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PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

COMMITTEES

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SUMMARY OF SUBMISSIONS: FURTHER INPUT ON THE NATIONAL CREDIT AMENDMENT BILL

The Portfolio Committee on Trade and Industry ("Committee") has resolved to request permission from the National Assembly to make further amendments to the National Credit Act, 2005 (Act No. 34 of 2005), based on issues that arose from the first public involvement process on the National Credit Amendment Bill, B47-2013. The Committee invited the public to provide input on the following additional amendments:

- New clause: Revision of the governance structure of the National Credit Regulator (NCR) to remove the board and allow the NCR to be directly accountable to the Minister (section 19 of the Act)
- New clause: Providing for an offence where prohibited charges are charged by the credit provider, including where the capped interest rate is exceeded (section 100 of the Act).
- New clause: Capping and/or regulating the cost and not just the value of credit insurance (section 106 of the Act).
- Clause 20: Alignment of the delivery of a section 129(1) notice with the judgement in Sebola and Another v Standard Bank of South Africa Ltd and Another (CCT 98/11) [2012] ZACC 11; 2012 (5) SA 142 (CC); 2012 (8) BCLR 785 (CC) (7 June 2012) to ensure that there is proof that the notice was delivered (section 129 of the Act).
- New clause: Providing for an offence where debts that have become prescribed under the Prescription Act, Act No. 68 of 1969, are collected, sold, and re-activated (Section 133 of the Act).
- New clause: Providing for the Minister to prescribe additional regulations based on the proposed amendments in the Amendment Bill, as well as the proposed additional areas mentioned above. These regulations will include provisions for a 'fit and proper' test; a process to deregister a PDA; the duties, obligations and fees of Payment Distribution Agents and ADR Agents; assessment criteria to determine if an applicant's commitments to prescribed guidelines are sufficient; a formula for penalty for late renewal of registration; and termination of/withdrawal from debt review process.
- New Clause: Amending sections 40 and 42 so that all credit providers will be required to be registered.
- New Clause: Amending section 52(4) so that a registration in terms of the Act remains in effect until cancelled.

The following stakeholders submitted their comments:

1. African Bank
2. Association of Debt Recovery Agents (ADRA)
3. AMC
4. Capital Software
5. Capitec
6. Cell C
7. Ms Z Coetzee
8. Consumer Goods Council of South Africa (CGCSA)
10. Logikos
11. Loots - du Plessis Attorneys
12. Ms R Marais
13. Microfinance South Africa (MFSA)
14. National Clothing Retail Federation of South Africa (NCRF)
15. National Debt Connection (NDC)
16. National Treasury (NT)
17. Nimble Group
18. Osip Consultants & Administrators

9. Credit Bureau Association (CBA)
9. De Beer de Klerk Attorneys
9. Debt Counselling Association of South Africa (DCASA)
9. Mr T Dooley
9. Eksteen Attorneys
9. First Rand Bank (FRB)
9. Flemix & Associates Incorporated
9. ICom Services (Pty)Ltd
9. Foschini Retail Group (FRG)
9. Gerhard van der Merwe Attorneys
9. Ms D Hatting
9. Intecon
9. Large Non-Bank Lender Association (LNBLA)
19. (Osip)
20. Payment Distribution Agent Association of South Africa (PDASA)
21. Real People Investment Holdings
22. Simpsons Attorneys
23. South African Insurance Association (SAIA)
24. SpectriFin
25. Standard Bank South Africa (SBSA)
26. Telkom
27. The Debt Counselling Industry (theDCI)
28. Transaction Capital
29. Mr G van Zyl
30. Woolworths Financial Services (WFS)

Their comments are summarised below:

