



SUBMISSION:

RE: INVITATION FOR COMMENTS ON DRAFT NATIONAL CREDIT AMENDEMENT BILL

15 January 2018

Honourable Ms Joanmariae Fubbs, MP
Chairperson: Portfolio Committee on Trade and Industry
National Assembly
Parliament of the Republic of South Africa
P.O. Box 15
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8000

Attention: Mr Andre Hermans
Committee Secretary: Portfolio Committee on Trade and
Industry
National Assembly
By email: ahermans@parliament.gov.za

1. Purpose

Microfinance South Africa (MFSA) appreciates the opportunity to submit its written comments to the National Assembly Portfolio Committee on Trade and Industry on the Draft National Credit Amendment Bill, as published for comment by on 24 November 2017.

The intention of our submission is to constructively inform and contribute to the body of knowledge and evidence at the Portfolio Committee's disposal, in order aid and assist the Portfolio Committee in its considerations and deliberations for the processing of the Draft National Credit Act Amendment Bill.

Through it, our purpose is to positively contribute to seeking a sustainable solution to relieve over-indebtedness experienced in the credit market. Within this context, it is also important to recognise the prevailing mechanisms as well as substantial concessions provided to over indebted consumers by MFSA members and credit providers more broadly.

As a critical industry stakeholder, we believe that our expertise and knowledge of the credit market and consumers, requires the Portfolio Committee to further consider the value of deeper exploration and unpacking of the contents of our submission through engagement with ourselves both during and after the scheduled public hearings on the Bill.

In this regard, I kindly request the opportunity to present and engage with the Portfolio Committee through an oral presentation during the Committee's Public Hearings scheduled for 30 and 31 January 2018 and 1 February 2018, respectively. In this regard, I kindly request your due consideration in affording us an opportunity to do so, on either the 30 January or 31 January 2018, during the late morning or early afternoon time periods (11h00-13h00).

We remain at your disposal should you require any further information and/or clarification regarding this submission and matters related hereto.

Yours sincerely



P H Ferreira
Chief Executive Officer

2. Executive Summary

As an association of registered and legal microfinanciers, the majority of MFSA members are small business engaged in affordable short term credit through responsible lending practices, to consumers who are of the most deprived of quality financial services. These are ordinary South African citizens, who require financial assistance to meet real, often basic needs within the prevailing economic circumstance of the country.

Our members therefore service an unmet need within the credit market, outside of 'high street institutions' (i.e. banks) or diversified financial products and services provided by retailers. Neither are our members illegal, rogue lenders and 'mashonisas' or loan sharks, who engage in punitive consumer practices that are detrimental to financial and socio-economic wellbeing of South Africa afflicted by poverty and unemployment.

Our members are profitable and financially liquid small, local business operating within towns and cities across the length and breadth of South Africa, wherein their owners deliver other consumer good and services and create local economic and job opportunities. These are often areas where banks and large retailers do not service the market.

We are therefore an important component of the overall South African credit market, providing a unique credit offering to a distinct segment of the South African consumer and borrower population.

Our members are responsible lenders and to date, there has never been a charge against a member for abusing the National Payment system.

MFSA supports a mutually responsible relationship between lenders and borrowers. In this regard, it is our contention that both credit providers as well as consumers should implement debt care in order to facilitate sustained financial inclusion and a stable credit market eco-system.

There are prevailing legislative and regulatory provisions, which provide coverage and assistance for consumers experiencing financial distress, which have not been sufficiently implemented or enforced. Legislated debt intervention and debt relief should not unfairly prejudice both consumers that have and continue to act responsibly.

MFSA recognizes that existing legislation may not adequately provide for debt interventions and relief mechanisms for certain segments of the population due to affordability and accessibility limitations. However, credit providers such as our members engage with consumers and are aware of their personal circumstances, which enables us to voluntarily offer debt intervention measures geared to assist financially distressed consumers. Moreover, offering debt intervention measures, inclusive of debt write-offs/extinguishment introduces substantive uncertainty in the short-term credit market and further hazard of cultivating negative consumer behavior and attitudes towards servicing debt obligations and upholding legal credit agreements.

Therefore it is our contention that implementing open-ended and extensive debt interventions as well as introducing the enabling provision for the Minister of Trade and Industry to prescribe unfettered debt interventions is unsustainable in the long-term and jeopardizes stability of the credit system. Moreover, it imposes risks to the short-term credit sector and our ability to recover debt incurred responsibly and provide access to financial products to segments of society which commercial banks cannot and do not offer.

Accordingly, the role of legal registered micro-financiers must be recognized as well as the role we play in the economy, financial system and lives of ordinary South Africans.

3. Introduction and Background

The MFSA has participated in the National Assembly Portfolio Committee on Trade and Industry's engagement on Debt relief measures to deal with over-indebtedness, which took place in November 2016.

