

Debt Relief Bill

Engagement with the Portfolio Committee on Trade and Industry with respect to Policy on debt relief
National Treasury, 10 October 2017



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Introduction

- Thank you for the opportunity to participate in this process, NT **supports the comm's drive for stronger relief** for overindebted South Africans.
- NT appreciates the comm's attempts to bring relief to consumers in respect of these debt relief measures, keeping in mind the need to approach consumer protection from a systemic perspective by taking into account the other **financial sector policy objectives of financial stability, financial inclusion and financial integrity**.
- Thus the pursuit of these four financial sector objectives should be balanced if we are to achieve a **responsible and sustainable credit sector that supports economic growth and development**.
- NT continues to offer support to the comm to explore the feasibility of different options, ultimately to be informed by the **research evidence on the expected impact on behavior and the market**
- This is highly complex and we do not have the answers, **makes sense that this is an ongoing, consultative engagement**

How we started

- Focus on helping the poorest of the poor, for indigents / NINAs
 - also need to deal with non-bank lenders (retailers, micro-lenders)
- This will need **careful engagement** on:
 - The **aggregate level of the write-off**: what is fair to the industry but will help the poorest South Africans? Who will bear the cost of this across banks and non-banks?
 - The **maximum level of debt per person** to be written off?
 - What about **debt that has already been on-sold** to debt collectors – must reach these
 - To get consumer behaviour right and prevent moral hazard, **should we require co-payments** by the borrower?
 - How can we change behaviour over the long term and **incentivise savings**?
 - Will need to consider the extent that government can share in this cost, minimise the burden on the fiscus
 - This process **cannot** threaten the stability or sustainability of the system, and **must not** lead to relieved persons being again indebted in 6 months time

Matters previously raised by and within the PCTI

- **NCA is already powerful** and may not be optimally used, especially wrt reckless lending
- Debt counseling is **failing too many consumers**, does not reach poorer South Africans
- Fragrant **abuses in debt collection** noted, which lie outside scope of the NCA
- What will be the **costs to the economy and the sector** of debt relief?
- There are **international case studies** of various forms of debt extinguishing, extinguishing debt is new in South Africa
- The **need for relief** must be **balanced against the need for financial stability**, but that systemic risk **cannot be an excuse for “doing nothing”** (or too little)

Need sustainable and permanent solutions

Good standing ————— Consumer in default ————— Over-indebted

Preventative measures

- Affordability criteria (*dti*)
- Suitability criteria (*dti*)
- Interest pricing caps (*dti*)
- Consumer credit insurance (*FSB/dti*)
- Strong regulatory monitoring supervision and enforcement (*NCR*)
- Stricter standards to apply to payment system esp. debit orders (*SARB*)
- Stronger rules for issuing EAOs (*DOJ*)
- Regulating loans secured by payroll deductions (*SARB?*)
- Simpler low-cost insolvency (*DOJ*)

Remedial measures

- Appropriate unilateral relief by credit providers (e.g Debt Counselling Rules System) (*dti*)
- Withdrawal of invalid or inappropriate EAOs and to only use EAOs as a last resort and s.t. robust code of conduct (*NT/DOJ*)
- Ensure debt-collection firms (including legal firms) do not indulge in unscrupulous practices (*DOJ*)
- Extend debt collection law to legal firms (*DOJ*)
- Investigate the legitimacy of EAOs (*private and public sector*)

Financial wellness

Insolvency



What is our vision?

- First, we want to give South Africans that are chronically overindebted and have no chance or way to escape that debt, **the opportunity of a fresh start**
- Second, we want to **change the way that South African's interact with the financial sector**, so that this “fresh start” paves the way for **new or changed borrowing behaviour**.

*Changing behaviour means getting South Africans **to save for future expenditure rather than borrow for immediate consumption**, and where borrowing, choose to **borrow to fund an investment like a home** rather than cheap consumable goods like a TV (noting also that many South Africans are **borrowing just to survive**)*

Do we agree on the guiding principles for debt relief?