Concern	Comments
New clause: Revision of the governance structure of the National Credit Regulator (NCR) to remove the board and allow the NCR to be directly accountable to the Minister (section 19 of the Act).	***Capitec***: How does this fit in with the Twin Peak Strategy? ***CGCSA***: It is unclear why this amendment is necessary and what the effects of it will be in practice. There is a concern that making the NCR accountable to the Minister may introduce bottlenecks and delays, rather than streamline the proper implementation of the Act. Furthermore, the Board was intended to be an independent and politically nonpartisan body that oversaw the regulation of the NCR (see section 20). Its removal represents an about-turn in policy and therefore ought to be properly debated in the public forum. ***DCASA***: The NCR's board was not effective and its removal alongside the implementation of the Twin Peaks Strategy may improve coordination among the regulators. They support this amendment, as long as quarterly public reporting is not removed. ***FRG***: This change will mean that instead of a board regulating the NCR, there will only be the CEO and the Minister. A board, as the NCR is currently governed, is preferable, as the decision making powers and responsibilities are spread amongst several individuals who collectively can ensure that the aim and spirit of the NCA are achieved. ***LNBLA***: They disagree with the removal of the NCR's board. This may lead to direct political intervention in the market without appropriate credit expertise been brought to bear on certain decisions. ***MFSA***: A skills audit could assist in determining the required optimal structure for the NCR. The removal of the board at this early stage of the NCR's development may not be in the best interest of effective oversight. Furthermore, in the absence of a board, the position of CEO cannot technically exist. ***NCRF***: They view the consideration to remove a Broad Based governance structure of the NCR as inappropriate, unnecessary and undermining of the spirit of social dialogue and the construct of governance and oversight

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	amendment to Section 26 with respect to the eligibility for appointment as chief executive officer and deputy chief executive officer and a similar clause be included as envisaged in the proposed amendment to section 29 with respect to the removal of the chief executive officer, deputy chief executive officer and persons appointed by the chief executive officer. ***Transaction Capital***: They disagree with the proposed amendment. This change implies that the NCR will be directly accountable to the Minister, which limits the NCR's guidance from persons with appropriate expertise in fulfilling its functions. They are concerned that this removal would make the NCR even less accessible than it already is.
New clause: Providing for an offence where prohibited charges are charged by the credit provider, including where the capped interest rate is exceeded (section 100 of the Act).	***ADRA***: This is contrary to the current compliance framework under the NCA which provides for compliance notices to be issued first for non-compliance with the NCA. On what legal or other basis is this being advocated? Does the "harm" that the legislation wishes to address warrant a criminal sanction? On what basis will this process be administered and what "checks" and "balances" including appeal processes will be available to ensure the rights of all stakeholders are taken into account under law? The remedy under law should be appropriate and proportional to the harm being guarded against. ***African Bank***: They have reservations about the intention to criminalise a contravention of the provisions of the NCA relating to interest, fees and charges. This proposal is in addition to permitting the NCR to impose penalties in respect of such a contravention and enforcing against credit providers remedial measures to reimburse consumers, resulting in an extremely prejudicial sanction against a credit provider. Such a legislative proposal by the Committee clearly indicates that the imposition of the legislative change has not been properly considered and completely ignores the fairness principle contained in the NCA. ***AMC***: The current legislation has existing mechanisms to prevent and act against prohibited charges. This is not being used to its full capacity. Additional punitive methods are superfluous. Charges may be excessive due to differences in opinion and interpretation, system failure and genuine error. This will open up credit providers to criminal prosecution, which seems clearly unfair. ***Capitec***: They are of the view that this is already covered by s161. ***CGCSA***: The Act only criminalises a limited number of contraventions, namely breaches of confidence, hindering the administration of the Act, failing to attend when summoned, failing to answer truthfully, and failing to comply with an order of the Tribunal (see sections 156 to 160). This is in line with the international trend to remove criminal sanctions from corporate statutory law and to introduce alternative means of enforcement by way of monetary and administrative sanctions. This proposal is taking a step backwards in the development of the effective enforcement of the NCA. The various administrative regulatory measures already catered for in the NCA, if carried out correctly, are a more effective and less costly method of enforcement than the employment of criminal sanctions. This will force the parties to have their day in court which will significantly slow down the corrective process. The party with the potential of an offence cannot