Recently, the MFSA also participated in the Public Hearings on Transformation of the Financial Sector, which was jointly convened by the Portfolio Committee on Trade and Industry together with the Standing Committee on Finance, wherein over-indebtedness and debt relief was cited in the Interim Report on the Hearings.

MFSA is supportive of the sentiments, which subscribe to a credit market, which is sustainable and of benefit to society in totality: including consumers who are financially challenged. Our members engage with consumers who are of the most deprived of quality financial services. We are therefore of the opinion that an important component of the credit market outside of 'high street institutions' (i.e. banks) are not fully being heard and understood in this matter.

Registered and legal Microfinanciers, who are members of the MFSA, fulfill a specific role in the credit market and address a need, which commercial and retail banks cannot and will not fulfill. Therefore while both banks and microfinanciers are all registered and legal credit providers, MFSA members cannot be regulated in the same manner as banks, specifically in areas such as:

- Interest rates and fees
- Credit life insurance
- Implementation of imposed debt relief

MFSA is of the view that, credit consumers who through legitimate and authentic reasons landed in a debt predicament can be assisted, through a process, and reach a negotiated and fair solution. A fair process considers the consequence to the total eco-system and has an intention to facilitate sustainable lending and borrowing practices and behaviors.

4. Overview of the MFSA

4.1. Our mandate

Micro Finance South Africa (MFSA) is a representative body of registered and legal microfinance Credit Providers. MFSA is the 'Recognised Voice of Reputable Microfinanciers in South Africa'.

Our Vision is to ensure a sustainable Microfinance Industry.

MFSA represents more than 1 100 Microfinance Credit Provider offices, providing short term and unsecured credit, registered with the National Credit Regulator, as well as a significant proportion of Service Providers in the Sector.

Geographically the MFSA members constitute a National presence with outlets situated in rural, semi urban and urban areas. Our member base range from small one office businesses to larger Credit Providers with more than 150 outlets, they include digital Credit Providers that originate and service credit online.

4.2 MFSA Membership Profile

MFSA members are not commercial or retail banks and thus assume the full risk without the option of a bailout. We are small business in the financial landscape and serve low-income consumers (5-6 million consumers) with short-term lending products and thereby also contribute to Financial Inclusion. Thus, any legislative proposals cannot define and impose regulation, which assumes and treats all credit providers as banks.

4.3 MFSA Approach to Responsible Lending and Borrowing

MFSA does not defend credit providers who are found to be in contravention of the law and those who have acted negligibly and undertaken rogue and reckless lending practices. We defend the rights of members to responsibly and sustainably provide micro finance loans and credit to consumers, which banks do not cater for. Our members are responsible lenders and to date, there has never been a charge against a member for abusing the National Payment system.

Both consumers and business require protection and whilst we recognise and acknowledge that there is an underground credit market of unregistered and illegal rogue lenders, the NCR as the regulator for the sector should play a more active role in this regard and execute their mandate in accordance with prevailing legislation including the enforcement of the National Credit Act.

4.4 Existing measures in the microfinance sector

There are many debt relief interventions already in place and legislated debt relief may build on and strengthen these interventions such as debt counselling and alternative dispute resolution.

Furthermore, recognition should be afforded to credit providers in respect of debt relief interventions, which they have already and on an on-going basis apply on a case-by-case basis taking into account the circumstances of consumers in the interests of a responsible and fair credit eco-system. These include:

- Ongoing Consumer Education
- Applying the National Credit Act Including the Affordability Regulations
- Mediation and engagement with consumers who cannot afford to make payments

5. Objectives of Legislated Debt Relief Interventions

Legislated debt interventions should consider and take into account the business and financial eco-system, which is cognisant of the knock-on effects of any imposed mechanisms on credit providers.

5.2. A balanced approach to the rights of consumers and credit providers

Any intervention should as far as possible balance the rights and requirements of both the consumer and credit provider to establish a reciprocal, mutually constructive, useful and acceptable solution whereby relief from financial distress may still be obtained without risking the stability and sustainability of the system.

5.3 Legislative recognition and provision for existing measures

In the experience of the MFSA, there are prevailing debt relief interventions and instruments available to and serving the interests of consumers. Whilst not all of these are appropriate and relevant in every instance as a preferred measure for consumers, many are serving their interests. Any legislative intervention should therefore aim to provide legislative provisioning and further strengthening of these measures. These include:

- The role of the Credit Ombud
- Affordability Regulations inclusive of pricing thresholds has intensified approach by the NCR as well as the impact on standard market forces.
- Consumer education and awareness
- Credit providers are playing a stronger and more proactive role in respect of self-regulatory mechanisms.
- Informal Debt Mediation
- Debt Counselling
- Changes to prescription of Debt
- Administration orders
- Sequestration
- Legal Debt Collection is under a constant spotlight. This has resulted in a clamping down of 'backdoor' avenues to collect reckless loans through an in proper use of the legal debt collections process. Illegal debt collection has now become far harder and in many cases impossible to pursue.

