Debt Relief Bill

Engagement with the Portfolio Committee on Trade and Industry with respect to Policy on debt relief
National Treasury, 9 October 2017
Introduction

- NT supports the comm’s drive for stronger relief for overindebted South Africans, and welcomes the opportunity to engage on the proposed Debt Relief Policy.
- NT appreciates the comm’s attempts to bring relief to consumers in respect of these debt relief measures, keeping in mind the need to approach consumer protection from a systemic perspective by taking into account the other financial sector policy objectives of financial stability, financial inclusion and financial integrity.
- Thus the pursuit of these four financial sector objectives should be balanced if we are to achieve a responsible and sustainable credit sector that supports economic growth and development.
- NT continues to offer support to the comm to explore the feasability of different options, ultimately to be informed by the research evidence on the expected impact on behavior and the market.
- This is highly complex and we do not have the answers, makes sense that this is an ongoing, consultative engagement.
Recap: Main recommendation on debt relief

- Focus has been on helping the poorest of the poor, for indigents / NINAs
  - also need to deal with non-bank lenders (retailers, micro-lenders)
- This will need **careful engagement** on:
  - The **aggregate level of the write-off**: what is fair to the industry but will help the poorest South Africans? Who will bear the cost of this across banks and non-banks?
  - The **maximum level of debt per person** to be written off?
  - What about **debt that has already been on-sold** to debt collectors – must reach these
  - To get consumer behaviour right and prevent moral hazard, **should we require co-payments** by the borrower?
  - How can we change behaviour over the long term and incentivise savings?
  - Will need to consider the extent that government can share in this cost, minimise the burden on the fiscus
  - This process **CANNOT** threaten the stability of the system, and **MUST NOT** lead to relieved persons being again indebted in 6 months time
Matters previously raised by and within the PC

- **NCA is already powerful** and may not be optimally used, especially wrt reckless lending
- **Debt counseling is failing**
- Fragrant **abuses in debt collection** noted, which lie outside scope of the NCA
- What will be the **costs to the economy and the sector** of debt relief?
- Noted that there are **international case studies** of various forms of debt extinguishing, and reminded that South Africa has never before gone this route
- It was agreed that the **need for relief** must be **balanced against the need for financial stability**, but that systemic risk cannot be an excuse for “doing nothing” (or too little)
Need sustainable and permanent solutions

<table>
<thead>
<tr>
<th>Good standing</th>
<th>Consumer in default</th>
<th>Over-indebted</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Preventative measures</strong></td>
<td><strong>Remedial measures</strong></td>
<td></td>
</tr>
<tr>
<td>• Affordability criteria <em>(dti)</em></td>
<td>• Appropriate unilateral relief by credit providers (e.g Debt Counselling Rules System) <em>(dti)</em></td>
<td></td>
</tr>
<tr>
<td>• Suitability criteria <em>(dti)</em></td>
<td>• Withdrawal of invalid or inappropriate EAOs and to only use EAOs as a last resort and s.t. robust code of conduct <em>(NT/DOJ)</em></td>
<td></td>
</tr>
<tr>
<td>• Interest pricing caps <em>(dti)</em></td>
<td>• Ensure debt-collection firms (including legal firms) do not indulge in unscrupulous practices <em>(DOJ)</em></td>
<td></td>
</tr>
<tr>
<td>• Consumer credit insurance <em>(FSB/dti)</em></td>
<td>• Extend debt collection law to legal firms <em>(DOJ)</em></td>
<td></td>
</tr>
<tr>
<td>• Strong regulatory monitoring supervision and enforcement <em>(NCR)</em></td>
<td>• Investigate the legitimacy of EAOs <em>(private and public sector)</em></td>
<td></td>
</tr>
<tr>
<td>• Stricter standards to apply to payment system esp. debit orders <em>(SARB)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Stronger rules for issuing EAOs <em>(DOJ)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Regulating loans secured by payroll deductions <em>(SARB?)</em></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Simpler low-cost insolvency <em>(DOJ)</em></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
What is our vision?

- First, we want to give South Africans that are chronically overindebted and have no chance or way to escape that debt, the opportunity of a fresh start.

- Second, we want to change the way that South African’s interact with the financial sector, so that this “fresh start” paves the way for new or changed borrowing behaviour.

  Changing behaviour means getting South Africans to save for future expenditure rather than borrow for immediate consumption, and where borrowing, choose to borrow to fund an investment like a home rather than cheap consumable goods like a TV (noting also that many South Africans are borrowing just to survive).
Do we agree on the guiding principles for debt relief?