	take corrective action until the matter is heard for the risk of prematurely accepting guilt. This will lead to high levels of litigation within the enforcement process and will place a further burden on the overcrowded courts. ***Coetzee***: She agrees with the proposal but suggests that interest should also be lowered to the repo rate + 2% for a person undergoing debt review in the case of secured debt and repo rate or zero per cent where unsecured debt is concerned. This would enable consumers to pay off their debt in the timeframes provided. Furthermore, it should be compulsory that the interest should be worked out in monetary terms to be shown on documents before the court when dealing with a debt review case. A creditor does not have the right to a certain amount of interest if a consumer is able to pay off his/her debt in full sooner than anticipated. ***DCASA***: They propose the amendment proposed in Section 100 be extended to cover the non-implementation of Section 103(5). ***Intecon***: With regard to Section 100(1)(d), the NCR had acted against credit providers in the NCT with regards to charges payable by a consumer once the consumer settles his payment obligation to a credit provider. These "charges" are either bank charges payable directly to a bank or to a Payment Association of South Africa (PASA) registered entity. These processing charges fall outside the ambit of the NCA and cannot be seen as part of the cost of credit. They submit that a bank can act as a credit provider (to a consumer) and the same bank can act as the provider of a financial instrument to the same consumer. The credit provider is not obligated to reduce the initiation fee, interest or monthly service charge or to take cognisance of the additional fee charged for processing payment for the same consumer once the consumer settles his payment obligation. Charges payable by a consumer to settle his payment obligation to a credit provider does not form part of Section 100(1)(d) and that the National Payment Systems Act and the Directives issued apply (see s124(3)). Intecon further submits that where a financial instrument is made available to a consumer and the consumer chooses to make use of the financial instrument for which he has signed for; this cannot be seen as a supplementary agreement or a document as described in Section 91(a). Once entities registered with PASA in terms of the Directives issued requires a consumer to sign a document with a PASA registered entity as required in terms of the Directives, the NCR acts against the non-bank credit provider stating that these documents fall under the ambit of Section 91 quoted above and further states that such a document then leads to a contravention of Section 91 by the non-bank credit provider. The same course of action is not taken by the NCR when a bank issues a cheque to a consumer and where the same bank acted as credit provider and therefore there are inconsistencies in this regard. ***LNBLA***: Although they agree that there should be consequences to contravening the NCA, they are concerned that criminalisation may result in ambiguity and work against creating a predictable and effective environment for the efficient regulation of registrants.

	There are certain interpretational issues with regards to current provisions of the NCA relating to the maximum allowable interest rate. An example is where a loan is granted and funded at a fixed rate at the maximum rate and the repurchase rate drops thereafter. To criminalise actions where the law is unclear is problematic. The general experience under the previous Companies Act, 1973 (Act 61 of 1973) had been that criminal sanctions were ineffective as a means of ensuring compliance due largely to the failure and reluctance to prosecute for technical offences. It is not clear what is proposed: to charge companies in courts of law or merely to introduce administrative fines without a hearing? Both outcomes are problematic, particularly if there is no distinction between deliberate overcharging and ad hoc system issues that may arise from time to time. ***Marais***: She welcomes this, as consumers under debt review are forced to use PDAs who often pay late and this is abused by credit providers. ***MFSA***: They do not support this amendment, as the incorrect determination of the rates and fees could stifle the supply of formal credit and leave consumers unprotected. The DTI also undertook to review the rates within 6 months and as such this clause opens up risk with regards to the harmonisation of legislation, regulation and undertakings made by the officials of the DTI. ***NCRF***: There is currently insufficient evidence that the NCR and enforcement structures are able to adequately identify, monitor and manage violations of the Act. Progressing to a provision of an offence without clarity and evidence of the nature and extent of the problem, impact or of the ability to effectively intervene is deemed inappropriate. ***SBSA***: Currently, there is uncertainty regarding the application of capped interest rates to fixed interest rates and differing NCT and ombudsman decisions in this regard. The proposed criminal offence exposes credit providers in an area where there is already interpretational uncertainty. This should first be clarified. ***Transaction Capital***: They are of the view that the offence is ill-considered and unnecessary, as there are sufficient existing mechanisms to ensure compliance by both credit providers and debtors. The existing financial penalties are substantial and severe and a criminal component appears arbitrary and may be a duplication of penalties.
New clause: Capping and/or regulating the cost and not just the value of credit insurance (section 106 of the Act).	***ADRA***: Supply and demand should determine cost of credit insurance not legislation. Does the Parliamentary Committee have authority to make legislation in respect of the insurance industry? The Financial Services Board and legislation relating to financial services and products falls under the auspices of the Department of Finance and Minster of Finance and not the Department of Trade and Industry. ***African Bank***: Credit life plays an important role in access to credit, in the use of credit for wealth creation purposes, in rehabilitation and in reducing over-indebtedness. However, there are market failures in compulsory credit

