

Comments on Courts of Law  
Amendment Bill

**MicroFinance South Africa**

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Microfinanciers in South Africa'***

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## **1. Executive Summary**

### **1.1. Introduction of MicroFinance South Africa (MFSA)**

MFSA is a representative body of registered and legal microfinance Credit Providers. MFSA is the 'Recognised Voice of Reputable Microfinanciers in South Africa'. Our Vision is to ensure a sustainable Microfinance Industry. MFSA represents more than 1180 Microfinance Credit Provider offices, providing short term and unsecured credit, registered with the National Credit Regulator, as well as a significant proportion of Service Providers in the Sector. Geographically the MFSA members constitute a National presence with outlets situated in rural, semi urban and urban areas. Our member base range from small one office businesses to larger Credit Providers with more than 150 outlets, they include digital Credit Providers that originate and service credit online.

### **1.2. MFSA strategic position**

MFSA since inception supports a microfinance regime which is appropriately regulated in order to ensure consumer protection and responsible and fair credit provision. Legal Debt Collection has from early days been controversial and emotional. Legal, social, political and subjective arguments complicate matters, more so in a society such as the South African.

Given that responsible credit can be granted in South Africa with many checks and balances to ensure that both Business and the Community function in harmony the following elements need to be considered in crafting the future and modernized regime with respect to legal debt collections.

- A respect for both the moral and legal imperatives when applying, accepting, granting and collecting credit by both the supply and demand side players. (Credit Providers and Consumers big and small, the privileged, the deprived and less fortunate)
- Reckless borrowing and ruthless collection are equally unacceptable and places in jeopardy those who borrow with care and dignity as well as providers who act with prudence, respect and good intention.

- Enforcement and consumer education especially with regards to Credit are two equally important sides of the same coin. This needs to also emphasize the honour in serving the credit which you received legally and enjoyed the benefits off. A paid house or car which one is the proud owner off, if it was paid by means of your own time, effort and discipline is an empowering achievement. This needs to be seen in contrast with "playing the system" simply to have an unrealistically high lifestyle and not honouring your legal obligations.
- Affordability and costs need to determine, through a scientific and practical research process, with the objective to reward both the credit provider/collector and consumer. The rewards respectively should include fair reward for financial risks taken and investments made, whilst consumers should find themselves in an improved financial and personally empowered position. All this should happen within a realistic time frame after initial commitment were not met as contractually required.
- In line with the cost sensitivity and consumer education the need to acknowledge the social and economic diversity of South African Citizens are important. Overly complicated or one - sided legal processes works against inclusion and to the detriment of the less sophisticated and financial savvy consumer and often small business as well.
- Bad debt and non- payment of legal debt, especially where consumers have the means, ultimately cost all South African citizens, the total economy and future credit options of especially individual from deprived backgrounds.
- Transparency in terms of both Credit Providers and consumers who are "playing the system" need to be achieved on a national level and perpetrators need to be brought to book; likewise those who act with a generally accepted code of good ethics need to (and will) be rewarded ultimately in terms of growth at commercial and personal level. This calls for either an establishment of an EAO register or expanded and improved credit bureau reporting.

- On the face of the process which is being followed there is a rush to get it all done. Respectfully the need for thorough economic and social impact assessment cannot be over emphasized. The subject is in litigation processes and due care will benefit all and avoid future damaging and costly processes.
- The need to ensure harmonization across all relevant legislation is crucial, especially in terms of matters pertaining to reckless lending and borrowing, consumer education and broad market conduct (enforcement) .The principle that legally obtained credit is payable, should one have the means, should in no way be disputable. This principle is the foundation of credit provision and all efforts should be made across society to entrench this important cornerstone.
- In a perfect world there would be no need for credit or legal enforcement and collections. Sadly the lowest common denominator in terms of conduct necessitates that a "system" needs to be created. MFSA fully support sanctioning of stakeholders who are abusive and exploitive, but those who are prudent, diligent, law - abiding and proudly South African can fairly claim to have access a workable, practical and affordable regime.

## **2. MFSA Research**

***In 2015 MFSA did research through Econometrix focusing on a number of matters including but not limited to Debt Collection. Below please find important extracts of the research. For ease of access this is also included as Annex A & B: COMMENT ON THE DRAFT REGULATIONS ON REVIEW OF LIMITATIONS OF FEES AND INTEREST RATES July 2015***

### ***2.1. Important macroeconomic issues affecting the cost of credit and debt collection***

***The financial crisis in the USA was in part driven by offering relatively low-interest high-risk secured credit. Much of this cost can be seen as a "social cost", i.e. credit in the sub-prime market was encouraged for policy reasons.***

***The global malaise has lessons for all involved in or responsible for excessive debt, whether that be public debt or private (household) debt. The responsibility for excessive debt lies not only with the lender (credit provider), but also the borrower***

*(debtor). This responsibility must be shared. Any action moving full responsibility from one to another will have serious implications for the economy concerned.*

*Borrowing levels remain relatively high. There is a concern regarding the sustainability of household incomes in the current economic climate and how an economic slowdown might affect household balance sheets, specifically those of highly indebted households. Any actions taken which result in consumers taking on excessive debt, particularly those who are encouraged by the possibility that their debt may never need to be repaid, will have a long-term detrimental effect on the credit market and the economy. Such signals would definitely be encouraged by reducing the cost of credit, keeping credit costs at an artificially low level, making repayment terms too generous or limiting the necessity to collect debts by abolishing or limiting EAOs.*

