

CREDIT LAW REVIEW: SETTING THE SCENE

Introduction

Consumer credit in South Africa includes a wide range of products, such as housing loans and mortgages, overdraft and personal loans, credit cards, retail credit, leases, installment sales and micro-loans. Many different institutions provide consumer credit. These include banks, micro-lenders, retailers and other non-bank financial intermediaries.

The need for a review

The need for a review of the consumer credit legislation has long been recognised. There is broad agreement that current laws are weak and outdated; they reflect the political reality of the apartheid era. The Department of Trade and Industry made certain changes to address specific problems such as increasing the protection on micro-loans, one change that was introduced in the revised exemption notice. The approach has, nevertheless, been piecemeal and a thorough and holistic assessment became essential.

A number of reports have commented on the weaknesses in consumer credit legislation. These include the Law Commission's 1994 review of the Usury Act; the Strauss Report on Rural Finance; the National Small Business Regulatory Review by Ntsika Enterprises Promotion Agency in 1999 and the Policy Board Report on SME Finance under the chairmanship of Dr Hans Falkena, 2001.

South African consumer credit legislation consists principally of the following: the Usury Act, 1968; the Credit Agreements Act, 1980; and the Exemption Notices, 1992 and 1999. Many factors have impacted on the consumer credit market since 1968. These include significant political, social and economic changes combined with major technological advances.

Criticism of a dysfunctional credit market is based on the following problem areas:

- Fragmented and outdated legislation;
- Ineffective consumer protection, particularly in relation to consumers in low-income groups;
- High cost of credit and, in some areas, access to credit;
- Rising levels of over-indebtedness; and
- Reckless behaviour by credit providers and exploitation of consumers by micro-lenders, intermediaries, debt collectors and debt administrators.

In March 2002, Dr Alistair Ruiters, Director-General of the Department of Trade and Industry, mandated a technical committee to undertake a review of consumer credit policy and legislation. The members of the Technical Committee were Professor Roshana Kelbrick, Mr Moses Moeletsi, Dr David Porteous, Mr Kgosi Pule and Mr Gabriel Davel. During the course of the review extensive research was conducted into different aspects of the consumer credit market. The following areas were covered:

- Consumer perceptions about credit products, credit providers and consumer protection, assessed through focus group discussions;
- The views of industry representatives, consumer representatives and other stakeholders on the current regulatory framework; and
- A statistical and economic analysis of the consumer credit market, in terms of value and cost of different products, and the factors that determine these outcomes.

Purpose of the review

The purpose of the review is to identify and analyse the weaknesses in the consumer credit market and to make proposals for a new regulatory framework. The review focuses on:

- Impediments in current legislation to serving the needs of the low-income personal finance market, housing and small business finance;
- The scope of new legislation and the treatment of small medium and micro enterprises in such legislation;
- Methods to make consumer protection effective;
- Examination of solutions to problems of over-indebtedness; and
- Identification of exploitative practices by credit providers and safeguards to protect vulnerable groups.

Key issues to be addressed

The following issues have been examined in detail by the Technical Committee and, in particular, through the research conducted at their request.

a) Consumer views about credit providers and products

- How can credit legislation address the high levels of consumer dissatisfaction about levels of disclosure on the cost and terms of credit products?
- Should consumers be shielded from unsolicited credit, especially when the belief exists that this contributes to levels of over-indebtedness?
- Can consumer credit legislation promote the benefits of a positive credit history as an asset through a shift in focus on the information disseminated by credit bureaux?

b) Views of industry representatives, consumer representatives and other stakeholders

- Is it feasible to replace the current credit legislation with a single statute to apply to all transactions and to all credit providers?
- Will stronger enforcement address many of the problems currently being experienced by consumers?
- Can the establishment of a 'national loans register' play a role in ensuring that credit providers do not extend more credit than consumers can afford?

c) Other issues

- How should insurance under a credit contract be regulated?
- Is it a function of consumer credit law to consider consumer over-indebtedness?
- Would the removal of price control be the best way to achieve an integrated market?
- Which factors are most detrimental to effective competition, and what is the best approach for dealing with these?

The way forward

Government plans to engage stakeholders in the discussions surrounding the credit law review. It aims in this process to consult both within government and externally to arrive at consensus on key issues. Consultation is at the core of the review process. We welcome your views and comments and encourage you to make them known to us. Forward these to the following email address: creditlaw@thedti.gov.za

Or post to: Department of Trade and Industry, Consumer Corporate Regulation Division, Private Bag X84, Pretoria, 0001.

Publications

An executive summary of findings of the Technical Committee and the following research reports and papers published as part of the credit law review are now available:

'Credit Law Review: Technical Committee Report: Executive summary of findings.' August 2003.

Research reports – full text

Hawkins, Dr Penelope. 'The cost, volume and allocation of consumer credit in South Africa'. FEASibility (Pty) Ltd March 2003.

Reality Research Africa. 'Credit contract disclosure associated factors'. December 2002.

Rudo Research and Training. 'A market research report: Credit law review'. December 2002.

Expert opinions – full text

Dymski, Professor Gary A. 'Interest rates and usury in emerging markets'. University of California, 2003.

Hofmeyr, Herbststein & Gihwala Inc. 'Report for the purposes of the credit law review'. December 2002.

Kunene, Mduduzi. Legal Advisor:MFRC. 'A comparison of consumer credit statutes'. 2003.

Meagher, Patrick. 'Regulation of payday lenders in the United States'. IRIS Center. University of Maryland, 2002.

Research reports and expert opinions – full text

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