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Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Consumer And Corporate Regulation Division

Presentation to the Portfolio Committee on Trade and Industry on the status report on matters that require Inter-Departmental coordination to give effect to the National Credit Amendment Act (NCAA) and/or to address related concerns

20 May 2016

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Presenters

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Purpose

To brief the Portfolio Committee on Trade and Industry on the “status on matters that require Inter-Departmental coordination to give full effect to the NCAA and/or to address related concerns”.

Background

- Cabinet took a decision in December 2013 that the over indebtedness of households is worrisome and as a result mandated the Ministers of Trade and Industry, Justice and Constitutional Development (DOJ) 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 which constitutes of the Department of Justice and Constitutional Development (DOJ), National Treasury (NT) and **the dti** to address the above problem within their legislative mandates.
- Analysing the problem, it was found that other departments are relevant to deal with the over-indebtedness, namely, Social Development, Department of Public Service and Administration.

Mandate

What the dti has done

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; and
- Claims and collections on prescribed debts.

Mandate

- 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; and
- 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; and
- 22.38 million (27.3%) are impaired.

National Credit Regulations & Affordability Assessment Regulations

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;
- Powers 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; and
- Automatic removal of adverse credit information **(Including paid-up Judgments).**

Affordability Assessment Regulations

- The Regulations came into legal force on 14 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%.

- 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. Interesting to see MFSA interdicting the final product.

- **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 06 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%; and
- Service Fees have been increased from R50 to R60.

- The Limitations on Fees and Interest Rates Regulations as reviewed will came into effect on 06 May 2016 and only affect new credit agreements entered into on and after the effective date.

Regulations on Interest Rates and Fees

- **the dti** had briefed the Committee on 09 February 2016 and the Committee raised some concerns regarding the final regulations on Rates and fees.

- After a number of engagements and consultations with **the dti**, the Committee resolved that **the dti** should go ahead and implement the regulations on 06 May 2016 with the understanding that further reductions, in particular with regard to Mortgages and Developmental Credits.

- During the same period or about 01 March 2016 MFSA lodged an application to court for an interdict preventing and reviewing the implementation of the regulations.

- The Minister opposed the application for an interdict and the matter was set down for hearing on 03 May 2016.

- Judgment was delivered on 05 May 2016 and the Northern High Court in Pretoria dismissed MFSA application for an interdict with costs and the regulations came into force on 06 May 2016.

- The Court further indicated that the application for review can be followed through the court processes by the applicant.

Regulations on Interest Rates and Fees

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

Repo Rate	5.75%		6.75%	
Credit Type	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 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); and
- Other credit agreements: R4.50 per R1 000 of the deferred amount (excluding the cost of credit).

Credit Life Insurance Regulations

- The public had until 06 January 2016 to submit their proposal to the Minister for consideration.
- **the dti** team has already consolidated the submissions and will further consulted with NCR, FSB and NT. The draft regulations were also submitted to the Committee through the Minister for the Committee to comment on the regulations.
- This is in line with the Committee"s recommendations on 09 February 2016, that they need to be given an opportunity to comment on all the regulations before they are finalised.
- Further inputs from the FSB will be incorporated into the regulations and the Minster will further consult with the Minister of Finance as required by section 106(8) of the NCA before issuing 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 mis-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 published for wider consultation on 04 February 2016.
- The Minister issued a Notice regarding the final determination of a threshold for credit provider registration on 11 May 2016 (**Notice no. 513, Government Gazette no. 39981**). In terms of the Notice, the Minister has determined this threshold to be NIL (R 0) for everyone involved in the business of lending money.
- The threshold as determined by Minister Davies means that any and every person or entity that trades as a credit provider, even the smallest, and informal credit providers, are encouraged to register with the NCR. The desired outcome is to locate, regulate and monitor all credit providers in the Republic, in order to promote responsible credit lending, to curb reckless credit lending and reduce the over indebtedness of consumers.
- Further, registered credit providers are prohibited from engaging in unconscionable and unscrupulous conduct, such as the outright criminal practices often used by illegal and informal credit providers to unlawfully force repayments on defaulting consumers, such as the retention of banking cards or identity documents as security for the loan. Registered credit providers are able to enforce their right to repayment on unwilling consumers lawfully through established debt collection procedures to counter any undue enrichment of a consumer unwilling to repay a loan.
- This will also ensure that the informal and illegal credit markets are regulated and consumers are protected.

