

Agbiz presents to the Portfolio Committee on the National Credit Amendment Bill

In the 30th of January 2018, Agbiz delivered a presentation on behalf of its members to the Portfolio Committee on Trade and Industry on the proposed amendments to the National Credit Act. The National Credit Amendment Bill, 2017, is unique in that it was initiated not by the Department of Trade and Industry, but by the Portfolio Committee itself. The primary aim of the Bill is to assist the most marginalised people in our economy, namely overindebted persons who earn an income of less than R7500 per month with not realisable assets.

The proposed mechanism is referred to as 'debt intervention', and it enables the NCR, after a prolonged period of debt restructuring, to write-off the debt in the even that the consumer is still not in a position to repay the debt within 12 months or restructuring the debt. Although these consumers may not typically be the clients of agribusinesses, the draft provisions could raise the risk involved with unsecured lending to small and emerging farmers. This in turn could have the unintended consequence of credit exclusion or raising the interest rates to off-set the increased risk. Neither result is desirable as it can lead to credit exclusion for small holder and emerging farmers.

The Bill furthermore placed an obligation on debt counsellors and all credit providers to report suspicions of reckless credit in an applicant's credit history to the regulator, who in turn is provided with the authority to suspend agreements it deems reckless. In this regard, Agbiz motivated that it will be a conflict of interest and consequently unfair procedurally for the NCR to investigate as well as suspend credit agreements deemed reckless without affording the credit provider a chance to state its case.

We furthermore questioned the ability of consumer credit providers and debt counsellors to identify and report reckless credit extended by agribusinesses since the factors used by agribusinesses to assess risk differs vastly from those used by other credit providers to assess the risk of consumer credit. The converse would also apply as agribusinesses would not be in a position to assess whether their clients had previously been extended reckless credit for their personal credit expenses.

Ultimately, the danger posed by these provisions is twofold, namely that agribusinesses may be unfairly reported and have credit agreements suspended or that their clients, the farmers, are prejudiced by their businesses loans when accessing consumer credit in their personal capacities.

Finally, the draft Bill makes provision for the Minister to prescribe ad hoc interventions to alleviate over-indebtedness in the event of a natural disaster such as a drought. Agbiz highlighted the role played by agribusinesses during the 2015/2016 drought to ensure that producers could still access production credit to plant when conditions became favourable again the following year.

Whilst we expressed utmost sympathy with farmers who became heavily indebted due to situations outside of their control, debt interventions must take place on a case-by-case basis between a credit provider and its client, based on the unique circumstances of each client. A one-size-fits-all approach enacted through



regulations, will likely not be tailored enough to treat each scenario on its merits. Finally, whilst the debt intervention measures are due to be prescribed, we raised serious constitutional questions regarding the state's ability to extinguish debt in these circumstances (as is catered for in the Amendment Bill) as it would amount to a serious deprivation of property.

Our thanks go out to the Banking Association South Africa who assisted us greatly in compiling inputs. The presentation delivered on the 30th is linked.

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