is a supplier in respect of whom the credit provider is a linked credit provider; or
 - (c) the person is an officer, agent or employee of the credit provider, or of any such related body corporate or supplier, acting in that capacity.”.

Section 6 amended

3. Section 6 of the principal Act is amended—

- (a) in subsection (1)(a), by deleting all the words beginning with “or is a body” and ending with “Islands”; and
- (b) in subsection (2), by deleting the words “or corporation”.

Section 7 amended

4. Section 7 of the principal Act is amended—

- (a) by inserting next after subsection (10) the following new subsection—

“(10A) This Act does not apply to the provision of credit by an insurer against the security of a policy of life insurance where the amount of credit does not exceed the surrender value of the policy.”; and
- (b) by deleting subsection (11) and substituting the following—

“(11) For a credit provider that provides credit to which this Act applies in the course of a business of providing credit to which this Act applies to employees or former employees and to others, subsection (10) applies only to the provision of credit on terms that are more favourable to the debtor than the terms on which the credit provider provides credit to persons who are not employees of or former employees of the credit provider or a related body corporate.”.

Section 10 amended

5. Section 10 of the principal Act is amended in subsection (3), by deleting all the words beginning with “If by virtue” and ending with “applies” and substituting the words “For the purposes of subsection (1), this Act applies”.

Section 11 amended

6. Section 11 of the principal Act is amended—

- (a) in subsection (3), by inserting next after the words “any other” the word “relevant”; and
- (b) by inserting next after subsection (4) the following new subsection—
 - “(5) For the purposes of subsection (3), a relevant person is a person associated with the credit provider or a finance broker (or a person acting for a finance broker) through whom the credit was obtained.”.

Section 12 amended

7. Section 12 of the principal Act is amended—

- (a) by deleting paragraph (b) and substituting the following—
 - “(b) a written contract document signed by the credit provider and constituting an offer to the debtor that is accepted by the debtor in accordance with the terms of the offer.”;
- (b) by re-numbering the section as subsection (1); and
- (c) by inserting next after subsection (1) the following new subsections—
 - “(2) An offer may be accepted by the debtor for the purposes of subsection (1) (b)—
 - (a) by the debtor or a person authorized by the debtor accessing or drawing down credit to incur a liability; or
 - (b) by any other act of a debtor or of any such person that satisfies the conditions of the offer and constitutes an acceptance of the offer at law.
 - (3) The credit provider, or a person associated with the credit provider, may not be authorized by the debtor for the purposes of subsection (2).
 - (4) Nothing contained in subsection (3) shall be construed as prohibiting the debtor from authorizing the credit provider to debit the debtor’s account.
 - (5) In the case of a contract document consisting of more than one document, it is sufficient compliance with this section if one of the documents is duly signed and the other documents are referred to in the signed document.”.

Section 14 amended

8. Section 14 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “A credit provider” and substituting the words “Subject to subsection (9) of this section and section 15, a credit provider”;
- (b) in subsections (2), (4) and (5), by inserting next after the words “subsection (1)”, in each of those subsections, the words “or subsection (9)”; and
- (c) by inserting next after subsection (8) the following new subsections—
 - “(9) Notwithstanding the provisions of subsection (1)(a) of this section and section 15, where a credit provider intends to provide credit in an amount not exceeding \$5,000.00, it shall be sufficient compliance with that subsection and that section if the pre-contractual statement and contract document respectively, contain the matters specified in Schedule 1A.
 - (10) The pre-contractual statement required by subsection (9) shall be in the form prescribed by the regulations.”.

Section 15 amended

9. Section 15 of the principal Act is amended by inserting at the beginning of the section the words “Subject to section 14 (9)”.

Section 18 amended

10. Section 18 of the principal Act is amended by deleting subsection (3) and substituting the following—

“(3) Subsection (2) does not apply if the credit provider has previously given the debtor a copy of the contract document to keep.”.