	insurance that need to be addressed. However, the inclusion of a new clause on limiting the pricing of insurance while the findings of the Consumer Credit Insurance task team are about to be made public, is suggestive of a very disconnected approach from Government, and almost impossible for business to manage and comment on. This amendment pre-empts the work of the task team and does not take into consideration the vast amount of industry work, engagements, presentations, impact analyses and other engagements between industry bodies and could well result in unintended consequences that would negatively impact upon financial stability and the fragility of the economy. Furthermore, the amendment in its current form will restrict the Minister's powers to only regulate and limit the cost of credit life insurance, while other forms of compulsory credit insurance will remain unregulated and that other remedial actions with respect to credit life insurance are left hanging. It is therefore proposed that the capping and/or regulation of the cost and value of all credit insurance be regulated in terms of the appropriate insurance legislation and regulations and not by way of a cap or limitation in the NCA. If the proposal is pursued, the Minister's powers should be widened rather than restricted, so that consideration may be given to a variety of mechanisms that will ultimately result in the limitation of the cost of credit life insurance as well as contribute to the development and accessibility of financial products to that segment of the market that has historically been excluded or restricted. It is therefore suggested that the proposed introduction of section 106(8) of the NCA be worded as follows: *"The Minister, in consultation with the Registrar of Long-term Insurance, may prescribe a mechanism or formula that will result in limiting the cost of credit life insurance that a credit provider may charge a consumer".* ***CGCSA***: National Treasury has established a Consumer Credit Insurance Task Team consisting of the Financial Services Board, National Credit Regulator, Competition Commission and the Actuarial Society of SA. The CCI Task Team has been undertaking an assessment of market conduct in relation to consumer credit insurance. The capping of insurance premiums is only one of the aspects this team is considering as the issues are of a complex nature. Industry players have raised concerns that premium caps could affect the solvency and wellbeing of certain insurance companies operating in the consumer credit insurance space and would be a matter for the Registrar of Insurance to deal with. Therefore, this amendment is considered premature and open to a jurisdictional dispute among the regulators. ***LNBLA***: There is a lack of clarity as to the credit life insurance product that the cap is proposed to relate to, if any, as credit life insurance products vary greatly in the extent of cover and benefits offered and waiting periods and exclusions applicable. The cap may lead to consumers being offered poor products and/or very basic protection. The NCR technical committee has indicated that they intend to prescribe the credit life insurance product, which prescribed product would have to

	provide life and disability cover at R4 per R1000 of the principal debt. They consider the proposed cap as too restrictive as it limits the benefits that may be offered to consumers, such as retrenchment cover. They are further concerned that in addition to the proposed cap in the NCA, additional measures may be introduced by other regulators impacting on credit life insurance, as this area is currently being researched. If the proposed cap is followed by a wide range of additional regulatory interventions impacting on the cost or ability to sell credit life insurance, a cap provided for in the NCA may very soon prove to be inappropriate. Industry requires the assurance that the cap will be the only regulatory intervention. ***Coetzee***: When a consumer goes under debt review, hey should be given the opportunity to relook at their credit life insurance policies and possibly replace these with a cheaper option. ***MFSA***: See comments above. Furthermore, it is unclear whether credit insurance falls within the jurisdiction of the NCR. ***NCRF***: There is no clarity on the general legality of this proposal. ***NT***: Although they share concerns regarding abuses in the credit life insurance, they have concerns regarding the wording of the proposal. The new clause will lead to duplication of new regulatory powers afforded to the FSB and blur the lines of accountability for insurance regulation and supervision. The Long-term and Short-term Insurance Acts have been amended to strengthen the Policyholder Protection Rules to allow the Registrar of Insurance to set norms and standards with which policies must comply. This includes the possibility of price caps, but goes further to also allow for standardised product features and disclosure, to aid comparability. Any legislative amendments at this stage would circumvent the important Consumer Credit Insurance (CCI) review, and could weaken the implementation of proposals arising from that process. It is, therefore, not necessary to include this amendment in this Bill, as it relates to CCI. Rather the FSB should set product standards for CCI through the Policyholder Protection Rules in consultation with the NCR and DTI. ***Real People***: Any attempt at capping the cost of credit insurance should take into account the potential conflict between regulators and relevant legislation and should provide for a holistic regulation thereof. Furthermore, the reasonability of credit insurance premiums should be considered after taking into account the once-off origination cost of the policy, the monthly administration cost of the policy, the quantum of cover provided and the term of the underlying loan covered by the insurance. ***SAIA***: It is outside the Minister of Trade and Industry's scope to regulate insurance and insurance premiums. This falls under the scope of the Minister of Finance and should be regulated under the Short-term Insurance and Long-term Insurance Acts. ***SBSA***: There should be an alignment between the NCA and the Short-