6. Evidence and Rationale

In order to provide the National Assembly Portfolio Committee on Trade and Industry with a reliable evidence-based impact assessment of the draft legislative proposals on providers of Short Term Credit and the affected consumer base, as well as to further inform the Committee's deliberations, MFSA has undertaken a detailed data analysis exercise.

6.1. Data Analysis Methodology

Our data analysis model has used the following parameters to estimate the impact of draft legislative proposals:

- 6.1.1. A sample of the credit active consumer base, prior to 24 November 2017.
- 6.1.2. Application confined to consumers with a valid South African Identity Number.
- 6.1.3 Applying the definition of 'Debt Intervention' according to the following criteria:
 - a. Unsecured debt/short term credit totalling (Less than or Equal to R50 000)
 - b. Predicted Income (Less than or Equal to R7 500)
 - c. No Legal action status codes
 - d. No Debt Counselling
- 6.1.4 Identification and correlation between address data and address information.
- 6.1.5 Further categorising the address as 'Rural' or 'Urban', based on the address with the latest first date (i.e. latest new address submitted). For this purpose, an address is defined as 'Urban' if it is part of the capital of any of the 9 provinces.
- 6.1.7 Evaluation of analysis based on summarising the total number and percentage of consumers, including outstanding balances for each Debt Intervention and 'Urban'/'Rural' indicator.
- 6.1.8 Segmenting consumers in accordance with a Debt Intervention indicator based on maximum delinquency status (i.e. defaults on repayments).

Other aspects that have been considered as part of the data analysis and research includes:

- A ratio of total unsecured debt as a percentage of the predicted income, as this provide a measure for over-indebtedness.
- Whether the account is Continuous Payment Authorities (CPA); and National Loans Register (NLR).
- The last payment date on the accounts.

6.2. Results of Data Analysis

The balances below are those that were updated in the last 60 days, as at 14 December 2017, and all account information is based on open accounts in retention (3 years).

6.2.1. Number of consumers affected with valid South African Identity Numbers

Total Population:

		Debt Intervention Flag		Grand Total
		No	Yes	
Rural Address Flag	No	5 395 175	1 254 756	6 649 931
	Yes	8 570 207	2 899 411	11 469 618
	Unknown	2 599 381	1 000 321	3 599 702
	Grand Total	16 564 763	5 154 488	21 719 251

By Percentage:

		Debt Intervention Flag		Grand Total
		No	Yes	
Rural Address Flag	No	24,84%	5,78%	30,62%
	Yes	39,46%	13,35%	52,81%
	Unknown	11,97%	4,61%	16,57%
	Grand Total	76,27%	23,73%	100,00%

6.2.2. Percentage of consumers with South African Identity Numbers affected per default status on repayments

- Applying the methodology to the flagged population, using the Debt Intervention and default status indicators, there is a higher percentage of consumers affected with a default status of 3 months or more.
- A smaller percentage of consumers have obtained an adverse listing, judgment and notice against them.
- Consequently, the '3+' months segment of indebted consumers would benefit the greatest from Debt Intervention, as they would have the highest probability of rehabilitation to remain future credit worthy consumers.
- At the same time, the lower level of indebtedness in the '1-2' month default category does not warrant extensive or open-ended Debt Intervention measures.
- Similarly, this lower percentage of indebted consumers who have entered the realm of adverse ratings, judgments and notices, do not warrant a Debt Intervention. If these consumers were monitored, identified and assisted earlier in the credit life cycle including through strengthening the implementation of existing legislative and voluntary mechanisms, these consumers would benefit from the appropriate available instruments to assist their financial management and servicing of debt obligations. Thereby mitigating financial distress and indebtedness to ensure 'debt care' and mitigate the need for debt intervention.
- Equally, the nature of the proposed legislated debt interventions, as contained in the Bill, does not provide the sufficient basis for driving widespread debt interventions across an extensive segment of the population. The data put forward demonstrates the percentage of consumers with a higher level of indebtedness is comparatively smaller.

Worst Default Status (Months)	Number	Percentage
0	1,303,469	25,29%
1-2	641,429	12,44%
3+	2,375,417	46,08%
Adverse	719,401	13,96%
Judgement	103,705	2,01%
Notice	11,067	0,21%
Grand Total	5,154,488	100,00%

6.2.3. Percentage of Short Term Credit account affected by Debt Intervention

	Number of Subscribers
Short Term Credit	1292
Banking	59
Retail	93

- On a subscriber level (i.e. short term credit providers), of the 1292 STC subscribers, the average number of accounts affected is 42%, but some will have 0% affected and some 100%.
- About 50% of the STC subscribers will have between 22% and 60% of accounts affected.

6.2.4. Frequency Tables

- This table provides an indication of distribution by showing the breakdown of the 5.1m individuals by unsecured current balance and income.
- The largest income group affected is between R4,000 - R5,999. This is consistent with the qualifying income threshold as proposed in the Draft Bill.

