

**PAPUA NEW GUINEA FINANCIAL CONSUMER PROTECTION ACT 2023, DEPOSIT AND CREDIT
PRODUCTS DIRECTIVE AND CONSUMER RECOURSE REGULATION**
3 February 2023

FINANCIAL CONSUMER PROTECTION ACT 2023

No. of 2023

An Act

entitled

Financial Consumer Protection Act 2023

Being an Act to establish a framework for the fair and equitable treatment of individual consumers of financial products and services and to empower the Central Bank in relation to the Act and financial consumer protection matters and for related purposes.

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PART 1 – PRELIMINARY

1. Compliance with Constitutional requirements

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (qualified rights) of the Constitution, namely:

- (a) the right to freedom from arbitrary search and entry conferred by Section 44;
- (b) the right to freedom of expression conferred by Section 46;
- (c) the right to privacy conferred by Section 49;
- (d) the right to freedom of information conferred by Section 51;
- (e) the right to freedom of movement conferred by Section 52; and
- (f) the right to protection from unjust deprivation of property conferred by Section 53

of the Constitution, is a law made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

2. Interpretation

In this Act, unless the contrary intention appears -

“annual percentage rate” means the per annum rate of interest applicable to a credit contract.

“Board” means the Board of Directors of a financial service provider or, if there is no Board of Directors, the equivalent senior management body or person (if a single individual).

“business day” means a day that is not a Saturday or Sunday or a public holiday.

“Central Bank” means the Bank of Papua New Guinea.

“consumer” means a natural person who is a current or a prospective customer of a financial service provider.

“complaint” means an expression of dissatisfaction made to a financial service provider by a consumer or security provider relating to a matter covered by this Act other than a simple enquiry and “complainant” has a corresponding meaning.

“Compliance Plan” has the meaning given in Section 11 (*Consumer protection compliance plan*).

“consumer credit insurance” means insurance that insures the capacity of a consumer to make payments under a credit contract, including for a reason related to sickness, injury, disability or death or unemployment.

“contract”:

- (a) means a contract for a financial product or service with a consumer; and
- (b) the use of the term “contract” in relation to a specific type of financial product or service, means a contract of that type with a consumer; and
- (c) includes a series or combination of contracts or contracts and arrangements.

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“continuing credit contract” means a credit contract under which multiple advances of credit are contemplated and the amount of available credit ordinarily increases as the amount of credit is reduced.

“credit” means the right granted by one person (the creditor) to another person (the consumer) to defer payment of a debt.

“credit contract” means a contract for the provision of credit between a financial service provider and a consumer and **“credit facility”** has a corresponding meaning.

“credit related insurance contract” means the following kinds of insurance in connection with a credit facility:

- (a) insurance over mortgaged property;
- (b) consumer credit insurance;
- (c) extended warranty insurance; and
- (d) insurance of a kind specified in a direction issued by the Central Bank.

“credit reference bureau” means a business that involves collecting, holding, using or disclosing personal information about individuals for the purpose of providing an entity with information about the credit worthiness of an individual.

“direction” means a direction issued under Section 76 (*Power to make Directions*).

“dispute” means a complaint which has been made to the relevant financial service provider and either:

- (a) the financial service provider has advised the complainant of their decision on the complaint, and the decision is not to the complainant’s satisfaction; or
- (b) the financial service provider has not advised the complainant of their decision on the complaint within the timelines referred to in Section 61 (*Complaints to financial service providers*) or Section 62 (*Complaints about liabilities*) or any related Regulation or direction issued by the Central Bank.

“effective interest rate” means:

- (a) in relation to credit, a rate which reflects the true cost of a financial product or service, including all interest charges or payments and any fee and charge, which rate is calculated for credit products consistently with the formula specified in directions issued by the Central Bank; and
- (b) in relation to any other type of financial product or service, has the meaning specified in directions issued by the Central Bank.

“Financial Consumer Protection Principles” means the principles described in Part 4 – *Financial Consumer Protection Principles*.

“financial product or service” means a product or service of a financial nature and, without limitation, includes any savings or other debit product and any credit, payment, remittance, lease, factoring, insurance, investment or pension product, financial advice and any other product or service prescribed by regulation.

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“financial service provider” means a person who provides financial products or services to consumers for the purposes of any business carried on by the person.

“guarantee” means any guarantee in relation to the provision of, or relating to, a financial product or service provided or proposed to be provided to a consumer and “guarantor” has a corresponding meaning.

“Key Facts Statement” means a document described in Section 43 (**Key Facts Statement**).

“mortgage” includes:

- (a) any interest in, or power over, property securing obligations of a consumer or guarantor, or
- (b) a financial service provider’s title to land or goods subject to a sale by instalments.

“payroll deduction” means a deduction made from a consumer’s pay for the real or ostensible purpose of making a payment to a financial service provider in respect of a credit contract.

“payroll loan” means a loan which is repaid by deductions from the consumer’s pay.

“personal advice” means advice given to a consumer in relation to the suitability of a specific financial product or service for the consumer taking into account their financial objectives, needs and capacity.

“personal attribute” of a person means their name, address, age, gender, race, ethnicity, political affiliation or beliefs, marital status, disability, or sexual orientation.

“personal information” means any information which identifies, or may be used to identify, a natural person and includes, without limitation, information as to:

- (a) any personal attribute of a person; or
- (b) their financial products and services.

“property” means any legal or equitable estate or interest (whether present or future, vested or contingent, or tangible or intangible) in real or personal property of any description (including money), and includes things in action.

“registered financial service provider” means a financial service provider which is registered under this Act.

“regulatory levy” means a levy on financial service providers to cover the Central Bank’s costs and expenses of carrying out its functions and powers under this Act, and as provided for in Section 8 (**Regulatory levies**).

“representative” means an officer, employee, agent, or service provider of a person and including, without limitation, any other person authorized to act on behalf of the financial service provider.

“security” means a mortgage, guarantee or other form of security securing the obligations of a consumer or guarantor in relation to the provision of, or relating to, a financial product or

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service provided or proposed to be provided to a consumer and “security provider” has a corresponding meaning.

“**standard form contract**” has the meaning given in Section 32 (*Standard form contracts*).

“**this Act**” includes regulations and directions made under this Act.

“**unpaid balance**” under a credit contract at any time means the difference between all amounts credited and all amounts debited to the consumer under the contract at that time.

“**unpaid daily balance**” for a day under a credit contract means the unpaid balance under the contract at the end of that day.

3. Scope of Application

This Act applies to any financial service provider that provides financial products or services to consumers in this jurisdiction.

4. Other laws

For the avoidance of doubt, this law prevails over any other law to the extent of any inconsistency except that where another law protects consumers of financial products and services to a greater extent than this Act, then the relevant provisions of that other law shall prevail.

PART 2 – FUNCTIONS AND POWERS OF THE CENTRAL BANK

5. Financial consumer protection functions of the Central Bank

- (1) The principal function of the Central Bank under this Act is to promote the fair and equitable treatment of consumers of financial products and services in Papua New Guinea.
- (2) The Central Bank has the powers conferred on it by this Act to supervise financial service providers.
- (3) The functions of the Central Bank under this Act include:
 - (a) the protection of the rights and interests of consumers of financial products and services; and
 - (b) the monitoring of the business conduct of financial service providers towards consumers;
 - (c) the collection and analysis of information in respect of Financial Consumer Protection Principles and other matters under this Act; and
 - (d) the encouragement and promotion of the carrying out by financial service providers of responsible practices towards consumers; and
 - (e) the evaluation of the effectiveness of carrying out of those practices.
- (4) Without limiting the generality of this Section, the Central Bank shall:
 - (a) be responsible for supervising compliance with the provisions of this Act; and
 - (b) promote, encourage, and enforce proper standards of conduct and sound and prudent business practices amongst financial service providers including by the issue of directions; and

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- (c) suppress or aid in suppressing illegal, dishonourable, or improper practices of financial service providers.

6. Financial consumer protection powers of Central Bank

- (1) The Central Bank is the regulatory and supervisory authority for the purposes of this Act.
- (2) The Central Bank has all the powers of a natural person to do, in Papua New Guinea or elsewhere, all things necessary and convenient to be done for or in connection with the achievement of its functions under this Act.
- (3) Without limitation to the Central Bank's powers under this Act or any other law, the Central Bank may, for the purposes of this Act, require a financial service provider to:
 - (a) correct, or withdraw, any misleading or deceptive advertising, terms and conditions, Key Facts Statement, sales material or other data or information;
 - (b) refund, or cease collecting, interest charges or other fees and charges imposed in breach of this Act; and
 - (c) modify or withdraw from the market any financial product or service.
- (4) Subject to Subsection (8), if the Central Bank proposes to exercise its powers under Subsection (3), the Central Bank must give the financial service provider written notice of its intention to do so, stating the reasons why it proposes to act and giving particulars of the financial service provider's rights, and the Central Bank's responsibilities, under Subsections (5) to (7).
- (5) A financial service provider may make written representations to the Central Bank within [14] business days of receipt of a notice under Subsection (4).
- (6) Where representations are made pursuant to Subsection (5), the Central Bank must take them into account before reaching a decision.
- (7) The Central Bank must notify the relevant financial service provider on exercise of a power under Subsection (3) and give reasons for its decision unless the Central Bank decides to take no further action.
- (8) Nothing in Subsection (4) prevents the Central Bank from exercising its powers under Subsection (3) immediately if the Central Bank considers that any delay in exercising the power would be prejudicial to the public interest.
- (9) In assessing whether compliance by a financial service provider is adequate for the purposes of this Act, the Central Bank may consider the nature, scale, complexity and risks of the financial service provider's business and the related financial products and services.

7. Information and investigation powers of the Central Bank

- (1) The Central Bank may at any time require from a financial service provider any statement, document, information, clarification, proof, or other useful element deemed appropriate to perform its functions and the financial service provider must comply with any such requirement.
- (2) The Central Bank must, at any time, have its own auditors, inspectors or any other person appointed for this purpose to carry out on-site inspections in the premises of financial service providers.
- (3) The persons under Subsection (2) may seize or take a copy of any relevant documents or source of information they deem necessary for the exercise of their functions.

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- (4) The Central Bank may instruct external auditors selected by the Central Bank to carry out audits on the Central Bank's behalf, but at the expense of the financial service provider.
- (5) The external auditors under this Section must co-operate with the Central Bank and may not invoke their professional secrecy against the Central Bank.

8. Regulatory levies

- (1) Regulations may be made for the imposition and collection of regulatory levies and for related matters including, without limitation, in relation to:
 - (a) the basis of the calculation of regulatory levies for a financial year, or any other specified period;
 - (b) the account into which regulatory levies are to be paid; and
 - (c) Central Bank reporting requirements in relation to the collection, and expenditure of regulatory levies.
- (2) Different bases of calculation, and different rates of regulatory levies, may be prescribed:
 - (a) for different classes of financial service providers; and
 - (b) for different types of costs and expenses;
 - (c) for the purposes of recovering the Central Bank's costs and expenses associated with the exercise of its powers to provide a dispute resolution service in accordance with Section 64 (**Central Bank power to consider disputes**); and
 - (d) for the purpose of recovering the Central Bank's costs and expenses associated with other functions and powers of the Central Bank.
- (3) Regulations may be made prescribing the payment of interest on unpaid regulatory levies and for imposing a penalty where an act or omission of a financial service provider leads to an under-collection of a levy.

9. Exemptions

- (1) The Central Bank may, by regulations made under this Act and published in the National Gazette, determine that:
 - (a) all or any of the provisions of this Act do not apply to specified financial service providers; or
 - (b) specified financial products and services do not constitute financial products and services for the purposes of application of all or any part of this Act.
- (2) Before any determination under Subsection (1) is granted the Central Bank must be satisfied that:
 - (a) the nature, scale, complexity or risks of the business of relevant financial service providers or of the relevant financial products and services does not justify the application of the Act; or
 - (b) any existing Act appropriately regulates the designated financial service providers or financial products and services in that it ensures the fair and equitable treatment of affected consumers; or
 - (c) for financial inclusion purposes; or
 - (d) to provide scope for innovation in the financial sector.
- (3) A determination made under this Section:
 - (a) may be expressed to apply to:

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- i. a particular financial service provider or class of financial service providers; or
 - ii. a particular financial product or service or class of financial products or services; and
 - (b) may specify the period during which the order shall remain in force; and
 - (c) may be made subject to such conditions as are specified in the order.
- (4) Without limiting the generality of this Section, the conditions imposed under this Section may relate to one or more of the following:
- (1) the safeguards to be followed by financial service providers to ensure the fair and equitable treatment of affected consumers; and
 - (2) the term during which the order is to apply.
- (5) The Central Bank may, by order published in the National Gazette, vary or revoke a determination under this Section.