	term Insurance Act to ensure that credit providers and other providers of credit insurance are regulated. However, they are not in favour of a cap on credit life insurance, as it affects the type of cover that can be offered and may remove the consumer's choice to buy additional cover or choose a policy with additional benefits. If the amendment is pursued, they suggest the following wording: "The Minister of Trade and Industry, **in consultation with the Minister of Finance**, may prescribe the limit in respect of the cost of credit life insurance that a credit provider may charge a consumer, **that any such proposed limits are gazetted for public comment for a period of 30 days before the introduction thereof**." Furthermore, they recommend that any amendments regarding credit life insurance should be aligned with the CCI review of credit life insurance. ***theDCI***: They suggest that an additional section be inserted, alternatively the regulations include a provision for the termination of such credit life charges and the agreement relating thereto once a consumer enters debt review and puts alternative credit life insurance in place. They also suggest that the contravention of this section become an offence. ***Transaction Capital***: They require clarity regarding the credit insurance product that is to be capped and the framework within which the cap will be determined. Capping may lead to less competition in the market and may result in insurers defaulting to the maximum premium. ***WFS***: They require clarity on whether the capping will be applied to both mandatory and optional products, as this will inhibit their ability to structure a product around the needs of their customers. They require clarity on (i) how this cap will be determined and take into account the different offerings and benefits relating to different insurance products; (ii) how this will take into account factors exclusive to specific credit providers; (iii) will this be implemented retrospectively; and (iv) the meaning of a cap on "the value of insurance". Optional credit life insurance does not add to the cost of credit but provides cover, as defined in the Long Term and Short Term Insurance Acts to a customer in the event of prescribed life events. As such they are of the view that any changes to optional credit life insurance should emanate from the FAIS Act.
Clause 20: Alignment of the delivery of a section 129(1) notice with the judgement in Sebola and Another v Standard Bank of South Africa Ltd and Another (CCT 98/11) [2012] ZACC 11; 2012 (5) SA 142 (CC); 2012 (8) BCLR 785 (CC) (7 June 2012) to ensure	***ADRA***: "Notice" and the true meaning of the word in terms of Section 129 of the National Credit Act ("NCA") has long since its promulgation been a point of contentious and continuous litigation. Section 129 does not in its current form refer anywhere to the word "delivery", but merely requires "notice". Section 130 of the NCA, however contains the word *delivery*, which relates not only to notice in terms of Section 129 but also to notice in terms of Section 86(9) of the NCA. The intended alignment of wording of Section 129 with the Sebola decision raises the question of whether the notice requires "delivery" or actual physical "receipt" as contemplated in Section 129. Delivery in its purest

that there is proof that the notice was delivered (section 129 of the Act).	form is described as: "the action of delivering letters, parcels, or goods" and furthermore, "an item or items delivered on a particular occasion". From the aforementioned it is clear that the delivery of a Section 129(1) does contain an element of delivery as well as receipt, but personal receipt is not required. The aforementioned decision is clear. Delivery as contemplated in terms of Section 130 dictates that the 129 letter of demand must be sent via registered postage accompanied by a track and trace proof obtained from the South African postal service for purposes of proving delivery of the 129 notice to the address chosen by the consumer. Actual collection from the post office is not a requirement. The practical implication of including words like "delivery" into Section 129 will not only result in additional litigation and further legal uncertainty, but will surely have unintended consequences including an impact on the application of Section 130(4)(b)(i) and (ii) notwithstanding the fact that other forms of delivery other than the process of delivery via registered postage has been acknowledged to exist. Therefore it must be contended that there exists no basis for the inclusion of the word "*delivery*" into the wording of Section 129, nor for the alignment of the NCA with the outcome of the Sebola-judgment, especially since the Constitutional Court's ruling on this issue has left no room for error or interpretation to the application of the word "*notice*" as contained in Section 129(1)(a) of the NCA. ***AMC***: In practice, the S129 letter is currently being sent out via registered mail. The judgment stops short of requiring actual physical delivery, recognising that this would be almost impossible in practicality, as some consumers may avoid receipt of a letter by registered mail by deliberately not collecting it. The current wording of the proposed section refers to 'track and trace registered mail', which does not actually exist. A letter may be sent via registered mail. As an additional service, the Post Office provides a track and trace service which may be accessed. This section may be open to misinterpretation as registered mail requires the customer to collect the letter, which is beyond the credit provider's control. It may be more effective to allow for other means of delivery such as SMS and email, for which one can also prove receipt and show much better statistics of actually being read. ***CBA***: In terms of section 130(3) of the NCA, a court is empowered to determine a matter brought before it, pertaining to a credit agreement governed by the NCA, only if it is satisfied that the procedures in, inter alia, section 129 have been complied with. The inclusion of the types of proof referred to in the Sebola case cited above will no doubt assist the court with its obligation to satisfy itself that procedures have been met by the credit provider. ***CGCSA***: "Delivery" should be reflected in section 129 as meaning "to dispatch the notice in terms of section 129 by registered mail to the address nominated