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Future Actions

the dti intends to propose to Cabinet:

- Amending the NCA to give more powers to NCR to impose fines;
- To review investigative powers of NCR, e.g. pro-active investigations; and
- To implement debt relief/forgiveness programmes.

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Coordination DTI/DOJ Matters

What the DOJ has done

Courts of Laws Amendment Bill

- The DOJ had to amend the Magistrates Court Act to incorporate something akin to affordability assessment criteria of the National Credit Amendment Act, 2014.
- Consent to jurisdiction and consideration of Emolument Attachment Orders by Magistrates and not by Clerk of the court .
- This Draft Bill has been introduced into Parliament after approval by Cabinet in February 2016.

Debt Collectors Bill

- The Debt Collectors Bill was published for comments and comments are currently being evaluated.
- Significant opposition to the draft Bill from the Legal Profession (Attorneys).

Prescription Act Amendment

- Amendment of the Prescription Act of DOJ to give effect to the prohibition on collection and sale of prescribed debts in line with the National Credit Amendment Act, 2014.

Coordination DTI/DOJ Matters

What the DOJ has done

- Review of Administrative Orders (Project 127).
- On 30 March 2016, the South African Law Reform Commission (SALRC) held roundtable discussion on whether administrative orders should be repealed and the following decisions were taken:
- A hybrid system, using best practices from both the administration orders and debt review process, should be investigated for purposes of law reform;
- Having regard to the current credit regulatory environment, the need to use administration orders to administer the estates of debtors should be investigated to determine whether this practice should continue;
- The SALRC should conduct the research as part of its investigation into review of administration orders (Project 127);
- A commission paper recommending the appointment of an advisory committee, comprising key individuals and representatives from relevant departments, must be submitted to the Commission for Consideration; and
- The Minister of DOJ in terms of section 7A (1) of the SALRC Act 19 of 1973, appoint the advisory committee after he has considered a recommendations from the commissioned debt review process, should be investigated for purposes of law reform.

Coordination DTI/DPSA Matters

What the DPSA has done

- DPSA Project on Emolument Attachment Orders (EAOs).
- **the dti** opposed to attachment of salary where affordability assessment was not conducted.
- Assessment of attachment orders should be done if Affordability Assessment Criteria is done, if not done, then „Debt Forgiveness" should be considered.
- DPSA should mobilise all government layers/tiers not to allow themselves to be debt collectors where Affordability Assessment is not done.
- Education and Awareness campaigns in government to take place.

Coordination DTI/Social Development Matters

What the Department of Social Development has done

- **the dti** Affordability Assessment Regulations considered Social grant deductions when conducting affordability assessment.
- Social Development introduced strict regulations pertaining to funeral policy deductions on social grants, particularly child support grants.
- Currently the department has been taken to court by an insurance company after amending regulation 26A of the Social Assistance Act which stipulates that deductions may not be made on child grants , foster child grant, care dependency grants that have been in effect for less than 12 months. **(Mail & Guardian, 13 May 2016, p14)**

Coordination DTI/NT Matters

What National Treasury (NT) has done

It is important to note that Financial Services Board (FSB) supports the Credit Life Insurance Regulations and NT still has amongst others the following legislation to work on:

1. **Financial Sector Regulation Bill (FSRB),**
2. **Market Conduct Policy Framework, and**
3. **Amendment to the National Payment System Act.**

Conclusion

- These are all coordinated efforts aimed at reducing the level of over indebtedness in South Africa.
- **the dti** will continuously report on progress made on all of these initiatives to give effect to the 2013 Cabinet decision.
- Inter-agency coordination may also be fostered well by a legislation. e.g. Sec 17(4) of the NCAA regarding NCR and Registrar of Banks.
- Coordination should be done within the realm of the Constitution without encroaching on each others mandates.
- The coordination at interdepartmental/inter-agency levels may have to be emulated at inter-ministerial/inter-Portfolio Committee levels.
- MFSA application to interdict the implementation of the regulations on Limitation of Rates and Fees and the application to interdict Social Development Development`s regulations seem to be indicting government also to flux its muscles in courts.

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Thank You