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**ATTENTION: THE MEMBERS
PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY**

Our Ref: KB11/068

**ATTENTION: Mr A Hermans
Email: ahermans@parliament.gov.za**

Your Ref: The NCA

29 November 2013

Dear Sirs

**RE: NATIONAL CREDIT AMENDMENT BILL
B 47 - 2013**

We refer to the above matter and the notices sent calling for submissions.

We advise that we act on behalf of the Debt Counselling Industry CC t/a **theDCI**, which provides a platform for debt counsellors and consumers to discuss the debt review process, concerns and experiences regarding debt issues via an online forum. Over eight hundred debt counsellors are members on the portal and the portal has a consumer database of over 450 000.

The sole member of **theDCI**, Ms D Solomon is a debt counsellor (NCRDC 689) herself and is aware of the challenges faced by debt counsellors. We also represent Ms Solomon in her capacity as a debt counsellor.

Our clients have requested us to put submissions before the portfolio committee in response to the request for submissions on the proposed National Credit Amendment Bill (B47 – 2013).

These submissions will take the form of:

- a) The written submissions contained herein, and
- b) Oral submissions, if approved by the committee.

In order to assist, we shall refer to the same numbering of the draft amendment bill

1. Paragraph 5 – Insertion of Section 44A

1.1. Our client welcomes the requirement for the registration of payment distribution agencies (hereinafter referred to as “**PDA**”) and believes that if, done correctly it will make a significant difference in the debt review industry.

1.2. Our client has concerns about the following aspects in the proposed amendment:

1.2.1. Our client believes that it is not advisable to have natural persons or other juristic persons registered as a **PDA**.

1.2.2. From experience, our client has found that a manual system of payment distributions (which will no doubt be utilised by smaller operators) does not work as:

1.2.2.1. It relies on a manual data capturing and payment system (which obviously allows for human error),

- 1.2.2.2. The volume of transactions and complexity of the redistribution schedules are often underestimated and causes processing and reporting difficulties to which affect all of the interested parties,
- 1.2.2.3. For a manual system to have any chance of success it would have to employ highly skilled persons, have various checks and balances, which all increase the cost of the service to the consumer,
- 1.2.2.4. There would also be a cost to the **NCR** regarding the monitoring and enforcement.
- 1.2.2.5. The appointment of natural persons as collecting and payment agencies will, it is submitted, not solve the problem and there is always a risk with individuals compared to proper organisations and infrastructures which are properly regulated.
- 1.2.2.6. Our client would propose that the **NCA** be amended to provide for the use of parties who are properly accredited and subject to the provisions of the National Payment System Act, 1998 (Act No. 78 of 1998 - the NPS Act), which for obvious reasons excludes natural persons.
- 1.2.2.7. It is our client's submission that the foregoing would:
 - 1.2.2.7.1. Make use of an existing tried and tested system,

- 1.2.2.7.2. Ensure regulatory compliance (the South African Reserve Bank will do this) with checks and balances in place,
- 1.2.2.7.3. Prevent “growing pains” and the risks associated with trying to re-invent the wheel (which our client believes would in any event be contrary to existing legislation),
- 1.2.2.7.4. Prevent systemic risk – defined as means the risk that failure of one or more settlement system participants, for whatever reason, to meet their payment obligations, including the payment obligations of clearing system participants, or their settlement obligations may result in any or all of the other settlement system participants being unable to meet their respective payment or settlement obligations,
- 1.2.2.7.5. Provide a cheaper, accurate and risk free service to the industry players thereby streamlining the system.
- 1.2.2.7.6. Free up resources of the **NCR** to be better spent on education and other aspects such as the complaints procedure and enforcement.
- 1.2.2.8. Our client also believes that the **NCR** is under an obligation as envisaged in the proposed amendment to Section 17 to enter

into an agreement with the Reserve Bank who in terms of Section 10(1) (c) of the South African Reserve Bank Act, 1989 is required to perform such functions, implement such rules and procedures and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing or settlement systems.

1.2.2.9. It is our client's submissions that the **PDA's** would fall within the ambit of the National Payment System Act, 1998 (Act No. 78 of 1998 - the NPS Act) and would be subject to the regulatory authority, registration requirements, pricing structures etc which the South African Reserve Bank monitors and enforces.

2. Paragraph 23 - The insertion of section 134 A

2.1. Our client proposes that a proper definition should be inserted into the **NCA**:

2.1.1. to make provision for this group of persons in a more accurate manner.
There are two suggestions here:

2.1.1.1. The term is removed completely from the legislation and the anticipated functions of an **ADR** be incorporated into the functions of a debt counsellor. This will allow for regulatory supervision of the process by the **NCR**, achieve the intention of the **NCA** and prevent any uncertainty or competing interests; alternatively

2.1.1.2. The term is re-defined in order to ensure that the persons referred to therein are required to be registered (with certain criteria which we propose would be similar to those imposed on debt counsellors and that they may not be registered in another capacity with the **NCR**), the **NCR** has regulatory powers in respect of those persons, the fees in respect of those persons be determined and published.

2.2. That there must be a clear distinction between the roles of **ADR's**, credit providers and debt counsellors to ensure that there is no overlapping or confusion in the minds of the public regarding the roles which these important industry players perform within the credit industry.

2.3. **ADR's** should in terms of the **NCA** specifically be provided complete independence from interference from any of the other players in the credit industry and in particular, should be able to act in a totally impartial manner in resolving disputes referred to it.

3. Paragraph 24 – Amendment to Section 136

3.1. Our client submits that the reference to “any person is too broad” and should be limited (particularly considering the inclusion of referring an allegation of a reckless credit agreement) to a debt counsellor only.

3.2. It is our client’s submission that only a debt counsellor would be properly empowered and equipped in terms of the **NCA** to properly assess reckless credit.

3.3. Failing to limit the foregoing, could result in consumers alleging reckless credit to the **NCR** and ultimately to the Tribunal in a situation where:

3.3.1. These complaints and referrals take notoriously long to be dealt with,

3.3.2. The process of appeal exists to the Tribunal and with respect the Tribunal is already, from our client's experience overwhelmed, and

3.3.3. The consumer could use the mechanism to simply buy time and at the same time could continue entering into further credit agreements.

3.4. Without a proper assessment conducted by a debt counsellor the propose amendment would allow for consumers to take advantage (either intentionally or unintentionally) of the right to allege a reckless credit agreement where none exists.

We trust that you find the above in order.

Yours faithfully
K J BREDEKAMP
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