PART 3 - OBLIGATIONS OF FINANCIAL SERVICE PROVIDERS

10. Ongoing obligations of financial service providers

A financial service provider must:

- (a) comply with their duties and obligations under this Act and ensure that their representatives do likewise;
- (b) ensure that its representatives:
 - i. are trained and competent to provide financial products and services, including understanding features, risks, terms and costs of the financial products or services they deal with; and
 - ii. understand, and act consistently with, the Financial Consumer Protection Principles and other applicable provisions of this Act;
- (c) ensure that remuneration and commission schemes for representatives do not incentivize them to act in a way inconsistent with this Act including, for example, by providing financial products and services which do not meet the needs or capacity of consumers; and
- (d) have adequate systems, procedures and resources to ensure compliance with this Act;
- (e) prominently display its certificate of registration under this Act, or its registration certificate or licence under any other Act relating to its business as a financial service provider, on its website and at all physical premises where consumers may be present;
- (f) include its registration number under this Act, or its registration or licensing number under any other Act relating to its business as a financial service provider, and its name in all advertising, sales material, letters of offer, contracts and other documents relating to financial products and services and intended for consumers;
- (g) not accept or seek to enforce a contract or security to the extent it is void or unenforceable under this Act; and
- (h) participate in any external dispute resolution service provided by the Central Bank or in any other external dispute resolution service approved by the Central Bank or

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made available under law, which in either case covers any financial product or service they provide.

11. Consumer protection compliance plan

- (1) A financial service provider must have and implement a written plan approved by their Board setting out detailed policies and procedures for compliance with this Act (**Compliance Plan**).
- (2) A financial service provider must ensure that:
 - (a) their Board monitors compliance with the Compliance Plan and receives regular reports from senior management for that purpose;
 - (b) the Compliance Plan is regularly reviewed and updated by the Board;
 - (c) the financial service provider reports annually to the Central Bank on their compliance with the Compliance Plan in a form specified in a direction issued by the Central Bank;
 - (d) A member of senior management is designated as having day to day oversight responsibility for the implementation of the Compliance Plan and the monitoring of its effectiveness.

12. Registration of financial service providers

- (1) A financial service provider must not:
 - (a) engage in the business of providing financial products and services unless it is registered by the Central Bank as required by this Act; or
 - (b) engage in any conduct which suggests that it is so registered if that is not the case.
- (2) Subject to this Act, a financial service provider may apply, in writing, to the Central Bank for registration under this Act.
- (3) An application under Subsection (2) must:
 - (a) be in a form specified in a direction issued by the Central Bank;
 - (b) be accompanied by:
 - i. details of the name and addresses of the applicant;
 - ii. details of the names and addresses of the each of the directors and other officers of the applicant if it is a company;
 - iii. details of the names and addresses of each member of the senior management team of the applicant and their title;
 - iv. any other information specified in a direction issued by the Central Bank; and
 - v. the application fee specified in a direction issued by the Central Bank.
- (4) The Central Bank:
 - (a) may register an applicant if it is satisfied with regard to the criteria set out in Schedule 1;
 - (b) must notify the applicant in writing of its decision as to registration;
 - (c) must cause notice of the registration to be published in the National Gazette; and
 - (d) may publish notice of the registration in any other way the Central Bank considers appropriate.
- (5) Registration as a financial service provider may be granted subject to conditions specified by the Central Bank which may be revoked or varied in accordance with this Act.
- (6) The Central Bank:

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- (a) shall issue a direction specifying the detailed registration criteria and procedures for financial service providers; and
 - (b) may specify conditions with which a registered financial service provider must comply including, without limitation as to the application and ongoing fees to be paid by registered entities, the period of registration, and financial products and services that may be provided by the financial service provider.
- (7) A financial service provider is not required to be registered under this Section if the relevant activities are covered by:
- (a) a licence issued under the ***Banks and Financial Institutions Act 2000***;
 - (b) a licence issued under the ***Capital Markets Act 2015***;
 - (c) a licence issued under the ***National Payments System Act 2013***;
 - (d) a licence issued under the ***Life Insurance Act 2000***;
 - (e) a licence issued under the ***Insurance Act 1995***;
 - (f) a licence issued under the ***Savings and Loan Societies Act 2015***;
 - (g) a licence issued under the ***Superannuation Act 2000***; or
 - (h) an exemption issued under ***Section 9 (Exemptions)***.
- (8) A reference to a “licence” in Subsection (3) includes a reference to a registration.
- (9) Notwithstanding Subsection (3) and unless provided by the Central Bank, financial service providers covered by Subsection (3) are subject to all other provisions of this Act and any related oversight requirements of this Act.
- (10) The Central Bank must publish on its website an up to date list of financial service providers registered under this Act.

13. Conditions

- (1) The Central Bank may, at any time by notice in writing served on a registered financial service provider and subject to Section 14 (***Suspension and revocation of registration and changes to conditions***):
- (a) impose conditions or additional conditions on the financial service provider’s registration;
 - (b) vary or revoke such conditions.
- (2) Without limiting the generality of the conditions which may be imposed on a financial service provider’s registration, the conditions may:
- (a) Impose limitations on the financial products and services that may be provided by the financial service provider; and
 - (b) require the financial service provider to take certain steps in relation to the processes and procedures it follows to achieve compliance with this Act, any alleged breach of the Act or complaints.
- (3) A registered financial service provider must, without limitation to any other obligations under this Act or any other law, comply with all conditions of registration.

14. Suspension and revocation of registration and changes to conditions

The Central Bank may suspend or revoke the registration of a financial service provider:

- (a) on receipt of an application from the financial service provider in the form specified in a direction issued by the Central Bank;
- (b) if, in the opinion of the Central Bank:

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- i. any of the criteria specified in Schedule 1 have not been or are not being fulfilled; or
 - ii. the financial service provider has failed to comply with any condition on a licence; or
 - iii. the Central Bank has been provided with false, misleading or materially inaccurate information by or on behalf of the financial service provider or in connection with an application for registration or by or on behalf of a director or other officer or senior manager of the financial service provider; or
 - iv. the interests of consumers are in any way threatened by the way in which the financial service provider conducts its business or proposes to do so; or
 - v. the financial service provider has not commenced the business the subject of the registration within [6] months of registration or ceases to carry on that business; or
 - vi. the financial service provider has breached this Act in a material way; or
 - (c) if the financial service provider goes into liquidation or is otherwise dissolved; or
 - (d) for any other prescribed reason.
- (4) Where the Central Bank proposes to:
- (a) suspend or revoke a financial service provider's registration;
 - (b) impose a condition or additional conditions on a financial service provider's registration; or
 - (c) vary or revoke conditions imposed on a financial service provider's registration,
- in each case without the agreement of the financial service provider, then the Central Bank must give 28 days' notice of its intention to do so, the related reasons and advise the financial service provider of its rights under this Section.
- (5) A financial service provider given notice under Subsection (4) may, within a period of 28 days beginning on the day on which the notice was given, make written representations to the Central Bank.
- (6) After considering any representations made under Subsection (5), the Central Bank must:
- (a) first decide whether:
 - i. to proceed with the action proposed in the notice;
 - ii. to take no further action;
 - iii. where the proposed action was to suspend or revoke the financial service provider's registration, to impose conditions on its registration instead; or
 - iv. where the proposed action was to vary conditions on the registration, to impose different conditions instead; and
 - (b) then give the financial service provider written notice of its decision and, except where the decision is to take no further action, the notice must state the reasons for the decision.
- (7) A notice given under Subsection (6):
- (a) may be given with the period of 42 days beginning on the day on which the representations under Subsection (5) were given to the Central Bank; and
 - (b) takes effect in accordance with its terms.
- (8) No notice need be given under Subsection (4) in respect of:

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- (a) The suspension or revocation of the registration of a financial service provider where it appears to the Central Bank that:
 - i. A winding up order has been or may be made against the financial service provider; or
 - ii. The financial service provider is insolvent or there is a significant risk that it may become so; or
 - (b) The imposition or variation of conditions on the registration of a financial service provider where the Central Bank considers that the conditions should be imposed or varied as a matter of urgency in order to protect the interests of consumers.
- (9) In any case where Subsection (8) applies:
- (a) The Central Bank may by written notice to the financial service provider immediately revoke or suspend the registration or impose or vary the conditions on the registration;
 - (b) The written notice referred to paragraph (a) must state the reasons for the revocation or the conditions and advise the financial service provider of its rights under this Section;
 - (c) A financial service provider given notice under paragraph (a) may, within a period of 14 days beginning on the day on which the notice was given, make written representations to the Central Bank
 - (d) After considering any representations made under paragraph (c), the Central Bank must, within 28 days of when the relevant notice was given, decide whether:
 - i. to confirm or rescind its original decision; or
 - ii. to impose a different condition or vary the conditions in a different manner; and
 - iii. give the financial service provider concerned written notice of the decision and give reasons for the decision except where the decision is to rescind the original decision.
 - (e) Any notice given under paragraph (d) takes effect in accordance with its terms.
- (10) Where a notice is given under Subsection (4) is followed by a notice given under Subsection (8), the latter notice has the effect of terminating any rights to make representations under Subsection (5).

PART 4 – FINANCIAL CONSUMER PROTECTION PRINCIPLES

15. Obligation to comply with Financial Consumer Protection Principles

A financial service provider must:

- (a) comply with the principles described in this **Part (Financial Consumer Protection Principles)** at all stages of their relationship with a consumer and related security providers; and
- (b) must ensure that their representatives comply with the Financial Consumer Protection Principles; and
- (c) must ensure that their policies and procedures reflect the Financial Consumer Protection Principles.

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16. Fair treatment principle

A financial service provider must treat all consumers and their security providers fairly and respectfully and not engage in misleading, deceptive, abusive or aggressive treatment or conduct which discriminates on the basis of a personal attribute of the consumer or the security provider.

17. Disclosure and transparency principle

A financial service provider must ensure that consumers and their security providers are provided with accurate, simple and clearly expressed information about the features, risks, terms and cost of any financial product or service or security they are considering.

18. Product suitability principle

A financial service provider must ensure that:

- (a) the financial product or services they provide are designed and marketed having regard to the financial objectives, needs, capacity and behaviors of consumers in the target market and with a view to minimizing the risk of harm to those consumers; and
- (b) the financial objectives needs and capacity of a consumer are considered before providing them with a financial product or service.

19. Responsible lending principle

A financial service provider must have policies and procedures in place designed to ensure:

- (a) credit products for consumers can be repaid without substantial hardship; and
- (b) the ethical treatment of consumers regardless of whether they are in default.

20. Data protection principle

The personal information of consumers and security providers must:

- (a) be kept confidential and secure by the financial service provider; and
- (b) only be used and disclosed by the financial service provider for legitimate and lawful purposes.

21. Consumer and security provider recourse principle

Consumers and their security providers must be provided with easy access to an accessible, transparent, effective, prompt and free internal complaints system and they must be made aware of any available external dispute resolution service (including any dispute resolution service provided by the Central Bank).

PART 5 - FAIR TREATMENT REQUIREMENTS

Division 1: Monetary obligations

22. Void monetary liabilities

(1) A contract or security is void to the extent that it imposes a monetary liability on a consumer for:

- (a) an interest charge which exceeds the amount permitted by Section 26 (**Calculation of Interest**);
- (b) a fee or charge more than that permitted by Section 23 (**Fees and charges**); or

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- (c) any other amount prohibited by this Act.
- (2) A financial service provider must not accept, or seek to recover, any monetary obligation which is void under this Act.
- (3) A financial service provider must not accept, or seek to recover, any monetary obligation which is void under this Act.
- (4) A consumer is not liable to pay, and may recover from the financial service provider, any amount which has been paid in respect of a monetary obligation which is void under this Act.