Number of IDs - Debt Intervention IDs by Balance and Predicted Income

Unsecured Current Balance	<R4,000	R4,000 - R5,999	R6,000 - R7,500	Grand Total
<= 500	118,168	227,524	302,816	648,508
500 <= 1 000	239,765	259,240	154,251	653,256
1 000 <= 2 000	256,767	369,176	226,163	852,106
2 000 <= 3 000	100,951	133,098	164,441	398,490
3 000 <= 4 000	63,869	104,235	123,288	291,392
4 000 <= 5 000	42,867	91,797	102,225	236,889
5 000 <= 10 000	97,393	394,094	308,043	799,530
10 000 <= 20 000	39,186	440,488	226,103	705,777
20 000 <= 30 000	4,568	185,726	124,786	315,080
30 000 <= 40 000	613	76,222	86,607	163,442
40 000 <= 50 000	120	29,596	60,302	90,018
Grand Total	964,267	2,311,196	1,879,025	5,154,488

Number of IDs - Debt Intervention IDs by Balance and Predicted Income - Percentage of Total

Unsecured Current Balance	<R4,000	R4,000 - R5,999	R6,000 - R7,500	Grand Total
<= 500	2.29%	4.41%	5.87%	12.58%
500 <= 1 000	4.65%	5.03%	2.99%	12.67%
1 000 <= 2 000	4.98%	7.16%	4.39%	16.53%
2 000 <= 3 000	1.96%	2.58%	3.19%	7.73%
3 000 <= 4 000	1.24%	2.02%	2.39%	5.65%
4 000 <= 5 000	0.83%	1.78%	1.98%	4.60%
5 000 <= 10 000	1.89%	7.65%	5.98%	15.51%
10 000 <= 20 000	0.76%	8.55%	4.39%	13.69%
20 000 <= 30 000	0.09%	3.60%	2.42%	6.11%
30 000 <= 40 000	0.01%	1.48%	1.68%	3.17%
40 000 <= 50 000	0.00%	0.57%	1.17%	1.75%
Grand Total	18.71%	44.84%	36.45%	100.00%

Number of IDs - Debt Intervention IDs by Balance and Predicted Income where Worst status Equals 3+ - Percentage of Total

Unsecured Current Balance	<R4,000	R4,000 - R5,999	R6,000 - R7,500	Grand Total
<= 500	20,214000	110,018000	110,718000	240,950000
500 <= 1 000	59,224000	99,985000	100,515000	259,724000
1 000 <= 2 000	96,554000	134,458000	162,406000	393,418000
2 000 <= 3 000	59,676000	78,417000	125,350000	263,443000
3 000 <= 4 000	42,712000	66,894000	94,519000	204,125000
4 000 <= 5 000	31,378000	62,815000	76,962000	171,155000
5 000 <= 10 000	79,413000	294,524000	240,305000	614,242000
10 000 <= 20 000	35,423000	360,183000	192,391000	587,997000
20 000 <= 30 000	4,488000	156,280000	102,751000	263,519000
30 000 <= 40 000	607000	65,628000	69,873000	136,108000
40 000 <= 50 000	120000	26,443000	48,346000	74,909000
Grand Total	429,809000	1,455,645000	1,324,136000	3,209,590000

6.2.7 Summation

The nature of the proposed legislated debt interventions, as contained in the Bill, does not provide the sufficient basis for driving widespread debt interventions across an extensive segment of the population. The data put forward demonstrates the percentage of consumers with a higher level of indebtedness is comparatively smaller.

Based on analysis presented, the size of population, which would be eligible for debt interventions is a total of 5.1 million consumers and this equates to a rand value of R3.2 billion, which includes both unsecured and short term credit.

MFSA is of the view that in order to administer debt intervention effectively, it should be applicable to the following category of consumer:

- Consumers who owe more than R10 000
- Consumer who earn a monthly income of less than R6000

MFSA further proposes that consumers who fall within the aforementioned category and have a default status on repayments of 3 months or more should be assisted with appropriate debt interventions.

We contend that this category of the population and type of consumer represents a practical volume of applicants, which is manageable in terms of the legislated processes to followed for the granting of debt interventions. Accordingly, the relevant regulatory authority would be in a better position to assess the circumstances of these consumers and determine the extent and nature of assistance required to ensure their long-term financial inclusion.

This data confirms that a blanket approach to debt interventions measures does not serve the interest of the intended legislative objectives. By targeting the '3+' consumer group, the greatest number of affected consumers in need of assistance will be reached. Extended beyond this to consumer groups who are not yet close to the verge of adverse status, judgments and notices, unduly benefits this consumer groups and ignores the opportunity they have from other existing legislature and voluntary debt care measure available for their benefit.