Section 19 amended

11. Section 19 of the principal Act is amended by deleting subsection (1) and substituting the following—

“(1) Although a credit contract has been made, the debtor may nevertheless, by written notice to the credit provider, terminate the contract unless—

- (a) any credit has been obtained under the contract; or
- (b) a card or other means of obtaining credit provided to the debtor by the credit provider has been used to acquire goods or services for which credit is to be advanced under the contract.”.

Section 21 amended

12. Section 21 of the principal Act is amended in subsection (1) (a) by inserting next after the words “of a” the word “credit”

Section 24 amended

13. Section 24 of the principal Act is amended by deleting subsection (3) and substituting the following—

“(3) Notwithstanding subsection (2), a credit provider is not required to credit a payment under a credit contract before it is payable under the contract if the contract prohibits its early payment and—

- (a) the credit provider informs the debtor, as soon as practicable after the credit provider becomes aware of the payment, that it will not be credited to the debtor (or that any credit will be reversed) until it becomes payable under the contract, and the debtor elects to leave the payment with the credit provider; or
- (b) the credit provider informs the debtor, before accepting the payment, that it will not be credited to the debtor until it becomes payable under the contract; or
- (c) the credit provider refunds the payment to the debtor.”.

Section 25 amended

14. Section 25 of the principal Act is amended by deleting subsection (2) and substituting the following—

“(2) A credit contract may specify, for the purposes of payments or any other purposes under the contract, when a day ends and different times of the day may be specified for different purposes.”.

Section 27 amended

15. Section 27 of the principal Act is amended by inserting next after subsection (3) the following new subsection—

“(4) This section does not apply to the debit of an interest charge under a credit contract before the end of the period to which the charge applies if—

- (a) the charge is debited on the last day of the period; and
- (b) the amount debited is not treated by the credit provider as part of the unpaid daily balance for that day for the purpose of calculating interest charges under the contract.”.

Section 30 amended

16. Section 30 of the principal Act is amended—

(a) by deleting subsection (1) and substituting the following—

“(1) A fee or charge payable by a debtor for an amount payable or to reimburse an amount paid by the credit provider to another person, body or agency is not to exceed the actual amount payable or paid by the credit provider if that amount is ascertainable when the fee or charge is paid by the debtor.”; and

- (b) by deleting subsection (5).

Section 31 amended

17. Section 31 of the principal Act is amended—

- (a) in subsection (3)(b), by inserting next after the words “statement period” the words “(other than debits for government charges, or duties, on receipts or withdrawals)”;
- (b) by inserting next after paragraph (e), the following new paragraph—
“(f) the debtor has died or is insolvent and the debtor’s personal representative or trustee in bankruptcy has not requested a statement of account.”; and
- (c) by inserting next after subsection (3) the following new subsection—
“(3A) A separate statement of account may, but need not, be given in respect of each or any number of the credit facilities provided under a credit contract.”.

Section 34 amended

18. Section 34 of the principal Act is amended—

- (a) in subsection (1)(c), by inserting next after the word “amounts” the word “currently”;
- (b) in subsection (1)(d), by inserting next after the word “amount” the word “currently”; and
- (c) by inserting next after subsection (3) the following new subsection—
“(3A) In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 180, to each joint debtor or guarantor.”.

Section 36 amended

19. Section 36 of the principal Act is amended—

- (a) in subsection (4), by deleting the words “In a case other than that described in subsection (3)” and substituting the words “In the case of any other credit contract for which a statement of account is given”; and
- (b) by inserting next after subsection (4) the following new subsection—
“(4A) In the case of a credit contract in respect of which a statement of account need not be and is not given for the period to which the disputed liability relates, the notice of dispute must be given to the credit provider not later than 3 months after the end of the contract.”.

New section 36A added

20. The principal Act is amended by inserting next after section 36 the following new section—

“Dating and adjustments of debits and credits in accounts

36A.—(1) For the purposes of this Act and the credit contract, a debit or a credit made by a credit provider to a debtor’s account is taken to have been made, and has effect, on the date assigned to the debit or credit, not on the date on which it is processed.

