



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Consumer And Corporate Regulation Division

**PRESENTATION TO PORTFOLIO COMMITTEE ON THE PROPOSED
DRAFT NATIONAL CREDIT POLICY REVIEW FOR DEBT RELIEF AND
THE NATIONAL CREDIT AMENDMENT BILL, 2017 DEVELOPED BY
THE PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY**

16 MAY 2017



PRESENTER

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PURPOSE

- To provide a briefing to Portfolio Committee on Trade and Industry (the Committee) on the proposed draft **National Credit Policy Review for Debt Relief (Policy Review) and the National Credit Amendment Bill, 2017 (Committee Bill)** developed by the Committee.
- The Committee requested the technical support and resources of **the dti** officials within the Consumer and Corporate Regulations Division (CCRD) to complete a **Policy Review and a Socio-Economic Impact Assessment (SEIAS)**, to assist the Committee in the development of the Committee Bill.

BACKGROUND

- The Department of Trade and Industry (**the dti**) has recently introduced numerous preventative measures in an attempt to reduce and prevent future household over-indebtedness.
- The ***Affordability Assessment Regulations*** outline the affordability criteria that credit providers must adhere to and came into effect on 14 September 2015. The reviewed ***Limitations on Fees and Interest Rates Regulations*** came into effect on 6 May 2016. The ***Threshold for Credit Provider Registration*** was issued on 11 May 2016 to compel the registration of all credit providers regardless of size. The ***Credit Life Insurance Regulations*** issued on 9 February 2017 will become effective on 10 August 2017.
- The impact of these will be assessed, a period of three years from the date of implementation is often considered sufficient for this purpose.

BACKGROUND

- The NCA currently makes provision for **Debt Review** as a debt relief measure. Debt relief through this measure is provided to consumers, mainly through restructuring of loans to reduce instalments burdens, reducing Interest rates to pre-determined levels and waiving of Fees by credit providers.
- The **Debt Counselling Rules System (DCRS)** provides for industry agreed concession rules to be used by Debt Counsellors to assist over-indebted consumers within Debt Review. Over-indebtedness however remains a challenge for many South Africans, specifically amongst the poor, many of whom are unable to afford Debt Review.

BACKGROUND

- The National Credit Regulator (NCR) commissioned a **study on the “Feasibility of a Debt Forgiveness Programme in South Africa”**. The study highlighted international debt forgiveness case studies including amongst others;
- The **“Fresh start”** Scheme by Croatia for low income customers with no property and no savings. Municipalities, utility and telecoms providers, tax authorities and banks were required to clear some of the debt and absorb the losses themselves
- The **“Debt Waiver and Debt Relief Scheme to Small & Marginal Farmers”** by India for over-indebted rural farmers. Farmers pledged land as collateral, within prescribed thresholds to qualify for either unconditional full debt relief or conditional and partial debt relief subject to repayment of the balance. Government recapitalized the loans written off for the full amount.

BACKGROUND

- The “**No Income, No Assets Debt Relief**” (NINA debtors) interventions by New Zealand, England and Wales where debtors are unable to pay their debt obligations due to changes in their (consumer’s) circumstances rather than irresponsible borrowing.
- Debt relief was granted where a debtor had liabilities, assets, monthly and discretionary income which are less than the prescribed threshold. The debt relief was subject to certain restrictions relating to the debtor’s individual behaviour, if the debtor adhered to all requirements of the NINA process then their debts were discharged.

BACKGROUND

- The Committee held **engagements with numerous key industry stakeholders** on the extent of over-indebtedness, the socio-economic impact on society and measures that could provide debt relief.
- During the engagements it was highlighted that numerous **voluntary debt relief measures exist in the credit industry and the Banks in particular**, depending on the needs of the consumer. Amongst others, these measures include **payment moratoriums, rescheduling of credit agreements** and other bespoke arrangements made depending on the merits of each case.
- It is the **consumer's responsibility to approach a credit provider** to benefit from the debt relief.

