



DEAN WILLIAM MACPHERSON MP

PO Box 15 Cape Town 8000 Tel: (021) 403-8641 Fax: (021) 461 0092
Cellphone: 083 776 0202 E-Mail: dean@eduform.co.za

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Mr. Ebrahim Patel
Minister for Trade, Industry and Competition

RE: PUBLIC INTEREST CREDIT AGREEMENTS IN TERMS OF SECTION 11 OF THE NATIONAL CREDIT ACT

I would like to submit the following proposal to you for consideration to invoke Section 11 of the National Credit Act relating to public interest credit agreements.

Below you will find a detailed explanation and solutions to the problem that immediately faces us as a country and millions of consumers.

I would request you to consider the recommendations and would be willing to engage with you on this matter further.

Kind Regards

Mr Dean Macpherson

Member of Parliament (DA)
Shadow Minister: Trade and Industry

Public Interest Credit Agreements as a mechanism to provide Short-Term Public Interest Loans to alleviate financial distress during the declared National State of Disaster & Covid-19 Pandemic:

The economic rationale for invoking Section 11 of the National Credit Act, 2005

1. Background and Context

1. The Coronavirus is a public health emergency of international importance, which has created unprecedented social and economic disruptions. South Africa is not insulated from the effects of COVID-19 nor the financial and economic impact and consequences of the nationwide lock-down. The recent ratings downgrades by Moody's and Fitch has exacerbated this impact, against the backdrop of low economic growth and much needed growth reforms in South Africa. The Coronavirus and the socio-economic impact of prevention and containment measures instituted, notwithstanding concerted economic mitigation measures, has set-back the South African economy, employers, workers and consumers even further.
2. The prevailing economic and social impact of COVID-19 means, among others, that very particular and vulnerable consumers are experiencing financial distress through no fault of their own. These consumers are not necessarily, at present, catered for and have access to the relief measures introduced by the banks. Furthermore, the recent downgrades have also resulted in a constrained economic environment.
3. The economic fallout during and after the lock-down is inevitable and inclusive of the impact on citizens, businesses as well as consumers active in the credit market. In the event that the National State of Disaster prevails, including measures such as the lock-down period is extended, the negative impact may increase.
4. Consumers active in the credit market may not at present qualify for finance or financial assistance, due to being unemployed or in a state of uncertainty in terms of job security going forward, at a time when the need for credit has never been greater.

5. The risk of distressed consumers approaching entities and ‘loansharks’ who are not registered with the National Credit Regulator (“NCR”) increases exponentially in a time like this. It is however understandable that given the distress being experienced by consumers, they may be desperate for financial assistance and may then explore all possible and even unlawful avenues to obtain credit.

2. **Provision for public interest credit agreements during circumstances of natural disaster in the Section 11 of the National Credit Act (NCA) 2005:**
 - 2.1 During this time of disaster and the pull through effect on the South African economy beyond the crisis, including during the stabilisation, post-crisis recovery and normalisation period, enjoins the State and private sector to unite behind public interest, pragmatic and common-interest proposals which cushion the impact and provide measures to support an economic recovery.
 - 2.2 On the part of the State, this requires fully utilising all available measures from within its arsenal, including legislation.
 - 2.3 Over and above existing financial services and relief measures made available by the Government and the financial sector, one such mechanism which has not yet been fully explored, is found in the NCA, which offers a solution for distressed consumers requiring access to credit and financial assistance during circumstances of disaster.
 - 2.4 There is no doubt that by having declared a National State of Disaster in terms of the Disaster Management Act of 2002, that the condition for a disaster as contemplated in the NCA, does in fact exist.
 - 2.5 While to date, this provision in the NCA has not been invoked and there is no precedence against which to test its invocation, the prevailing economic circumstances and declared National State of Disaster, provide adequate rationale necessitating activating these provisions for the purposes that it was intended in law.
 - 2.6 Section 11 of the NCA - **“Public Interest Credit Agreements”**, provides for a mechanism, which may be activated by the Minister of Trade and Industry, during circumstances of natural disaster, such as the prevailing State of a National Disaster.

2.7 The NCA provides for “Public Interest Credit Agreements” defined as: *“a credit agreement that meets all the criteria prescribed in terms of section 11, and which is therefore exempt from the application of provisions of this Act concerning reckless credit”*.

2.8 It provides for two mechanisms for this measure to be activated:

1. A Declaration

In terms of Section 11(1)(a), the Minister may make a declaration in accordance with subsection 11(2) of the NCA:

“(2) The Minister, by notice in the Gazette, may make a declaration contemplated in subsection (1)(a)-

(a) in order to promote the availability of credit in all or part of the Republic in circumstances of natural disaster or similar emergent and grave public interest: and

(b) with or without prior notice or consultation, as the Minister may determine having regard to the circumstances.”