(2) A credit provider may subsequently adjust debits or credits to a debtor’s account, and the account balances, so as to accurately reflect the legal obligations of the debtor and the credit provider.

(3) Subsections (1) and (2) do not permit a debit or credit to be assigned a date other than the date on which it is processed, or the subsequent adjustment of a debit or a credit or account balance, if—

- (a) the assignment or adjustment is not consistent with the credit contract; or
- (b) the adjustment results in an interest charge that is more than the maximum amount permitted by the Act, as calculated on the basis of debits or credits to a debtor’s account consistent with the credit contract; or
- (c) the assignment or adjustment results in a contravention of section 24; or
- (d) the assignment of the date on which an interest charge is taken to be debited results in a debit being taken to be done before a time permitted under the Act.

(4) An adjustment by a credit provider under subsection (2) does not affect any liability of a credit provider under section 113.”

Section 37 repealed and replaced

21. Section 37 of the principal Act is repealed and replaced by the following—

“Deferrals, waivers and changes under contracts

37.—(1) The provision of credit as a result of a change to an existing credit contract, or a deferral or waiver of an amount under an existing credit contract or a postponement relating to an existing credit contract is not to be treated as creating a new credit contract for the purposes of this Act if the change, waiver or postponement is made in accordance with this Act or the existing credit contract.

(2) In this section “existing credit contract” includes existing consumer lease.”

Section 39 amended

22. Section 39 of the principal Act is amended by re-numbering the section as subsection (1) and by inserting next after subsection (1) the following new subsection—

“(2) This section does not apply if the credit provider has previously given the mortgagor a copy of the mortgage document to keep.”.

Section 44 amended

23. Section 44 of the principal Act is amended by inserting next after subsection (4) the following new subsection—

“(5) In this section, a reference to a credit contract or guarantee includes a reference to a proposed credit contract or proposed guarantee.”.

Section 51 amended

24. Section 51 of the principal Act is amended in subsection (1), by deleting all the words beginning with “Before” and ending with “guarantee” and substituting the words “Before a guarantee is signed by the guarantor”.

Section 52 repealed and replaced

25. Section 52 of the principal Act is repealed and replaced by the following—

“Copies of documents for guarantor

52.—(1) A credit provider must, not later than 14 days after a guarantee is signed and given to the credit provider, give the guarantor—

- (a) a copy of the guarantee signed by the guarantor; and
- (b) a copy of the credit contract or proposed credit contract.

(2) Subsection (1)(a) does not apply if the credit provider has previously given the guarantor a copy of the guarantee to keep and subsection (1)(b) does not apply if the credit provider has previously given the guarantor a copy of the credit contract or proposed credit contract to keep.”.

Section 53 amended

26. Section 53 of the principal Act is amended in subsection (1)(b) by deleting the words “or pre-contractual statement”.

Section 54 amended

27. Section 54 of the principal Act is amended in subsection (3), by deleting the word “does” and substituting the words “and section 51 do”.

Section 55 amended

28. Section 55 of the principal Act is amended in subsection (2) by deleting the words “or any other act or omission by, or circumstances affecting, the debtor”.

Section 56 amended

29. Section 56 of the principal Act is amended by deleting subsection (2) and substituting the following—

“(2) This section does not apply to an increase in liabilities resulting from—

- (a) a change of which notice referred to in section 58 (2) (a) or (b);
- (b) a change of which notice is required to be given under Division 1 of Part 4 (not being a change referred to in section 62 (3) or section 63);
- (c) a change under section 68 (2) or a postponement under section 88 (2);
or
- (d) a deferral or waiver of a debtor’s obligations for a period not exceeding 90 days.”.

Section 59 amended

30. Section 59 of the principal Act is amended in subsection (5) by deleting the words “30 days” and substituting the words “20 days”.

Section 60 amended

31. Section 60 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “30 days” and substituting the words “20 days”; and
- (b) by inserting next after subsection (2) the following new subsections—

“(2A) If the amount or frequency or time for payment of installments or minimum repayments is not specified in the credit contract but is determined by a method of calculation so specified, this section requires the credit provider to give particulars only of any change in that method of calculation.