7. Legislative Debt Relief

The Micro-Finance Industry offers responsible credit for real-life needs and practical circumstances faced by ordinary individuals. This type of credit is typically for purposes, which normal commercial banks would not offer or be in a position to assist with. Therefore, it means micro-financiers take into account the personal as well as financial position of consumers seeking credit understanding the risks involved due to the recognition that such credit may be used for basic necessities such as: school and related fees, groceries, public transport costs, including servicing secured debt obligations. Moreover, consumers who acquire such short-term credit are fully aware of the applicable terms and conditions and cognisant of the impact of defaulting on such repayments as this may limit or cease their ability to obtain short-term credit from credit providers going forward.

For the MFSA the objective of such legislation is best understood in the context of “debt care” both from the perspective of the consumer as well as the credit provider.

This means that:

- The consumer has the necessary tools and instruments at their disposal to responsibly engage in a lender-borrower relationship and credit agreement
- The consumer is able to manage the effective servicing of their credit obligations
- Take measures to ensure they take care of and protect their financial commitments including credit agreements
- Implement “debt care” so as not to compromise their financial status and ability to remain a credit active citizen with access to financial inclusion products.
- The credit providers should lend and act responsibly in a manner consistent with the prevailing National Credit Act 2005, as amended, and supports financial inclusion
- The credit provider enables and supports consumers to maintain a good credit record and access to financial products
- The credit provider empowers consumers by providing the relevant information for consumers to make informed decisions
- The credit provider cultivates a good relationship with consumers to facilitate the successful servicing of debt obligations and credit agreements especially when consumers are in financial distress and require assistance by way available voluntary mechanisms offered by credit providers.

Legislated debt interventions should be underpinned by the need for:

- a. Feasible debt intervention measures in the interests of consumers and financial inclusion
- b. Curtailing and clamping down on rogue illegal credit providers
- c. Maintaining the sustainability of businesses which cater for a specific segment of the market and type of consumer by providing responsible legal short term credit

8. Principles for Legislative Debt Relief in the Microfinance industry

8.1. Recognition for smaller credit providers

Recognition should be afforded to smaller players in the market, which provides an appropriate and relevant framework within which the role of microfinanciers is acknowledged and sufficiently catered for as part of the broader credit provider industry within the current and contemplated legislative and regulatory. Therefore, as these players expand and move up the system the compliance regime should strengthen.

It is necessary and important to acknowledged the diversification within the industry in order for MFSA members to play their part as well as compete in their own right. This should not be construed as appealing for a special dispensation outside of the credit provider industry or creating a stalling mechanism; we are advocating this on the basis that any legislation must be fit-for-purpose and thorough specifically when it deals with credit market regulation and thus consumer behaviour.

8.2. Distinct impact of Debt Relief for microlenders

The Micro Finance Industry provides unsecured credit for which they price for risk. If these credit providers are unable to price for such risk, they accept certain risks upon extending credit and lending. As such consumers are responsibly granted unsecured small loans in the absence of a banking profile. This industry therefore absorbs more risk than commercial and retail banks and as such its ability to withstand further uncertainty and instability by way of imposed debt relief may have an adverse consequence and result in many either going underground (illegal rogue credit market) or closing down completely.

Accordingly, in respect of legislated debt relief the costs incurred therefrom for credit providers should be carefully considered so as not to create an impediment or risk to the credit market and financial eco-system in its entirety.

9. Comments and Recommendations

9.1 Individual circumstances should trump a blanket approach

MFSA is firmly of the view that the process followed in order to be granted debt relief cannot be an 'industrialised' process and should look at the individual circumstances of consumers. Accordingly, interventions and the legislation, which provides for this cannot undertake and assume a one-size fits all approach. While the legislation for debt relief must conform to the 'General Law of Application', it cannot support the application of a generic rule as consumers all differ irrespective of their income threshold and any legislation must account for and accommodate special circumstances and situations.

9.2 Definition of a credit provider

Legislation, which provides for debt relief cannot define and therefore treat all credit providers the same. Accordingly, while all credit providers are registered and legitimate lenders who comply with the prevailing legislative and regulatory requirements, these are not identical in its constitution. Thus a broad definition of a credit provider may be used but a specific definition for non-bank lenders and micro-lenders must be provided for to ensure an equitable regime in respect of imposed debt relief.

9.3 **Section 88A (1) (a) and (c)**

9.3.1. Evidence-led Approach

A 'Means Test' should be conducted for all consumers, regularly, at certain points in time to ascertain the profile of consumers who may be indebted as well as their respective circumstances. This should also apply throughout the application of debt intervention measures to determine the continued eligibility of those who applied and benefitted from a first order debt intervention measures within the specified time period as contained in the Draft Bill.

9.3.2. **Section 70 1 (a) and 2 (aA)**

Consumers who have benefited from debt relief must be listed on the credit bureau. However, how this information is loaded on the credit bureau must be informed by and include the specific reason why the consumer has been listed as well as the reason for this such as circumstances etc.

9.4 **Section 88A (2) (3) and (4); Section 88B (1) (2) (3) (4) and (5)**

9.4.1 Application Process

Consumers should fulfil and complete an application form as one of the supporting documents required in order to apply for and to be considered eligible for the granting of debt relief.