BACKGROUND

- During the engagements with the Committee, the credit industry highlighted their **reluctance for a legislated debt relief process outside of the current existing Debt Review process and the existing voluntary debt relief measures** already in place within the industry.
- The credit industry, in particular the Banks amongst other credit providers, **cautioned against legislated debt relief measures and the unintended consequences.** There was great support for **refining the current Debt Review** processes to make **provision for low income consumers** and the broad **utilization of the DCRS industry agreed concession rules.**

BACKGROUND

- Other stakeholders, in particular Trade Unions and Pro-Consumer bodies, did however **support debt relief for retrenched consumers with no income and insufficient or no credit life insurance** to pay off their debts. They also supported **debt relief for victims of child support grant abuses, reckless credit lending and unlawful Emolument Attachment Orders (EAOs)**, amongst others.
- Having concluded the engagements with industry stakeholders, the Committee proceeded to request permission of the National Assembly to introduce the Committee Bill to the House. **On 2 March 2017 the National Assembly granted the Committee permission** to develop and introduce a Committee Bill in the House.

BACKGROUND

- The NCR submitted to **the dti** that its **administrative powers should be extended** to allow it to amongst others, **impose remedial sanctions** for contraventions to the NCA, **without referrals to NCT**, in order to effectively enforce the NCA.
- The National Consumer Tribunal (NCT) submits that the **Chairperson should have the discretion to allocate** simple matters to a single Tribunal member as opposed to a panel of three members, amongst other suggestions, to improve efficiency within the NCT.
- The NCR and NCT proposals have been approved by the Minister, to assist the Committee to achieve the aims of the Committee Bill.

DISCUSSION

Purpose and Problem statement

- The Purpose of the Policy Review is to **propose legislative amendments to the NCA through a Committee Bill** and to inform the SEIAS analysis to be conducted on the Committee Bill.
- The Problems which the **Policy Review seeks to address** are as follows:
- The NCA, per se, makes **no provision for debt relief measures** to alleviate household over-indebtedness. Debt relief measures may be required from time to time;
- To address the impact of high over-indebtedness, debt relief measures could be afforded to **over-indebted households within a sector or section of the community**. The prevailing economic conditions, such as the prevailing drought and conditions in the steel and mining sectors may be considered as examples which ought to warrant the granting of debt relief;

DISCUSSION

Purpose and Problem statement

- The NCA provides **no criteria within which the Minister is empowered** to isolate specific over-indebted consumers as the eligible beneficiaries for debt relief measures. The NCA should require the **Minister to consult** with the credit industry before the Minister makes any such regulations. These criteria ought to be used **from time to time** to identify prospective beneficiaries;
- The NCA does not **empower the NCR to impose remedial sanctions** such as fines, after completion of their investigations. Referral to the NCT for this purpose renders the NCR ineffective in enforcing the NCA;
- The **service delivery system of the NCT** is hampered and rendered inefficient by **referrals from the NCR**, applications by consumers whose cases have not been entertained by the NCR and Debt Counsellors for orders within the Debt Review process;

DISCUSSION

Purpose and Problem statement

- **Prohibited conduct** such as collection of Prescribed Debt and non-application of the Affordability Assessment Regulations can only be **detected by the NCR and the NCT during investigation and adjudication respectively**. The prohibited conduct is **not treated as reportable irregularities in terms of the NCA and other legislation** such as the Companies Act, 2008 and the Auditing Profession Act, 2005 for harmonization;
- No predetermined criteria exist to **regulate the development of Settlement Agreements** between the NCR and transgressors of the NCA. In most cases, it would appear that the consumer is left without redress when such agreements are entered into;