23. Fees and charges

- (1) A consumer is not liable to pay, and a financial service provider must not accept or seek to recover, a fee or charge relating to a contract:
 - (a) which has not previously been disclosed to the person in accordance with this Act; or
 - (b) for a fee or charge payable to a third party more than the amount payable to that third party; or
 - (c) to the extent that the fee or charge is prohibited under any other provision of this Act, any other law or regulations prescribed under Subsection (4).
- (2) An application or establishment fee must not exceed a reasonable estimate of the financial service provider's reasonable administrative costs of assessing the application or establishing the contract or the average reasonable costs for these matters in relation to the relevant class of financial product or service.
- (3) A fee or charge for a partial or full early payment under a credit contract must not exceed a reasonable estimate of:
 - (a) the administrative costs of the early payment; and
 - (b) in the case of an early payment under a fixed interest rate contract, the financial service provider's loss arising from the early payment to the extent the loss arises from a difference between the annual percentage rate payable under the contract and the market rate for contracts of that type.
- (4) Regulations may be made prescribing any of the following matters:
 - (a) prohibiting the charging of a specific fee or charge;
 - (b) limiting the amount or rate which may be charged for a fee or charge; and
 - (c) specifying circumstances in which a fee or charge may be charged.

24. Annual percentage rate caps

- (1) The maximum annual percentage rate which may apply to a credit contract may be prescribed in regulations.
- (2) Different annual percentage rates may be prescribed under Subsection (1) for different types of credit contracts, including without limitation by reference to:
 - (a) the amount of credit;
 - (b) the category of the financial service provider; and
 - (c) whether or not obligations under the credit contract are secured.
- (3) Where a maximum annual percentage rate is prescribed under Subsection (1), a financial service provider must not enter into a credit contract if the annual percentage rate of the contract exceeds the rate prescribed.

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25. Publication of fees and charges, annual percentage rates and other terms

- (1) A financial service provider must publish the following information in relation to the financial product or services they make available to consumers:
 - (a) itemized fees and charges; and
 - (b) any applicable annual percentage rate(s).
- (2) The information referred to in Subsection (1) must be published in a prominent manner:
 - (a) in at least 2 newspapers circulating throughout Papua New Guinea on 31 March and 30 December in each year or, if that day is a public holiday, the following business day;
 - (b) on the financial service provider's website;
 - (c) at any premises of the financial service provider or its representatives attended by consumers; and
 - (d) as otherwise required by the Central Bank.
- (3) The standard terms and conditions for any financial product or service a financial service provider may provide to consumers must be:
 - (a) published in a prominent manner on the financial service provider's website;
 - (b) made available by the financial service provider on request; and
 - (c) the subject of a prominent notice displayed at any premises of the financial service provider or its representatives attended by consumers, which notice draws attention to the availability of the standard terms and conditions.
- (4) The Central Bank may publish the fees and charges, annual percentage rates and other terms and conditions of financial products and services in any manner designed to facilitate the ability of consumers to understand, and compare, the relevant financial products or services.
- (5) A financial service provider must provide the Central Bank with any information the Central Bank requires for the purposes of Subsection (4).

26. Calculation of interest

- (1) The maximum amount of any interest charge payable under a credit contract is an amount equivalent to applying the daily percentage rate to the unpaid daily balance (or the sum of each such amount if there is more than one annual percentage rate).
- (2) A financial service provider must not, at any time before the end of a day to which an interest charge applies, require payment of or debit the interest charge.

27. Right to pre-pay credit contract

- (1) A financial service provider must accept any payment under a credit contract before it is payable and must credit the consumer with receipt of the payment as soon as reasonably practicable.
- (2) A consumer may pay out a credit contract at any time by paying:
 - (a) the outstanding amount of credit; and
 - (b) accrued fees and charges (including, for the avoidance of doubt, interest charges) which are payable consistently with this Act;

less any amount due in respect of an insurance premium under Section 36 (1)(b)
(Termination of Insurance Contracts).
- (3) A financial service provider must provide a statement of a payout figure as described in Subsection (2) within 5 business days after receiving a request to do so.

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(4) A court may, on the application of a consumer, determine a payout figure if the financial service provider does not do so as provided for in Subsection (3).

28. Allocation of payments under a credit contract

(1) Payments made by a consumer must:

- (a) be allocated to clearing any amount in arrears before any fees and charges; and
- (b) be allocated first to the balance incurring the highest interest charge.

(2) A consumer that is liable to a financial service provider under 2 or more credit contracts or related securities may request that a payment be allocated in a specified way between them and the financial service provider must comply with that request.

29. Default interest and other charges

A differential rate of interest or any other charge (including, without limitation, a late payment fee) applying on default:

- (a) may only be applied by the financial service provider to the amount in default and while the default continues; and
- (b) must not exceed the financial service provider's reasonable costs of the default.

Division 3: Mortgages and guarantees

30. Mortgages which are void or unenforceable

(1) A mortgage is void to the extent that:

- (a) it does not describe or identify the property subject to the mortgage;
- (b) it charges all the property of the mortgagor;
- (c) it charges property to be acquired in the future which is not specifically identified;
- (d) it secures an amount that exceeds the sum of the reasonable expenses of enforcing the mortgage and:
 - (i) the liabilities of the consumer under the credit contract where the mortgage is given by the consumer; or
 - (ii) the liabilities of the guarantor under a guarantee where the mortgage is given by the guarantor; or
- (e) it purports to create a security over a consumer's employment remuneration or benefits or any retirement or superannuation benefits.

(2) A mortgage is unenforceable in relation to a new credit contract unless the financial service provider has:

- (a) given the mortgagor a copy of the credit contract; and
- (b) the mortgagor has accepted the extension in writing.

(3) A mortgagor must not assign or dispose of property subject to a mortgage without:

- (a) the financial service provider's consent which must not be unreasonably withheld; or
- (b) court approval, which may be given subject to conditions.

31. Guarantees which are void or unenforceable

(1) A guarantee is void to the extent that:

- (a) it secures an amount that exceeds the sum of the reasonable expenses of enforcing the guarantee and the liabilities of the consumer under a credit contract; or
- (b) it limits the guarantor's right to indemnity from the consumer whose liability the guarantor has guaranteed or to enforce such an indemnity.

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- (2) A guarantee is not enforceable in respect of credit provided under a new credit contract unless there is express provision in the guarantee for it to apply to the new credit contract and the financial service provider has:
 - (a) given the guarantor a copy of the contract document of the new credit contract; and
 - (b) subsequently obtained from the guarantor an explicit written acceptance of the extension of the guarantee.
- (3) A guarantee is not enforceable against a guarantor who was less than 18 years old when they gave the guarantee.

Division 2: Unfair Terms

32. Standard form contracts

- (1) A contract is in a standard form if it has been prepared by or on behalf of a financial service provider and was not subject to full and genuine negotiation with the consumer or security provider concerned.
- (2) A contract between a financial service provider and a consumer or a security provider for a financial product or service will be presumed to be in a standard form unless the financial service provider proves the contrary.

33. Unfair terms void

- (1) Any clause of a standard form contract for a financial product or service or related security is void if it is unfair as provided for by this Act.
- (2) A term of a contract or security is to be considered as unfair if the term:
 - (a) reflects a significant imbalance in the parties' rights and obligations;
 - (b) causes detriment to the consumer or security provider; and
 - (c) is not required to protect the financial service provider's legitimate interests.
- (3) Without limitation to Subsection (2), a term is to be considered as unfair if it:
 - (a) allows the financial service provider to unilaterally change the terms of a contract or security without expressly describing the circumstances in which that change may be made;
 - (b) allows the charging of a fee or charge which has not previously been disclosed to the consumer or which is prohibited by this Act;
 - (c) prohibits, or limits, early repayment of a credit contract;
 - (d) waives any protection provided for by this Act;
 - (e) purports to avoid or modify any provision of this Act;
 - (f) seeks to prevent the consumer or security provider from relying on statements or conduct of the financial service provider's representatives; or
 - (g) limits the right of a consumer or security provider to take legal action against the financial service provider.

Division 3: Other fair treatment obligations

34. Account closure

- (1) A financial service provider must process, as soon as reasonably practicable and in any event within 5 business days, any request from a consumer as to the steps and timeline for closing an account relating to a financial product or service.

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- (2) A financial service provider must process any request from a consumer to close an account as soon as reasonably practicable and in any event within 5 business days of the request or any longer period reasonably required to identify the consumer.
- (3) When a contract is terminated, the financial service provider must, within 5 business days:
 - (a) pay to the consumer or at their direction any money due to them; and
 - (b) cancel any standing order or direct debit authority on the relevant account.
- (4) A fee or charge to close an account must not exceed the administrative costs reasonably incurred by the financial service provider to process that request.
- (5) A financial service provider must not debit a consumer's account with any interest charge or fee or charge which relates to an event or time period which occurs after an account has been closed.

35. Requirement to take out insurance

- (1) A financial service provider must not:
 - (a) require a consumer or security provider to take out, or pay for, insurance unless it is consumer credit insurance, insurance over mortgaged property, compulsory insurance required by law, or insurance of a prescribed type;
 - (b) require a consumer or a security provider to take out insurance with a particular insurer; or
 - (c) make any unreasonable requirement as to the terms on which insurance must be taken out, the required level of cover or the insurer to be used by the consumer or security provider.
- (2) A financial service provider must explicitly advise a consumer or security provider in writing of their right to choose the insurer to provide cover for a policy permitted by this Act.
- (3) Any requirement to take out insurance is void if:
 - (a) the requirement, and information related to the insurance policy, is not separately and prominently disclosed in accordance with Part 6 *Transparency and Disclosure*; or
 - (b) the consumer or security provider provides evidence that they already have insurance of the relevant type.
- (4) If a financial service provider contravenes this Act the insured is entitled to recover from the financial service provider the full amount of any premium paid.

36. Termination of insurance contracts

- (1) If a credit contract is terminated, then:
 - (a) any consumer credit insurance contract is immediately terminated;
 - (b) the financial service provider must pay to the consumer, or credit the consumer with, an amount equal to the premium paid for the unexpired portion of any credit related insurance contract in force immediately before the termination with the amount payable to be calculated as specified in a direction issued by the Central Bank; and
 - (c) the financial service provider may recover any amount paid under Subsection (b) from the insurer.
- (2) A financial service provider must expressly inform the consumer of their rights under Subsection (1) on the termination of the credit contract, or as soon as reasonably practicable afterwards.

PART 6 - TRANSPARENCY AND DISCLOSURE

Division 1: Form and information requirements

37. Advertising and promotional materials

- (1) A financial service provider must ensure that any advertising or other promotional material concerning a contract or a security:
 - (a) is accurate, simple, and clearly expressed;
 - (b) is not misleading or deceptive; and
 - (c) includes any other disclosures specified in a direction issued by the Central Bank.
- (2) Any advertising or other promotional material that does not comply with Subsection (1) is prohibited.

38. Form and manner of disclosure requirements

- (1) A financial service provider must ensure any information, contract or notice provided to a consumer or a security provider pursuant to this Act is:
 - (a) easily legible;
 - (b) simply and clearly expressed, without use of technical language; and
 - (c) meets any other requirement specified in a direction issued by the Central Bank.
- (2) If the Central Bank is satisfied that any information, contract, or notice does not meet the requirements of Subsection (1), the Central Bank may prohibit its continued use.

39. Explanations for consumers

- (1) The features, risks, terms and cost of a financial product or service or security must be clearly explained by the relevant financial service provider to the consumer or security provider in a language they can understand:
 - (a) if it is reasonably obvious that the consumer or security provider is illiterate or cannot understand the relevant contract or security; and
 - (b) on request.
- (2) A potential security provider must also be given a clear explanation by a financial service provider, in a language they can understand, of:
 - (a) the implications and risks of giving a security, including the possible quantum of any financial liability; and
 - (b) the desirability of seeking independent legal advice.
- (3) An explanation referred to in Subsection (1) or (2) must:
 - (a) be given a reasonable time prior to the relevant contract or security coming into effect; and
 - (b) be the subject of a written record.

Division 2: General disclosure requirements

40. Contractual disclosures

- (1) A financial service provider must clearly and prominently disclose in a contract information with the form and content specified in a direction issued by the Central Bank.
- (2) A financial service provider must also disclose to a consumer additional information relevant to a contract as specified in a direction issued by the Central Bank.

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41. Periodic statements of account

- (1) A financial service provider must provide a periodic statement of account free of charge to a consumer for the following financial products or services:
 - (a) a deposit account;
 - (b) a credit account; and
 - (c) any other type of financial product or service specified in a direction issued by the Central Bank.
- (2) A periodic statement of account must disclose information with the form and content specified in a direction issued by the Central Bank.
- (3) A statement referred to in Subsection (1) must be provided at least at the following intervals:
 - (a) for a credit card contract – every 40 days; and
 - (b) in any other case – every 6 months,except to the extent specified otherwise in a direction issued by the Central Bank.