The application should constitute and include the key requirements for consumers who wish to apply for debt relief as well as the applicable criteria and process for adjudication.

Moreover, it should be made explicitly clear in the interests of both consumers and credit providers, who or which person or entity will oversee such a process. In this regard, further clarity should be provided in respect of the roles of the NCR, NCT, Debt counsellors as well as any other appointed entity or institution entrusted to grant and execute debt relief for eligible consumers.

9.4.2 Application 'Means Test'

Any application must also be accompanied with a 'Means Test' to determine the circumstances of the consumer prior to and during incurring debt as well as the their current state of over-indebtedness. This Means Test can be conducted by the appointed authority upon receipt and review of the application for debt relief.

9.5 **Section 88A (1) (a) and (c); Section 88A (2) (3) and (4)**

9.5.1 Category of Consumer eligible for debt relief

A consumer's monthly income cannot be used as the sole determinant for whether or not such a consumer is eligible for debt relief.

Credit providers as well as the responsible entity entrusted with the authority to assess applications and grant debt relief must consider whether:

- It is joint income
- A result of tribal land
- Takes into account work and household expenses
- Consumers have dependents

9.5.2. Income Threshold

An Income Cap or Threshold should not be the sole determinant or guidance for which consumers should receive debt relief or a category of consumers who are over-indebted. Moreover, while a threshold may apply it cannot be a blanket application thereof with ill regard for circumstance.

A Means Test as well as the relevant due diligence must be undertaken by the appointed authority prior to granted any debt relief. These safeguards provide a reliable indicator of consumer behaviour and can show when a loan was taken and therein also demonstrate non-malice for lenders and consumers.

If it is deemed appropriate to set the income threshold as high as possible, this should be accompanied by confined parameters. For example, if a cap is R5000, this must translate into more stringent oversight and result in more lenient concessions, which may still help the consumer.

Depending on the applicable threshold provided for in the contemplated legislation, the industries that may be affected the most by the imposed legislated debt relief measures are the short term unsecured credit providers and clothing retailers.

9.6 **Section 88C**

Rehabilitation Period

Once consumers are granted debt relief they should not be enabled to re-enter the credit market or incur debt for a specified time period, which is effective from the date upon which such relief was implemented. This should be provided for in the legislation and undertaken in the best interests of the consumer's financial health and long-term prospects including due regard for credit providers who should be made aware of a consumer's credit history prior to offering or considering their eligibility for credit products.

All consumers that have been granted debt relief must be subject to a rehabilitation programme, which includes consumer awareness and education, financial literacy as well as the role of the National Credit Act and National Credit Regulator.

10. Proposed Debt Relief Interventions

There are a number of interventions, which may assist over-indebted consumers and provide debt relief. These may be provided for in legislation and regulation but must first and foremost be based on individual circumstances with due regard for the type of credit provider a consumer borrowed and incurred debt from.

These include the following:

10.1 Section 88C (3) (c)

10.1.1 Credit life insurance

Any consumer who has credit life insurance or historically retained such insurance but loses employment and cannot fulfil their instalment obligations, if their circumstances are legitimate, there is a legitimate link to repayment. Accordingly, the policy must pay-out for the default to the credit provider. When consumers have credit life insurance this should enable consumers to meet their debt obligations by way of such insurance paying out all debt owed to the credit provider.

There are currently existing legislation and regulations governing credit life insurance. The final credit life insurance regulations were published in the Government Gazette on the 09 February 2017 and were effective as at August 2017.

These regulations limit the cost of credit life insurance to R4,50 per R1000 of the deferred amount for credit facilities, unsecured loans, developmental credit agreements and other types of credit agreements. The cost of credit life insurance is limited to R2 per R1000 of the deferred amount for mortgage agreements.

According to the NCR, “the regulations will provide more protection for consumers by ensuring that the insurance cover is appropriate for the needs of consumers. Therefore, consumers that are not employed cannot be sold retrenchment cover.

Furthermore, the regulations prescribe the minimum benefits that must be offered to consumers and the limitations or exclusions that apply to the insurance cover.

MFSA is of the view that these regulations and the application thereof have not been appropriately evaluated including the impact on specific types of credit providers such as micro-financiers. Moreover, the extent to which these regulations have been effectively applied to the benefit of consumers is also at present unknown.

MFSA therefore proposes that the Department of Trade and Industry as well as the NCR provide feedback and an appraisal on the implementation of the regulations to date, to assist and inform the Committee's discussions and deliberations on this provision and the final inclusion and application.

10.2 **Section 88C (4)**

10.2.1 Debt Write-off and Extinguishment

Further consideration should be given to the implications of debt write offs or extinguishment. Debt relief should as far as possible never take place. What should apply in this regard is a grace period whereby the credit providers cease the accumulation of fees and interest until such time that the consumer is able to make a payment and fulfil their obligations. Accordingly, via the aforementioned mechanism, the credit provider immediately provides the consumer with some form of relief.

