

SUMMARY

NATIONAL CREDIT AMENDMENT BILL 2018, [B 30 – 2018]

1. INTRODUCTION

- 1.1 The purpose of this summary is to give a plain and simple understanding of the National Credit Amendment Bill, [B 30 – 2018] (the Bill) in order to assist the public and relevant stake holders. This will assist in providing informed comments on the Bill and facilitate the required participation in the law making process.
- 1.2 The fact that legislation affects everybody in the country makes it important for all persons to not only know the laws, but also the legislative processes involved in enacting them so as to effectively participate in the process and make meaningful contributions. The public is therefore invited to actively participate in the law making process by giving inputs so that their views will be represented in the laws that are passed.

2. THE SUMMARY

- 2.1 This Bill is a committee bill and has not been introduced by the Minister but by the National Assembly's Portfolio Committee on Trade and Industry in terms of section 73 (2) of the Constitution of the Republic of South Africa, 1996.
- 2.2 This Bill amends the National Credit Act (NCA), 2005 as amended by Act 19 of 2014 and in the first instance adds new definitions that will clarify some of the provisions of the Bill.

- 2.3 This Bill has been termed the “Debt Intervention Bill” as its main purpose is to address and prevent over – indebtedness of consumers and ensuring an accessible, consistent, responsible and equitable credit market.
- 2.4 Studies conducted have shown that unsecured and illegal lending has grown and is more prevalent in factory workers, miners, farm workers and domestic workers who thus are vulnerable to over-indebtedness. The study has also found that the factors that have contributed to the demand for credit by these workers include retrenchment, escalating cost of living, the number of breadwinners lost their lives in taxi and bus accidents and other accidents.
- 2.5 Out of the above, the Portfolio Committee saw a need for a strong response and intervention because although the NCA is a sound piece of legislation that served as a safeguard to the economy during the 2008 financial meltdown, it does not cater sufficiently for the poor workers.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1 inserts new definitions into the Act.

3.2 Clause 2 amends section 3 of the Act to provide for debt intervention as one of the tools to promote and advance the social and economic welfare of South Africans. The intention is to provide urgent debt relief to those people not currently covered by the insolvency systems and debt administration which remains largely creditor oriented.

3.3 Clause 3 inserts section 15A into the Act to provide for the functions of the National Credit Regulator in respect of applications for debt intervention and to provide for the creation of necessary capacity in this regard. The current statutory measures offering debt relief have been limited to sequestration, administration and debt review.

3.4 Clause 4 amends section 27 of the Act to add to the functions of the Tribunal in respect of referrals to it in terms of this Act.

3.5 Clause 5 amends section 60 of the Act to correctly reflect the right to apply for credit as being subject to the Act.

3.6 Clause 6 inserts section 69A into the Act to require the National Credit Regulator to keep a register of applications for debt intervention and to provide that the Minister may prescribe the information to be recorded therein.

3.7 Clause 7 amends section 70 of the Act requiring credit bureaux to accept information related to debt intervention applications from the National Credit Regulator at no charge. The intention here is that the National Credit Regulator should ensure that consumers that are able to repay, after an adjustment to their obligations, should be able do so.

3.8 Clause 8 amends section 71 of the Act to provide for clearance certificates to be issued by the National Credit Regulator and for resolving disputes in this regard.

3.9 Clause 9 amends section 71A of the Act to provide for the period within which credit bureaux must remove a listing related to debt intervention and for resolving disputes in this regard.

3.10 Clause 10 inserts section 82A into the Act, which requires debt counsellors to report suspected reckless credit. It further requires credit providers to provide certain information within seven business days and provides that the Tribunal may impose an administrative fine for failure to do so. Through this clause, this bill will also discourage registered financial service providers from reckless lending, as effective measures will now be enforced.

3.11 Clause 11 amends section 85 of the Act to empower a court to enquire in respect of a matter before it and where the consumer may qualify for debt intervention, whether the consumer wishes to participate and if so, to refer the matter directly to the National Credit Regulator for consideration of debt intervention or to consider an order for debt intervention where the court has sufficient information to do so.

3.12 Clause 12 amends section 86 of the Act to require a debt counsellor to always consider credit agreements for reckless lending, and not just at the request of the consumer. This clause further includes as one of the orders possible under re-arrangement of obligations, an order declaring interest rates, costs and fees to be reduced and even to be zero-rated.

3.13 Clause 13 inserts section 86A into the Act. This section provides for the National Credit Regulator to consider whether the obligations of a debt intervention applicant can be re-arranged and to refer the application either for such re-arrangement or for suspension and extinguishing by the Tribunal if re-arrangement is not possible within a specified period. It also provides that a referral for suspension and extinguishing is only possible for a period of four years from the commencement of this Amendment Act. The Minister is required to review the effectiveness of this measure and report on it to the National Assembly.

