national treasury

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National Treasury
REPUBLIC OF SOUTH AFRICA

To: Ms J Fubbs
Chairperson: Portfolio Committee on Trade and Industry

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NATIONAL TREASURY SUBMISSION ON THE DRAFT NATIONAL CREDIT AMENDMENT BILL, 2018

Thank you for the opportunity to provide comment on the Draft National Credit Amendment Bill 2018. The National Treasury welcomes the proposed debt relief for poor and indigent South Africans, to improve their quality of life and escape poverty associated with being caught in a debt trap. Evidence suggests that since its peak in 2008, although very high South Africans continue to deleverage. Total indebtedness of South African households has been declining gradually to 72.5 per cent of disposable income in Q3 2017, from 85.7 per cent in 2008. However, this decline in total indebtedness masks large differences in total indebtedness of individual households, and categories of consumer. These differences highlight the need for relief in targeted segments.

It is in this spirit that we support the Portfolio Committee of Trade and Industry (the Portfolio Committee) in considering stronger measures of debt relief for South Africans, and support the need at this point in time for clearly identifiable and specified debt obligations to be permanently extinguished, as outlined in the Bill, provided that the permanent extinguishing of debt as an intervention is once-off and not embedded as a regulatory and supervisory tool. This is to ensure that the Bill does not inadvertently reduce the volume of credit and increase the cost of credit in the economy.

We are therefore concerned with the Regulation powers proposed in the new clause 88F, and recommend that this clause be removed from the Bill. On the back of stricter regulatory requirements and reduced risk appetite, credit extension to borrowers earning less than R7500 per month has already

contracted significantly – by our calculations nearly 25 per cent for the period 2014 to 2017 compared to the equivalent period preceding that. Credit extension to those earning more than R7500 per month has by comparison increased.

Specifically, we are concerned that the Regulations:

- Introduce a high level of uncertainty for credit providers in assessing the risk that they will not be repaid, which in turn will ***further curb risk appetite, reduce credit extension and increase costs to borrowers*** (who will pay for the increased risk premium associated with the "insurance" required against prescribed debt extinguishment). This will likely ***change the structure of the credit market.*** This is because banks will likely be advantaged relative to other credit providers as have much more accurate income and expenditure information of their clients and cash-strapped borrowers will most likely increasingly turn to informal, unregulated credit providers.

- ***Compel credit providers to act as insurers***, as they are no longer concerned with an individual's credit risk but an insurable event for the risk pool as a whole i.e. that the debt for the whole market segment will be extinguished. It is unlikely that the insurance or banking regulators will permit this because of the very different risks that need to be managed and risks associated with balance sheet strain; in any event risk management and capital requirements will probably make this unviable.

- ***May be unconstitutional*** given the impact on contractual relations and the implied deprivation of rights, especially the new section 88F(5)(c).

- ***May destabilise the retail sector***, which alongside the microlenders are shown to be most exposed to these lower income market segments, and which is a major contributor to GDP and employment.

- Appear to be ***inconsistent with the international examples*** relied upon by the Portfolio Committee in developing these interventions; no countries have adopted this approach in which a Minister is given sweeping powers that can result in the [repeated] deprivation of creditor rights. It would be useful to better understand these differences.

The dti working with the NCR and Government more widely has made many improvements to the legislative environment in support of consumers that are already over-indebted and to prevent consumers from becoming over-

indebted in future. Given the massive impact of extinguishing debt by law, it seems prudent that the Government efforts highlighted, together with the new immediate interventions proposed through this Bill by the Committee, be given time to take effect and be monitored for their consequences, before Regulation making powers are given. It does not seem fair that credit providers may have to bare the cost of a weak economic environment, which lies beyond their control. We would very much appreciate the opportunity to engage further on these provisions.

The research conducted by the National Treasury considering which credit providers are most impacted by the proposals is only one part of the puzzle. Additional research could consider how these effects will affect the structure, employment, profitability and sustainability of the banking and retail sectors, tax collection and the economy more broadly. We therefore ***propose an inter-departmental impact assessment*** that brings together the dti, National Treasury and the Department of Justice, which could be ***reviewed, as in the existing SEIAs process, by the Department of Planning Monitoring Evaluation***.

Lastly, we note with concern that the Bill in its current form does not appear to deal with debt that has been sold by a credit provider to a debt collector. We would appreciate further engagement on this matter, and respectfully urge the Portfolio Committee to ***reconsider this approach, and expand the Bill to extinguish all debt that satisfies the specified criteria, irrespective of whether it is sitting with a debt collector or a credit provider***. Given the overlap in jurisdiction, we understand that any steps taken in relation to debt collectors should be done in consultation with the Department of Justice.

We look forward to further engagement on the Draft Bill and the opportunity to present findings of the research that has been conducted in relation to the impact of the proposals on credit providers. Additional technical inputs that expand on the issues raised in this letter are attached as Annexure A.

Regards,

ISMAIL MOMONIAT
DEPUTY DIRECTOR GENERAL TAX AND FINANCIAL SECTOR POLICY
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