42. Transaction receipts

- (1) A financial service provider must provide a receipt for any payment made in respect of a contract or a security as soon as reasonably practicable after the payment is received.
- (2) Without limitation to Subsection (1), a receipt for a payment made by a consumer will be deemed to be provided as soon as reasonably practicable where the payment is made via a standing order, direct debit authority or a payroll deduction if details of the payment are included in the next periodic statement of account provided to the consumer under Section 41 (**Periodic statements of account**).
- (3) The receipt must contain, at a minimum:
 - (a) the amount received; and
 - (b) enough information to identify the contract or security to which the payment relates.

43. Key Facts Statements

- (1) A financial service provider must provide to a consumer a summary of the key features and price for any type of financial product or service specified in a direction issued by the Central Bank, with the summary to be in a standardized form designed to facilitate consumer understanding and comparability of product offers (**Key Facts Statement**).
- (2) A Key Facts Statement must be provided to a consumer:
 - (a) on request;
 - (b) when the consumer makes an enquiry about the relevant financial product or service; and
 - (c) at the same time the consumer is given the proposed final form of the contract for the relevant financial product or service; and
 - (d) as otherwise specified in a direction issued by the Central Bank.
- (3) A financial service provider must give the consumer sufficient time to read, and have explained to them, a Key Facts Statement before they enter into the contract for the relevant financial product or service.
- (4) A Key Facts Statement must:
 - (a) be in the form specified in a direction issued by the Central Bank;
 - (b) include all the information provided for in the relevant form of Key Facts Statement including, for the avoidance of doubt, an effective interest rate;

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- (c) contain variable information which is current as at the following dates (which-ever is applicable):
 - (i) in the case of a Key Facts Statement given pursuant to Subsection (2)(c), as at the date the Key Facts Statement is provided; and
 - (ii) in any other case, as at the disclosure date specified in the Key Facts Statement;
- (d) be completed in accordance with the instructions in the relevant form of Key Facts Statement; and
- (e) meet any other applicable requirement of this Act including, without limitation, Section 38 (***Form and manner of disclosure requirements***).

44. Information for consumers and security providers

- (1) A financial service provider must provide a consumer on request with a copy of any transaction and contractual information relating to a current contract with the consumer, or to a contract which has been terminated in the last 6 years.
- (2) A financial service provider must provide a current security provider on request with a copy of the relevant credit or security contract, transaction details, information as to any late payments, and details of the outstanding balance.
- (3) The information referred to in Subsections (1) and (2) must be given:
 - (a) as soon as reasonably practicable; and
 - (b) free of charge unless a similar request has been made in the previous 6 months, in which case a fee reflecting the reasonable cost of providing the information may be charged.

45. Enforceable contracts and securities

- (1) A contract or security is not enforceable unless:
 - (a) it is in the form of a written document signed by the relevant consumer or security provider or clearly accepted in some other clearly specified and verifiable way (for example, by drawing down available credit); and
 - (b) a copy of the proposed contract or security is provided to the consumer or security provider a reasonable time before the contract is made.
- (2) A copy of the final contract or security must be provided to the consumer or security provider by the financial service provider at the earlier of:
 - (a) the contract being executed by all parties; or
 - (b) the consumer or security provider becoming bound by the contract or security.

46. Changes to contracts and securities

- (1) A change made unilaterally by a financial service provider to a contract or a security is void except to the extent the relevant contract or security expressly provides for the change and the circumstances in which it may be made.
- (2) A financial service provider must not exercise a power to make a unilateral change to a contract or a security which increases the obligations of the consumer or a security provider unless it has given the other party:
 - (a) subject to Subsection (3), in the case of a change to a variable annual percentage rate, at least 5 business days' notice of the details of the change; and
 - (b) in any other case, at least 20 business days' notice of the details of the change.
- (3) A notice of change to a variable interest rate for the purposes of Subsection (2) may be given in 2 newspapers circulating throughout Papua New Guinea provided that the financial service provider also gives the consumer particulars of the change in the next statement of

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account provided under Section 41 (**Periodic Statements of Account**) or before the date on which the statement is provided.

- (4) A reference to a change to a contract or security in this Act includes, without limitation, a reference to:
- (a) a different annual percentage rate which increases the liabilities of a consumer, or reduces the return to a consumer from a savings or investment product;
 - (b) a change in the method of calculation of interest payable or due under the relevant contract;
 - (c) a new or increased fee or charge;
 - (d) a change to the terms and conditions of a financial product or service; and
 - (e) a change in the amount or method of calculation of a repayment.

47. Refinance of credit facility

- (1) Without limitation to any other provision of this Act, if a financial service provider allows a consumer to refinance all or part of a credit facility on expiration of the facility's term, then:
- (a) the refinanced credit facility must be treated as a new credit facility; and
 - (b) all the disclosure requirements in this Act applicable to, or in relation to, a credit contract will apply to the new credit facility (including, without limitation, Section 40 (**Contractual disclosures**) and Section 43 (**Key Facts Statements**)).
- (2) For the avoidance of doubt, the continuation of an existing overdraft facility on the same terms following a review by the financial service provider does not of itself amount to a refinancing of that facility for the purposes of this Act.

PART 7 – FINANCIAL PRODUCT AND SERVICE SUITABILITY

48. Financial product or service design

- (1) A financial service provider must have in place, and apply, written policies and procedures to ensure that the financial products and services they provide to consumers are designed and marketed having regard to the financial objectives, needs and capacity of consumers in the target market and with a view to minimizing the risk of harm to those consumers.
- (2) At a minimum, those policies and procedures must:
- (a) identify and control relevant risks including those relating to financial product or service features, marketing, distribution, security, usage, and account maintenance;
 - (b) assess and define the target market for each new financial product or service to be offered to consumers having regard to their likely financial needs, preferences and capacity and considering their known behaviours;
 - (c) set out the process for the authorization and introduction of new financial products or services for consumers, including the decision makers and how relevant requirements of this Act will be met (including, without limitation, this Section, Section 49 (**Financial product and service suitability policies and procedures**) and PART 8 (**Responsible Lending**); and
 - (d) meet any other requirements specified in a direction issued by the Central Bank.

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49. Financial product and service suitability policies and procedures

- (1) A financial service provider must have in place, and apply, written policies and procedures to determine whether a financial product or service provided to a consumer is reasonably likely to meet the financial objectives, needs and capacity of that consumer.
- (2) The policies and procedures referred to in Subsection (1) must require personal advice about the suitability of a financial product or service for a consumer to be provided on request or if it seems reasonably likely that the consumer needs such advice.
- (3) Personal advice referred to in Subsection (2) must be recorded in a statement of advice, with a copy to be provided to the consumer.
- (4) A statement of advice referred to in Subsection (3) must include any information specified in a direction issued by the Central Bank.

PART 8 - RESPONSIBLE LENDING

50. Credit affordability

- (1) A financial service provider must only provide a credit facility to a consumer after:
 - (a) a reasonable assessment of the ability of the consumer to repay the credit without substantial hardship; and
 - (b) taking reasonable steps to verify the information on which they rely to assess the consumer's creditworthiness.
- (2) A financial service provider must comply with any directions issued by the Central Bank concerning the steps to be taken to determine the matters referred to in Subsection (1).

51. Unsolicited offers of credit

A financial service provider must not make an unsolicited, pre-approved offer to a consumer of:

- (a) a credit facility; or
- (b) a credit limit increase.

52. Payroll deductions

- (1) If a consumer has authorized their employer to deduct an amount from their pay for direct payment to a financial service provider in relation to a credit contract, then:
 - (a) the authority is void to the extent it exceeds any amount that may be deducted from the consumer's wages under any law or regulatory instrument
 - (b) the financial service provider must disclose to the consumer any fee or charge payable to any person in connection with the deduction as if it were payable in connection with the credit contract;
 - (c) a repayment is deemed to have been made consistently with the relevant credit contract as soon as it has been deducted from a consumer's pay and regardless of whether the payment is remitted in whole or in part to the financial service provider;
 - (d) the financial service provider must immediately cancel the payroll deduction on repayment of all amounts due under the credit contract or termination of the contract for any reason;
 - (e) if a payroll deduction is a "mortgage" as defined in this Act, the provisions of this Act applying to a mortgage will apply accordingly; and

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- (f) for the avoidance of doubt, a mortgage is void to the extent it purports to create a security over remuneration or related benefits or retirement benefits under Section 30 (***Mortgages which are void or unenforceable***).
- (2) A financial service provider must not accept, or seek to recover, any payment which is void under this Section.
- (3) A financial service provider is liable to a consumer, and must immediately reimburse the consumer, for any payroll deduction to the extent it exceeds the amount payable under this Act or the relevant credit contract.

53. Notice of default

- (1) A financial service provider must not commence enforcement proceedings against a consumer or security provider unless:
 - (a) they are in default and they have been given a notice allowing at least 30 business days to remedy the default and specifying: full details of the default, the amount in default; and the consequences of failing to pay and any other information specified in a direction issued by the Central Bank; and
 - (b) the default has not been remedied in the period stated in the notice.
- (2) A notice need not be given under Subsection (1) if:
 - (a) the financial service provider reasonably believes that urgent action is required to protect mortgaged property; or
 - (b) permitted by a court order.
- (3) A default is not taken to be remedied if there is a subsequent default of the same kind within the relevant notice period.
- (4) This Act is in addition to any provision of any other law relating to the enforcement of real property or other mortgages.

54. Debt collection

- (1) A financial service provider or supplier must not harass a consumer, a security provider or any other person in relation to the repayment of credit or an amount due under a security.
- (2) Harassment of a person for the purposes of this Act includes, without limitation, any action specified in a direction issued by the Central Bank.
- (3) A financial service provider must comply, and ensure its debt collectors comply, with any directions issued by the Central Bank concerning debt collection activities.
- (4) Without limitation to Section 65 (***Compensation for breach through court action***), a financial service provider is liable for the acts or omissions of a debt collector acting on their behalf, or on behalf of a person to whom they have assigned a debt, as if those acts or omissions were those of the financial service provider.

55. Repossession and sale of mortgaged goods

- 1. A financial service provider must not enter a home to re-possess mortgaged goods without the occupier's consent or a court order.
- 2. A financial service provider must comply with a direction issued by the Central Bank in relation to the repossession and sale of mortgaged goods.

56. Limits on guarantees

- (1) A guarantor may withdraw from a guarantee:
 - (a) at any time before credit is first provided under the credit contract; and

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- (b) after credit is provided if the credit contract differs materially from the copy given to the guarantor before the guarantee was signed.
- (2) A guarantor of a continuing credit contract can, by notice to the financial service provider, limit the guarantee so that it only applies to liabilities already incurred and any other agreed amount.
- (3) If the terms of a credit contract are changed to increase or allow for an increase in liabilities of a guarantor, the guarantor's liabilities are not increased unless the guarantor has specifically agreed in writing to the increase or the change is:
 - (a) an increase in the annual percentage rate, repayments or fees and charges expressly provided for in the credit contract;
 - (b) a deferral or a waiver of the consumer's obligations for a period not exceeding 90 business days; or
 - (c) a change approved by a court.

57. Enforcement of guarantees

A financial service provider must not enforce a judgement against a guarantor unless:

- (a) the financial service provider has obtained a judgement against the consumer for the guaranteed amount which has remained unpaid for 30 business days after a written demand; or
- (b) the consumer cannot be located after reasonable attempts to do so;
- (c) the consumer is insolvent; or
- (d) a court authorizes the financial service provider to do so.

58. Consumer and security provider responsibilities

For the avoidance of doubt, subject to the protections provided for by this Act or any law, nothing in this Act is intended to detract from the responsibilities of consumers and their security providers under any contract or law, including:

- (a) to fulfil their obligations under credit contracts they have entered into and securities they have provided;
- (b) to provide complete and truthful information to a financial service provider; and
- (c) not to act fraudulently.

PART 9 - DATA PROTECTION

59. Data protection policies and procedures

- (1) A financial service provider must have in place, and apply, policies and procedures to ensure the confidentiality and security of the personal information of a consumer and a security provider and do so in a manner consistently with this Act and any regulations prescribed for the purposes of this Section.
- (2) A financial service provider may only use and disclose the personal information of a consumer or a security provider:
 - (a) consistently with the original purpose of collection;
 - (b) with the explicit and informed consent of the consumer or the security provider, as the case may be;
 - (c) as required or permitted by law; or

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- (d) in any other circumstances specified in directions issued by the Central Bank.
- (3) The regulations referred to in Subsection (1) may, without limitation, relate to:
 - (a) the content and form requirements for privacy disclosures by a financial service provider;
 - (b) a consumer's or security provider's right of access to their personal information;
 - (c) a financial service provider's obligation to consider correction of a consumer's or security provider's personal information on request;
 - (d) other circumstances in which a financial service provider may use or disclose personal information of a consumer or security provider;
 - (e) complaints from a consumer or a security provider about misuse of their personal information; and
 - (f) the privacy policy of a financial service provider.