	as the domicilium by the consumer in terms of the relevant credit agreement". ***DCASA***: The proposed amendment of Section 129 addresses one the fundamental flaws in the NCA where the sending out of a Section 129 Notice to the consumer prevents him/her from implementing any remedy other than full repayment of the arrears. The proposed amendment will restore the original intention of the NCA and also improve the effectiveness of debt review. Where a consumer receives a Section 129 Notice they have an option to apply for debt review and the inclusion of that debt allows the debt counsellor to implement a responsible repayment plan for all debt and curb additional legal costs included by credit providers where the debt is excluded from debt review due to the current Section 129 practice. They support the proposed amendment in addition to the amendment to Section 129 and Section 130 to ensure positive proof of delivery to the consumer. The current use of registered mail does not ensure that all consumers are notified, as many consumers work away from their home addresses and the registered letters are posted to the home address in a remote place and consequently is never received by the consumer. The proposed amendment will also level the playing field between all credit providers who have a right to equal and fair repayment of all debt. ***FRG***: The need to <u>prove</u> service of a notice is very onerous. If a Credit Provider can show that it has done all it can to ensure service this should suffice, i.e. sending a s129 notice by any other means that the consumer has indicated in the credit agreement. They suggest that alternative methods for delivery are therefore considered, such as e-mail and/or fax, which has a higher likelihood of being read and received than registered post, which is often not collected by a customer and therefore prejudices a credit provider's right to collection of outstanding monies. ***Hatting***: She suggests that the post mark stamp date on the envelope of a s129(1) notice should not be older than a day, as the late posting of these notices creates an unnecessary administrative burden. Credit providers should also take into account the 10 business day SARB requirement for PDAs to hold any monies paid by debit order to be held in a trust account to ensure it is not returned before issuing these letters to consumers under debt review. She raises concerns regarding the timeous delivery of these notices due to postal issues leading to the justification of termination when the consumer could not have received these notices. She suggests that wording such as "notwithstanding any postal delivery strikes/delays the letter is deemed to have been delivered within 4 business days from date of issue". ***LNBLA***: The proposed clause 20 is onerous and costly to credit providers and could result in more uncertainty. Whilst there is a definition in the regulations, there is a need to define "delivery" for the purposes of the Act and/or specific sections of the Act and section 129. They propose that "delivery" be defined to mean the sending of a document or notice by hand; fax; e-mail; registered mail; downloadable webpage or any other electronic means *as elected by the client*. The delivery method should be stipulated in the NCA so as to be clear, in each case, when delivery to the consumer has taken place and can be relied on. They further propose that the location for delivery should be determined by the consumer when