DISCUSSION

Purpose and Problem statement

- The NCT seems to be operating too much as a court of law, as it **is too involved with legal technicalities**. The NCT should be inquisitorial and must be guided by **principles of fairness, equity and redress**, regardless of whether or not the threshold of legal technicalities has been resolved;
- There is no legal **certainty on the application of the *in duplum*** rule regarding debt accumulation. Clarity is important to determine when the date of default is, also what should occur when a consumer defaults and then starts paying again. It should also be clear that **not just interest but all fees and charges are included** in the calculation for determining *in duplum*;

DISCUSSION

Purpose and Problem statement

- The DCRS concession rules are not effectively and widely used by all Debt Counsellors and Credit Providers to the benefit of over-indebted consumers. The NCA should require **mandatory application of the DCRS** by all Credit Providers and Debt Counsellors;
- The Debt Review system does not accommodate **low income consumers**. There should be an **effective debt counselling framework** which provides an **incentive for Debt Counsellors** to provide assistance, through Debt Review, to low income consumers;
- Although the NCA prohibits **reckless credit lending**, amongst other conduct, the prohibition does not deter credit providers from lending recklessly. Credit providers' lack of compliance should be **criminally punished** and the NCA rigorously enforced.

DISCUSSION

Provision for Debt Relief measures

- The NCA makes **no provision for debt relief measures** to specific categories of persons or sector of the economy or community. There is also no provision for the Minister to prescribe debt relief, from time to time.
- The NCA should make **provision for the prescription** of debt relief measures to alleviate household over-indebtedness. The Minister should be empowered to prescribe debt relief measures, **from time to time, through regulations**. The circumstances to consider for debt relief for a particular sector or section of the community may include but not limited to prevailing economic circumstances, from time to time. The prevailing economic conditions may include retrenchments in certain sectors due to the persisting drought or conditions in the steel, mining and poultry sectors which warrant the granting of debt relief.

DISCUSSION

Criteria for Debt Relief measures

- The NCA prescribes **no criteria to be considered** when granting debt relief measures.
- Criteria should be developed to guide the prescription of debt relief measures. Such **criteria should be used from time to time** and utilized for the reduction of household over-indebtedness in required circumstances.
- It is proposed that such criteria may include, but not limited to, debt relief for **retrenched consumers**, victims of **unlawful EAOs**, victims of **unlawful social grant deductions** and victims of **reckless credit lending**. Remedies should be prescribed to alleviate consumer over-indebtedness resulting from prejudicial behaviour by unscrupulous credit providers. The Credit Industry should participate and recommend to the Committee the criteria within which the Minister may prescribe debt relief measures.

DISCUSSION

Eligibility for Debt Relief measures

- **Retrenched Consumers** are not considered for debt relief. These consumers, whether in possession of a Credit Life Insurance policy or not, are often unable to fulfil their outstanding obligations owing to the loss of income.
- It is proposed that, for retrenched consumers, the NCA should provide for the **partial or total extinguishing** of the credit obligations and prohibit the collection of the outstanding balance, depending on the **duration of the agreement and considering the portion already performed**.
- It may also be necessary for every mandatory **Credit Life Insurance Policy to provide for the full discharge of all outstanding balance as a form of debt relief**. It is important to consider that a Credit Life Insurance Policy may in particular instances extinguish the outstanding balance fully, in some instances it may fall short and certain instances no such policy exists to the benefit of the consumer.

DISCUSSION

Eligibility for Debt Relief measures

- Victims of **unlawful Emolument Attachment Orders** (EAOs) are not considered for debt relief. Such EAOs are as a result of illegal consents to jurisdiction, criminality by clerks of the courts or due to exorbitant recovery fees beyond the normal rates. The gravity of the abuse of EAOs was highlighted by the Stellenbosch Judgment, ultimately the Judiciary left it to the Legislature to intervene and grant relief.
- It is proposed that, for Victims of unlawful EAOs, the NCA should **prohibit the collection of funds** resulting from unlawful EAOs. There should be **refunds** to affected consumers and a **fine or penalty for the unlawful act**. Where a debt is written-off, the debt should not be later collected on, as such the writing off should have the effect of completely extinguishing all obligations. Parliament should consider retrospective relief granted from the date the prohibition provisions came into effect.