60. Credit reporting data

A financial service provider must:

- (a) obtain the specific and informed consent of the consumer or the security provider (as the case may be) before disclosing their personal information to a credit reference bureau; and
- (b) take responsibility for dealing with any complaint from a consumer or a security provider about:
 - (i) the use or disclosure of their personal information by a credit reference bureau; or
 - (ii) the accuracy of the records or information about them, which is held by a credit reporting information,where the financial service provider has disclosed the personal information of the consumer or security provider to the credit reference bureau.

PART 10 - CONSUMER RECOURSE

61. Complaints to financial service providers

A financial service provider must have in place, and apply, documented policies and procedures for a fair, accessible, transparent, free, and efficient internal complaints system that meets the requirements of this Act and any direction issued by the Central Bank.

62. Complaints about liabilities

- (1) If a consumer or a security provider, by notice to a financial service provider, complains about a liability under a credit contract or security then the financial service provider must respond to that notice as soon as reasonably practicable and in any event within 5 business days of the notice being given.
- (2) The financial service provider's response must explain in reasonable detail how the liability arose except to the extent the financial service provider agrees with the consumer or the security provider as to the disputed amount.
- (3) A consumer, a security provider or a financial service provider may apply to the court for an order in relation to a disputed amount and the court may determine the complaint on such conditions as it thinks appropriate.

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- (4) A financial service provider must not, without court approval, begin enforcement proceedings based on a liability complained about by a consumer or a security provider under this Act:
- (a) until at least 30 business days after the financial service provider has responded to the consumer or the security provider; or
 - (b) while a court is determining a complaint as provided for in Subsection (3).
- (5) This Section applies notwithstanding any other provisions of this Act, including Section 61 ***Complaints to financial service providers*** and Section 64 (***Central Bank power to consider disputes***).

63. Reporting to the Central Bank

A financial service provider must provide reports to the Central Bank on complaints received and processed:

- (a) at intervals specified in a direction issued by the Central Bank; and
- (b) in the form, and containing the information, specified in a direction issued by the Central Bank.

64. Central Bank power to consider disputes

- (1) The Central Bank has power to provide a dispute resolution service that meets the requirements of this Act and any prescribed regulations.
- (2) The Central Bank is not required to consider a dispute under this Act unless:
- (a) the consumer or the security provider has first sought to have the dispute resolved through the financial service provider's complaint resolution processes and the outcome of those processes is known; or
 - (b) the Central Bank considers exceptional circumstances apply.
- (3) A dispute must be considered by the Central Bank for the purposes of this Act:
- (a) in an accessible, transparent, free, and efficient manner;
 - (b) otherwise in accordance with any policies and procedures set out in regulations made pursuant to Subsection (8).
- (4) A financial service provider must notify consumers and security providers of the Central Bank's role:
- (a) by prominently displaying relevant information at physical premises, on websites, in any other form of media used by the financial service provider;
 - (b) by a prominent notice in the terms and conditions of the contract or security (as the case may be);
 - (c) at the time a complaint is made to the financial service provider; and
 - (d) on request.
- (5) The Central Bank must publicize its dispute resolution service provided for by this Act.
- (6) If the Central Bank is not successful in reaching an agreed outcome on a dispute referred to in Subsection (1) within a reasonable time, the Central Bank may make a decision on the dispute which must:
- (a) be in writing;
 - (b) contain reasons for the decision;
 - (c) specify any remedy the Central Bank considers appropriate; and
 - (d) be provided to all parties to the dispute.

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- (7) A decision by the Central Bank made pursuant to Subsection (6):
- (a) is binding on the financial service provider concerned in accordance with the regulations; and
 - (b) for the avoidance of doubt, may include an order to compensate the relevant consumer or security provider for all or part of any direct loss suffered as a result of the matter the subject of the dispute.
- (8) Regulations may be prescribed for the purposes of this Section including, without limitation, concerning:
- (a) the policies and procedures to be followed in relation to a dispute;
 - (b) the nature of any decisions or recommendations which may be made by the Central Bank;
 - (c) limits on the types of disputes which may be considered by the Central Bank including, without limitation, limits which refer to a minimum or maximum monetary cap;
 - (d) limits on the amount of any order which may be made under Subsection (7)(b); and
 - (e) publication of data concerning disputes considered by the Central Bank.

65. [Compensation for breach through court action](#)

- (1) A financial service provider is liable to a person, including a consumer and a security provider, for any loss or damage suffered because of its acts and omissions, including those of its representatives, in connection with a matter covered by this Act.
- (2) A court may:
- (a) order a financial service provider to compensate a person affected by any breach of this Act; and
 - (b) make any consequential or ancillary orders it considers appropriate.
- (3) The Central Bank may initiate and conduct an action for compensation on behalf of a consumer or a class of consumers affected by a breach of this Act.

66. [Reopening of contracts and securities through court action](#)

If a court is satisfied on the application of a consumer or a security provider that, in all the circumstances, there has been a breach of this Act, the court may re-open the relevant contract and make any of the following orders:

- (a) relieve the consumer or security provider from an obligation to re-pay any amount due under the contract;
- (b) reopen an account already taken between the parties;
- (c) set aside or revise the contract or security;
- (d) give judgement for an order for payment of an amount to the consumer or security provider that the court considers to be just having regard to all the circumstances of the case; and
- (e) make ancillary or consequential orders.

PART 11 – OFFENCES AND PENALTIES

67. Offences

A person who contravenes any provision of this Act is guilty of an offence.

68. Specific penalties

- (1) A person convicted of an offence against any of the sections listed in Part 1 of Schedule 2 is liable to a fine or imprisonment or both as listed in Part 1 of Schedule 2.
- (2) A person convicted of an offence against any of the sections listed in Part 2 of Schedule 2 is liable to a fine or imprisonment or both as listed in Part 2 of Schedule 2.

69. General penalty

A person who commits an offence against this Act, for which there is no specific penalty provided, is liable to a penalty of:

- (a) a fine not exceeding K500,000.00; or
- (b) a term of imprisonment not exceeding five years; or
- (c) both a fine not exceeding the amount specified in paragraph (a); and a term of imprisonment not exceeding the term specified in paragraph (b).

70. Continuing offences and penalties

Where an offence against this Act is of a continuing nature, a person who is found guilty of that continuing offence is liable to a further default penalty of a fine, in addition to that prescribed in Section 68 (**Specific penalties**) or Section 69 (**General penalty**) not exceeding K5,000.00 per day for each day that the offence continues.

71. Prosecution and other actions

- (1) The Central Bank may:
 - (a) prosecute a person who commits an offence against this Act; or
 - (b) commence a civil action against a person for any form of civil relief which is available in respect to the matters constituting the offence.
- (2) Any prosecution or action commenced by the Central Bank in relation to an offence committed under this Act shall be heard by the National Court.
- (3) Notwithstanding Section 524 of the **Criminal Code Act** (Chapter 262), following a committal for an offence under this Act, the Central Bank shall:
 - (a) present an indictment against the accused; and
 - (b) a copy of the indictment shall be served on the Public Prosecutor; and
- (4) the Public Prosecutor may withdraw the indictment within 14 days of service of the indictment on him.
- (5) Where a legal action is taken by or against the Central Bank under this Act:
 - (d) the Court may award costs against any party or claimant other than the Central Bank; and
 - (e) the costs may be recovered by the Central Bank as a debt to the Central Bank.

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- (6) Where an action is taken by the Central Bank under this Act, the Court may, on application by the Central Bank, whether as interlocutory or final relief, order a person to cease any activity until further order.
- (7) Any order made by the Court under Subsection (5) shall be made on condition that the Central Bank is not responsible for any loss of income or profit which may be incurred by the enterprise as a consequence of that order.
- (8) An offence against this Act may be prosecuted summarily or on indictment, but an offender is not liable to be punished more than once in respect of the same offence.
- (9) In addition to any other powers it has under the Act, the Central Bank may specify sanctions of an administrative nature on a financial service provider for a breach of this Act.
- (10) Any fine to be paid by a person as a result of a legal or administrative action taken by the Central Bank:
 - (a) shall be paid to the Central Bank; and
 - (b) in addition to any other remedy, may be recovered by the Central Bank as a debt to the Central Bank.

72. Injunctions and other orders

- (1) Where the Central Bank or the Public Prosecutor apply for an injunction or any other orders, the Court may, where it deems appropriate, grant the injunction or orders after it is satisfied that:
 - (a) there is a reasonable likelihood that a person will contravene this Act; or
 - (b) a person has been found guilty of the contravention; or
 - (c) there is a reasonable likelihood that the contravention will continue or be repeated.
- (2) Where there is a reasonable likelihood that a person will contravene this Act under Subsection (1)(a), the Court may grant an injunction restraining him from disposing of or otherwise dealing with any of his assets while the suspected contravention is investigated.

73. Changes to penalties

The Head of State, acting on the advice of the Central Bank, may amend the monetary amounts specified in this Part or in Schedule 2.

PART 12 - MISCELLANEOUS

74. Enforceable undertakings

- (1) The Central Bank may accept a written undertaking given by a financial service provider in connection with a matter in relation to which the Central Bank has a function or power under this Act.
- (2) An accepted undertaking may be withdrawn or varied at any time but only with the Central Bank's consent.
- (3) If the Central Bank considers that a financial service provider who has given an undertaking has breached any of its terms, the Central Bank may apply to the court for an order under Subsection (4).
- (4) If the court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:
 - (a) an order directing the financial service provider to comply with that term of the undertaking;

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- (b) an order directing the financial service provider to pay to a person specified in the order (including, without limitation, a consumer or a class of consumers or the Central Bank) an amount up to the amount of any financial benefit that the financial service provider has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the financial service provider to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.
- (5) An enforceable undertaking, and information about compliance with the undertaking, must be published by the Central Bank on its website except to the extent that the Central Bank is satisfied that the information:
- (a) is commercial in confidence;
 - (b) consists of personal details of an individual; or
 - (c) should not be disclosed because its release would be against the public interest.

75. Power to make Regulations

The Head of State, acting on the advice of the Central Bank, may make, amend or vary regulations which:

- (a) are not inconsistent with this Act; and
- (b) prescribe any matters that by this Act are:
 - (i) required or permitted to be prescribed by regulations; or
 - (ii) necessary or convenient to be prescribed by regulations for the carrying out or giving effect to this Act; and
- (c) provide penalties for offences against the regulations.

76. Power to make Directions

- (1) The Central Bank may issue directions to financial service providers, their representatives, and any other relevant person and in relation to financial products and services which:
- (a) are not inconsistent with this Act;
 - (b) prescribe any matters that by this Act are:
 - (i) required or permitted to be prescribed by directions; or
 - (ii) necessary or convenient to be prescribed by directions for the carrying out or giving effect to this Act.
- (2) Without limitation to Subsection (1), the Central Bank may issue directions which extend or limit any time limit provided for by this Act.

77. Effect of Act on a contract or security

- (1) A provision of a contract or a security is not illegal, void, or unenforceable because of a breach of this Act except to the extent provided for by this Act.
- (2) For the avoidance of doubt, where this Act applies to a contract or security, it does so notwithstanding any provision to the contrary in the contract or security.

78. Notice requirements

- (1) Subject to Section 79 (***Electronic contracts, transactions, and disclosures***), a notice or another document to be provided under this Act:
- (a) must be sent to:
 - (i) the last known address or other location of the addressee; or
 - (ii) any other address explicitly nominated in writing by the recipient;

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- (b) must be sent by post, or delivered personally or sent electronically;
 - (c) must be given in writing; and
 - (d) must otherwise comply with requirements specified in a direction issued by the Central Bank.
- (2) A notice or another document to be provided under this Act will be taken to have been delivered:
- (a) on the date it is given personally;
 - (b) if sent by post, on the date it would be delivered in the normal course;
 - (c) if sent electronically, on the date that it becomes capable of being retrieved by the addressee; and
 - (d) as provided for by any law.
- (3) Nothing in this Section limits:
- (a) the provisions of any other law relating to the giving of notices or other documents; or
 - (b) the power of the court to make orders concerning notices or other documents.

