the dti
Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

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Ms J. L. Fubbs
Chairperson: Portfolio Committee on Trade & Industry
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Dear Ms. Fubbs

THE DTI COMMENTS ON THE DRAFT NATIONAL CREDIT AMENDMENT BILL AS INTRODUCED BY DR M ORIANI-AMBROSINI, MP

The department has noted the Draft National Credit Amendment Bill published in the Government Gazette No. 35876 by Dr. Mario Oriani-Ambrosini, MP, for public comments. The proposed amendments seek to:-

1. Exclude credit agreements that involve business to business transactions from the application of the National Credit Act ("the Act")

2. Suspend the accrual of interest on debt re-arrangements for a period of 5 years by the Magistrates' Court acting on the recommendation of a debt counsellor.

BUSINESS TO BUSINESS TRANSACTIONS

Section 6 of the Act provides that the Act does not apply to a credit agreement in terms of which the consumer is a juristic person. The only exception is where the juristic person has an asset value or annual turnover of less than R1 Million. This means that the Act already partly covers Mr. Ambrosini MP's proposal for the exclusion of business-to-business transactions from the application of the Act. The point of departure is that Mr. Ambrosini MP's proposal seeks to exclude protection of any business.

The Legislature purposefully wanted small and emerging business to be protected and treated as consumers in credit agreements. The objective was to protect small and emerging businesses from exploitation and abuse from unscrupulous credit providers. The need for protection arises from the fact that these businesses may not be sufficiently equipped or tend to be vulnerable when dealing with unscrupulous credit providers at the time of contracting. Unequal bargaining power also plays a huge role when a credit agreement is negotiated and this may expose small enterprises to debilitating financial risks which in turn may have a negative socio-economic impact. This situation can be further exacerbated by their inability to access redress through the normal courts. It is for these reasons that the protection offered in the NCA had to be extended to small and emerging business and there is a need to continue to do so.

SUSPENSION OF ACCRUAL OF INTEREST

The suspension of interest is unlikely to benefit the consumer as he/she would still have to pay it after the expiry of 5 years. This could result in a longer period of debt review. It is also quite important to note that section 103 (5) prohibits the accumulation of interest, credit fees and charges beyond the balance of the unpaid debt.

It is important to note that in expressing the views contained herein, **the dti** has also considered the views of the National Credit Regulator. The parties share the same view on the proposed amendments.

It is worthy to mention that during the 2012/2013 financial year **the dti** embarked on a project to analyse and develop the National Credit Policy in order to effect amendments to the NCA. The necessary amendments were identified through a monitoring and evaluation exercise on the implementation of the NCA which revealed that various provisions of the NCA had to be amended. **the dti** considered it prudent that the necessary amendments are supported by policy hence the project to analyse and develop the National Credit Policy.

The project is almost complete and the amended policy will be presented to the Minister for his approval before the end of the current financial year. Upon approval, the department will conduct workshops with targeted stakeholders before seeking Cabinet's approval through the Minister. Once the amended policy has been approved, the department will commence a project to draft the legislative amendments during the 2013/2014 financial year. The department plans to finalise and introduce the amending Bill to Parliament before the end of the 2013/2014 financial year.

Kind regards

Mr. Tumelo Baleni
Acting Deputy Director-General: **the dti**

30/01/2013