(2B) This section does not apply to a change that occurs while the credit contract does not require any repayment of the amount of credit provided.”.

Section 61 amended

32. Section 61 of the principal Act is amended in subsection (1), by deleting the words “30 days” and substituting the words “20 days”.

Section 63 amended

33. Section 63 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “30 days” and substituting the words “20 days”; and
- (b) in subsection (3), by inserting next after the figures “59, 60, 61 or 62” the words “(or which would be required to be so given but for an exception provided in any such section)”.

New section 63A added

34. The principal Act is amended by inserting next after section 63 the following new section—

“Particulars of matters as changed only required to be given under this

Division in certain cases

63A. The credit provider may, under section 59, 60, 61 or 63, give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

- (a) makes it clear to the person that the matter has changed; or
- (b) issues to the person a new set of terms and conditions relating to the credit contract, mortgage or guarantee.”.

Section 65 amended

35. Section 65 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “within 30 days” and substituting the words “not later than 30 days”;
- (b) in subsection (3), by inserting next after the words “credit contract” the words “(other than a continuing credit contract)”; and
- (c) by inserting next after subsection (4) the following new subsection—

“(4A) The credit provider may, under subsection (1), give the person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

- (a) makes it clear to the person that the matter has changed; or
- (b) issues to the person a new set of terms and conditions relating to the credit contract, mortgage or guarantee.”.

Section 67 amended

36. Section 67 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “within 30 days” and substituting the words “not later than 30 days”; and
- (b) by inserting next after subsection (2) the following new subsection—

“(3) The credit provider may, under subsection (1), give a person particulars only of a matter as changed instead of particulars of the change, but only if the credit provider—

- (a) makes it clear to the person that the matter has changed; or
- (b) issues to the person a new set of terms and conditions relating to the credit contract.”.

*Section 73 amended***37.** Section 73 of the principal Act is amended—

- (a) in subsection (1), by deleting the words “the credit provider writes off the relevant debt, whichever occurs first” and substituting the words “otherwise comes to an end”; and
- (b) in subsection (2), by deleting the words “credit provider writes off the relevant debt, whichever occurs first” and substituting the words “credit contract is rescinded or discharged or otherwise comes to an end”.

*Section 76 amended***38.** Section 76 of the principal Act is amended by inserting next after subsection (4) the following new subsection—

“(4A) In the case of joint debtors or guarantors, the statement under this section need only be given to a debtor or guarantor who requests the statement and not, despite section 180, to each joint debtor or guarantor.”.

*Section 78 amended***39.** Section 78 of the principal Act is amended—

- (a) in the heading to the section, by deleting the words “and goods subject to sale by installments”;
- (b) by deleting subsection (1) and substituting the following—
 - “(1) If a credit provider has a mortgage over goods of a debtor or guarantor, the debtor or mortgagor may give written notice of an intention to surrender the goods to the credit provider or, if the goods are in the credit provider’s possession, require the credit provider in writing to sell the goods.”;
- (c) in subsections (2) to (7) and (9), by deleting the words “debtor or” wherever they appear in each of those subsections;
- (d) in subsection (4), by deleting the words “and, being a debtor”;
- (e) in subsection (8) (a)—
 - (i) by deleting the word “contract” and substituting the word “guarantee”; and
 - (ii) by inserting next after paragraph (d) the following new paragraph—
 - “(e) the expenses reasonably incurred by the credit provider in connection with the possession and sale of the mortgaged goods.”; and
- (f) in subsection (9), by deleting the words “net amount due under the credit contract” and substituting the words “amount due under the guarantee”.

Section 79 amended

40. Section 79 of the principal Act is amended—

- (a) in subsections (1) and (2), by deleting the words “debtor or” wherever they appear; and
- (b) in subsection (2), by deleting the word “debtor”, where it last appears.