However, the Credit Bureau listing and 'flagging' of such consumers is of great important in these instances. In this regard, it is important to note that if debt write off takes place MFSA members (the majority hereof work with their own capital) will only result in it becoming more difficult to access credit, thus driving the consumers to the underground illegal rogue credit market.

10.3 **Section 88B (1) (2) (3) (4) and (5)**

10.3.1 Reckless lending

Reckless lending is indefensible and the existing legislation must be enforced and the NCR should play a more active role in this regard to protect consumers in the short to long-term so that consumers do not find themselves in financial distress as a

result of reckless lending and borrowing patterns. Where credit has knowingly been offered, and extended to consumers who were not in a position to repay or incur such debt. Thus, rogue credit providers gave this to the consumer recklessly.

10.4 Section 88C

10.4.1 Financial and Employment circumstances

Consumers who are in between jobs and do not have fixed employment, should not automatically be eligible for debt interventions due to the change in circumstances – the consumers must demonstrate the period of distress and that they have exhausted other available measures. These include where credit providers may freeze that consumers 'situation' and thereby their account to provide immediate interim relief. Once the consumer has attained fixed or part-time employment, which allows the re-servicing of the debt, their account will be reinstated. However, it must be noted that the consumer's account is frozen in accordance with the application of in-duplum. However, this must be subject to a sunset clause and strict parameters to ensure that consumers do not abuse this system and claim unemployment for extensive and consistent periods of time.

If a consumer manages to attain employment, however such employments pays less then the system as per the individual credit providers must allow for such distinction and deviation and thus amend the agreement and payment terms and instalments accordingly.

If a consumer is still unable to find and retain employment, and after a certain period is still without a job, the onus is on the responsible credit provider to acknowledge certain factors based on the consumer's individual circumstances, and thus an acceptance of debt write off is necessary and undertaken.

10.5. Section 88F (1) and (2)

10.5.1 Debt Intervention Measures as prescribe by the Minister

The MFSA is of the view that the power of the Minister to prescribe debt interventions presents an unquantifiable risk and introduces uncertainty and instability in the credit market eco-system. Consumers will directly experience the impact of this by way of financial exclusion and access to financial and credit products.

The Minister of Trade and Industry's ability, as contained in the Draft Bill, to prescribe debt intervention measures to relieve household debt should in addition to what has been provided for should include strict guidelines for applications including the process to be followed prior to prescribing a debt intervention and the basis on which such an intervention is pursued.

In this regard, the MFSA proposes that:

- Where the Minister seeks to prescribe a debt intervention measure, that the targeted industry sector or segment of the population intended to benefit therefrom is clearly defined.
- The rationale for the aforementioned target must be clearly stipulated accompanied by the relevant evidence, demonstrating why the identified target is in need of such a relief
- The identified targeted beneficiaries are not guaranteed an automatic and unrestricted relief
- An application process must be established, akin to that provided for in this Draft Bill, which should be followed and applied including the adjudication process for determining the beneficiaries and recipients of such relief within the identified targeted sector or segment of society.
- Applicants must sufficiently and appropriately provide the relevant information/documentation demonstrating that they have been and are in significant financial distress for a minimum period of 6 consecutive months, which has placed their movable and immovable assets at risk and which has resulted in their defaulting on servicing credit agreements and debt agreements. Therefore applicants must demonstrate that their circumstances are irrecoverable without assistance.
- Furthermore, applicants must show that they have exhausted all available measures including in instances where they have credit life insurance and that they have also sought access to voluntary measures offered by credit providers as well as mediation between the credit provider and consumer in respect of the applicable credit agreement.
- Applicants must be assessed on a case-by-case basis evaluating the merits of these.

- The data system and data resources to support and facilitate the evaluation of applicants must accurate and populated with the relevant information to guard against abuse of prescribed measures especially in instances where consumers have benefited from the legislated once-off debt interventions as provided for in this Draft Bill.
- Prescribe debt interventions must follow a system of phased orders applicable for specified time periods akin to that provided for in this Draft Bill.
- Prescribed debt interventions must be applicable for a specific time period including the provision of a sunset clause.

10.6. Section 157A and Section 161

10.6.1. Offences and Penalties

The application and enforcement of penalties on a credit provider are only effective if implemented and enforced. Furthermore, those rogue illegal unregistered credit providers are not subject to this provision. Therefore it does not address the issue of reckless and irresponsible lending practices and the impact this has on the consumer.

Moreover, it places unreasonable and unrealistic requirement on the credit providers, which falls outside of the ambit of existing legislative and regulatory provisions.

Furthermore, the determination of what constitutes an offence and is thus subject to a penalty is open ended and insufficiently defined and quantified such as those included in Section 157B.

While the MFSA does not and will not defend any micro-financier who is found in contravention of the prevailing legislative and regulatory prescripts, the imposition of penalties (fine and or imprisonment) must be consistent with the offence including taking into account the nature of the credit agreement and type of credit provider.

