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What a (debt) relief...

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On 13 August 2019, President Cyril Ramaphosa signed the much-anticipated National Credit Amendment Bill into law (the Amendment Act). The Amendment Act seeks to give greater effect to the overarching objective of the National Credit Act, 2005 (National Credit Act), namely for the promotion of a fair and accessible credit market in South Africa. The Amendment Act aims to address and prevent, as well as provide additional mechanisms for resolving, consumer over-indebtedness.

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However, the Amendment Act has received significant criticism, especially from the banking sector in South Africa, which has suggested that not only will the Amendment Act be harmful to consumers, but it will also be detrimental to the South African credit market in general.

The Amendment Act recognises that there are categories of consumers who are unable to access current natural person insolvency measures and seeks to provide a suitable alternative. Accordingly, the Amendment Act introduces the concept of *debt intervention* as an alternative to the traditional natural person insolvency measures. In terms of the Amendment Act, a natural person with total unsecured debt owing to one or more credit providers of no more than R50,000, may apply to the National Credit Regulator for debt intervention in order to be declared over-indebted.

To qualify for debt intervention, the applicant must have accumulated not more than R50,000 in debt from either unsecured credit agreements, unsecured short-term credit transactions and/or unsecured credit facilities. Furthermore, the applicant must either receive no income at all or where the applicant does receive an income, the gross amount must not have exceeded R7,500 per month for the preceding six months.

In terms of the Amendment Act, if the National Credit Regulator determines that an applicant is a suitable candidate for debt intervention, but such applicant does not have sufficient income or assets for a re-arrangement of debt obligations, the National Credit Regulator must refer the matter to the National Credit Tribunal. In such a scenario, the National Credit Tribunal is entitled to suspend all of the applicant's qualifying credit agreements in part or in full for 12 months, which period can be extended for a further 12 months. The National Credit Amendment Act, through the introduction of debt intervention, has the potential to expunge qualifying consumers from their various debt obligations.

Current reports estimate that the debt intervention, as provided for in the Amendment Act, may result in debt write-offs of between R13-20 billion. Furthermore, the Banking Association of South Africa (BASA) who has been a vocal opponent of the Amendment Act in its current state, has indicated that the Amendment Act may do more harm than good, especially to consumers.

The Amendment Act and the concept of debt intervention may have the unintended consequence of making access to credit more difficult for low-income consumers, who already face increased challenges in accessing fair credit. According to BASA, the Amendment Act is likely to limit the ability of credit providers (especially banks) to grant credit to consumers who earn less than R7,500 a month.

BASA stated,

> *Banks cannot extend other people's money as loans – for education and entrepreneurship – if they cannot be sure these loans can be repaid. By making provision for the arbitrarily expunging of debt, the Act effectively prevents banks from extending responsible credit, particularly to those in low-income households, who often need it most.*

Further, where credit is granted to consumers who fall within the R7,500 gross-income per month threshold, such credit will likely come at an increased cost in order to counteract the new and additional risks that the Amendment Act will introduce.

Consequently, and to the detriment of South African consumers, the Amendment Act is likely to exclude the already vulnerable low-income members of the economy from the credit-market. The Amendment Act could therefore achieve the opposite of what it has sought to accomplish, with the potential to affect the South African economy significantly.

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