- Will need **different solutions for different “categories” of distressed persons**, depending on their circumstances:
 - Are you earning an income, how high is that income?
 - Do you own assets?
 - Do you have a secured or unsecured loan?
- If a person **can pay, he or she should pay** (unless the loan was granted recklessly)
- **Promote responsible lending:** want to disincentivise reckless lending, incentivise secured over unsecured lending especially for homes
- **Promote responsible borrowing:** change behaviour, promote borrowing for capital growth rather than consumption and within affordable and sustainable limits

Do we agree on the guiding principles for debt relief? (cont)

- **Extinguishing of debt** should only apply to unsecured loans, with focus on no or low income (those groups who cannot afford debt review)
- To the extent possible and reasonable **protect a borrowers asset**; selling that asset should be **absolute last resort**, and where done should be done **fairly and with dignity**
- Requires **holistic response**, should be a **shared responsibility across government, bank and non-bank credit providers, debt collectors and debt counsellors**
- Do **comprehensive impact assessment** of agreed options in support of evidenced-based policy
- **Maintain systemic stability**

Recall evidence of past interventions – clean up of bureau data

- First clean up of credit bureaux in 2007, based on civil court judgments paid up, very low amounts or old – did not remove obligation to pay debts
- Bureaux **subject to internal and independent audit**
- All information was declared removed – bureaux did not keep a list of ID numbers that benefitted through amnesty
- However a data comparison was performed and about **600 000 consumers were identified and used as a statistical sample** (by the CBA)
- **64% of the individuals who benefitted from amnesty subsequently opened accounts**
- **74% of the individuals who obtained credit had bad (30%) or adverse (44%) accounts**
- **19% of the individuals had a judgment in 5 years**
- =====> approx **52% of amnesty beneficiaries remained clear – IS THIS GOOD ENOUGH? WHAT IS OUR BENCHMARK FOR SUCCESS? HOW CAN WE IMPROVE ON THIS RESULT?**

Initial thoughts on the draft bill

- It is our understanding that this a **framework bill**, and that the specifics of categories and levels of debt should be evidentially led to understand impact, ultimately **informed by research**
- Have questions on the bill to understand **approach and intention**:
 - **Are we satisfied that the Bill meets the agreed principles?**
 - **Should this be an Amendment Bill to the NCA?** Need to reach debt collectors... how?
 - What is the Comm wanting to achieve through **debt extinguishing vs broader NCA reform?** Is there a need to differentiate?
 - What is the **role of the Minister of Finance and Governor** wrt banks and SIFIs?

Types of debt covered – qualifying criteria

- **Focus on the indigent and child headed households seems sensible**; consistent with view that above R3500 should go into debt review, and we should fix that process (should debt review be subsidised, and by whom?)
- Our 10k figure was an early approximation, the debt busters figure is updated and more reliable (R7500); study will give additional insights
- Also **good that taking into account the principle of “no realizable asset”**, ie this is dealing specifically with NINAs, although concerned that the definition of an asset seems contradict this
- **Consider including very clear person categories** in this definition to help reduce burden of proof e.g. social grant beneficiaries and those considered “indigent” by municipalities
- **Affordability criteria** – consider simplifying e.g. straight max 25% of income (to be informed by research)
- **Value of the debt to write off** should be informed by the research: 2013 study suggests debt as % income lower for lower income categories (0,2% for <R3500 vs 2.1% for >R30000)

Applications and orders

- Does the NCR / Tribunal have **capacity**? How can the process be simplified and streamlined?
- **Proof of income**: how to get people to tell the truth, obvious incentive to mislead/lie, support principle that credit providers must have opportunity to verify facts
- Like the **evaluation criteria** given in 88B
- Agree that there should be flexibility in granting of orders, but how can we make this more systematic? The prescribed periods for “halting” obligations needs engagement iro BASEL requirements.
- **Support need for prescribed rehabilitation** period matched with **compulsory financial education** (by whom and when?).

Other considerations

- **Timing** – balancing urgent powerful action against recklessness; in each case need to **first know impact**
- **Amendment of section 69 on keeping register of applications: Propose** also have reporting on these persons **over time** to monitor effectiveness of the intervention ie do these people take on more debt and when/how? This would dovetail with requirements on FIs and bureau
- **How many times can you apply for debt relief?**
- **Concerns with prescribed debt relief provisions:** How should this be defined, how to ensure consistent checks and balances? Role of the Comm? Role of the Minister of Finance/Governor for banks and SIFIs?
- **In duplum rule:** need legal certainty, so that attorney debt collectors cannot exploit current loop holes – cap should apply across the life of the loan into debt collection, even where - especially where – on-sold
- **Process of engagement:** research → concrete proposals → impact assessment → hearings?

In conclusion

- **Framework bill useful** to flesh out specific matters of principle – can these principles be confirmed?
- Details of coverage of debt relief and impact should be **informed by research**
- **Debt collectors** must be included
- Is there a **role for municipalities?**
- **Request to present** on SIE process (joint sitting with SCOF?)
- Looking to the medium to long-term, how do we avoid getting into a cycle of extinguishing debt? Can **broad reform to the NCA and NCR** (esp debt review) be accelerated? Also Insolvency Act
- How to **strengthen research capability** of our regulators?