

**the dtic**

Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

DISCUSSION DOCUMENT (CONSULTATION):
RECORDED DURING THE LOCKDOWN PERIOD UNDER THE
COVID-19 PANDEMIC

1. INTRODUCTION

- 1.1 The President declared a national state of disaster on 15 March 2020 in response to the outbreak of COVID-19 pandemic in the republic. Soon after the national lockdown was also declared by the President and given effect in the Disaster Management Regulations by the Minister of Cooperative Governance and Traditional Affairs that followed. That meant that the general population was under the national lockdown with limited movement, only essential workers and certain key industries were permitted.
- 1.2 The declaration also brought about an increase in the negative socio economic implications to the citizens of the republic, with only a handful of the citizens working during this time, meant a loss of income, reduction in income and employment for many. Financially distressed consumers increased sharply as more and more consumers failed to meet their financial obligations, which has resulted in some consumers qualifying for payment breaks as offered by the financial institutions and some having their credit records deteriorating sharply.
- 1.3 In response to the devastating effects of COVID-19 pandemic and concerns raised by interested parties on behalf of evicted consumers and consumers 'blacklisted' (consumers listed with adverse credit information), the Government has introduced, and plans to introduce a number of interventions aimed at assisting its citizens to ease the suffering experienced during this time. One of the key interventions of Government through the Department of Trade, Industry and Competition

(dtic) is the issuance of the regulations prohibiting the adverse listing of consumers by credit and service providers and the removal of adverse consumer credit information on consumer credit records for certain defined periods.

- 1.4 The regulations are aimed at assisting all consumers who are negatively affected by the national state of disaster, provided the consumers were in good standing before the national state of disaster and subsequently have had their credit records deteriorating after the commencement of the national state of disaster.
- 1.5 **the dtic** has worked in concert with the National Credit Regulator (NCR) to come up with the regulations and the Ministry of Trade, Industry and Competition (TIC) has consulted the following Ministries: Cooperative Governance and Traditional Affairs, Water and Sanitation, Presidency, Justice and Correctional Services respectively. At this stage of the process, it is of importance to consult the credit industry whom will play an active and important role in the implementation of the regulations after their publication.
- 1.6 It must be borne in mind that the regulations are issued in terms of the Disaster Management Act, 2002 hence the normal process of public consultation in terms of the National Credit Act, 2005 will not be followed. This discussion document creates a platform for **the dtic** to engage and consult the credit industry before the publication for implementation. Any other party or person may make representation within 14 days after publication of the regulations for the Minister of TIC to attend to any concerns or matters of clarity.
- 1.7 Written input on the discussion document can be e-mailed to SSasayi@thedtic.gov.za and SKondleka@thedtic.gov.za by no later than 24 July 2020. The draft regulations are herein accompanying this discussion document.

2. OBJECT OF THE PROPOSED REGULATIONS

Regulation 1 dealing with the interpretation and definitions

- 2.1 This section deals with definitions in the regulations and to achieve alignment with the principal Act (National Credit Act, 2005, as amended).

Definitions have been provided for in the following expressions as defined in the principal Act: **“Adverse consumer credit information”**, **“In good standing”** **“Minister”** and **“Payment profile information”**.

The following additional definitions to give context to the Regulations include: **“COVID-19”** and **“National disaster”**.

Regulation 2 dealing with the Purpose of the Regulations

- 2.2 This regulation outlines the purpose of the regulations which is to prohibit the listing of adverse consumer credit information and provide for the removal of adverse consumer credit information occurred during the period of the national state of disaster.

Regulation 3 deals with the Application

- 2.3 This section of the regulations gives the necessary parameters for the implementation and set the criteria for the financially distressed consumers who will be able to benefit from these regulations. Further it highlights that the regulations will apply from the date of declaration of the national state of disaster and provides termination of the regulations on 30 September 2020 or when the national state of disaster is no longer applicable, whichever comes first. Furthermore, the credit bureaux are prescribed a 14-day period to effect the removal of adverse consumer information from the effective date of the regulations. The regulations do not apply to the payment profile information reflected on consumers' credit bureaux

records. This information will not be removed and will continue to be reported on by credit and service providers to the credit bureaux for the duration of the regulations.

Regulation 4 deals with the Removal of adverse consumer credit information and timeframes

2.4 This section of the regulations gives the scope of information to be removed effective from 1 April 2020 to 30 September 2020. The removal must commence 14 days from the effective date of the regulations. On application by the credit bureaux, the NCR is empowered to grant an extension of 7 days. The regulations also provide that within this period, new listing of adverse consumer credit information is prohibited.

Regulation 5 dealing with the Notification of other registered credit bureaux

2.5 This Regulation provides for the credit bureaux to notify other registered credit bureaux within a prescribed period of 3 days of the adverse information removed and for other registered credit bureaux to effect the same within a period of 3 days.

Regulation 6 deals with the Restrictions on the storage and usage of removed adverse consumer credit information

2.6 This section of the Regulations prohibits the credit bureaux from storing, using or selling the adverse consumer credit information removed in terms of these Regulations. Further, prohibits credit providers from using or resubmitting adverse consumer credit information removed in terms of these regulations for any reason.

Regulation 7 deals with the Audit and compliance monitoring

2.7 This Regulation provides for the credit bureaux to provide audit reports to the NCR 1 month after the regulations are no longer in operation confirming adverse information removed, making any recommendations appropriate to the implementation of these Regulations and a plan for the

implementation systems and procedures to prevent adverse information removed from being listed again. The NCR is also compelled to monitor compliance with these regulations by registered credit bureaus and credit providers.

Regulation 8 deals with the Liability for debt

- 2.8 This section highlights the fact that although the adverse consumer credit information has been expunged in terms of these regulations, the consumer is still liable to make payment and fulfil all other obligations under the credit agreement.

Regulation 9 deals with the Representations on these Regulations

- 2.9 This section of the regulations provides for any person to make representations within 14 days on publication of the regulations to raise any concerns or require clarity on these regulations. This is to ensure parties that were never consulted are given an opportunity to raise any matter that relates to the regulations. This representation will not impact on the effective date of the regulations. They will become effective on the date they are published in the Gazette.

Regulation 10 deals with the Information and complaints

- 2.10 This section of the Regulations provides the necessary information for consumers who are affected by these regulations to contact the NCR or the registered credit bureaux.

Regulation 11 deals with the Title and effective date

- 2.11 This section provides for the title and the coming into effect of the regulations. The regulations will be published as the Removal of Adverse Consumer Credit Information.

