

**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE NATIONAL  
CREDIT ACT AMENDMENT REGULATIONS**

**PROPOSED AMENDMENTS TO THE NATIONAL CREDIT ACT REGULATIONS  
OF THE NATIONAL CREDIT ACT, 2005 (ACT NO. 34 OF 2005)**

**INTRODUCTION**

The Law Society of South Africa has received the proposed amendments to the National Credit Act Regulations.

**GENERAL COMMENTS**

Having reviewed the proposed amendments, our preliminary overview of the amendment Regulations is that they seek to broaden the identification and definition of a “consumer” or “person” to include a juristic person too, which is a welcome inclusion and thereby extend the information submission requirements, in terms of the Regulations, to the same. The proposed regulatory amendments introduce greater transparency in creating a database driven insight into the credit market and consumers, and to enhance consumer protection by identifying and remedying systematic issues.

We have also identified the noticeable expansion of the affordability criteria assessment under the draft Regulations, to assets, which, while protecting the

interests of the creditor, may have potentially far-reaching implications for the consumer.

We hereby comment as follows:

## **SPECIFIC COMMENTS**

### **1. Amendment of regulation 18 (7) (a)**

The subregulation should also include a reference to a 'state department' to precede the words 'an organ of state' as an organ of state is, in most cases, housed under a state department within the core national, provincial or local government administration. Whilst the Regulations do not expressly exclude a state department as an original source of consumer information, the omission of the words 'state department' from the amendment Regulation in their current form may create an undesirable and/or unintended limitation on the ability of the National Credit Regulator to obtain consumer information.

### **2. Amendment of Regulation 19 (b)**

2.1 The proposed regulatory amendment brings in "data providers", in addition to a "credit provider" as one of the parties mandated to submit credit information to the credit bureaus. While the term "credit provider" is defined in the principal Act, the term "data provider" is however not defined in the principal Act nor in the Regulations. We therefore propose that this term be defined, for certainty.

2.2 As a check and balance measure, we propose that, while credit providers and data providers are required to submit information to the credit bureau, that a platform for consumers also be developed that will enable consumers to check the accuracy of the information provided to the credit bureaus prior to the submission of the information. Whilst we are mindful that this may be an onerous exercise, we are of the view that it will provide a measure of protection to consumers.

### **3. Amendment of regulation 23 (A) (8)**

The amendment regulations expand the financial affordability criteria of the consumer to “[include] the consideration of the realisation of assets”. As indicated in the introductory remarks, the LSSA submits that this is a marked amendment to the subregulation and the utilisation of the word “including” in the framing of the amendment subregulation renders such consideration to be quasi-obligatory on the part the credit provider, and that it is a criterion that is mutually inclusive of other criteria being “financial means, prospects and obligations”. Understandably, the credit provider needs protection from consumers who may possibly default on their credit obligations, and the inclusion of assets commences as a ‘consideration’ on the part of the credit provider.

Whilst the LSSA does not seek to pre-empt how a credit provider will apply the provisions of this specific amendment, should it come into effect, the LSSA is of the view that where assets are concerned, caution should be exercised to avoid a credit dispensation environment where assets are easily realisable by credit

providers. We wish to stress the importance of providing credit to consumers, which is more or less, commensurate with the financial means of consumers, as a point of departure.

Accordingly, we propose in this regard that in order to strike a balance of rights for both the credit provider and the consumer concerned, the insertion of the supplemental emboldened words in the regulatory provision, “including the consideration of the realisation of assets, **where necessary**”.

ENDS.