*The responsibility for excessive debt lies not only with the lender (credit provider), but also the borrower (debtor). Any action moving full responsibility from one to another has serious implications for the economy concerned. Moves that reduce the ability of credit providers to collect debt and placing the onus on the credit provider by moving responsibility from the borrower to the credit provider will, in the long run, have substantial detrimental economic consequences.*

## **2.2. Overview of the credit market**

*Some key issues that must be considered when making decisions regarding regulations governing the credit industry arise from an analysis of the lending market and in particular unsecured lending over the past few years and include the following:*

- Certain individuals do overspend and are encouraged to do so through advertising and other means including reckless lending. However whilst they need protection it could be dangerous to take steps which relieve the individuals' responsibility for over-borrowing.*
- Unsecured lending in the South African economy has grown in recent years to be a much more important form of credit extension in relation to secured lending. This became an important factor driving the growth in retail and motor sales. Unsecured lending alone was by no means the only driver of high growth*

*in consumer spending. Growth in disposable income was a much more important driver of growth in consumption relative to new household credit.*

- The household sector became significantly more indebted over the period 2004 to 2008 and it remains so. This is a measure of the potential debt stress should there be an economic slowdown, unexpected unemployment, shocks to the system or a steady increase in interest rates.*
- Mortgages continue to dominate the share of lending to the household sector. There was a sharp falloff in new mortgage lending in 2007 but despite a moderate increase, growth remains muted. This is a cause for concern if a recovery in the property market and the important construction industry is to occur.*
- Growth of employment in the public service was a very important contributor towards the willingness of unsecured lenders to advance money to consumers. In this regard, growth of such employment has tailed off under budgetary pressures and has contributed significantly towards reduced growth in unsecured lending.*
- The magnitude of the dynamic of a large number of previously disadvantaged individuals entering the middle-class has rendered the high growth in unsecured lending and credit generally as a natural rather than artificial phenomenon.*

*Policy should be directed at reducing any incentive to over-borrow and to not meet one's financial commitments. However, the analysis indicates, in general, that households remain over-indebted despite the fact that interest payments to disposable income have fallen, even though absolute debt levels have increased. The analysis showed that the high-income earners or wealthier property owners were not the ones facing difficulties as over-indebtedness in mortgages had been declining. The figures suggested that it was and continues to be the middle and lower income individuals that are the ones facing difficulties.*

### **2.3. Responsibility for debt**

*There are several issues concerning debt that are of concern in any economy and particularly in a developing economy such as South Africa. At its heart, it is common cause that excessive debt is essentially bad for an economy, the*

*individuals and all those involved. Debt is money borrowed and there is an obligation on the part of the borrower to repay the debt in full together with the interest payment in the form that has been agreed upon between the parties concerned. Not only is there an obligation to repay the debt but, in practice, the debt will ultimately either be repaid in one form or another or will result in a loss of capital for the lender. In addition, if the borrower defaults on the interest / cost of capital, the lender will also lose revenue. The impact of this on the cost of providing credit is significant, as lenders automatically start to “insure” their lending by building an additional margin into the cost of credit. This in turn has a profoundly negative impact on the responsible borrowers who are impacted by the actions of those who do not repay capital or service the cost of the capital. They ultimately will be the ones who repay the debt. Essentially, debt is borrowing from the future income stream to pay for present consumption and investment. The debt must be paid for out of future income streams.*

#### **2.4. Potential economic costs of banning or limiting EAOs**

*The analysis focused on the impact of potential losses to credit providers emanating from increasing write-offs of bad debt due to non-payment and the resulting impact on the total economy. Financial institutions will increase their interest rates to compensate for the financial losses incurred because of the non-payment of debt. Such losses will therefore increase the total debt service cost in the economy. This will result in more money flowing out of the pockets of debt-paying individuals through relatively higher interest rates. In effect, the good payers in the economy in one way or another are required to pay for the additional costs and non-repayment of debts associated with the non-payers. Slow payers and non-payers are a burden, not only to the banking system, but also to other citizens in good standing in the country and ultimately these outcomes slow economic growth and create unemployment in the economy. These cost effects have a substantial impact in many sectors of the economy as they affect both investment and consumer expenditure patterns. The report calculated the impact on the total economy by calculating the increase in the real rate of interest.*

*In summary, there is a strong financial and economic incentive to ensure that debts are repaid. There is no doubt that procedures and processes must be*

***properly regulated. Government and institutions, through legislation and control must limit and/or minimise potential abuses. Protection must be introduced to limit reckless lending. Recent steps taken and the recent court judgements are steps in the right direction. However, one cannot take away personal responsibility. There also remains a case against reckless borrowers and encouraging a culture of non-payment and a right to hand-outs.***

***This is something which lies at the core of many economic and sectoral problems in the country. There is a strong case to be argued, based on economic facts, that borrowers must ultimately remain responsible for the debts they incur. EAOs are an efficient and effective method of collecting debts. They play an important economic and social role in this process. A move to limit or abolish them would have extremely damaging economic and social implication for the South African economy.***

### **3. Future Engagement**

MFSA has over a number of years proven its willingness to engage with all appropriate Authorities and Regulators. We sincerely appreciate the opportunity to submit our submission and are committed to continue constructive and transparent inputs in the Sector. MFSA wishes to once again reiterate that the document could form the basis of further engagement.

Regards,



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