Section 80 amended

41. Section 80 of the principal Act is amended—

- (a) in subsection (4), by deleting the words “during the period of thirty days” and substituting the words “during the period specified in the default notice for remedying the original default”;
- (b) by inserting next after subsection (4) the following new subsection—

“(4A) Default notices that may be given under subsections (1) and (2) may be combined in one document if given to a person who is both a debtor and a mortgagor.”;
- (c) in subsection (5) (c), by deleting the words “to do so” and substituting the words “to begin the enforcement proceedings”;
- (d) in subsection (7), by inserting next after the word “property” the words “or other”.

Section 87 amended

42. Section 87 of the principal Act is amended—

- (a) in subsection (1) by deleting the words “written notice of the conditions of postponement is given to the debtor, mortgagor or guarantor”;
- (b) by inserting next after subsection (2) the following new subsections—

“(3) A credit provider must give written notice of the conditions of a postponement referred to in subsection (1) not later than 30 days after agreement is reached on the postponement.

(4) A notice referred to in subsection (3) must set out the consequences under subsection (7) if the conditions of the postponement are not complied with.

(5) A credit provider that contravenes subsection (3) commits an offence.

(6) A credit provider that is required to give notice under section 65 in relation to a postponement is not required to comply with subsection (3).

(7) If any of the conditions of a postponement are not complied with, a credit provider is not required to give further notice under this Act to the debtor, mortgagor or guarantor with whom the postponement was negotiated before proceeding with the enforcement proceedings.”.

Section 99 amended

43. Section 99 of the principal Act is amended by inserting next after subsection (1) the following new subsections—

“(1A) Enforcement expenses of a credit provider extend to those reasonably incurred by the use of the staff and facilities of the credit provider.

(1B) If there is a dispute between the credit provider and the debtor, mortgagor or guarantor about the amount of enforcement expenses that may be recovered by the credit provider, the Court may, on application by any of the parties to the dispute, determine the amount of that liability.”.

Section 116 amended

44. Section 116 of the principal Act is amended in subsection (3) by inserting next after the words “credit contract” where they first appear, the words “(other than a continuing credit contract).”.

Section 118 amended

45. Section 118 of the principal Act is amended in subsection (1) by inserting next after the words “in relation to the” the word “sale”.

Section 123 amended

46. Section 123 of the principal Act is amended by inserting next after subsection (3) the following new subsection—

“(4) This section does not apply to a sale contract for the supply of rights in relation to, and interests in, real property unless the supplier was aware that the purchaser intended to obtain the credit from the supplier or from a linked credit provider of the supplier.”.

Section 124 amended

47. Section 124 of the principal Act is amended by inserting next after subsection (8) the following new subsection—

“(9) This section applies—

- (a) to the exercise by a purchaser of a right under this Act or any other law to rescind or discharge a sale contract; and
- (b) to a tied loan contract or a tied continuing contract, but only if the sale contract was the principal purpose for which the credit was provided.”.

Section 131 amended

48. Section 131 of the principal Act is amended—

(a) by deleting the heading to the section and substituting the following—

“Interpretation and application”; and

(b) by inserting next after subsection (2) the following new subsections—

“(3) This Act does not apply to insurance over mortgaged property that—

(a) is insurance for an extended period of warranty for goods; or

(b) is insurance over property that is not mortgaged to secure obligations under the credit contract.

(4) This Act does not apply to consumer credit insurance in connection with a credit contract unless the contract for consumer credit insurance insures the obligations of the debtor under the credit contract.”.

Section 133 amended

49. Section 133 of the principal Act is amended by deleting subsection (2).

Section 137 amended

50. Section 137 of the principal Act is amended—

(a) in subsection (4), by inserting next after the word “section” the words “, including the rebate payable where this section does not apply to the whole of a credit-related insurance contract”; and

(b) by inserting next after subsection (5), the following new subsection—

“(6) This section does not apply to a credit-related insurance contract, to the extent that it provides a benefit in the event of the death of the debtor, if a credit contract is terminated on the death of the debtor; but it does apply to the credit-related insurance contract to the extent that it provides other benefits.”.

