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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 976

Mr D W Macpherson (DA) to ask the Minister of Trade, Industry and Competition:

- (1) What is the name of each person he consulted from the credit and banking sectors regarding the possible enactment of section 11 of the National Credit Amendment Act, Act 7 of 2019;
 - (2) whether he has found that invoking the specified section will be beneficial to the economy; if not, what is the position in this regard; if so, what are the relevant details;
 - (3) what processes will be followed in order to invoke the specified section?
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REPLY

The pandemic together with the impact that it has on the economy is placing consumers, workers, firms and vulnerable members of society under enormous pressure.

In order to combat the rapid spread of COVID-19 as effective as possible and limit the damage to the economy, Government has taken a number of measures that have been publicised. Further measures continue to be under consideration.

During the course of addressing both the pandemic and the destructive and other effects of the disaster, the Ministry and Department has been reviewing provisions of legislation within its mandate, including the Competition Act and the National Credit Act, to identify measures that can be taken responsibly to support families and businesses in distress.

On 20 March 2020, I gazetted an exemption from sections 4 and 5 of the Competition Act, to enable banks to meet and agree on terms to support consumers and small businesses in distress. This includes payment holidays and debt relief for businesses and individuals in financial distress; limitations set on asset repossessions of businesses and individuals in financial distress; and the extension of credit lines to individuals and businesses in financial distress.

In respect of the National Credit Act, while the Act imposes prudent measures to mitigate against reckless lending by credit providers, it also contains provisions that are aimed at assisting distressed consumers in cases of disaster or other unforeseen

emergencies. These include both the emergency loan provisions; and the public interest loan provisions in the Act. I am advised that, in terms of the Act, the provisions relating to reckless credit equally do not apply to either emergency loans or public interest credit agreements.

In the initial discussion with the Department and the Credit Regulator, there was a recognition of the need for additional finance and facilities that would be required over the period of the COVID-19 national disaster; at the same time, both entities were concerned about the risk of over-indebtedness to vulnerable consumers which may result from reckless lending.

Officials from the Department thus engaged with a range of industry stakeholders on the most appropriate measures to provide additional access to finance to consumers in need, while mitigating any risks which may exist. These engagements included the following:

- Ms Nomsa Motsegare, CEO of the National Credit Regulator;
- Mr Kuben Naidoo, Deputy Governor of the South African Reserve Bank and CEO of the Prudential Authority;
- Mr Lungisa Fuzile, CEO of Standard Bank South Africa;
- Mr. Cas Coovadia, Managing Director of the Banking Association of South Africa at the time;
- Ms. Marguerite Jacobs, General Manager responsible for Legislation & Regulatory Oversight for the Banking Association of South Africa;
- Mr Abdul Waheed Patel of Ethicore, in their capacity as advisors to Microfinance South Africa; and
- Mr Michael Lawrence, Executive Director of the National Clothing Retail Federation.

The National Credit Regulator also engaged with the South African Reserve Bank and relevant Government entities on the matter.

In the course of the discussion with stakeholders, it was clear that the provisions of the National Credit Act were not the only, nor the most important challenge for financial institutions to provide additional credit. Banks in such circumstances are concerned about the repayment of loans advanced. This was a key rationale for the launch of the R200 billion Loan Guarantee Scheme, as a joint effort by the Government, the SARB and commercial banks.

During the consultations, industry stakeholders advised that the emergency loan provisions of the Act would achieve similar objectives to the public interest credit agreement provisions; however further guidelines on the use of the emergency loan provisions would aid the industry.

In terms of the Act, an emergency loan is defined as a credit agreement entered into by a consumer to finance costs arising from or associated with—

- a death, illness or medical condition;
- unexpected loss or interruption of income; or
- catastrophic loss of or damage to home or property due to fire, theft, or natural disaster,

affecting the consumer, a person who is dependent upon the consumer or a person for whom the consumer is financially responsible.

In terms of the Act, no further regulation is required to enable use of the emergency loan provisions, however “reasonable proof of the existence of the emergency” must be obtained and retained by the credit provider. While such “reasonable proof” is not defined in the Act, the National Credit Regulator published a circular on 21 May 2020, to provide guidelines to credit providers on the issuance of emergency loans, and the documentation which constitute “reasonable proof”. These guidelines can be found on the website of the NCR at <https://ncr.org.za/documents/Circulars/Circular-05-of-2020-%20Emergency%20Loan%20Guideline.pdf>.

The emergency loan definition provides for relief for many of the challenges which consumers will be experiencing during this Covid-19 national disaster, and which may have been specified in any regulation or declaration regarding section 11. Following consultation, I have accepted advice that the emergency loan provisions should be utilised as it requires no additional legislation.

Subsequent to the publication of the emergency loans guidelines, officials from the Department have further engaged with credit providers. I am advised that credit providers have welcomed the guidelines published by the NCR and that BASA have reported that banks have begun to use the emergency loan provisions.

The Department will continue to engage with the sector on the efficacy on these measures. Should the emergency loan provisions in the Act fail to address the challenges which consumers are facing, I may consider which other measures would contribute, and this may include relooking the value of invoking section 11 of the Act to define certain credit agreements as public interest credit agreements.

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