Box: The National Credit Act

The National Credit Act, No 34 of 2005 (the Act), became effective on 1 June 2006. At the same time the office of the National Credit Regulator and the National Consumer Tribunal were established. The Act replaces the Usury Act of 1968, the Credit Agreements Act of 1980 and the exemption notice issued in terms of the Usury Act[1]. The Act sets a framework for every type of credit transaction, i.e. micro loans, home loans, overdrafts, furniture finance, etc. The objectives of the Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers[2].

The Act is being implemented in three phases: Most of the Act's administrative provisions came into effect on 1 June, 2006; the National Consumer Tribunal as well as measures to protect the consumer against unfair practices by credit bureaus came into effect on 1 September, 2006; and the new and improved consumer rights will be implemented on 1 June 2007. This box provides an overview of the Act, in particular the highlights of Chapter 4 which deals with consumer credit policy by looking at its impact on consumers[3] and the way credit providers conduct business.

Chapter 4 of the Act outlines the consumer credit policy[4]. Part of Chapter 4 deals with consumer rights. Among the rights afforded to the consumer is the right to apply for credit. Protection against discrimination in respect of credit is provided for and, on request from the consumer, the credit provider must provide the dominant reason(s) for credit being refused. The consumer has the right to information in plain and understandable language; to receive documents through mechanisms such as facsimile and e-mail; and to rescind a credit agreement. The consumer may access his or her credit record without charge; be advised by the credit provider before any adverse information concerning the person is reported to a credit bureau; and may challenge the accuracy of the records and information. Consumers will be entitled to a free copy of their credit records once every year and will have enough time to shop around for the best deal before taking up any credit. The

Act requires that quotation documents on any proposed credit transaction be provided and must be valid for five working days.

The Act prohibits, except if pre-arranged with the consumer, credit providers from marketing or selling credit at home or work. Advertising practices that are misleading, fraudulent or deceptive are prohibited. Credit providers are required to verify the indebtedness of prospective clients before providing credit, with failure to do so resulting in money owed to them being forfeited. Credit providers are also required to follow the strict laws aimed at preventing *over-indebtedness and reckless lending*[5].

The Act allows consumers to apply to a debt counsellor to be declared over-indebted and have their debts restructured. If a debt counsellor concludes that a consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court either declare one or more of the consumer's credit agreements reckless or re-arrange such agreement(s) by extending the repayment period, postpone payment, or both, to suit all the parties involved. During this process, the consumer may not enter into any further credit agreement other than a consolidation agreement.

Chapter 5 of the Act allows the Minister of Trade and Industry, after consulting the National Credit Regulator, to prescribe the maximum interest rate and maximum transaction fees applicable to each subsector of the consumer credit market. This may close loopholes used by money lenders to charge exorbitant interest and fees.

1 The Usury Act governed money-lending transactions, The Credit Agreements Act governed instalment sale agreements and the exemption notice issued in terms of the Usury Act exempted microlenders from the maximum interest rate imposed on banks.

2 For details of the Act, refer to Government Gazette No 28619 of 15 March 2006.

3 The Act gives credit guarantors the same status and protection as it does credit consumers.

4 The Consumer credit policy is divided into four parts which deal, firstly, with consumer rights, secondly with confidentiality, personal information and consumer credit records, thirdly with credit-marketing practices, and fourthly with over-indebtedness and reckless credit.

5 A consumer is *over-indebted* if the preponderance of available information at the time that a determination is made indicated that the particular consumer is or will be unable to satisfy in a timely manner all the obligations under all the credit agreements to which the consumer is a party. On the other hand, a credit agreement is reckless if, at the time that the agreement was made, or at the time when the credit amount approved was increased, the credit provider failed to conduct an assessment as prescribed by the Act; or, having conducted an assessment as required by the Act, the credit provider entered into the credit agreement with the consumer despite the fact that the preponderance of information available to the credit provider indicated that the consumer did not generally understand or appreciate his or her risks, costs or obligations under the proposed credit agreement, or entered into a credit agreement that would make the consumer over-indebted.

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