



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Draft National Credit Amendment Bill, 2017 – Committee Bill on Debt Intervention

Response to submissions received on specific published clauses

31 July 2018

PRESENTERS

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INTRODUCTION

- The Portfolio Committee on Trade and Industry published specific clauses of the Draft National Credit Amendment Bill, 2017 on the Parliament website for public comment.
- 10 Credit industry stakeholders provided submissions to the Committee. **the dti** developed a working document consolidating the comment and proposals received.
- **the dti**, the NCR and the NCT considered the submissions and herein provide their responses to the pertinent issues raised. Response are limited to inputs made only on the specific clauses as published by the Committee.
- Comprehensive responses, per stakeholder, are on the working document provided to the Committee. See attached Matrix/ Grid document.

Clause 12(b) ‘Reduction of interest and fees’

Reponses by the dti

Comments

- ✓ Propose that clause not be enacted and removed in its entirety.
 - ✓ There is a voluntary debt restructuring mechanism, the Task Team Agreement, which includes concession rules agreed to by credit providers.
 - ✓ Guidance should be provided to Debt Counsellors and the NCR on the reduction of interest, fees and charges.
 - ✓ Guidance provided to the Courts on the exercise of its power to reduce.
 - ✓ Concerned this provision is not restricted to credit agreement type or quantum of credit agreement.
 - ✓ Concern regarding unintended consequences.
- The use of the Task Team Agreement and its agreed concession rules is voluntary and minimal and currently its usage is very low (+-18% of the industry). NCR guidelines not binding on credit stakeholders and not taken seriously.
 - Need to prescribe/determine criteria to guide reductions in regulation.
 - Criteria to include a determination of affordability. Every credit agreement to be treated differently. Zero rated percentage only in extreme cases.
 - Interest rates on mortgage agreements should ideally not be reduced to zero. However mortgages should be included in the restructuring.
 - Not automatic that zero percentage interest will always be determined.
 - Unintended consequences to be mitigated by criteria on reductions which will be fair and sustainable. Zero rate is beneficial for credit providers than not receiving payments from consumers.

Clause 12(b) 'Reduction of interest and fees'

Comments

- ✓ The NCR is the only entity that can process Debt intervention applications and this places the NCR in a position of being both a Regulator and Registrant in cases where a repayment plan is possible.
- ✓ Courts should not be allowed to exercise broad and unrestricted powers in respect of the credit agreements between credit providers and consumers without the appropriate guidance and criteria.

Responses by the dti

- No conflict of interest in NCR undertaking debt intervention. NCR wouldn't be deciding, just processing and recommending, at no cost to the consumer, unlike the debt review.
- The NCR will minimize the cost of debt intervention for consumers and will do so in the same intention by the legislation to address the consumers currently not catered for by debt counselors.
- The discretion of the courts is respected. Guidelines will be provided in terms of the reduction.

Clause 29(a) 'Funding of financial literacy'

Comments

- ✓ "Credit Lending/Over-indebtedness Levy" to be charged in addition to the existing monthly service fee, to fund a debt intervention programme under the existing debt counseling infrastructure for the lower income population and assist in the funding of the financial literacy and capability programme.
- ✓ Bank SETA in conjunction with credit providers has done extensive work on financial literacy and would be the perfect entity to assist in this regard.
- ✓ Debt counsellors could also be trained to provide financial literacy coaching while reviewing consumer's standing.

Reponses by the dti

- Not in support of the proposal to burden over-indebted consumers further by the imposition of a levy. Possibility of abuse where this proposal is accepted (e.g levy on debit orders or credit agreements).
- Levy must be on credit providers. A money Bill might be necessary where it is decided. This is the approach in other jurisdictions (United Kingdom model, legislation imposed levy post the 2008-9 financial crisis).
- Acknowledge existence of Bank SETA material, for literacy and financial education of consumers. Existing mechanisms not enough and addresses niche market outside the target this Bill intends to reach. Subjective approach to debt relief, e.g. promotion of voluntary surrender not debt review. Material should be ideally intended to the consumer catered for in the Bill.

Clause 29(b)

'Minister to adjust gross income and maximum debt'

Comments

- ✓ Concern that Minister will be granted very wide powers, may include a much greater number of consumers and credit agreements in the debt intervention process, without having to consult with credit industry stakeholders.
- ✓ No objective factors to assist the Minister in determining what will make a consumer an "economically viable client for a debt counsellor".
- ✓ Not in support of the Minister being empowered to adjust the amounts for a debt intervention applicant as this will create long term uncertainty and instability in the credit market.
- ✓ Right of Minister to be extended to other circumstances such as repo rate and prime lending rate.

Reponses by the dti

- A consultation process is binding on the Minister in the making of any regulation.
- An 'economically viable client' ought to be determined through a thorough assessment and research, in consultation with all stakeholders.
- Authority of the Minister has already been decided upon by the Committee.
- The factors referred to, are considered in the ordinary course of regulation.
- It ought to be noted that changes done will not be retrospectively applied. As such no sudden changes will be made, changes will be consulted on, published and implemented on a future date.
- Factors already taken into consideration when adjustments are addressed.

GENERAL OBSERVATIONS

- ✓ Although the Portfolio Committee invited comment on specific clauses, various stakeholders took the opportunity to provide input on other aspects of the Bill already deliberated and decided upon. This presentation sought only to respond to submissions on the specific clauses.
- ✓ Clause 12(a) is not supported by stakeholders due to the lack of clarity and guidance on the manner in which the reductions will be done. It is proposed that guidance be provided per regulation, through consultation with the industry, based on the Task Team Agreement.
- ✓ Clause 29(a) is supported in principle by stakeholders. Although the funding model remains a concern with stakeholders wanting the Government, or consumers through a levy, to take responsibility for the cost of the literacy and financial education programmes. It is proposed that the costs be borne by or imposed on credit providers.
- ✓ Clause 29(b) is not supported by stakeholders due to the Minister being granted very wide powers which might be exercised without consultation with the industry stakeholders. The Minister is compelled to consult by law when making any regulation. The Minister will undertake the necessary research, consider relevant factors and consult the credit industry in the formulation of regulations contemplated herein.

CONCLUSION

- ✓ **the dti**, the NCR and the NCT are in support of the specific sections being discussed and urge that the Committee consider and further deliberate on them.
- ✓ It is advisable that the Committee considers publishing the revised Bill in the Government Gazette for broader public input, considering the material changes that have been made to the Bill since it was initially published. Legal opinion may be sought by the Committee to confirm the necessity.



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THANK YOU