



27 February 2014

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André R Hermans  
Committee Secretary: PC Trade and Industry

Dear Sir

**NATIONAL CREDIT AMENDMENT BILL: REVISION OF THE GOVERNMENT'S  
STRUCTURE OF THE NATIONAL CREDIT REGULATOR**

We refer to your request for input dated 12 February 2014 and reply as follows:-

- Point 1            It is not possible for us to comment without having sight of the proposed change. Presently the NCR is independent (Section 12(c)), it advises, recommends and reports to, advises the Minister (Section 18 (1)(a) to (e)). We should be furnished with reasons as to why the amendment is sought.
- Point 2            The new clause providing for an offence where prohibited charges are raised and where the capped interest rate is exceeded is to be supported.
- Point 3            The capping and/or regulating the cost of credit insurance is commendable in principle but the extent of the cap and or regulation will have to be established in consultation with the insurance industry.
- Point 4            The amendment dealing with the delivery of a Section 129(1) notice to align it with Sebola judgment is commendable in principle.
- Point 5            The common law position is that the court cannot *mero motu* take the point of prescription. See S17(1) of the Prescription Act. Prescribed claims are, therefore, not necessarily unenforceable and the Prescription Act does not make the collection of a prescribed debt as an offence. However, the aggressive pursuit of debt collectors who buy written off books i.e. they take cession of the claim, is unfair on consumers and this particular conduct need to be addressed. Perhaps the answer is to define as being unlawful the purchasing of a bad debts book, i.e. taking cession of same for value and thereafter collecting it for the purpose of profit where claims have prescribed.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

- Point 6            The provision of powers for the Minister to prescribe additional regulations needs to be specifically defined.
- Point 7            The provision for the amendment of Section 40 and 42 so that all credit providers will be required to be registered cannot be supported. No motivation is submitted. If it is intended to target the activities of micro lenders, then a proper definition of the type of money lending transactions which will be covered needs to be drafted. However, it cannot be expected that all service providers who render service for which they are not paid immediately should be required to register as credit providers.
- Point 8            The amendment to Section 52(4) is not understood as the Act already appears to provide that a registration remains in effect until the registrant is deregistered or the registration is cancelled in terms of the Act. Further details in this regard are required.

Kind regards



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