79. Electronic contracts, transactions and disclosures

- (1) For the purposes of this Act, any contract or transaction is not invalid because it took place wholly or partly by means of one or more electronic communications.
- (2) Any requirement or permission under this Act, however expressed, to:
- (a) produce a notice;
 - (b) give information in writing;
 - (c) provide a signature;
 - (d) produce a document;
 - (e) make a request;
 - (f) give a statement of reasons;
 - (g) record information; or
 - (h) retain a document,

may be met by electronic means with the explicit prior consent in writing of any recipient and provided they are given a copy of any relevant disclosure document in a form which they can keep and access for future reference.

PART 13 - TRANSITIONAL PROVISIONS

80. Commencement of Act

- (1) Subject to Subsection (2), this Act commences on a date to be fixed by proclamation.
- (2) This Act, or any Section of this Act, may be prescribed to commence on different dates in relation to different types of:
- (a) financial service providers;
 - (b) financial products or services;
 - (c) contracts;
 - (d) securities;
 - (e) payroll deductions; and
 - (f) any other activity or matter.

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81. Application of Act to contracts, securities and payroll deductions

- (1) Subject to Subsection (2), this Act applies in relation to a contract, a security and a payroll deduction which is entered into or given on or after the date on which the applicable sections in the Act commence.
- (2) This Act also applies in relation to a contract, a security and a payroll deduction in existence before the day on which the applicable Section in the Act commences ("**existing facility**") except that:
 - (a) a financial service provider for an existing facility will not be in breach of this Act in respect of anything done, or omitted to be done, before the commencement of the applicable sections in the Act;
 - (b) Section 30(1) (***Mortgages which are void or unenforceable***) does not apply in relation to a mortgage which was in existence before that section commences;
 - (c) Section 31(1) (***Guarantees which are void or unenforceable***) does not apply in relation to a guarantee which was in existence before that section commences; and
 - (d) any other Section or part of a Section does not apply in the circumstances prescribed by regulations.

82. Application of Act to complaints and disputes

- (1) This Act applies in relation to a complaint and any related dispute where the event which gave rise to the relevant complaint occurred on or after the date on which the applicable section of the Act commences.
- (2) Subsection (1) is subject to any provision to the contrary in this Act.

SCHEDULE 1: CRITERIA FOR REGISTRATION OF A FINANCIAL SERVICE PROVIDER

Sections 12 (*Registration of financial service providers*) and Section 14 (*Suspension and revocation of registration and changes to conditions*)

- (1) Every person who is, or is to be, a director, chief executive or manager of a financial service provider must be a fit and proper person to hold the particular position.
- (2) In determining whether a person is a fit and proper person to hold any particular position, regard shall be had to:
 - (a) his or her probity;
 - (b) his or her competence and soundness of judgment for fulfilling the responsibilities of that position; and
 - (c) the diligence with which he or she is fulfilling or likely to fulfil those responsibilities; and
 - (d) whether the interests of consumers are, or are likely to be, in any way threatened by the person holding the position.
- (3) Without limiting the generality of the Subsections (1) and (2) provisions, regard may be had to the previous conduct and activities, in business or financial matters, of the person in question and, in particular, to any evidence that he or she has:
 - (a) committed an offence involving fraud or other dishonesty or violence; or
 - (b) been engaged in or been associated with any financial loss due to dishonesty, incompetence, or malpractice in the provision of financial products and services, or the management of companies or other businesses or due to their position as a discharged or undischarged bankrupt; or
 - (c) been engaged in any business practices appearing to the Central Bank to be deceitful or oppressive or otherwise improper, whether unlawful or not, or which otherwise reflect discredit on his method of conducting the business of a financial service provider; or
 - (d) engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence and soundness of judgment; or
 - (e) previously been engaged as a director, chief executive or manager of a financial service provider or Authorised Institution under the Bank and Financial Institutions Act 2000, that has been declared bankrupt or placed under statutory management by the Central Bank.

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SCHEDULE 2: SPECIFIC PENALTIES FOR OFFENCES AGAINST THIS ACT

Section 68 (*Specific penalties*)

Part 1 – Sections which carry a fine not exceeding K100,000 or imprisonment for a term not exceeding two years, or both

Section 8 Regulatory levies

Section 10 Ongoing obligations of financial service provider

Section 11 Consumer protection compliance plan

Section 12 Registration of financial service providers

Section 13 Conditions

Section 15 Obligation to comply with Financial Consumer Protection Principles

Section 22 Void monetary obligations

Section 23 Fees and Charges

Section 24 Annual percentage rate caps

Section 25 Publication of fees and charges, annual percentage rates and other terms;

Section 26 Calculation of interest

Section 27 Right to prepay credit contract

Section 28 Allocation of payments under a credit contract

Section 29 Default interest and other charges

Section 34 Account Closure

Section 35 Requirement to take out insurance

Section 36 Termination of insurance contracts

Section 37 Advertising and promotional material

Section 38 Form and manner of disclosure requirements

Section 39 Explanations for consumers

Section 40 Contractual disclosures

Section 41 Periodic statements of account

Section 42 Transaction receipts

Section 44 Information for consumers and security providers

Section 45 Changes to contracts and securities

Section 48 Product design

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Section 49 Product suitability policies and procedures

Section 50 Credit affordability

Section 51 Unsolicited offers of credit

Section 52 Payroll deductions

Section 53 Notice of default

Section 54 Debt collection

Section 55 Repossession and sale of mortgaged goods

Section 57 Enforcement of guarantees

Section 59 Data protection policies and procedures

Section 60 Credit reporting data

Section 61 Complaints to financial service providers

Section 62 Complaints about liabilities

Section 63 Reporting to the Central Bank

Part 2 – Sections which carry a fine not exceeding K500,000 or imprisonment for a term not exceeding five years, or both

Section 6 Financial Consumer Protection Powers of the Central Bank

Section 7 Information and investigation powers of the Central Bank

Section 43 Key Facts Statements

ANNEX 1 – EDR REGULATION DRAFTING INSTRUCTIONS

DRAFTING RECOMMENDATIONS FOR PROPOSED PAPUA NEW GUINEA FINANCIAL CONSUMER PROTECTION (CONSUMER RECOURSE) REGULATION (insert date)

FINANCIAL CONSUMER PROTECTION (CONSUMER RECOURSE) REGULATION

MADE for the purposes of Section *Central Bank power to consider disputes* of the Financial Consumer Protection Act 2023.

PART 1 – PRELIMINARY

1. Purpose

The purpose of this Regulation is to prescribe matters for a dispute resolution service as set out in Section 64 (*Central Bank power to consider disputes*) of the Financial Consumer Protection Act 202[X].

2. Definitions

In this Regulation, unless the contrary intention appears, the definitions in *Section 2 (Interpretation)* of the Act apply.

“**Act**” means the Financial Consumer Protection Act 2022.

“**dispute resolution service**” means a service relating to resolution of disputes which is provided by the Central Bank for the purposes of Section 64 (*Central Bank power to consider disputes*) of the Act.

“**chief decision maker**” means the person appointed by the Central Bank for the purposes of Regulation 7 (*Duties of Chief Decision Maker*).

“**maladministration**” means an act or omission contrary to or not in accordance with a duty or obligation owed at law or pursuant to the contract between the financial service provider and the complainant.

PART 2 – SCOPE

3. General scope

The Central Bank can consider any dispute within the meaning of the Act subject to the limitations set out in these Regulations.

4. Time limits

Unless both parties to a dispute agree otherwise, the Central Bank can consider a dispute only if it receives it within:

- (a) [six] years of the date when the complainant first became aware (or should reasonably have become aware) that they had a reason to complain; and

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(b) [two] years of the date of any financial service provider's final response.

5. **Mandatory exclusions**

The Central Bank cannot consider or continue to consider a dispute if:

- (a) a court of competent jurisdiction or other similar body has considered or is considering it (unless the court stays the proceeding so that the dispute can be considered by the dispute resolution service); or
- (b) the Central Bank has previously considered the matter, unless material evidence has become available since the matter last went before the Central Bank; or
- (c) the complainant has already reached a full and final settlement with the financial service provider.

6. **Discretionary exclusions**

The Central Bank may decline to consider or continue to consider a dispute if:

- (a) the dispute is about the exercise of commercial judgement made without maladministration;
- (b) the dispute has no reasonable prospect of success;
- (c) the complainant is acting frivolously, vexatiously, or unreasonably;
- (d) the complainant has suffered no loss (or has been offered appropriate compensation for such loss);
- (e) the dispute is about the level of a fee, premium, charge or interest rate except that, for the avoidance of doubt, this ground does not exclude any dispute concerning non-disclosure, misrepresentation, or incorrect application, charging or calculation of a fee, premium, charge or interest rate;
- (f) there is a more appropriate place to deal with the dispute, such as a court or tribunal;
- (g) the Central Bank agrees to allow a financial service provider to treat the dispute as a test case; or
- (h) the complainant is claiming more than the compensation limit.

7. **Chief decision maker appointment and duties**

- (1) The Central Bank may appoint any person it considers suitable as the chief decision maker for the purpose of this Regulation.
- (2) For the avoidance of doubt, the chief decision maker may be given any position title determined to be appropriate by the Central Bank.
- (3) It is the duty of the chief decision maker to:
 - (a) ensure that the functions imposed on the Central Bank to provide a dispute resolution service under this Regulation and Section 64 (**Central Bank power to consider disputes**) of the Act are implemented; and
 - (b) manage the dispute resolution service for the Central Bank and direct its affairs and, in relation to the management of the dispute resolution service and the direction of its affairs, to act honestly and in good faith to achieve the Central Bank's objectives and policies for financial consumer protection; and
 - (c) implement the dispute resolution process for the Central Bank under this Regulation and Section (Central Bank power to consider disputes) of the Act.

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- (4) In the exercise of its functions and powers under this Regulation and Section 64 (**Central Bank power to consider disputes**) of the Act, the chief decision maker is operationally independent.

PART 3 – DISPUTE RESOLUTION PROCESS

8. Resolution process

- (1) The Central Bank may gather relevant information, and try to resolve a dispute by agreement, through informal methods where practicable.
- (2) For the avoidance of doubt, the Central Bank may seek to resolve a dispute by facilitating negotiations between the parties or conducting a mediation or conciliation conference.
- (3) If reasonable attempts to resolve a dispute by agreement do not or are unlikely to succeed, the dispute resolution service may then proceed to make a decision on the dispute in accordance with Section 64(6) (**Central Bank power to consider disputes**) of the Act.

9. Gathering relevant information

- (1) Without limitation to the Central Bank's powers to obtain information and investigate under the Act or any other law, the Central Bank may require the financial service provider and complainant to provide information about a dispute that it considers relevant for the purposes of providing the dispute resolution service.
- (2) A party to a dispute must comply with the requirements to provide information within the timeframe specified unless:
 - (a) to provide the information would breach a duty of confidentiality;
 - (b) to provide the information would breach a Court order or the law; or
 - (c) the information does not or no longer exists or cannot reasonably be obtained.
- (3) If a party to a dispute without reasonable excuse fails to provide information within the specified timeframe, the Central Bank may take whatever steps it considers reasonable in the circumstances.
- (4) When considering a dispute, the Central Bank may, as it considers appropriate:
 - (a) consult with industry and consumer advisors as it thinks appropriate.; and
 - (b) seek expert advice including from a legal, industry or other relevant expert.

10. Decision-making process

- (1) After gathering relevant information, the Central Bank may provide the parties with a preliminary assessment of their dispute.
- (2) A preliminary assessment under sub-regulation (1) must set out reasons for any conclusions made about the merits of the dispute and must provide a recommendation as to how the dispute should be resolved.
- (3) The Central Bank must inform the parties to the dispute that they can either accept the preliminary assessment or request a review of it and the time they have to make a choice.
- (4) If the parties accept the preliminary assessment within the specified time, the dispute is settled on that basis.

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- (5) If either party does not accept the preliminary assessment within the specified timeframe and requests a review of the preliminary assessment, the dispute will proceed to a final decision by the chief decision maker or their delegate.
- (6) Before making a final decision, the chief decision maker or their delegate must review the preliminary assessment and consider any further representations from the complainant and financial services provider.
- (7) The decision must be sent to both parties in writing with reasons and specify any remedy.

