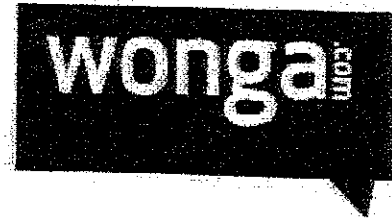


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Wonga Finance SA (Pty) Ltd  
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33 Bree Street  
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8001

28 November 2013

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Ms JL Fubbs

Chairperson: Portfolio Committee on Trade & Industry

Attention: Mr A Hermans

Per email

[ahermans@parliament.gov.za](mailto:ahermans@parliament.gov.za)

cc [mherling@parliament.gov.za](mailto:mherling@parliament.gov.za)

[dwoodington@parliament.gov.za](mailto:dwoodington@parliament.gov.za)

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Dear Madam/Sir

**Re: WONGA SUBMISSIONS IN RESPECT OF THE DRAFT NATIONAL CREDIT AMENDMENT BILL, 2013**

Wonga Finance SA (Pty) Ltd (Company no 2010/015269/07) is a Registered Credit Provider (NCRCP5033) operating a short term loans website [www.wonga.com](http://www.wonga.com). Our entire process is automated so we don't employ salespeople and don't operate out of branches. We have developed automated decision-making technology based on a proprietary algorithm, and we pay for public data – including from the credit bureau – to make accurate lending decisions.

We have read the Draft National Credit Act Amendment Bill, 2013 and its proposed amendments ("the Bill") to the National Credit Act No. 34 of 2005 ("the Act") and would like to make the following submissions in this regard:

## AMENDMENT OF SECTION 48 OF ACT 34 OF 2005

"8. Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness [, including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority] or compliance with a prescribed code of conduct or a guideline including but not limited to an affordability assessment guideline prescribed by the Minister after consultation with the National Credit Regulator; and"

We have read the Affordability Assessment Guidelines ("the AAG") now issued by the National Credit Regulator ("the NCR") in terms of section 82(2)(b) of the Act as referred to in the abovementioned amendment clause and submit as follows in response thereto:

### Clause 5.1: Existing Financial Means and Prospects

The requirements set out in clause 5.1 of the AAG will have a negative impact on both our operations as an online credit provider and the consumer from a practical implementation perspective in the following ways:

1. Assessing a Prospective Customer's Allocatable Income, as well as their Discretionary Income, will require that this information be accessible electronically.
2. In the same way that credit information is made available via credit bureaux, the aforementioned information would need to be shared electronically by the South African Revenue Services ("SARS").

3. SARS would, in addition, need to provide the "Necessary Expenses", as defined in the AAG, in order for the Credit Provider to ensure an accurate calculation and validation of the Prospective Customer's Discretionary Income.
4. Physical and scanned supporting documentation in the form of payslips, bank statements and other credible confirmation of the Prospective Customer's income, cannot be supported as part of an automated process and would require manual intervention, which contradicts the very nature of our core business model.
5. Application approval and disbursements would in turn be negatively impacted by slower turnaround times, particularly over weekends and outside of office hours.
6. Consumers would require access to specialized electronic equipment such as scanners and/or facsimile machines to submit the necessary documentation for validation as prescribed by the Guidelines, thus reducing the accessibility to short-term credit for a certain category of consumers.

It is our submission that the abovementioned consequences of the requirements of clause 5.1 of the AAG will not only negatively impact the business of online credit providers such as Wonga, but will also discriminate against those who may not have the ways or means to gain access to such equipment and/or technology. Whilst we acknowledge the need for transparency and accountability, the enforcement of such provisions may make it impossible for legitimate Consumers to obtain credit for short periods of time.

### **Clause 5.2: Existing Financial Obligations**

Again, we have concerns regarding the practical implementation of validating the existing financial obligations of every Prospective Customer for the following reasons:

1. SARS would be required to share the Prospective Customer's Gross Annual Income with the online credit provider and provide confirmation of employment.

In addition, we have concerns around applicants on benefits, those in the informal sector and those without an annual income and how their information would be validated.

In the same way as the requirements of clause 5.1, validating the existing financial obligations of the Prospective Customer as prescribed herein negatively impacts both the credit provider and the consumer by requiring manual intervention, thus drastically slowing down loan application processing and approval turn-around times, resulting in less access to credit and less credit extended to lower income consumers.

### **Clause 6: Debt Repayment History**

Our concern here is two-fold:

1. Firstly, the minimum monthly payments due by consumers may change depending on the credit balance, interest and fees payable on a monthly basis and there is a question as to how the credit provider would cater for this change from month to month during the loan term at the point of application.

2. Secondly, the agreement by Cabinet to implement a credit amnesty will see credit bureaux removing adverse credit information, especially in respect of consumers who have paid their debts. This will mean credit providers will no longer be able to check a consumer's debt repayment history to distinguish between performing and non-performing credit behaviour. This is further canvassed below.

#### **Clause 7: Avoiding Double Counting in Calculating the Allocatable Income**

Our concerns are as follows:

1. How would an online credit provider reliably validate that a credit agreement is being entered into on a substitutionary basis or ensure the proper use of the credit for that purpose?
2. What would be considered "reasonable steps" for determining the aforementioned use and intended purpose?