Micro-financiers are small-scale businesses, they are not large credit providers nor are they commercial banks therefore 10% of its annual turnover or R1 000 000 would substantively cripple the sustainability of the business and its ability to responsibly provide financial and credit product to those consumers in need.

Micro-financiers are small independently owned businesses, which in many cases are not their core business. However, their primary business enables them to provide and offer short-term credit to those in need.

11. Unintended Consequences

11.1. Moral hazards

Consumer education and awareness in the process of debt relief is paramount to mitigating moral hazard. Thus consumers must acknowledge the basis upon which they have been granted an intervention and such debt relief and must thus adhere to restrict rehabilitation guidelines and requirements to ensure that such relief was not granted in vein and that they may benefit from such relief in the short to long-term.

Accordingly, consumers must understand that in order for such relief to ultimately be beneficial for them they must be subject to and comply with a rehabilitation programme, which will enable them to responsibly re-enter the credit market after a specified time period. Therefore it is our contention that the Department of Trade and Industry must ensure the establishment of a financial literacy and budgeting skills programme which is available to all debt intervention applicants regardless or whether they have been granted debt relief or benefited from a debt intervention.

MFSA would further caution against cultivating a culture of consumer being accustomed to the cycle and precedence of debt relief. This may result in consumers recklessly incurring debt in the hope that it will be written off or subject to debt relief interventions.

11.2. Removal of Adverse Credit Information

The removal of adverse credit information has been a positive stepping stone for consumers. However, if this becomes an expected 'norm' for consumers it will result in cultivating bad borrower practices and undermine a consumer's legal obligation to service their debt incurred.

The implementation of this is however also a concession. While it may appear to benefit consumers practically it results in credit providers adopting a risk averse and an even more cautious approach to lending. Consequently, this inadvertently penalizes those consumers who did not 'benefit' from such a 'once-off' regulatory remedy.

11.3. Variable inflation for various LSMs

Further consideration should be given to the Variable inflation for various LSMs, as for Lower LSMs credit is more expensive. In this regard, credit providers will also become more risk averse in the extension of credit. As such they may only provide loans to certain people with integrity for which these good consumers will pay the price and premium.

11.4. Legitimate consumer circumstances

Consumers who apply for debt relief must only do so on the basis of authentic and legitimate circumstances and reasons. This is to guard against the assumption by consumers that even though they do not at this stage need or require debt relief, but while it is on offer, it should be theirs to attain and benefit from 'like everyone else'.

11.5. Financial Exclusion and Stimulating the illegal Credit Market

Should legislation force microlenders to disrupt the scales in favour of granting debt relief without discretion and legitimate circumstances, legislation will result in a situation where credit providers exit the market. Thus leaving consumers with two options - either being outside the credit market (financial exclusion) or being forced into resorting to the underground illegal rogue credit market.

12. Considerations for the Draft Bill

12.1. Responsible lending and consumer awareness/education

Responsible lenders will ensure that consumers are sufficiently appraised in respect of the credit products they intended and eventually agree to purchase. However, consumers also have responsibility and must be treated as such within a legislative and regulatory framework as well so as not to inculcate bad financial practices that contribute to over-indebtedness.

12.2. Enforcing regulation for illegal lenders by the NCR

The National Credit Regulator (NCR) through its enforcement powers and capabilities must clamp down illegal and unregistered rogue lenders who take advantage of consumers on. The current provisions contained in this Draft Bill do not apply to illegal lenders by virtue of their status as unregistered credit providers. Therefore while the intention of such clauses are understood and the desired objective may not be reached.

12.3. A pragmatic and scientific approach

Dedicated debt intervention legislation must consider rationally as well as scientifically the consequence of providing for debt relief in dedicated legislation in order to ensure a desired and long-term solution for over-indebtedness. Accordingly, we believe that solutions to address over-indebtedness and offer debt relief must be:

- A quality solution
- Affordable for short-term consumers
- Fair in respect of credit providers
- Sufficiently reassuring for the Regulator
- Built on consumer education

13. Conclusion

MFSA members engage with consumers who are of the most deprived of quality financial services. We are therefore of the opinion that an important component of the credit market outside of high street institutions such as commercial and retail banks are not fully being heard in this matter.

Moreover, we are of the view that any legislation for debt relief, which is not accompanied by lessons for both consumers and credit providers', inculcates bad practices. In this regard, any write off of debt (whether imposed or voluntary) will cultivate the same outcomes and behaviour if it is done so without any education and teachings on the imperative of responsible lending and borrowing practices.

It is vitally important that any legislative interventions recognise that borrowing and lending are part of economic stimulus and that the role of lending in the market is to promote and support growth and development, for both consumers and the economy.

MFSA further states that any legislation cannot regulate and impose debt relief as if all credit providers are commercial and retail banks.

Moreover, any legislated and further prescribe debt intervention and debt relief measures must consider the credit market as an eco-system whereby consumers are one of numerous stakeholders therein.