

REPUBLIC OF SOUTH AFRICA

NATIONAL CREDIT AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75)) (Bill and prior notice of its introduction published in Government Gazette 35876 of 16 November 2012) (The English text is the official text of the Bill)

(Dr M G Oriani-Ambrosini, MP)

[PMB 1 - 2012]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Credit Act, 2005, by clarifying the definition of consumer to exclude business-to-business transactions and persons who purchase for purposes other than personal consumption; and to make provision for further relief for consumers by the suspension of interest accrual on debt for a period of up to five years from that consumer being placed under debt review; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 34 of 2005

1. Section 1 of the National Credit Act, 2005, Act 34 of 2005 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of “consumer” of the following definition:
“ ‘**consumer**’, in respect of a credit agreement to which this Act applies, means a person who acquires money, goods or services for such person’s intended consumption in a transaction other than a business-to-business transaction and who is --

- (a) the party to whom goods or services are sold under a discount transaction, incidental credit agreement or instalment agreement;
- (b) the party to whom money is paid, or credit granted, under a pawn transaction;
- (c) the party to whom credit is granted under a credit facility;
- (d) the mortgagor under a mortgage agreement;
- (e) the borrower under a secured loan;
- (f) the lessee under a lease;
- (g) the guarantor under a credit guarantee; or
- (h) the party to whom or at whose direction money is advanced or credit granted under any other credit agreement;”.

Amendment of section 86 of Act 34 of 2005

2. Section 86 of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

- “(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that --
- (a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;

- (b) the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or
- (c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders--
 - (i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those arrangements appear to be reckless; and
 - (ii) that one or more of the consumer's obligations be re-arranged by--
 - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (bb) postponing during a specified period the dates on which payments are due under the agreement;
 - (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; **[or]**
 - (dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6; or
 - (ee) suspending the accrual of interest for a period of up to five years.".

Short title and commencement

3. This Act is called the National Credit Amendment Act, 2012, and comes into operation upon publication in the *Gazette*.

MEMORANDUM ON THE OBJECTIVES OF THE NATIONAL CREDIT AMENDMENT BILL OF 2012

1. BACKGROUND

Parliament passed the National Credit Act [“the Act”] to provide assistance and relief to financially over-extended consumers as an alternative to them declaring insolvency. However, there are shortcomings in the Act which this amendment bill aims at correcting.

In the Act, the definition of “consumer” is unclear and has had the unintended consequence of extending the application of the Act also to business-to-business transactions and other situations such as credit agreements incidental to the purchase of goods by distributors from manufacturers and whenever the persons concerned do not acquire money, goods or services to consume or use but rather to on-sell.

In times of economic recession, debt rearrangement often ends up maintaining consumers in the “debt trap” as interest on their debt continues to accrue unaltered and increases with interest rate hikes. This adversely affects consumers who intend repaying their debt rather than seeking insolvency protection.

2. OBJECTIVES OF THE BILL

The objectives of the Bill are:

- 2.1 to clarify the definition of consumer to avoid unintended applications of the Act so that the Act applies only in respect of consumers at the retail level or as end users, which will make the Act consistent with international and comparative practices; and
- 2.2 to provide economic relief to deserving consumers under debt rearrangement by giving the discretion to a Magistrate acting on the recommendation of the relevant debt counsellor to suspend the accrual of interest on the debt(s) concerned for a period of up to five years, if granted under the circumstances of the case, so as to avoid that the cost of serving such debt becomes in itself beyond the debtor’s financial capabilities, especially in the case of increased interest rates or diminished earnings on the debtor’s side on account of an economic downturn.

3. FINANCIAL IMPLICATIONS FOR THE STATE

None

4. PARLIAMENTARY PROCEDURE

As in the case of the Act, the Bill falls within the ambit of section 75 of the Constitution.