2. Regulations

In terms of Section 11(1)(b), the Minister may make regulation in accordance with subsection 11(3) of the NCA:

(3) The Minister may make a regulation contemplated in subsection (1)(b)-

(a) in order to promote the availability of credit in all or part of the Republic in any circumstances that the Minister considers to be in the public interest; and

(b) in accordance with the provisions of section 171(2) of the NCA

2.9 Section 171(2) of the NCA states:

(2) Before making any regulations in terms of subsection (1)(a), the Minister-

(a) must publish the proposed regulations for public comment; and

(b) may consult the National Credit Regulator and provincial regulatory authorities.

2.10 Public Interest Credit Agreements are a mechanism for short-term public interest loans to eligible consumers active in the credit market and offer assistance to those experiencing financial distress due to the impact of COVID-19 and measures put in place to manage the National State of Disaster associated therewith.

2.11 Section 11(4) and 11(5) of the NCA states:

- ***11(4) When making a declaration or regulation contemplated in subsection 11(1) the Minister must prescribe the following criteria applicable to determining whether a credit agreement qualifies as a public interest credit agreement:***
 - (a) The public interest circumstances in which credit may be granted or made available to a consumer;***
 - (b) the maximum permissible principal debt;***
 - (c) the maximum permissible duration of the credit agreement; and***
 - (d) the area within the Republic in which the consumer under such an agreement must reside or carry on business.***

- ***11(5) A public interest credit agreement is exempt from the application of Part D of Chapter 4 (“Over-indebtedness and reckless credit”) to the extent that it concerns reckless credit.***

3. Recommendations

3.1 Therefore, the Minister may make regulations invoking the provision of “Public Interest Credit Agreements” as provided for in the NCA.

3.2 It would therefore be prudent for the Minister to activate Section 11(3) of the NCA in order to simultaneously:

- a) By necessity ensure expediency and the need to move with speed given the public interest imperative to bring relief to affected consumers in a time sensitive manner, while maintaining sound regulatory principles as well as consumer protection considerations.

- b) Enable a limited time period for consultation on these Regulations and afford various critical in stakeholders the opportunity to make representations to the Minister.

- 3.3 Such regulations should include the following provisions as necessary safeguards against abuse by both credit providers and borrowers.
- 3.4 Accordingly, these regulations including the Minister's intent to activate Section 11 of the NCA must be published in the Government Gazette with comment due within 72 hours of date of publication thereof. The timeframe for implementation must be clearly stated i.e. that the intended regulations are enacted and come into force within 7 calendar days of the publication of the Notice, having due regard for such comment received, which requires amendment to the published Notice.

4. Provisions in the Regulations

- 4.1 These regulations apply to all credit providers.
- 4.2 Consumers may only access a public interest credit agreement from credit providers with whom they have an existing account or relationship.
- 4.3 This provision should apply nationally and not be restricted to specific areas or Provinces within the country.
- 4.4 The maximum permissible principal debt is R4500 per existing short-term loan threshold.
- 4.5 Such credit agreements may be revolving i.e. consumers may access and enter into a new public interest credit agreement, during the National State of Disaster, provided that they have repaid and settled previous agreements.
- 4.6 These credit agreements are subject to a 12-month repayment term.
- 4.7 The Credit Bureau's must flag these loans as Public Interest Credit Agreements and report them to the NCR who will provide a report on a monthly basis to the Minister on the number and amounts of these loans granted.
- 4.8 The Minister provide instructions as to the interest and fees payable on these agreements in accordance with the prevailing limitations of fees and interest rates, published in the Government Gazette No. 39379 on 6 November 2015 with the additional concession of a reduction of 1% applicable to all fees and rates).

- 4.9 While Public Interest Credit Agreements are not subject to the reckless lending provisions in Part D of Chapter 4 of the NCA and the affordability regulations in regulation 23A of the Regulations made in terms of the National Credit Act, 2005, the Minister prescribes:
- a. The implementation of affordability assessments with the basic minimum criteria in order to prevent abuse of the system by credit providers and consumers. These minimum requirements imposed on credit providers to take practical steps to ensure consumer affordability and eligibility, which include:
 - Proof of Financial Distress
 - Income and extent of interruption thereto (i.e. not paid full salary etc.) for individuals as well as SMMEs
 - Existing financial obligations
 - Dependents (i.e. family and or employees)
 - Debt repayment history per Credit Bureau records
 - b. That when credit providers exceed the maximum permissible principal debt and demonstrate unreasonable lending practices including aggressive marketing practices of such an agreement to consumers, that this is subject to a penalty imposed by the NCR.
- 4.10 The Minister declares that these credit agreements are ring fenced and excluded from the application of the National Credit Amendment Act 2019 (i.e. debt interventions).
- 4.11 The NCR, Banking Services Ombudsman and Credit Ombudsman may upon expiration of the declaration of the National State of Disaster in terms of the Disaster Management Act 2002, receive complaints and concerns from consumers based on a predetermined criteria of assessment and due diligence. Upon verification of the veracity and validity of the complaint received, the relevant authority with whom the complaint was lodged may approach the credit provider concerned for clarity and to institute voluntary remedies and resolutions in the interests of consumer protection.