

THE BANKING
ASSOCIATION
SOUTH AFRICA

National Assembly Portfolio Committee on Trade and Industry

**Presentation on the Draft National Credit Amendment Bill
published in Government Gazette No. 41274 of 24 November
2017, lead by Ambassador Abba Omar**

31 January 2018

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Introduction 2

- The Banking Association South Africa (BASA) is the industry representative body for commercial banks which consists of 35 local and international member banks.
- BASA supports the objective and purpose of the National Credit Act (NCA) and believes that over-indebtedness is a social and economic challenge that has far reaching consequences for the economy and society.
- The banking sector is a key stakeholder in the assessment, review and feasibility of the proposed debt intervention measures, given that banks grant 76.3% of new credit in the market (*NCR CCMR Q3-2017).
- The banking sector supports targeted and sustainable debt intervention measures that limits uncertainty and unintended negative consequences to the credit market, South African economy and society.
- Our presentation today is supplemented by our detailed written submission dated 22 January 2018.

* Source: NCR Consumer Credit Market Report, Q3-2017.

Existing Debt Intervention Measures 3

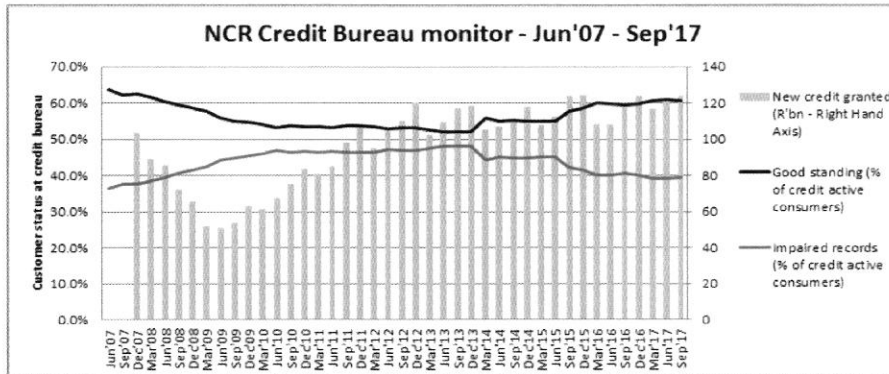
Debt Intervention Measures (provided for in NCA)	Debt Intervention Measures (not provided for in the NCA)
<ul style="list-style-type: none"> ■ Debt Review Process. ■ Prescription of Debt (Expunged R 9,252 billion + monthly expungement of prescribed debt). ■ Credit Life Insurance Regulations (Prescribe maximum caps and minimum benefits). ■ Limitation of Fees and Interest Rates (Reduction in the Cost of Credit). ■ Stricter Affordability Assessment Regulations. ■ Setting aside of reckless lending. ■ Alternative dispute resolution agents to resolve disputes. 	<ul style="list-style-type: none"> ■ Debt Counselling Rules System (DCRS) for debt restructuring, incorporates concession rules (above/beyond NCA). ■ Payment Holidays/Moratoriums. ■ Restructuring/Rescheduling. ■ Debt Consolidation. ■ Bank Assisted Sales. ■ Bespoke Arrangements. ■ Settlement Campaigns.

Over-indebtedness decreased, consumer behaviour improved. Allow for full embedment and evaluation of existing measures before implementing further measures.

Banks offer a number of voluntary debt relief measures. The **interest rate concessions** granted was **R 3,425 billion** for 2016 and **R 3,976 billion** for 2017.

