

19 FEBRUARY 2013

NATIONAL CREDIT AMENDMENT BILL - the dti RESPONSE TO STAKEHOLDER COMMENTS

**TABLE OF COMMENTS**

<b>Detailed list of issues</b>				
<b>Party</b>	<b>Description</b>	<b>Comment</b>	<b>Party's Proposal</b>	<b>Dti response</b>
Banking Association of South Africa (BASA)	An amendment to the definition of 'consumer' that excludes all business-to-business transactions and credit for non-personal consumption	Support the amendment; however: <ul style="list-style-type: none"> <li>• Need to define the terms 'intended consumption' and 'business-to-business transaction'.</li> <li>• Credit providers may have difficulties in determining whether the NCA applies to a specific transaction given this proposed definition.</li> <li>• There are consequential amendments required if this definition is implemented, namely: sections 4, 8, 10, 13, 78 and 81, as well as Regulation 42.</li> </ul>	<ul style="list-style-type: none"> <li>• BASA support such an amendment of excluding business-to-business transactions.</li> <li>• "consumer" in respect of a credit agreement to which the Act applies, means a person who is not a juristic person and who is-</li> </ul>	The Act partly covers the exclusion of business-to-business transactions by excluding businesses whose annual turnover or asset value exceeds R1 million. Protection of small and emerging businesses was purposefully included at the time of passing the NCA. These businesses are perceived to potentially be ill-equipped or vulnerable to unscrupulous credit providers at the time of contracting; due to unequal bargaining power. Furthermore, they are limited in accessing redress through normal courts.
BASA	Suspension of Accrual of Interest	The proposed amendment does not define "suspending the accrual of interest" and therefore creates uncertainty as to whether interest will be suspended to the effect that a credit provider will not be allowed to charge interest for a specified period and thereafter will be able to recover the interest that accrued during the suspension period.	The proposed amendment may change credit lending behaviour of credit providers to cater for the risk should a consumer apply for debt review and a suspension of interest ordered, in that stricter credit lending criteria may be applied which would make credit less accessible for consumers. BASA is against the proposed amendment	The suspension of accrual of interest would not benefit the consumer, as he/she would have to pay it after the expiry thereof leading to a longer debt review period. In this regard Section 103(5) prohibits the accumulation of interest, credit fees and charges beyond the balance of unpaid debt. It is unclear from the proposed amendment on what will happen to the interest after 5 years.

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Bentley Attorneys	Business to Business Transactions	It is unclear whether the Bill attempts to only exclude business-to-business transactions or also to exclude incidental credit agreements from the ambit of the Act. An important aspect is that the Act intended to cover some business-to-business transactions. If the proposed amendment is to change an unintended consequence would occur. There would be a need to amend sections 4 and 5 among others.	The term "business-to-business transaction" must be defined and all such transactions must be excluded from the Act.	It is clear from the Act that the Legislature did intend to protect at least some "business-to-business" transactions and it is not an unintended consequence. Section 4(1)(a)(i) provides that the Act applies to every credit agreement between parties dealing at arm's length and made within, or having an effect within, the Republic, except- <ul style="list-style-type: none"> <li>(a) A credit agreement in terms of which the consumer is-</li> <li>(i) a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1).</li> </ul>
Bentley Attorneys	Suspending the accrual of interest for a period of up to five years	The amendment will favour debtors who use the debt counseling process over those that honour their debt commitments and in that way encourage irresponsible debt behavior which will further aggravate the consumer debt problems in the country.	The amendment fails to address an issue where the Act is weak, namely the early termination or default by a debtor under debt rearrangement and this could lead to abuse of the debt re-arrangement process to obtain not only a payment holiday but also the benefit of having a court order giving an up to five year "interest holiday".	<b>the dti</b> share the same sentiments with the stakeholder. Suspension of interest might lead to the abuse of debt re-arrangement process as it favours debtors who use debt counselling over those that honour their debt commitments. However, if credit providers continue to recover the interest that was suspended such consumers who are in debt re-arrangement would be worse off.
Credit Bureau Association	Business to Business Transactions	Credit Bureaus would not be able to ascertain the annual turnover or asset value of a business to categorise it accordingly unless the Act obliged credit providers to submit such information and indicate the applicability of the Act to each contract entered into with that business. The definition may also lead to a business having	It would be preferable to achieve this intention through another means such as completely excluding juristic persons or incidental agreements. Juristic persons would in any case not be negatively affected by this exclusion as they would be comprehensively protected under the Protection of Personal Information Bill once enacted.	The policy framework on consumer credit in South Africa supports the protection of small and emerging businesses. The Legislature wanted small and emerging business to be protected and treated as consumers in credit agreements. The Department do not agree with the proposal that juristic persons would in any case not be negatively affected by this exclusion. Small businesses are still vulnerable and there are suggestion from the industry that the turnover

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		some NCA governed contracts and others that are not governed by the NCA.		value of R1 million should be reviewed as there are small businesses that have annual turnover higher than R1 million.
Western Cape Department of the Premier	Business to Business Transactions	The proposed amendment intends to limit the application of the Act to consumers at retail level or who are end users. Currently, juristic persons whose annual turnover or asset value is less than R1 million, receive protection.	The amendment legislation would have to amend other sections in the Act that deals with the issue of juristic persons.	Agree with the proposal that amendment legislation would have to amend other sections in the Act that deals with juristic persons. Hence, the Department is of the view that the proposed amendments do not have a policy basis. The ongoing consumer credit policy review by <b>the dti</b> will form a basis for the proposed amendments from the National Credit Regulator and other industry stakeholders.
Western Cape Department of the Premier	Suspending the accrual of interest for a period of up to five years	Support the principle of the suspension of the accrual of interest, as this accumulation on overdue accounts is problematic for over-indebted consumers.	Different maximum suspension periods for different types of consumer credit agreements should be considered.	On a contrary view, the suspension of interest would not benefit the consumer as he/she would have to pay it after the expiry thereof leading to a longer debt review period.

**CONCLUDING REMARKS:**

**the dti** is of the view that the proposed amendments should be part and parcel of the Policy Review and Bill to be tabled before Cabinet in the 2013/14 Parliamentary Process. This will avoid amending legislation without a policy rationale. This conclusion is not based on merit or demerit of the issue, but request that the process of subjecting any amendment or review should be subjected to a broader policy or legislative review that is always followed by policy rationale and regulatory impact assessment.