DISCUSSION

Eligibility for Debt Relief measures

- Victims of **unlawful Social Grant Deductions** are not considered for debt relief. Social Grant recipients, whose government social grants are unlawfully, used to service debt obligations or where unlawful deductions are made to social grant funds. The victims become over-indebted where social grants are unlawfully deducted and used for a purpose which is not intended. Recent Court Judgments have also highlighted the gravity of the abuse.
- It is proposed that, for Victims of unlawful Social Grant Deductions, the NCA should provide for the **total extinguishing of all credit obligations** and **prohibit collection** of the outstanding balance. There should be **refunds** to affected consumers. Parliament should consider retrospective relief from the date the prohibition provisions came into effect.

DISCUSSION

Eligibility for Debt Relief measures

- Victims of **Reckless Credit Lending** are not considered for debt relief. Reckless lending is done in contravention of the NCA and contributes to over-indebtedness. There is **no punishment or deterrent for reckless lending**. Credit providers persist with their unlawful lending practices without reproach which leads to consumer over-indebtedness, without any form of redress to the prejudiced consumer.
- It is proposed that, for Victims of Reckless Credit Lending, the NCA should provide for **total extinguishing of all credit obligations** and prohibit collection of the outstanding balance of a reckless loan. There should be refunds to affected consumers. Parliament should consider retrospective relief from 2007/ the date the prohibition provisions came into effect. Reckless credit lending should attract criminal and personal liability as punishment. The NCA should contain provisions akin to the “Delinquency of Directors” provisions within the Companies Act.

DISCUSSION

Eligibility for Debt Relief measures

- Debt relief is not considered where consumers become over-indebted and suffer prejudice as a result of **Unscrupulous Credit Providers** in continuous transgression of the NCA. In addition to prohibiting reckless credit lending, the NCA prohibits the sale and recovery of Prescribed Debts (A contractual debt is completely extinguished after expiry of the prescription period, the complete extinction has the effect that no natural obligation remains and the extinguished debt cannot be resurrected by an acknowledgement of debt (see *Leonie and Others v Nelson Attorneys* unreported case no. 2645/2011, at [16], Eastern Cape Local Division, Port Elizabeth)). The NCA also prohibits mis-selling of Credit Life insurance (retrenchment benefit sold to pensioners) and prohibits charging of unlawful credit related charges, such as club fees (Abuse highlighted through cases brought by NCR against EDCON and the recent judgment therein).

DISCUSSION

Eligibility for Debt Relief measures

- It is proposed that, for Contraventions to the NCA by unscrupulous Credit Providers, the NCA should provide for **total extinguishing of all credit obligations and prohibit collection of outstanding balances**. There should be refunds to affected consumers. Parliament should consider retrospective relief from 2007/ the date the prohibition provisions came into effect. Poor market conduct should further attract a penalty or fine, redress to consumers and publication of the names of offenders and the nature of the contravention. **Unlawful lending should attract criminal and personal liability.**

DISCUSSION

Eligibility for Debt Relief measures

- The Debt Review process does not provide the much needed debt relief to lower income consumers. **Debt Counsellors are reluctant** to assist low income consumers primarily due to financial issues, as the current fee structure provides no incentive for assisting such consumers.
- It is proposed that, the **Debt Review process should be incentivised** to encourage Debt Counsellors to assist more low income over-indebted consumers. The **fee structure should be revised** to support the inclusion of low income consumers and create an appetite for Debt Counsellors to assist them. It has been proposed that a subsidy should be re-introduced by the NCR for this purpose. The **re-introduction of a subsidy** is supported and Parliament should consider sanctioning the re-introduction of the subsidy for this purpose.