We have read the draft amendments to the Code of Conduct to Combat Over-indebtedness ("the CCCO") and submit as follows in response thereto:

#### **Clause 2: All Credit Providers to report credit information to Credit Bureaux**

Our concerns are as follows:

1. If adverse information is to be removed from the bureau within 7 days of settlement, the requirement to report this information appears contrary to the proposed section 71A discussed below.

#### **Clause 3.1.1: 5 year limitation on EAO's**

Our concerns are three-fold:

1. If a judgment only prescribes after 30 years, it is prejudicial for a creditor to be limited in its ability to enforce such a judgment. A debtor's salary may be the only means in which to enforce relief as debtors often don't own assets to attach. Taking into account the nominal amounts that debtors are often required to pay on a monthly basis to reduce their debt, 5 years can easily pass without the debt being settled.
2. The courts will further be flooded with applications to issue warrants (in the hope that there may be goods to attach). This will increase an already insurmountable load of work for our courts.
3. Furthermore, by doing away with the EAO, this would make it more difficult for a Credit Provider to recover unpaid debts and could result in access to credit becoming more difficult for lower income earners.

#### **Clause 3.4: Reporting on EAO's**

Our concerns are as follows:

1. How often will Credit Providers be required to report to the NCR – annually?

2. Again, with regard to reporting to Bureaux, this information is only worthwhile to a Credit Provider whilst a credit agreement is in existence.

#### **Clause 4.5.1: Term of Unsecured Term Credit Agreement**

We suggest that the lesser of the two time periods provided prevails. We are a Credit Provider who currently provides loans payable within 30 days. For this to become 60 months would be inequitable, both as to time and to the maximum amount of the loans we offer, namely R2500.

#### **Clause 4.5.3: 50% Write-off provision**

Is this clause incomplete? The last sentence appears to hang on the word "solves".

#### **Clause 4.5.4: Secured Credit Agreements**

We think the reference to 4.6.3 herein should read 4.5.3.

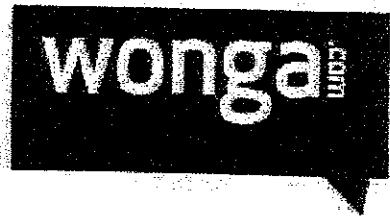
#### **Clause 5: Credit Life Insurance**

We suggest the NCR call on Credit Providers who insist on insurance to provide absolute transparency regarding their offerings.

#### **INSERTION OF SECTION 71A OF ACT 34 OF 2005**

13. The following section is hereby inserted in the principal Act after section 71:

***"Automatic removal of consumer credit information***



71A. (1) The credit provider must submit to the credit bureau within seven days after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was the subject of—

- (a) an adverse classification of consumer behaviour;
- (b) an adverse classification enforcement action against a consumer; or
- (c) a payment profile listed in the consumer credit payment profile.

(2) The credit bureau must remove any adverse listing contemplated in subsection (1) within seven days after receipt of such information from the credit provider.

(3) If the credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the National Credit Regulator.

(4) For the purposes of this section—

(a) **'adverse classification of consumer behaviour'** means classification 25 relating to consumer behaviour and includes a classification such as "delinquent", "default", "slow paying", "absconded", or "not contactable"; and

(b) **'adverse classification of enforcement action'** means classification relating to enforcement action taken by the credit provider, including 30 a classification such as "handed over for collection or recovery", "legal action", or "write-off",.

We have noted the abovementioned credit amnesty proposal and make the following submissions in this regard:

1. As a credit provider, we are tasked with performing two types of analyses before taking a decision to extend credit:

1.1 An affordability assessment to determine the ability of the consumer to service the debt applied for (in respect of which submissions have been canvassed above); and



- 1.2. Credit bureaux checks to determine the consumer's propensity to repay his or her debt.
2. Applying a total amnesty through the removal of adverse credit information would no longer allow credit providers to distinguish between performing and non-performing credit behaviour, as aforesaid.
3. This would result in imperative information for credit providers being inaccessible at a critical stage of assessment of a Prospective Customer, leading to credit providers following an impractically conservative approach to lending in what could only be described as making decisions "in the dark". Well performing consumers would also be prejudiced as it would be difficult to distinguish them from the poorly performing consumers.

While committed to combatting over-indebtedness and reckless lending, Wonga submits that the importance of the role of a well-operating, diversified and profitable credit industry in the effective functioning of the economy should not be underestimated.

#### **ISSUES NOT CANVASSED IN BILL, AAG OR CCCO**

Notwithstanding the fact the following is mentioned in the DTI Presentation, we can find no reference to amendments relating to these matters in the Bill or Codes of Conduct:

1. Spouse's consent in online applications;
2. Application of *in duplum* rule as it appears under section 101 of the Act, including collection costs; and
3. Issuing of clearance certificate if consumer has satisfied all debt obligations.

wonga<sup>.COM</sup>

In conclusion we appreciate the opportunity to submit comments on the National Credit Amendment Bill, and we are in support of a number of the proposed amendments. However we are concerned that as an online company some of the proposals would severely impede our ability to operate and sustain our business. Specifically those that require manual verification processes we believe are obstructive to our business model and we would therefore respectfully request the cooperation of organisations such as SARS to make this kind of information available to us and other innovative credit providers electronically. In this way we can continue to work together to offer consumers greater accessibility to credit.

Yours faithfully



Kevin Hurwitz

Chief Executive Officer, Wonga Finance SA (Pty) Ltd