Section 139 amended

51. Section 139 of the principal Act is amended by deleting subsections (3) and (4) and substituting the following new subsections—

“(3) The advertisement need not contain an annual percentage rate, but must do so if the advertisement states the amount of any repayment.

(4) If the advertisement contains an annual percentage rate and credit fees and charges are payable, the advertisement must—

- (a) state that fees and charges are payable; or
- (b) specify the amount of the fees and charges payable; or
- (c) specify the amount of some of the fees and charges payable and state that other fees and charges are payable.

(4A) The advertisement may contain the comparison rate calculated as prescribed by the regulations and, if it does so, must be accompanied by the warnings set out in the regulations.”.

Section 142 amended

52. Section 142 of the principal Act is amended by deleting the words “the annual percentage rate or rates” and substituting the words “expressed as a nominal percentage rate per annum”.

Section 145 amended

53. Section 145 of the principal Act is amended in subsection (1) by deleting the words “the person” appearing at the end of that subsection and substituting the words “a person who resides there”.

Section 147 amended

54. Section 147 of the principal Act is amended—

- (a) in subsection (i)(a), by deleting all the words beginning with “or is a body” and ending with “Islands”; and
- (b) in subsection (2), by deleting the words “or are strata corporations formed,”.

Section 151 amended

55. Section 151 of the principal Act is amended in subsection (1) (c), by inserting next after the words “government charge” the words “(other than on receipts or withdrawals)”.

Section 152 amended

56. Section 152 of the principal Act is amended by inserting next after subsection (2) the following new subsections—

“(3) Subsection (1) does not apply if the lessor has previously given the lessee a copy of the consumer lease to keep.

(4) Section 180 applies to this section as if references in that section to the credit provider were references to the lessor and as if references in that section to the debtor were references to the lessee.”.

Section 157 amended

57. Section 157 of the principal Act is amended in subsection (1)(b) by deleting the words “in the form set out” and substituting the words “as set out”.

Section 163 amended

58. Section 163 of the principal is amended by inserting next after subsection (1) the following new subsection—

“(1A) Subsection (1) does not apply to hirers who have, in respect of defaults, other than the final payment, given not less than 51 days notice in lieu of the 21 days provided in subsection (1); and for the purpose of this subsection “final payment” means the final payment or installment to be made under a hire purchase agreement.”.

Section 164 amended

59. Section 164 of the principal Act is amended by deleting the words “section 163 (4)” and substituting the words “section 163 (1)”.

Section 175 amended

60. Section 175 of the principal Act is amended in subsection (3) by inserting next after the word “debtor” the words “, or would continue to do so if the debtor complied with the credit contract”.

New section 178A added

61. The principal Act is amended by inserting next after section 178 the following new section—

“ Indemnities

178A.—(1) An indemnity for any liability under this Act is not void, and cannot be declared void, on the grounds of public policy, despite any rule of law to the contrary.

(2) The liabilities to which this section applies include the following—

- (a) a liability for any criminal or civil penalty incurred by any person under this Act;
- (b) a payment in settlement of a liability or alleged liability under this Act;
- (c) a liability under another indemnity for any liability under this Act.

(3) This section is subject to section 178 (2).

(4) This section does not derogate from any other rights and remedies that exist apart from this section.

(5) This section extends to any indemnity for any liability obtained before the commencement of this Act.”.

Section 180 repealed and replaced

62. Section 180 of the principal is repealed and replaced by the following new section—

" Giving notice or other document

180.—(1) This section applies as follows—

- (a) this section applies (subject to this subsection) to notices or other documents that are required to be given for the purposes of this Act;
- (b) this subsection and subsections (3) and (7), but not the remainder of this section, apply to pre-contractual statements and notices given under section 14;
- (c) subsections (4), (5) and (6) do not apply to default notices; and
- (d) this section applies despite the provisions of any other sections of this Act (except section 34 (3A) and 76 (4) to the contrary.