DISCUSSION

Eligibility for Debt Relief measures

- The interpretation of the *in duplum* rule in debt accumulation should be clarified. It should be clear that not just interest, but all fees and charges are included in the calculation. Clarity is also needed as to determine when the date of default is and what ought to happen when a consumer defaults and then starts paying again.
- It is proposed that, the interpretation of the *in duplum* rule in debt accumulation should be clarified. **It should be clear that not just interest, but all fees and charges are included in the calculation. Clarity is also needed as to determine when the date of default is and what ought to happen when a consumer defaults and then starts paying again.**
- It is important to note that including all interest, fees and charges in the calculation for the purpose of determining *in duplum*, may in itself provide great debt relief for defaulting consumers.

Socio-Economic Impact Assessment Report

- The Initial Impact Assessment aims to ensure that the policy is on the right track by requiring evaluation of alternative approaches. It should help drafters avoid finalising an inappropriate solution because they moved too quickly to select a strategy without adequately analysing the roots of the problem and considering alternative measures. It should facilitate a brainstorm about issues involved in the problem and full range of alternatives to deal with them.

Socio-Economic Impact Assessment Report

DISCUSSION

- The following are the debt relief options considered in the initial impact assessment report. These options relate to targeted consumers who would receive debt relief assistance from the State and credit providers.
- Partial or full debt discharge for low income consumers
 - This option aims to provide debt discharge to low income consumers who would have paid a significant portion of their debt
- Debt review for low income consumers
 - This option seeks to make the debt review process accessible to low income consumers as they are currently excluded from the existing debt review process.
- Debt relief in unforeseen loss of income.
 - This option targets consumers who have lost income under unavoidable circumstances as the law currently does not provide for any debt relief for such consumers
 - Consumers in both Options 2 & 3, are often left to negotiate on their own with their creditors on the terms and conditions of their repayments.

DISCUSSION

Socio-Economic Impact Assessment Report

- **Funding for debt relief programme**
- In order to minimise implementation and compliance costs, the State needs to establish a fund reserved for debt relief interventions.
- The fund should be used to subsidise low income consumers who have to undergo the debt review process.
- In addition, the fund should be used to partially or fully pay off the debt of qualifying consumers, depending on their circumstances.
- Credit providers need to provide debt relief to over indebted consumers who have already paid a significant portion of their debt.

DISCUSSION

- **Risks associated with the options and mitigation measures**
- Beneficiaries of debt relief may create new debts and other consumers who have not benefited may default on their repayments deliberately in anticipation of benefiting from the debt relief interventions.
- The risk would be managed through education and awareness for consumers to act responsibly where credit matters are concerned.
- Debt relief measures could affect access to credit where credit providers reduce lending to beneficiaries of the debt relief.
- Debt discharge would reduce revenue of credit providers and this may result in job losses. Debt discharge would be applied in cases where the outstanding amount does not jeopardize business sustainability.

DISCUSSION

- **Further research areas**
- Profiling of over indebted consumers in terms of their income levels, amount owed, employment, causes of their over indebtedness to inform the determination of the criteria and thresholds for qualifying consumers.
- Research to inform the determination of the criteria for partial or full debt discharge.
- Research to determine how much funding would be required in relation to the scale of over indebtedness and the possible sources of funding.

CONCLUSION

- This Policy Review contains a lot of technical amendments that are associated with issues raised above. Other technical amendments which may arise during the Parliamentary consultations with stakeholders will be attended to accordingly.
- The Committee should consider the involvement of other Parliamentary Committees such as the Portfolio Committees on Human Settlements, Social Development, Justice and Correctional Services and the Standing Committee on Finance, amongst others, considering that greater debt relief may be achieved with their involvement and input.

CONCLUSION

- In terms of the initial SEIAS, the State would need to establish a fund reserved for debt relief interventions. The fund would be used to subsidise low income consumers who have to undergo the debt review process. In addition, the fund would be used to partially or fully pay off the debt of qualifying consumers, depending on their circumstances. Credit providers would also need to provide debt relief to over indebted consumers who have already paid a significant portion of their debt



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THANK YOU