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	CBA: In terms of section 130(3) of the NCA, a court is empowered to determine a matter brought before it, pertaining to a credit agreement governed by the NCA, only if it is satisfied that the procedures in, inter alia, section 129 have been complied with. The inclusion of the types of proof referred to in the Sebola case cited above will no doubt assist the court with its obligation to satisfy itself that procedures have been met by the credit provider. ***CGCSA***: "Delivery" should be reflected in section 129 as meaning "to dispatch the notice in terms of section 129 by registered mail to the address nominated as the domicilium by the consumer in terms of the relevant credit agreement". ***DCASA***: The proposed amendment of Section 129 addresses one the fundamental flaws in the NCA where the sending out of a Section 129 Notice to the consumer prevents him/her from implementing any remedy other than full repayment of the arrears. The proposed amendment will restore the original intention of the NCA and also improve the effectiveness of debt review. Where a consumer receives a Section 129 Notice they have an option to apply for debt review and the inclusion of that debt allows the debt counsellor to implement a responsible repayment plan for all debt and curb additional legal costs included by credit providers where the debt is excluded from debt review due to the current Section 129 practice. They support the proposed amendment in addition to the amendment to Section 129 and Section 130 to ensure positive proof of delivery to the consumer. The current use of registered mail does not ensure that all consumers are notified, as many consumers work away from their home addresses and the registered letters are posted to the home address in a remote place and consequently is never received by the consumer. The proposed amendment will also level the playing field between all credit providers who have a right to equal and fair repayment of all debt. ***FRG***: The need to <u>prove</u> service of a notice is very onerous. If a Credit Provider can show that it has done all it can to ensure service this should suffice, i.e. sending a s129 notice by any other means that the consumer has indicated in the credit agreement. They suggest that alternative methods for delivery are therefore considered, such as e-mail and/or fax, which has a higher likelihood of being read and received than registered post, which is often not collected by a customer and therefore prejudices a credit provider's right to collection of outstanding monies. ***Hatting***: She suggests that the post mark stamp date on the envelope of a s129(1) notice should not be older than a day, as the late posting of these notices creates an unnecessary administrative burden. Credit providers should also take into account the 10 business day SARB requirement for PDAs to hold any monies paid by debit order to be held in a trust account to ensure it is not returned before issuing these letters to consumers under debt review. She raises concerns regarding the timeous delivery of these notices due to postal issues leading to the justification of termination when the consumer could not have received these notices. She suggests that wording such as <u>"notwithstanding any postal delivery strikes/delays the letter is deemed to have</u>

	been delivered within 4 business days from date of issue". ***LNBLA***: The proposed clause 20 is onerous and costly to credit providers and could result in more uncertainty. Whilst there is a definition in the regulations, there is a need to define "delivery" for the purposes of the Act and/or specific sections of the Act and section 129. They propose that "delivery" be defined to mean the sending of a document or notice by hand; fax; e-mail; registered mail; downloadable webpage or any other electronic means *as elected by the client*. The delivery method should be stipulated in the NCA so as to be clear, in each case, when delivery to the consumer has taken place and can be relied on. They further propose that the location for delivery should be determined by the consumer when entering into the credit agreement and thereafter updated in terms of section 96 of the NCA. ***SBSA***: They propose the following wording: "(5)(a) The notice contemplated in subsection (1)(a) must be made available to the consumer through one or more of the mechanisms set out in section 65 or by registered mail; (6) The credit provider will have met the requirements of delivery of the notice contemplated in subsection (1)(a) to the consumer if it is able to show that the notice was sent and delivered to the consumer's chosen fax number, email address, residential address or postal address." ***Transaction Capital***: The requirement to prove actual delivery places an onerous burden on credit providers compared to other litigating parties. The proposal may also lead to debtors deliberately avoiding to collect such letters. The wording still does not provide clarity as to the requirements regarding delivery and/or receipt of the section 129 notice. The only way the credit provider could be certain that a default debtor received the notice would be through delivery by the Sheriff of the Court, which is not practicable. ***WFS***: They request clarity on exactly what proof will be required for the section 129 to be deemed delivered.
New clause: Providing for an offence where debts that have become prescribed under the Prescription Act, Act No. 68 of 1969, are collected, sold, and re-activated (Section 133 of the Act).	***ADRA***: Current law is more than adequate in terms of dealing with the concept of prescription. Furthermore, should there be any concern of abuse, the current laws together with powers already vested with regulatory bodies are sufficient to deal with contravening parties. Implementation of this amendment is likely to have a significant impact on the credit industry and potentially the economy as a whole, if one takes the viewpoint that credit is essential to economic growth and the financial wellbeing of consumers. Potential impacts of such implementation could include: • Fundamental changes to the manner in which credit providers chose to issue credit, with a restriction of supply due to concerns in the recoverability thereof. • Aggressive collections processes and adoption of a legal process to secure judgement immediate upon the first default, as opposed to negotiated arrangements for arrears amounts. • The commencement of a game whereby borrowers "duck and dive" for a period of three years and then walk away from their obligations whilst having enjoyed all the benefits. • Certain entities to which the NCA applies will be dealt with more harshly

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