(2) A credit provider is relieved from the obligation to give a notice or other document to a person if—

- (a) the credit provider has previously made a reasonable (but unsuccessful) attempt to give a notice or other document in accordance with this Act by leaving it at, or by sending it by post, telex, facsimile or similar facility to the appropriate address of the person under section 181;
- (b) the credit provider has reasonable grounds for believing that the person can no longer be contacted at that address.

(3) In the case of joint debtors mortgagors or guarantors, a notice or other document must be given to each debtor, mortgagor or guarantor, except as provided by this section.

(4) A notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors by being given to one of the joint debtors, mortgagors or guarantors nominated by them to receive the notice or document on their behalf, and in such a case, the notice or other document need not be addressed to all of them.

(5) A single copy of a notice or other document may be given to any 2 or more joint debtors, mortgagors or guarantors at the same address if each of them has consented to a single copy being given and the notice or other document is addressed jointly to them, and this procedure is an alternative to the procedure prescribed by subsection (4).

(6) A notice or other document may be given to a person by being given to any other person nominated by the person to receive the notice or other document on his or her behalf, so however, that—

- (a) a debtor, mortgagor or guarantor cannot nominate the credit provider or a person associated with the credit provider; and
- (b) a mortgagor cannot nominate the debtor if the mortgage is given by a guarantor; and
- (c) a guarantor cannot nominate the debtor.

(7) A notice or other document may be given to a person by being given to a legal practitioner acting for the person in the matter concerned.

(8) A nomination or consent under this section ceases to have effect if it is withdrawn by the person who made or gave it.

(9) A nomination or consent under this section (or withdrawal of any such nomination or consent) must be in the form required by the regulations.”.

Section 181 amended

63. Section 181 of the principal Act is amended—

(a) in subsection (1)(a)(ii), by deleting all the words beginning with “the address” and ending with “other document” and substituting the words “an appropriate address of the person”;

(b) by inserting next after subsection (1) the following new subsections—

“(1A) For the purposes of subsection (1), the appropriate address of a debtor, mortgagor, guarantor or consumer lessee is—

- (a) an address nominated in writing by that person to the person giving the notice or other document; or
- (b) if there is no such nomination, the address of the place of residence of that person last known to the person giving the notice or other document.

(1B) For the purposes of subsection (1), an appropriate address of any other person is—

- (a) an address nominated in writing by that person to the person giving the notice or other document; or
- (b) the address of the place of residence or business of that person last known to the person giving the notice or other document.”.

Section 183 amended

64. Section 183 of the principal Act is amended—

(a) by inserting next after subsection (2) the following new subsection—

“(2A) Subsection (2) does not prevent a credit provider from authorizing a person associated with the credit provider to enter into a credit contract on behalf of the credit provider.”; and

(b) by deleting subsection (4) and replacing it with the following—

“(4) For the purposes of this Act, a person is associated with a credit provider if—

- (a) the person and the credit provider are related bodies corporate;
- (b) the person is a supplier of whom the credit provider is a linked credit provider; or
- (c) the person is an officer, agent or employee of the credit provider, or of any such related body corporate or supplier, acting in that capacity.”.

New section 183A added

65. The principal Act is amended by inserting next after section 183 the following new section—

“Offences by officers, agents or employees

183A. An officer, agent or employee of a credit provider or other person may be prosecuted for an offence against this Act or the regulations (if liable for the offence) whether or not proceedings have been taken against the credit provider or other person.”.

Schedule 1 amended

66. Schedule 1 to the principal Act is amended as set out in Schedule 1 to this Act.

Schedule 1A added

67. The principal Act is amended by inserting next after Schedule I the new Schedule 1A set out in Schedule 2 to this Act.

Part 6 repealed

68. Part 6 of the principal Act, other than section 113, is repealed.

“Consequential amendments

69. The principal Act is amended—

- (a) in section 8(1)(b), by deleting “or body of the kind mentioned in section 6(1)(a)”;
- (b) in section 9(1)(b), by deleting “or body of the kind mentioned in section 6(1)(a)”;

- (c) in section 113(1), by deleting “, other than one for which a civil penalty is provided by Division 1 or by any other provision of this Act”;
- (d) in section 146 –
 - (i) by deleting “or body of the kind mentioned in section 147(1)(a)”;
and
 - (ii) by deleting “or body” after “that person”.