11. Basis of decision

- (1) In making any decision, the Central Bank must be fair in all the circumstances, having regard to the Act and any other law, any relevant code and good industry practice.
- (2) The Central Bank is not bound by rules of evidence or previous decisions.

12. Compensation

The Central Bank may direct a financial service provider subject to a dispute to compensate the complainant for:

- (a) any direct financial loss up to the amount of [K500,000];
- (b) any non-financial loss, including stress and inconvenience suffered up to the amount of [K5,000];
- (c) any legal or other professional costs or incidental expenses a complainant reasonably incurred in the course of the dispute up to the amount of [\$]; and
- (d) any interest on a payment to be made.

13. Other remedies

- (1) The Central Bank may direct a financial service provider subject to a dispute to carry out or refrain from carrying out any specific action that is necessary to provide redress, including:
 - (a) the forgiveness or variation of a debt;
 - (b) the release of security for a debt;
 - (c) the repayment, waiver or variation of a fee or other amount owing; and
 - (d) the reinstatement or rectification of a contract.
- (2) The Central Bank cannot award punitive, exemplary, or aggravated damages.

14. Effect of Decision

For the purposes of Section 64(7) (**Central Bank power to consider disputes**):

- (a) A decision by the Central Bank in relation to a dispute is final and binding on the financial service provider and the complainant, if the complainant agrees with it in writing;
- (b) A decision by the Central Bank in relation to a dispute is not final and binding on the financial service provider and the complainant, if the complainant disagrees with it in writing;
- (c) If a decision by the Central Bank is final and binding on the financial service provider, the financial service provider may not bring or continue an action in the courts or take any other available action against the complainant in relation to the subject matter of the complaint.
- (d) If a decision by the Central Bank is final and binding on the complainant, the complainant may not bring or continue an action in the courts or take any other available action against the financial service provider in relation to the subject matter of the complaint.

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(e) There is no right of appeal to court of a final decision.

15. Complaints about the dispute resolution service

- (1) A party who is dissatisfied with the standard of service provided by the dispute resolution service may lodge a complaint with the Central Bank.
- (2) Where a party expresses dissatisfaction to the Central Bank about the standard of service, the Central Bank must respond to the person within a reasonable timeframe.
- (3) The Central Bank does not have power to re-open a dispute or to consider the merits of a dispute or the substantive outcome of a dispute that is considered pursuant to this regulation.

PART 4 – CONFIDENTIALITY, FAIRNESS AND DISCLOSURE

16. Confidentiality

Information obtained through the dispute resolution process will be treated as confidential, except where:

- (a) the information is already publicly available;
- (b) fairness requires disclosure of the information to the other party to the dispute; or
- (c) otherwise required or permitted under the Act or under any other law.

17. Fairness

In making any decision, including whether to consider, or continue to consider a dispute, the Central Bank must follow the rules of natural justice, which include giving both parties:

- (a) adequate notice of important steps and decisions;
- (b) the opportunity to access and provide relevant information, express their views, and to have those views considered, before a decision; and
- (c) the reasons for the decision in writing and within a reasonable time.

18. Information sharing with the parties

The Central Bank must generally share information provided by a party to a dispute with the other parties to the dispute, unless it considers there is a good reason to keep it confidential (for example, it discloses fraud detection and security systems).

19. Use of and publication of data

- (1) Information obtained for the purpose of the dispute resolution service can be used and disclosed by the Central Bank in exercising its functions under the Act or any other law.
- (2) Without limiting the purposes for which information obtained through the dispute resolution service can be used by the Central Bank in exercising its functions under the Act or any other law, the Central Bank must publish reports at least every 12 months on:
 - (a) the number of disputes it considered and the number of disputes it did not consider and where the Central Bank did not consider any disputes it must report, in de-identified form, the reasons why it declined to consider or continue to consider the disputes;
 - (b) the number of complaints received by the dispute resolution service per financial service provider;

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- (c) the number of complaints closed per financial service provider
- (d) the outcome of the disputes it considered;
- (e) the time taken to resolve disputes; and
- (f) the types and causes of the disputes and any systemic issues.

PART 5 – LEGAL PROCEEDINGS

20. Effect on legal proceedings and debt recovery action

While the Central Bank is considering a dispute, the financial service provider must not:

- (a) begin legal proceedings against the complainant or other affected party about the subject matter of the complaint; or
- (b) seek judgment or take any other action to recover a debt the subject of the complaint, other than to the minimum extent necessary to preserve the financial service provider's legal rights.

21. Test cases

- (1) A financial service provider can, at any time before a decision is issued in relation to a dispute, ask in writing that the Central Bank not consider, or stop considering, the dispute because it believes the dispute involves issues of general application.
- (2) Such a request must also state that the financial service provider will undertake to:
 - (a) begin legal proceedings against the complainant within six months of the request;
 - (b) pay the complainant's reasonable costs of the test case and any subsequent appeal by the financial service provider and make interim payments for these costs; and
 - (c) meet any other requirements of the Central Bank.
- (3) The Central Bank must not consider or must stop considering a dispute if in its absolute discretion it agrees with a financial service provider's request and the financial service provider complies with the undertakings.

ANNEX 2 – DRAFTING INSTRUCTIONS FOR FINANCIAL CONSUMER PROTECTION ACT DIRECTIONS

DIRECTIONS RELATING TO DEPOSIT AND CREDIT PRODUCTS

1. Interpretation

- (1) Any term used in these directions, which is defined in the Financial Consumer Protection Act 2022, has the same meaning as in that Act.
- (2) In these directions, unless the contrary intention appears:
“Act” means the Financial Consumer Protection Act 2022.

2. Contractual disclosures for deposit products

- (1) For the purposes of Section 40(1) (**Contractual disclosures**), a financial service provider must clearly and prominently disclose the following information in tabular form on the first and immediately following pages of a contract for a deposit product (including a proposed contract), as at the specified disclosure date:
 - (a) **Type:** the type of deposit product;
 - (b) **Features:** the key features of the deposit product, including the consumer’s benefits and rights;
 - (c) **Risks:** the key risks associated with the deposit product;
 - (d) **Financial service provider:** the name, licence number or registration number and contact details of the deposit product;
 - (e) **Term:** the term of the contract, if any, and any applicable fee or penalty for terminating a term deposit early;
 - (f) **Interest (if any):**
 - (a) the current annual percentage rate or rates and how each applies; and
 - (b) the method of calculation of interest;
 - (g) **Fees and charges:**
 - (a) the amount or if the amount is not ascertainable, the method of calculation, of each fee and charge; and
 - (b) the total amount of ascertainable fees and charges;
 - (h) **Withdrawal options:** details of the means by which withdrawals may be made and any limitations on withdrawals.
 - (i) **Effective interest rate:** the effective interest rate for the deposit product or service (if any);
 - (j) **Changes:** details of any changes which may be made to any provision of the contract or any amount payable under the contract and how the consumer will be informed of the change;
 - (k) **Commissions:** details of any commission payable in respect of the contract, including the amount (if ascertainable, or the method of calculation) and by and to whom the commission is payable;
 - (l) **Data protection:** the circumstances in which the financial service provider will collect, use, and disclose the consumer’s personal information and how it will be kept secure;
 - (m) **Complaints:** information as to how to make a complaint to the financial service provider;

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- (n) **Dispute Resolution:** contact information for any applicable dispute resolution service (including the Central Bank);
 - (o) **Central Bank:** contact information for the Central Bank; and
 - (p) **Other information:** any other information or warning specified in the Act or in a direction issued by the Central Bank.
- (2) The specified disclosure date for the purposes of Subsection (1) must be no more than 2 business days before the information is provided.

3. Contractual disclosures for credit products

- (1) For the purposes of Section 40 (1) (**Contractual disclosures**), a financial service provider must clearly and prominently disclose the following information in tabular form on the first and immediately following pages of a contract for a credit product (including a proposed contract and a letter of offer), as at the specified disclosure date:
- (a) **Type:** the type of credit product;
 - (b) **Features:** the key features of the credit product, including the consumer's benefits and rights;
 - (c) **Risks:** the key risks associated with the financial product or service;
 - (d) **Financial service provider:** the name, licence number or registration number and contact details of the financial service provider;
 - (e) **Credit:** the amount of credit or any applicable credit limit;
 - (f) **Deductions from loan proceeds:** the nature and amount of any deduction from the proceeds of a loan before it is disbursed to a consumer;
 - (g) **Term:** term during which the credit is to be provided and any applicable fee or penalty for terminating a credit contract early;
 - (h) **Interest (if any):**
 - (a) the current annual percentage rate or rates and how each applies;
 - (b) details of any applicable reference rate and how the current reference rate may be ascertained;
 - (c) the method of calculation of interest;
 - (d) the total amount of interest charges if ascertainable; and
 - (e) any applicable default rate of interest and when it will be applied.
 - (i) **Fees and charges:**
 - (a) the amount or if the amount is not ascertainable, the method of calculation, of each fee and charge; and
 - (b) the total amount of ascertainable fees and charges;
 - (j) **Effective interest rate:** the effective interest rate for the credit contract;
 - (k) **Repayments:**
 - (a) the amount of each repayment or the method of calculating the amount if the amount is not ascertainable;
 - (b) when each repayment is due;
 - (c) the number of repayments; and
 - (d) the total amount of repayments if ascertainable; and
 - (e) the right to prepay a credit contract;
 - (l) **Security:** details of any mortgage or guarantee which is to be provided including a description of the mortgaged property;

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- (m) **Insurance:** details of any insurance to be financed by the credit contract including:
 - (a) the name of the insurer;
 - (b) the type of Insurance;
 - (c) the amount payable to the insurer and when it must be paid;
 - (d) any commission payable in respect of the Insurance;
 - (e) how claims may be made under the Insurance policy; and
 - (f) details of key risks covered and key exclusions;
 - (n) **Payroll loans:** a prominent, separately disclosed warning in the form of **Schedule 2** on the first page of the contract;
 - (o) **Changes:** details of any changes which may be made to any provision of the contract or any amount payable under the contract and how the consumer will be informed of the change;
 - (p) **Commissions:** details of any commission payable in respect of the contract, including the amount (if ascertainable, or the method of calculation) and by and to whom the commission is payable;
 - (q) **Data protection:** the circumstances in which the financial service provider will collect, use, and disclose the consumer's personal information and how it will be kept secure;
 - (r) **Complaints:** information as to how to make a complaint to the financial service provider;
 - (s) **Dispute Resolution:** contact information for any applicable dispute resolution service (including the Central Bank);
 - (t) **Central Bank:** contact information for the Central Bank; and
 - (u) **Other information:** any other information or warning specified in the Act or in a direction issued by the Central Bank.
- (2) The specified disclosure date for the purposes of Subsection (1) must be no more than 2 business days before the information is provided.
- (3) If a credit related insurance contract is to be financed by the credit contract, the financial service provider must ensure that the insurer provides the consumer with a copy of the relevant insurance policy within 5 business days of acceptance of the policy proposal by the insurer.

4. Periodic statement of account disclosures

For the purposes of Section 41(2) (**Periodic statements of account**), a financial service provider must clearly and prominently disclose the following information for the relevant statement period for a deposit account or a credit account to the extent applicable:

- (a) **Statement period:** the dates on which the statement period begins and ends;
- (b) **Balances:** the opening and closing balance for the statement period;
- (c) **Credit:** each amount of credit provided in the statement period;
- (d) **Amount payable:** any amount (including any minimum amount) payable by the consumer and the date it is due;
- (e) **Payments:** the amount, date, and nature of each payment into or out of the account;
- (f) **Supplier:** the identity of any supplier of goods and services for which credit was provided;

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- (g) **Annual percentage rate:** the current annual percentage rate and details of any change in the statement period;
- (h) **Interest charges:** the amount and date of any debit or credit of interest charges;
- (i) **Fees and charges:** the amount, date and nature of any debit for fees and charges;
- (j) **Insurance:** the amount paid for any insurance financed under the credit contract, and the name of the insurer, the kind of insurance and any applicable commission (unless previously disclosed);
- (k) **Corrections:** any correction of information in a previous statement; and
- (l) **Other information:** any other information or warning specified in a directive issued by the Central Bank.

5. Key Facts Statements

- (1) For the purposes of Section 43(1) (**Key Facts Statements**), a Key Facts statement is to be provided for any fixed term credit contract.
- (2) For the purposes of Section 43(1) (**Key Facts Statements**), the information to be disclosed in a Key Facts Statement for a credit product is to be in the form set out in Schedule 2.
- (3) A Key Facts Statement is to be written in English and in Tok Pisin.