Current Credit Landscape: Market Overview

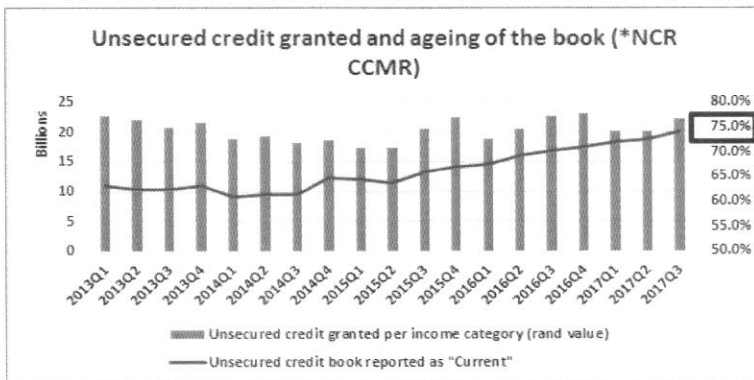
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- The positive effects of legislation already implemented, is starting to show and should be allowed to stabilise.
- Consumers with impaired records have reduced since 2015 and are currently at levels last observed in 2008.
- Credit granted (credit growth) has become basically stagnant over recent years.
- A balanced view to the implementation of new legislation should be considered to ensure that access to credit is not unnecessarily constrained.

Current Credit Landscape: Unsecured Credit Overview

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- When focussing on unsecured credit, we note that consumers that are in good standing have improved in line with the legislation already implemented whilst new credit granted stagnated.
- By Q1/2013, 46% of new unsecured credit was to consumers with an income of R7500 and less. By Q3/2017, only 26% of new unsecured credit was granted to this segment.
- This consumer segment's access to regulated credit could be impeded further if credit providers become more uncertain of receiving repayment of the monies owed, and could lead to financial exclusion.

Considerations: Economic and Social Impact 6

■ The number of consumers that could qualify to apply for debt intervention is as follows:

Credit Active Consumers (with Unsecured Debt)								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="background-color: #cccccc;">Credit Industry</td></tr> <tr><td>5 267 636</td></tr> <tr><td>R 40 382 899 771</td></tr> </table>	Credit Industry	5 267 636	R 40 382 899 771	↓	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="background-color: #cccccc;">Banks</td></tr> <tr><td>3 634 610</td></tr> <tr><td>R 33 976 560 355</td></tr> </table>	Banks	3 634 610	R 33 976 560 355
Credit Industry								
5 267 636								
R 40 382 899 771								
Banks								
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R 33 976 560 355								
Not in Debt Review								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="background-color: #cccccc;">Credit Industry</td></tr> <tr><td>5 154 488</td></tr> <tr><td>R 38 202 219 705</td></tr> </table>	Credit Industry	5 154 488	R 38 202 219 705	↓	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr><td style="background-color: #cccccc;">Banks</td></tr> <tr><td>3 554 829</td></tr> <tr><td>R 32 393 433 317</td></tr> </table>	Banks	3 554 829	R 32 393 433 317
Credit Industry								
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Credit Industry								
4 869 988								
R 34 544 390 429								
Banks								
3 355 749								
R 29 722 812 307								

Consumers earning a gross monthly income of R7500 or less AND total outstanding unsecured debt is less than R50 000 as at 24/11/2017
Consumers who are under Debt Review are excluded
Consumers against whom legal action has been taken are excluded

■ Consumers eligible to apply for Debt Intervention at the NCR (Credit industry and Banks) and Consumers eligible to be granted Debt Intervention Orders by the NCT (Credit Industry and Banks).

Source: COMPUSCAN data for the Credit Industry View and COMPUSCAN & Banks Data for the BANK view.

Considerations: Economic and Social Impact ... continued 7

Consumers and Credit Providers	Cost of Credit/Access to Credit
<ul style="list-style-type: none"> <input type="checkbox"/> Responsible lending and responsible borrowing go hand in hand and form the core of a sustainable credit market and industry. <input type="checkbox"/> Consumers who previously repaid their debts could become dis-incentivised to do so, as standardised debt intervention measures and debt intervention criteria rewards negative repayment behaviour and will accelerate irresponsible borrowing. <input type="checkbox"/> Encouraging responsible payment behaviour is a fundamental aspect of a well-functioning credit market and should not be compromised. 	<ul style="list-style-type: none"> <input type="checkbox"/> Legislated and broad-based debt intervention measures and criteria may make it extremely difficult for credit providers to adequately determine the risk associated with extending credit in the lower income segments. <input type="checkbox"/> While extinguishing debt may be regarded as a once-off loss, implementing the Bill will result in the banks incurring significant ongoing operating costs. <input type="checkbox"/> Access to credit could potentially decrease due to potential de-risking and the cost of credit will increase. <input type="checkbox"/> Could result in a reversal of positive developments observed.
<p>Consideration should be given to the timing and concept of the Bill in light of the two recent downgrades of South Africa by the rating agencies (with the potential of a third downgrade) and the growth rate being almost 0, and its impact on economic stimulation and growth.</p>	

