

Debt Forgiveness

Since 2015, the Department of Trade and Industry (DTI) has considered preventative measures in an attempt to reduce and prevent future household over-indebtedness. A Portfolio Committee on Trade and Industry was instituted to investigate the possibility of a debt relief programme.

In November 2017, the National Credit Amendment Bill, 2018 was published for comment. The memorandum on the objects of the Bill states that the Bill “aims to provide for capped debt intervention to promote a change in the borrowing and spending habits of an over indebted society. The Bill will provide relief to over-indebted South Africans who have no other effective or efficient options to extract themselves from over-indebtedness. The Bill provides for mandatory credit life insurance on all credit agreements for longer than six months, but no more than R 50 000 in value to prevent lower income groups from falling into over-indebtedness due to changes in their financial circumstances. The Bill also aims to further limit the widespread abuse of consumers by unscrupulous lenders and to allow for simpler and more rigorous enforcement of the Act by, amongst others, providing for criminal prosecution of persons who contravene the Act”

As part of the legislative process public hearings were held in January 2018. The submissions to the Committee raised some critical questions, including:



1. The appropriateness of the criminal prosecution of persons who contravene the Act and the constitutionality of the Bill

It was submitted that the granting of credit is a subjective process. To criminalise this act would increase the burden of proof in such cases and may have the effect of choking up the courts. Debt relief measures do already exist in our law and it is possible that the solution lies in the efficient enforcement of these measures rather than legislating additional measures.



2. Are the provisions of the Draft Bill constitutional?

The credit industry, particularly banks and other credit providers, cautioned against legislated debt relief measures and the unintended consequences thereof. In previous opinions it has been stated that it is likely that debt constitutes property for purposes of S 25 of the Constitution and therefore a debt relief measure would constitute deprivation of property. Our Constitution clearly states that no law may permit the arbitrary deprivation of property which means that the deprivation must be in terms of a law of general application, ensuring that the law requires equal treatment and a discernible standard.

3.



What is the socio-economic impact of the Bill?

The preamble of the Bill refers to the purpose of the National Credit Amendment Act, 2005 being “to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers”. The Bill further refers to a debt intervention applicant as being a consumer under a credit agreement with income which does not exceed R 7 500 per month, has no realisable assets and is not subject to debt review. To this end the public hearings received a number of submissions questioning the manner in which this criteria had been determined. Various submission have proposed that this criteria is too generous and should be reduced, perhaps in line with the national minimum wage. It has also been suggested that sources of income and nature of expenses should be considered in determining whether the consumer is eligible for debt relief.

It would defeat the very purpose of the proposed debt relief programme for these measures to indirectly drive up the cost of credit with increased borrowing costs and limit the goal of financial inclusion effectively reducing the ability of low income consumers to access credit.

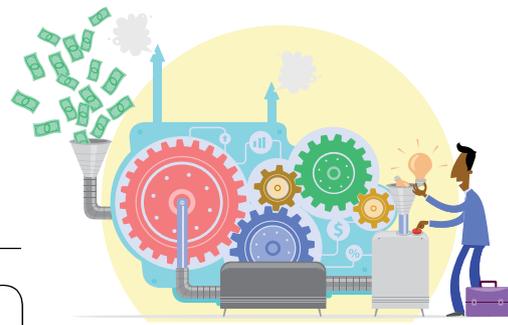
4.



What is the impact of credit providers taking on the role of being whistleblowers in respect of their fellow credit providers?

The participants submitted that the process of performing an affordability assessment is an automated process dependant on information relevant at the time. To expect credit providers to report suspected reckless credit agreements to the NCR would not be feasible, according to the various parties as they would not have access to retrospective information, nor the assessment mechanism. It was further argued that reporting of reckless credit is not the role of the credit provider.

5.



Is the process of the proposed debt forgiveness programme viable?

The general consensus in the various submissions is that a significant amount of systems development will be required before the proposed debt forgiveness programme can be implemented. In particular the National Credit Regulator may face some obstacles in their capacity to implement these increased powers.

Most submissions have emphasised the fact that many voluntary debt relief measures are already in place, some at significant costs to the credit provider, which can be refined further to give effect to the objectives of the Bill.

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