



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Consumer And Corporate Regulation Division

Presentation to the Portfolio Committee on Trade and Industry on the National Credit Amendment Act Regulations Including Affordability Assessment Regulations, the Review of Limitations on Fees and Interest Rates Regulations, the Draft Credit Life Insurance Regulations and the Prescription of a Threshold for all Credit Providers Regulations

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Presenters

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Purpose

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- To brief Trade and Industry Portfolio Committee on the National Credit Amendment Act Regulations Including Affordability Assessment Regulations, the Review of Limitations on Fees and Interest Rates, the Draft Credit Life Insurance Regulations and the Prescription of a Threshold for all Credit Providers Regulations.

Background

- Research commissioned by **the dti** showed inconsistency in the applicability of the then affordability assessment guidelines by credit providers.
- Credit providers tended to overlook affordability tests and extended credit based on listing information on the credit bureau. As a result **the dti** and the NCR recommended to Parliament that the National Credit Amendment Act should empower the Minister to Issue binding regulations on affordability assessment criteria.
- Garnishees orders have become an easy way to collect debt. Credit providers opted to by-pass risk management processes associated with defaulting debtors, by just approving credit without checking if the consumer can afford such.

Background

- Cabinet took a decision that the over indebtedness of households is worrisome and as a result mandated the Ministers of Trade and Industry, Justice and Correctional Services and Finance to attend to the problem.
- The Portfolio Committee on Trade and Industry also instructed **the dti** to attend to the cost of credit.
- In view of the above, a Task Team was formed constituted of the Department of Justice and Correctional Services (DOJ), National Treasury (NT) and **the dti** to address the above problem within their legislative mandates.
- The Task Team has attended to a number of issues as summarised in the attached grid.

Background

- The DOJ had to amend the Magistrates Court Act to incorporate something akin to affordability assessment criteria of the National Credit Amendment Act, 2014.
- The Debt Collectors Act had to be amended, as attorneys apply a different rate of interest.
- The Desai judgment also instructed the DOJ to amend the Magistrates Court Act to be in line with the Affordability Assessment Criteria that are embodied in the National Credit Amendment Act, 2014.

Amongst other issues of concern to Cabinet, the following were highlighted as major issues:

- Reckless lending
- Gap in affordability assessment
- Abuse of credit insurance
- High cost of credit
- Judgments and garnishees
- Lack of education and awareness about credit
- Listing requirements
- Discretionary credit guidelines
- Honesty and disclosure by credit providers and consumers
- Claims and collections on prescribed debts

Background

According to the NCR statistics as at September 2015, the status of the Consumer Credit Records is as follows.

Out of 23.11 million credit active consumers:

- 12.70 million (55.0%) are in good standing.
- 10.41 million (45%) are impaired.

In terms of accounts, these consumers have 82.04 million accounts:

- 59.66 million (72.7%) are in good standing.
- 22.38 million (27.3%) are impaired.

Discussion

These Regulations were published on 13 March 2015 in the Government Gazette and have brought, amongst others;-

- Criteria for Affordability Assessment (e.g Maintenance and Social Grants)
- Registration by all credit providers
- Powers of National Credit Regulator to investigate reckless lending matters
- Power of National Consumer Tribunal to adjudicate reckless lending matters
- Disclosure of total cost of credit and capping of credit insurance
- Prohibition of sale and collection of prescribed debt
- Automatic removal of adverse credit information

Affordability Assessment Regulations

- After interactions with the various industry role players, the Minister postponed the implementation of Affordability Assessment Regulations for a period of six (6) months with effect from the 13th of March 2015 in order to give time for the industry to align their systems.
- The Regulations came into legal force on the 14th of September 2015 and all industry role players are expected to be in full compliance with the Regulations.
- The NCR is currently conducting investigations and checking on whether or not the industry is in compliance with the regulations.

Regulations on Interest Rates and Fees

- The decision to review interest rates was made in Parliament in 2013 after public hearings on the National Credit Amendment Act.
- The research conducted on over indebtedness showed that the interest rates charged to consumers are very high and coupled with that, no review of interest rates and fees had been conducted since 2007.
- This prompted **the dti** to publish for public comments, a Notice regarding limitation on fees and interest rates applicable for borrowings.
- The **Government Gazette No. 38911** proposed changes to maximum rates for Unsecured Credit from 32.65% to 24.78%, Mortgage agreements from 17.65% to 17.75%, Credit Facilities from 22.65% to 19.78%, Developmental Credits from 32.65% to 32.78% and other credit agreements from 22.65% to 22.75%.