SCHEDULE 1
(Section 15)

AMENDMENTS OF SCHEDULE 1 TO PRINCIPAL ACT

- (B) **Amount of credit** Delete paragraph (a) and substitute the following—
 - “(a) If the amount of credit to be provided is ascertainable—
 - (i) that amount; and
 - (ii) the persons, bodies or agents (including the credit provider) to whom it is to be paid and the amounts payable to each of them, but only if both the person, body or agent and the amount are ascertainable.”.
- (E) **Total amount of interest charges payable** Delete “assumptions in sections 158 and 160” and substitute “assumptions under sections 168 and 170”.
- (F) **Repayments** Delete paragraph (a) (ii) and substitute the following—
 - “(ii) if ascertainable, the number of payments;
and
 - (ii)(a) if ascertainable, the total amount of the repayments, but only if the contract would, on the assumption under section 168 and 170, be paid out within 7 years of the date on which credit is first provided under the contract; and”.

Insert next after paragraph (b) the following new paragraph—

“(c) Paragraph (a) does not apply to minimum repayments under a continuing credit contract.”.

(N) Insurance financed by contract

Insert next after paragraph (d) the following new paragraph—

“(e) In the case of consumer credit insurance that includes a contract of general insurance—

(a) it is sufficient compliance with paragraphs (a) and (b) if the contract document contains the name of the general insurer and the total amount payable to the insurers (or, if it is not ascertainable, how it is to be calculated); and

(b) it is sufficient compliance with paragraph (d) relating to the amount of commission if the contract document contains the total amount of commission (expressed as a monetary amount or as a proportion of the premium to be paid by the insurers.”.

“SCHEDULE 1A
(Section 14(9))

DISCLOSURE REQUIREMENTS FOR SMALL LOANS

(A) Amount of credit

The amount of credit agreed to be provided (if ascertainable) or, (if not ascertainable) the maximum amount of credit agreed to be provided or the credit limit under the contract (if any).

(B) Annual percentage rate or rates

(a) The annual percentage rate or rates under the contract.

(b) If there is more than one rate, how each rate applies.

If an annual percentage rate under the contract is determined by referring to a reference rate—

(i) the name of the rate or a description of it;

- (ii) the margin or margins (if any) above or below the reference rate to be applied to determine the annual percentage rate or rates; and
- (iii) the current annual percentage rate or rates.

(C) Calculation of interest charges

The method of calculation of the interest charges payable under the contract and the frequency with which interest charges are to be debited under the contract.

(D) Total amount on interest charges payable

The total amount of interest charges payable under the contract, if ascertainable (but only if the contract would, on the assumptions in sections 168 and 170, be paid out within 7 years of the date on which credit is first provided under the contract).

(E) Repayments

- (a) If more than one payment is to be made—
 - (i) the amount of the payments or the method of calculating the amount;
 - (ii) if ascertainable, the number of payments;
 - (iii) if ascertainable, the total amount of the repayments, but only if the contract would, on the assumption under sections 168 and 170, be paid out within 7 years of the date on which credit is first provided under the contract; and
 - (iv) when the first repayment is to be paid, if ascertainable, and the frequency of payment of repayments;
- (b) if the contract provides for a minimum repayment, the amount of that repayment, if ascertainable, but if not, the method of calculation of the minimum repayment; and
- (c) paragraph (a) does not apply to minimum repayments under a continuing credit contract.”

(F) Credit fees and charges

- (a) A statement of the credit fees and charges that are, or may become, payable under the contract, and when each such fee or charge is payable, if ascertainable.
- (b) The amount of any such fee or charge, if ascertainable, but if not, the method of calculation of the fee or charge, if ascertainable.

Consumer Credit—1 of 2006

- (c) The total amount of credit fees and charges payable under the contract to the extent that they are ascertainable.”.

Passed by House of Representatives on 23rd February 2006.

Passed by Senate on 9th March 2006.