6. Statement of amount owing and other matters

- (1) Without limitation to any other requirement of the Act, a financial service provider must, at the request of a consumer or a security provider, and within the time specified in this Regulation, provide a statement of:
 - (a) the current balance of the consumer's credit contract account;
 - (b) any amount overdue;
 - (c) any amount debited or credited in a specified period; and
 - (d) the amount required to pay out any credit contract.
- (2) The statement referred to in Subsection (1) must be given:
 - (a) as soon as reasonably practicable and in any event within 5 business days of the request; and
 - (b) free of charge unless a similar request has been made in the previous 6 months, in which case a fee reflecting the reasonable cost of providing the information may be charged.

7. Effective interest rates

A financial service provider must calculate, and provide to a consumer, an effective interest rate for a credit contract:

- (a) on request;
- (b) in a Key Facts Statement; and
- (c) as otherwise required by the Act.

8. Debtor harassment

- (1) For the purposes of Subsections (2) and (3) of Section (Debt collection), a financial service provider must not engage in any of the following activities except to the extent expressly required by law:
 - (a) unnecessary or excessive contact or communication with a person, going beyond what is acceptable or reasonable;
 - (b) making threats to seize, or seizing, property which has not been provided as collateral;

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- (c) deliberately damaging personal property;
 - (d) approaching someone other than a consumer or a security provider to seek payment of the amount due;
 - (e) threats of harm to any person and assault;
 - (f) disclosing the existence of the debt to a third party;
 - (g) calling at a place of employment to seek repayment; and
 - (h) public shaming.
- (2) Notwithstanding Subsection (1)(d), disclosure of the existence of a debt to a debt collector is permitted provided that the debt collector is required to keep the information confidential and secure, as required of the relevant financial service provider under this Act.
9. Repossession and sale of mortgaged goods
- (1) This Section applies for the purposes of Section 55(2) (***Repossession and sale of mortgaged goods***).
- (2) A financial service provider must, within 5 business days of taking possession of mortgaged goods, give the mortgagor a notice with an estimate of the goods' value based on the best price reasonably obtainable.
- (3) A financial service provider must sell the goods the subject of a notice under Subsection (2) to a purchaser nominated by the mortgagor, for the estimated price or a greater price, provided the nomination is received within 14 business days of the date of receipt of the notice.
- (4) Subject to Subsection (3), a financial service provider must not sell the goods the subject of a notice under Subsection (2) and must not advertise the sale of the goods:
- (a) within 21 business days of the notice being given;
 - (b) while a stay of enforcement proceedings is in place; or
 - (c) for a price less than the estimated value, other than with court approval.
- (5) Immediately after a sale of mortgaged goods takes place, the financial service provider must notify the mortgagor of:
- (a) the gross and net proceeds of sale;
 - (b) the amount credited to the mortgagor; and
 - (c) any amount required to pay out the credit contract or any security.
- (6) The amount credited to a mortgagor on the sale of mortgaged goods must not be less than the proceeds of sale less:
- (a) the outstanding amount secured by the mortgage; and
 - (b) the reasonable expenses of the sale.
- (7) A reference in this Act to the taking possession of mortgaged goods includes a reference to the financial service provider taking possession of the goods:
- (a) pursuant to the terms of the mortgage; or
 - (b) after the voluntary return of the goods by the mortgagor.

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PRODUCT SUITABILITY DIRECTIONS

10. Statements of advice

For the purposes of Subsection (Product suitability policies and procedures) (4), the following information is prescribed:

- (a) a summary of the advice;
- (b) any assumptions made by the person providing the advice;
- (c) applicable fees and charges;
- (d) any potential conflict of interest;
- (e) any applicable commissions to be paid to the person providing the advice; and
- (f) the basis for the advice.

COMPLAINTS TO FINANCIAL SERVICE PROVIDERS DIRECTIONS

11. Complaints to financial service providers

- (1) This Section applies for the purposes of Section 61(1) (***Complaints to financial service providers***).
- (2) A financial service provider must ensure that:
 - (a) they have a well-publicized, point of contact to which consumers and security providers may refer a complaint;
 - (b) a complainant can make complaints in person, in writing, by telephone, electronically and by any other channel through which they normally communicate with the financial service provider;
 - (c) an adequate number of staff are designated to handle complaints (although they may perform other duties);
 - (d) the staff handling complaints are independent from any staff and function subject to a complaint to the extent feasible having regard to the nature, scale, complexity, and risks of the financial service provider;
 - (e) relevant staff are appropriately trained on the financial service provider's policies and procedures for handling complaints and have appropriate resources and capacity; and
 - (f) up to date records of complaints received and processed are maintained which include information on:
 - (i) the date a complaint is received;
 - (ii) brief details of the complaint;
 - (iii) the name and contact details of the complainant;
 - (iv) the name and contact details of relevant staff members handling the complaint;
 - (v) details of all communication with the complainant; and
 - (vi) details of any settlement reached.
- (3) A financial service provider must actively inform consumers and security providers about how to make a complaint including by:
 - (a) prominently displaying relevant information at physical premises, on websites, in any other form of electronic media used by the financial service provider;
 - (b) prominently including relevant information in terms and conditions for any contract or in any security; and
 - (c) providing the information on request.

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- (4) A financial service provider must:
- (a) give each complaint a unique tracking number and advise the complainant of the number on receipt of the complaint;
 - (b) establish, and implement, a reasonable timeline for dealing with each complaint which must include, at a minimum:
 - (i) acknowledgement of receipt of the complaint within 2 business days of receipt;
 - (ii) investigation of the complaint as soon as reasonably practicable; and
 - (iii) advice to the complainant of the outcome of the complaint within 20 business days of its receipt;
 - (c) ensure all complaints are addressed in an equitable, objective, and timely manner; and
 - (d) at the same time as rejecting a complaint:
 - (i) give reasons for the rejection; and
 - (ii) give the complainant contact information for any applicable dispute resolution service (including the Central Bank).
- (5) A financial service provider must ensure that:
- (a) regular (at least quarterly) reports are provided to their Board on the volume and nature of complaints received, the extent to which they have been resolved and the related root causes and systemic issues; and
 - (b) lessons learnt through the complaints management policies and procedures are used to improve those policies and procedures, inform training of representatives and to improve financial products and services.
- (6) A financial service provider must comply with any additional requirements relating to complaints management specified in a direction issued by the Central Bank.

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SCHEDULE 1 – EFFECTIVE INTEREST RATE CALCULATION

ANNEX I

- I. The basic equation expressing the equivalence of drawdowns on the one hand and repayments and charges on the other.

The basic equation, which establishes the annual percentage rate of charge (APR), equates, on an annual basis, the total present value of drawdowns on the one hand and the total present value of repayments and payments of charges on the other hand, i.e.:

$$\sum_{k=1}^m C_k (1 + X)^{-t_k} = \sum_{l=1}^{m'} D_l (1 + X)^{-s_l}$$

where:

- X is the APR,
- m is the number of the last drawdown,
- k is the number of a drawdown, thus $1 \leq k \leq m$,
- C_k is the amount of drawdown k ,
- t_k is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each subsequent drawdown, thus $t_1 = 0$,
- m' is the number of the last repayment or payment of charges,
- l is the number of a repayment or payment of charges,
- D_l is the amount of a repayment or payment of charges,
- s_l is the interval, expressed in years and fractions of a year, between the date of the first drawdown and the date of each repayment or payment of charges.

Remarks:

- (a) The amounts paid by both parties at different times shall not necessarily be equal and shall not necessarily be paid at equal intervals.
- (b) The starting date shall be that of the first drawdown.
- (c) Intervals between dates used in the calculations shall be expressed in years or in fractions of a year. A year is presumed to have 365 days (or 366 days for leap years), 52 weeks or 12 equal months. An equal month is presumed to have 30,41666 days (i.e. 365/12) regardless of whether or not it is a leap year.
- (d) The result of the calculation shall be expressed with an accuracy of at least one decimal place. If the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one.
- (e) The equation can be rewritten using a single sum and the concept of flows (A_k), which will be positive or negative, in other words either paid or received during periods 1 to k , expressed in years, i.e.:

$$S = \sum_{k=1}^n A_k (1 + X)^{-t_k},$$

S being the present balance of flows. If the aim is to maintain the equivalence of flows, the value will be zero.

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II. The additional assumptions for the calculation of the annual percentage rate of charge shall be as follows:

- (a) If a credit agreement gives the consumer freedom of drawdown, the total amount of credit shall be deemed to be drawn down immediately and in full.
- (b) If a credit agreement gives the consumer freedom of drawdown in general but imposes, amongst the different ways of drawdown, a limitation with regard to the amount of credit and period of time, the amount of credit shall be deemed to be drawn down on the earliest date provided for in the credit agreement and in accordance with those drawdown limits.
- (c) If a credit agreement provides different ways of drawdown with different charges or borrowing rates, the total amount of credit shall be deemed to be drawn down at the highest charge and borrowing rate applied to the most common drawdown mechanism for this type of credit agreement.
- (d) In the case of an overdraft facility, the total amount of credit shall be deemed to be drawn down in full and for the whole duration of the credit agreement. If the duration of the overdraft facility is not known, the annual percentage rate of charge shall be calculated on the assumption that the duration of the credit is 3 months.
- (e) In the case of an open-end credit agreement, other than an overdraft facility, it shall be assumed that:
 - (i) the credit is provided for a period of 1 year starting from the date of the initial drawdown, and that the final payment made by the consumer clears the balance of capital, interest and other charges, if any;
 - (ii) the capital is repaid by the consumer in equal monthly payments, commencing 1 month after the date of the initial drawdown. However, in cases where the capital must be repaid only in full, in a single payment, within each payment period, successive drawdowns and repayments of the entire capital by the consumer shall be assumed to occur over the period of 1 year. Interest and other charges shall be applied in accordance with those drawdowns and repayments of capital and as provided for in the credit agreement.

For the purposes of this point, an open-end credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

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For the purposes of this point, an open-end credit agreement is a credit agreement without fixed duration and includes credits which must be repaid in full within or after a period but, once repaid, become available to be drawn down again.

- (f) In the case of credit agreements other than overdrafts and open-end credits as referred to in the assumptions set out in points (d) and (e):
- (i) if the date or amount of a repayment of capital to be made by the consumer cannot be ascertained, it shall be assumed that the repayment is made at the earliest date provided for in the credit agreement and is for the lowest amount for which the credit agreement provides;
 - (ii) if the date of conclusion of the credit agreement is not known, the date of the initial drawdown shall be assumed to be the date which results in the shortest interval between that date and the date of the first payment to be made by the consumer.
- (g) Where the date or amount of a payment to be made by the consumer cannot be ascertained on the basis of the credit agreement or the assumptions set out in points (d), (e) or (f), it shall be assumed that the payment is made in accordance with the dates and conditions required by the creditor and, when these are unknown:
- (i) interest charges are paid together with the repayments of capital;
 - (ii) a non-interest charge expressed as a single sum is paid at the date of the conclusion of the credit agreement;
 - (iii) non-interest charges expressed as several payments are paid at regular intervals, commencing with the date of the first repayment of capital, and if the amount of such payments is not known they shall be assumed to be equal amounts;
 - (iv) the final payment clears the balance of capital, interest and other charges, if any.
- (h) If the ceiling applicable to the credit has not yet been agreed, that ceiling is assumed to be EUR 1 500.
- (i) If different borrowing rates and charges are offered for a limited period or amount, the borrowing rate and the charges shall be deemed to be the highest rate for the whole duration of the credit agreement.
- (j) For consumer credit agreements for which a fixed borrowing rate is agreed in relation to the initial period, at the end of which a new borrowing rate is determined and subsequently periodically adjusted according to an agreed indicator, the calculation of the annual percentage rate shall be based on the assumption that, at the end of the fixed borrowing rate period, the borrowing rate is the same as at the time of calculating the annual percentage rate, based on the value of the agreed indicator at that time.
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SCHEDULE 2 – WARNINGS ABOUT PAYROLL LOANS

Do you really need a payroll loan today?

It can be very expensive to borrow small amounts of money and borrowing may not solve your money problems. And it becomes more expensive every time a loan is re-financed.

Also, take great care to check all deductions from your pay for loan deductions.

If you have any questions, talk to your lender. If they cannot help you, call [**BNG EDR service**]

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SCHEDULE 3 –FIXED TERM CREDIT KEY FACTS STATEMENT
COMMENTS / QUERIES