Regulations on Interest Rates and Fees

- Short-term credit transactions remained at 5% per month for the first loan and a proposed 3% for subsequent loans within the same calendar year.
- Incidental credit agreements remained unchanged at 2%.
- The public was invited to comment in writing on or before **5 August 2015**.
- **the dti** team had convened sessions with affected stakeholders as part of the consultative process during the month of July 2015.

Regulations on Interest Rates and Fees

- **the dti** also urged stakeholders to take up the opportunity to clarify any aspect relating to the draft regulations during consultation sessions, and further provide **the dti** with their written submissions with alternative proposals, where necessary.
- **the dti** team consolidated the submissions and analysed them before producing a revised set of regulations for consideration by the Minister.
- The submissions from the affected stakeholders enriched the process and enabled the Minister to make a final determination.

Regulations on Interest Rates and Fees

- It is important to note that the review also came as a result of a court application lodged by the MicroFinance South Africa (MFSA) against **the dti** and the NCR regarding the review of Service fees.
- **the dti** through NCR commissioned a holistic review of the maximum interest rates, initiation fees and service fees.
- The Minister, after having considered the submissions and proposals from the industry made a final determination, and published the final Notice on the Limitations of Fees and Interest Rates Regulations in the **Government Gazette No. 39379** on the 6th of November 2015.

Regulations on Interest Rates and Fees

In summary, the final Notice on the Limitations of Fees and Interest Rates Regulations was as follows at the date of publication:

- Unsecured Credit decreased from 32.65% to 27%, (RR + 21%)
- Mortgage agreements increased from 17.65% to 18%, (RR + 12%)
- Credit Facilities decreased from 22.65% to 18%, (RR + 12%)
- Developmental Credits increased from 32.65% to 33%, (RR + 27%)
- and other credit agreements increased from 22.65% to 23%, (RR + 17%)
- Short-term credit transactions remained at 5% per month for the first loan and a 3% for subsequent loans within the same calendar year.
- Incidental credit agreements remain unchanged at 2%
- Service Fees have been increased from R50 to R60.

- The Limitations on Fees and Interest Rates Regulations as reviewed will come into effect on the 6th of May 2016 and will only affect new credit agreements entered into on and after the effective date.

Regulations on Interest Rates and Fees

- Repo rate of 5.75% was effective at the time of the Government Gazette publication. Current Repo rate is 6.75%.

Repo Rate	5.75%		6.75%	
	Current Formula	Effective 06 May	Current Formula	Effective 06 May
Unsecured Credit	32.65%	26.75%	34.85%	27.75%
Mortgages	17.65%	17.75%	19.85%	18.75%
Credit Facilities	22.65%	19.75%	24.85%	20.75%
Developmental Credit	32.65%	32.75%	34.85%	33.75%
Other Credit Agreements	22.65%	22.75%	24.85%	23.75%

Credit Life Insurance Regulations

- The NCR had consulted and agreed with the Financial Services Board (FSB) on the regulations to cap credit life insurance.
- The draft regulations were finalised by **the dti** and sent to the Minister of Finance for consultation and concurrence as required in terms of section 106(8) of the National Credit Amendment Act.
- **the dti** and the NT had a bilateral meeting and agreed that the draft regulations must be published for wider consultation.
- The consultation between the NT and **the dti** occurred between March to October 2015.

Credit Life Insurance Regulations

- The draft Credit Life Insurance Regulations were published on the 13th of November 2015 in the **Government Gazette No 39407**, and provided for, amongst others, the capping of Credit Life Insurance on the following credit transactions:
- Mortgage agreements: R2.00 per R1 000 of the deferred amount (excluding the cost of credit)
- Credit facilities: R4.50 per R1 000 of the deferred amount (excluding the cost of credit)
- Unsecured credit transactions: R4.50 per R1 000 of the deferred amount (excluding the cost of credit)
- Short term credit transactions: R4.50 per R1 000 of the deferred amount (excluding the cost of credit)
- Developmental credit agreements: R2.00 per R1 000 of the deferred amount (excluding the cost of Credit)
- Other credit agreements: R4.50 per R1 000 of the deferred amount (excluding the cost of credit)