• Will need **different solutions for different “categories” of distressed persons**, depending on their circumstances:
  - Are you earning an income, how high is that income?
  - Do you own assets?
  - Do you have a secured or unsecured loan?

• If a person **can pay, he or she should pay** (unless the loan was granted recklessly)

• **Promote responsible lending**: want to disincentivise reckless lending, incentivise secured over unsecured lending especially for homes

• **Promote responsible borrowing**: change behaviour, promote borrowing for capital growth rather than consumption and within affordable and sustainable limits
Do we agree on the guiding principles for debt relief? (cont)

- **Extinguishing of debt** should only apply to unsecured loans, with focus on no or low income (those groups who cannot afford debt review)

- To the extent possible and reasonable **protect a borrowers asset**; selling that asset should be **absolute last resort**, and where done should be done fairly and with dignity

- Requires **holistic response**, should be a **shared responsibility** across government, bank and non-bank credit providers, debt collectors and debt counsellors

- Do **comprehensive impact assessment** of agreed options in support of evidenced-based policy

- **Maintain systemic stability**
Recall evidence of past interventions – clean up of bureau data

- First clean up of credit bureaux in 2007, based on civil court judgments paid up, very low amounts or old – did not remove obligation to pay debts
- Bureaux subject to internal and independent audit
- All information was declared removed – bureaux did not keep a list of ID numbers that benefitted through amnesty
- However a data comparison was performed and about 600 000 consumers were identified and used as a statistical sample (by the CBA)
- 64% of the individuals who benefitted from amnesty subsequently opened accounts
- 74% of the individuals who obtained credit had bad (30%) or adverse (44%) accounts
- 19% of the individuals had a judgment in 5 years
- Of course this conversely means that more than half (52%) of amnesty beneficiaries remained in clear – IS THIS GOOD ENOUGH? WHAT IS OUR BENCHMARK FOR SUCCESS?
Initial thoughts on the draft bill

• It is our understanding that this a **framework bill**, and that the specifics of categories of debt etc should be evidentially led to understand impact, ultimately informed by research

• Have questions on the bill to understand **approach and intention**:
  – Are we satisfied that the Bill meets the agreed principles?
  – **Should this be an Amendment Bill to the NCA?** Need to reach debt collectors... how?
  – What is the Comm wanting to achieve through **debt extinguishing vs broader NCA reform**? Is there a need to differentiate?
  – What is the **role of the Minister of Finance and Governor** wrt banks and SIFIs?
Types of debt covered – qualifying criteria

- **Focus on the indigent and child headed households seems sensible**; consistent with view that above R3500 should go into debt review, and we should fix that process (should debt review be subsidised, and by whom?)

- Our 10k figure was an early approximation, the debt busters figure is updated and more reliable (R7500)

- Also **good that taking into account the principle of “no realizable asset”**, ie this is dealing specifically with NINAs, although concerned that the definition of an asset seems contradict this

- **Consider including very clear person categories** in this definition to help reduce burden of proof e.g. social grant beneficiaries and those considered “indigent” by municipalities

- **Affordability criteria** – consider simplifying e.g. straight max 25% of income (to be informed by research)

- **Value of the debt to write off** should be informed by the research: 2013 study suggests debt as % income lower for lower income categories (0.2% for <R3500, 2.1% for >R30000)
Applications and orders

- Does the NCR / Tribunal have capacity? How can the process be simplified and streamlined?

- **Proof of income**: how to get people to tell the truth, obvious incentive to lie, support principle that credit providers must have opportunity to verify facts

- Like the **evaluation criteria** given in 88B

- Agree that there should be flexibility in granting of orders, but how can we make this more systematic? The prescribed periods for “halting” obligations needs engagement into BASEL requirements.

- Support need for prescribed rehabilitation period matched with compulsory financial education (by whom and when?).
Other considerations

- Amendment of section 69 on keeping register of applications: Also have reporting on these persons over time to monitor effectiveness of the intervention ie do these people take on more debt and when/how? This would dovetail with requirements on FIs and bureau

- How many times can you apply for debt relief?

- Prescribed debt relief: How should these be defined, how to ensure consistent checks and balances? Role of the Comm?

- In duplum rule: need legal certainty, so that attorney debt collectors cannot exploit current loop holes – cap should apply across the life of the loan into debt collection, even where - especially where – on-sold
In conclusion

• **Framework bill useful** to flesh out specific matters of principle – can these principles be confirmed?
• Details of coverage of debt relief and impact should be informed by research
• **Debt collectors** must be included
• Is there a role for municipalities?
• Can broad reform to the NCA and NCR (esp debt review) be accelerated? Also Insolvency Act...