3.14 Clause 14 amends section 87 of the Act to empower the Tribunal to re-arrange a consumer's obligations.

3.15 Clause 15 inserts section 87A into the Act. This section provides for orders by the Tribunal where a consumer's obligations cannot be re-arranged within a specified period. The remedy provided commence with the suspension of the relevant obligations, which suspension may be extended for one further period. If the consumer can still not solve after a period of 24 months, the Tribunal may then declare all or part of the obligations extinguished.

3.16 Clause 16 inserts sections 88A and 88B into the Act. These sections provide for the effect of debt intervention and rehabilitation from an order granted under section 87A respectively.

3.17 Clause 17 amends section 89 of the Act to empower the Tribunal to declare an unlawful credit agreement void.

3.18 Clause 18 amends section 90 of the Act to empower the Tribunal to make an order related to unlawful provisions in a credit agreement.

3.19 Clause 19 amends section 106 of the Act to provide for mandatory credit life insurance in respect of certain credit agreements. The targeted credit agreements are those that consumers who earn less than R7500 per month could access, although this is not a requirement for mandatory credit life insurance. It is further provided that the cost of this mandatory credit life insurance must be determined by the Minister as the purpose is to benefit the target group of consumers and not to create a further burden. It is envisaged that mandatory credit life insurance will enable consumers to not be over-indebted in the event of retrenchment, and so exclude these consumers from any group in need of a debt intervention.

3.20 Clause 20 amends section 129 of the Act to provide that a credit provider may also not re-instate or revive a credit agreement or part thereof, as the case may be, where an order of the Tribunal was executed in respect of that credit agreement, or where the Tribunal ordered that the debt that underlies a credit agreement is extinguished.

3.21 Clause 21 amends section 130 of the Act to provide that a court must dismiss a matter before it where the Tribunal ordered that the debt underlying that credit agreement was extinguished.

3.22 Clause 22 amends section 137 of the Act to provide for the referral of applications for debt intervention to the Tribunal.

3.23 Clause 23 amends section 142 of the Act to provide for the hearing of an application for debt intervention by a single member of the Tribunal.

3.24 Clause 24 amends section 152 of the Act to make it clear that orders of the Tribunal are binding on credit providers and consumers as well.

3.25 Clause 25 inserts sections 157A, 157B, 157C and 157D into the Act. Section 157A provides for offences where a person intentionally submits false information or intentionally misrepresents information in respect of debt intervention, or

where a person deliberately alters his or her financial circumstances in order to qualify for debt intervention. Section 157B provides for offences related to certain acts that are currently prohibited by the Act. Section 157C provides for offences where, despite registration being required by the Act, a person still operates as credit provider, credit bureau, debt counsellor, payment distribution agent, or alternative dispute resolution agent. Section 157D provides for the situation where an offence is committed by a company.

3.26 Clause 26 amends section 161 of the Act to provide for penalties for the offences created in clause 25. Due to seriousness of the offences, the maximum period of imprisonment is set at 10 years and in respect of the offences set out section 157A, two years plus the debt intervention applicant is also permanently barred from applying for any debt intervention. In respect of offences committed by a person who is not a natural person, the example of administrative fines set out in section 151 is followed so that the maximum fine is set at 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater.

3.27 Clause 27 amends section 164 of the Act to extend the provisions of the Act related to civil actions and jurisdiction to orders that the Tribunal may make in respect of unlawful provisions or unlawful credit agreements.

3.28 Clause 28 amends section 165 of the Act to provide that the Tribunal may change or rescind its order under certain circumstances.

3.29 Clause 29 amends section 171 of the Act to require the Minister to make regulations establishing a financial literacy programme and to consult the Minister of Finance on the funding for such programmes. Provision is also made for guidance to be prescribed for the Magistrate's Court and Tribunal when making an order referred to in section 86(7)(c)(ii)(ccA). Provision is lastly made for an adjustment by the Minister, with the approval of the National Assembly, of the maximum gross income of a debt intervention applicant and the maximum total unsecured debt.

3.30 Clause 30 amends the long title of the Act so as to provide for debt intervention.

3.31 Clause 31 provides for the Amendment Act, save for clauses 19, 25 and 26, to be applicable to a credit agreement that was made before the commencement date of the National Credit Amendment Act, 2018, if that credit agreement falls within the application of the Act.

3.32 Clause 32 provides the short title and commencement.

4. CONCLUSION

Members of the public are urged to comment on the Bill as it will affect them once it is passed into law. Copies of the Bill may be obtained at any of the following:

- www.gov.za or
- www.eclegislature.gov.za or
- Mr. Makabongwe Tyiwani, the Committee Coordinator responsible for the Portfolio Committee on Economic Development, Environmental Affairs and Tourism, who may be contacted at mtyiwani@ecleg.gov.za or phone no. 079 496 6490 or
- Mr Lonwabo Sopela: Legal Advisor, who may be contacted at lsopela@ecleg.gov.za or phone no. 082 562 4493.

Verbal and written comments on the Bill are acceptable and these may be submitted to Members and staff of the Portfolio Committee who will be visiting various areas in the province conducting publicity and public

hearings. Comments may also be sent via email to the above email addresses or faxed to 086 7344 949.