Key Stakeholders Consulted during Meetings

- Real People Group
- Capitec Bank Limited
- Bayport Financial Services
- Consumer Goods Council of South Africa
- Clientele Life
- First Rand Bank
- Finbond Mutual Bank
- National Treasury
- MicroFinance South Africa(MFSA)
- Standard Bank
- The National Clothing Retail Federation of South Africa(NCRF)
- Izwe Loans
- African Bank
- Nedbank
- The Foschini Retail Group(TFG)

Credit Life Insurance Regulations

- The public had until the 6th of January 2016 to submit their proposal to the Minister for consideration.
- **the dti** team has already consolidated the submissions and will further consult with NCR, FSB and NT before recommendations are made to the Minister to issue the regulations as final.
- A six (6) months implementation period will be proposed in order to give an opportunity to the industry role players to align their IT systems.
- The final Credit Life Insurance Regulations will only affect new credit agreements entered into on and after the effective date.

Credit Life Insurance Regulations

- The Notice on the draft Credit Life Insurance Regulations also includes the requirement on what the cover attached to the credit insurance must include.
- Research and investigations showed that credit insurance was sold to debtors and included products such as retrenchment cover for pensioners and self-employed people, however, excluded such products for debtors that are actually employed.
- The NCR is currently taking actions and conducting investigations against abuse of Credit Life Insurance.

Credit Life Insurance Regulations

- NCR investigations uncovered massive mi-selling of credit insurance
 - Retrenchment cover sold to pensioners & self-employed consumers
 - Occupational disability cover sold to pensioners, self-employed, and consumers on government disability grants
 - Credit Life Insurance sold with a waiting period equivalent to the loan term
- Cases referred to National Consumer Tribunal against Lewis Stores, Finbond Mutual Bank, JDG Trading, Shoprite Investments & their cell captive insurers
 - Lewis Stores is refunding R67.1 million to customers

Threshold for all Credit Providers

- The regulations relating to process and fees for registration of credit providers that previously fell below the threshold for registration has been approved by the Minister.
- These were supposed to have been published for wider consultation on the 21st of January 2016. However, due to technicalities at the Government Printers, the process is still underway.
- This will catch those unscrupulous loan sharks below the NCR radar; who continue to charge exorbitant interest on loans, hold credit cards and social grant cards as security, and continue driving the poor into a deeper life of poverty.
- This will also ensure that the informal and illegal credit markets are regulated and consumers are protected.

Coordination within Government

- The NT and **the dti** were mandated by Cabinet during December 2013 to take necessary measures to assist the currently over-indebted households and also prevent them from becoming over-indebted in the future.
- As a result of this, an inter-governmental task team was established and comprised of NT, **the dti**, DOJ, FSB, NCR, South African Reserve Bank (SARB) and National Consumer Commission (NCC).

Coordination within Government

- The mandate of the Task team was to deal with amongst others:-
 - Improvement in credit bureau arrangements
 - Encourage employers to investigate EAOs
 - Norms and standards for access to the payments system
 - Regulate debt collection firms
 - Set affordability assessment criteria
 - Review caps on interest rates and fees
 - Reckless lending
 - Cooperation/Coordination between regulators
- Progress report in respect of the work and measures taken is currently being prepared and will be presented to the Ministers of Trade and Industry, Justice and Correctional Services and Finance for consideration and presentation to Cabinet.

Conclusion

- The implementation of the National Credit Amendment Act, the Affordability Assessment Regulations, Review of fees and interest rates, Capping of Credit Life Insurance and Prescription of Threshold; will make a huge impact in reducing over indebtedness and protecting both the rights of the consumers and credit providers in South Africa.
- The DOJ is also moving smoothly in amending its legislation, e.g Magistrates Court Act and Debt Collectors Act. The Prescription Act also needs to be amended accordingly.
- Both National Credit Regulator and the National Consumer Tribunal are now able to deal with cases of reckless lending practices.
- The coordination efforts have been enhanced by section 17(4) of the National Credit Amendment Act, 19 of 2014.

Conclusion

- Protocol was adopted to coordinate communication between NCR and the Registrar of Banks.
- Coordination is not meant to affect the mandate of each regulator, but seeks to ensure coordinated enforcement action.
- It is further important to note that **the dti** has made a huge progress in ensuring that the 2013 Cabinet decision is implemented.
- All of these recent reforms have been embarked on in response to the decisions by Cabinet/ Parliament to come up with strategies to reduce over-indebtedness and cost of credit in South Africa.



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Thank You