Considerations: Impact on the Banking Sector 8

- SARB Directive 7 prescribes how banks should identify and treat restructured credit exposures for purposes of the definition of default.
- The banks will have to amend their impairment policies to ensure compliance with Directive 7 as well as IFRS9 (accounting changes that are being implemented). This will have a direct financial impact on banks from a compliancy requirement.

APPLICATION	ORDER GRANTED	REJECTION
<p>Debt intervention Applicant applies to the NCR, the NCR processes the application, notifies the credit provider and where successful refer to the NCT.</p>	<p>If the NCT grants a restructure order and the bank didn't flag the consumer as in distress earlier in the process, the consumer would now be flagged, and an appropriate provision raised.</p>	<p>If the NCT rejects the application, the bank would still need to keep this impairment for at least 6 months in line with Directive 7.</p>
<p><i>If we assume that this is evidence of distress in line with the description above, then the bank would need to raise an appropriate impairment on this consumer and therefore would experience a financial impact early in the process</i></p>	<p><i>When the consumer finally exits the process or rehabilitates, the impairment would remain for at least 6 months in line with Directive 7. However, Where any debt is extinguished, the banks would have to write-off the debt and this will be a pure financial loss</i></p>	<p><i>There is therefore a prolonged financial impact on the bank even where the NCT rejects the application. And given that debts would not be serviced for affected agreements, the rejection will be followed by a restructure with the client – the 6 month period is therefore a minimum</i></p>

- The banking system has an undertaking by borrowers to repay loans obtained, any compromise to this principle will have severe consequences for the industry and for the economy (e.g. job losses).

Considerations: Legal and Operational Impact 9

- The proposed amendments to the NCA raise concerns around unconstitutionality that should be considered.

Section 82A: Suspension of Reckless Credit Agreements	Section 88A to Section 88E: Debt Intervention Application
<ul style="list-style-type: none"> ❑ Credit provider must report a reasonable suspicion of a reckless credit agreement to the NCR. ❑ NCR is empowered to suspend a credit agreement it considers reckless, without a hearing. 	<ul style="list-style-type: none"> ❑ Procedurally unfair, credit provider deprived of input, credit provider's rights adversely affected due to far reaching orders by the NCT. ❑ Vested contractual rights compromised (arbitrary deprivation of property). ❑ Delegated powers are vague/confer wide discretion without guidance – may lead to arbitrary exercise of powers.

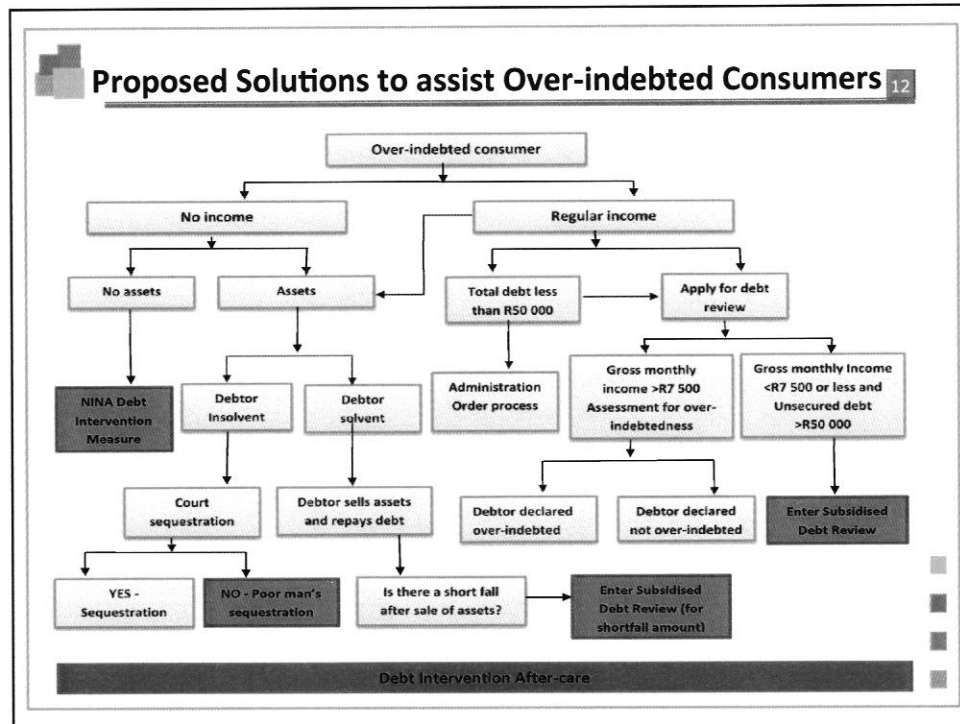
Considerations: Legal and Operational Impact ... continued 10

- The proposed amendments to the NCA raise concerns around unconstitutionality that should be considered.

Section 88F: Minister prescribing Debt Intervention	Credit Life Insurance (CLI)
<ul style="list-style-type: none"> <input type="checkbox"/> Delegated powers are vague/confer wide discretion without guidance – may lead to arbitrary exercise of powers. <input type="checkbox"/> Permits arbitrary expropriation/deprivation of property. 	<ul style="list-style-type: none"> <input type="checkbox"/> Section 106(1A) obliges a credit provider (not third party) and consumer to enter into CLI the principal debt is less than R50 000 and the term exceeds 6 months. <input type="checkbox"/> Restriction is arbitrary for the consumer as it deprives the consumer of his/her right to conclude insurance with a third party of choice. <input type="checkbox"/> Restriction is arbitrary for credit provider as it obliges the credit provider to register as an insurer and to comply with the associated regulatory requirements.

Considerations: Legal and Operational Impact ... continued 11

- Annexure A (attached to our written submission) comprises comprehensive and detailed comments, from a legal and operational perspective, in respect of the Bill on a clause-by-clause basis. Of significant importance is that:
 - clear and well-defined qualifying, affordability and evaluation criteria must be stipulated regarding debt intervention;
 - credit providers are afforded participation throughout the debt intervention process (from application through to rehabilitation) before the NCR and NCT;
 - the NCR and NCT should have sufficient capacity and skilled, qualified and educated resources to deal with debt intervention;
 - the debt intervention process should have timeframes and prescribed formats in regulation. Recourse should be available in the event of non-adherence;
 - credit bureaux must be updated with the debt intervention application and the status thereof throughout the process; and
 - the rights and obligations of consumers and credit providers must be balanced.



- ### Conclusion 13
- BASA recognises that over-indebtedness is an economic and social problem that has far reaching consequences for the economy and society.
 - BASA and its members are supportive of the introduction and implementation of targeted and sustainable debt intervention measures to assist over-indebted consumers where consumer's circumstances have changed for the worse.
 - BASA cannot support the Bill, in its current format, as it does not balance the rights of consumers and credit providers, as it does not constitute a sustainable debt intervention measure, as it has severe implications on the impairment levels and capital requirements of banks, and as it will impact negatively on the economy.
 - BASA and its members are concerned that the proposed debt intervention, as per Section 88A to 88E, could result in a reversal of positive developments and/or accelerate the growth of unscrupulous lending practices outside of the regulatory space as formal lenders will de-risk.
 - Of significant concern is Section 88F, which proposes on-going debt intervention measures to be prescribed by the Minister of Trade and Industry.



Questions

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BASA requests that the Committee review our submission and earnestly consider the alternative debt intervention measures proposed.

We would welcome further engagements with the Committee, to respond to any questions and discuss our presentation in greater detail.

- Thank you
- Dankie
- Ngivathokoza
- Ke a lehoha
- Ke a lehoza
- Ke a lehoza
- Sivabonga
- Inkom!
- Ndolivhuwa/Rolivhuwa
- Enkosi
- Ngivabonga

