

***Presentation by the National Credit Regulator
to the Joint Meeting: Portfolio Committee on Trade, Industry and
Competition; and the Standing Committee on Finance***

THE REGULATION OF THE BANKING SECTOR IN RELATION TO CREDIT PROVISION AND COMPETITION MATTERS - APPLICATION OF THE NATIONAL CREDIT ACT 34 of 2005

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National Credit Regulator

Outline of the Presentation

1. **Mandate of the NCR**
2. **Application of the NCA**
3. **Provisions of the NCA relating to developmental credit agreements**
4. **Recommendations from the study on developmental credit**

Mandate of the NCR

- ❑ Regulate the consumer credit industry in South Africa
- ❑ The mandate of the NCR stems from sections 12,13,14, and 15
- ❑ **Section 13:** The development of an accessible credit market (set appropriate conditions for the supplementary registration of credit, conduct research and propose policies to the Minister in relation to any matter affecting the consumer credit industry, including proposals for legislative, regulatory or policy initiatives.)
- ❑ **Section 14:** Registration function
- ❑ **Section 15:** Enforcement function complaints concerning alleged contraventions of the Act, monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted; investigating areas of non-compliance. referring matters to the Tribunal and appearing before the Tribunal,
- ❑ **Section 16:** Research and publications (issue guidelines, applying for declaratory orders, monitor trends, reviewing legislation etc..)

Application of the NCA

□ Application of NCA

4. (1) The NCA applies to every credit agreement between parties dealing at *arm's length* and made within, or having an effect within, the Republic, except-

(a) a credit agreement in terms of which the consumer is-

(i) a **juristic person** whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic persons, at the time the agreement is made, equals or exceeds the threshold value determined by the Minister in terms of section 7(1); or

Application of the NCA

- ❑ large agreement, as described in section **9(4)**, in terms of which the consumer is a juristic person whose asset value or annual turnover is, at the time the agreement is made, below the threshold value determined by the Minister in terms of section **7(1)**;
- ❑ Where the consumer is the state;
- ❑ Where the consumer is an organ of the state;
- ❑ Where the credit provider is the SARB;
- ❑ Where the credit provider is located outside SA, approved by the Minister on application by the consumer.

Application of the NCA

Examples of relationships that will not be regarded as being at arm's length:

- ❑ **Shareholder loans** (credit provider is a juristic person and the person with a controlling interest to that juristic person, or the person with the controlling interest over a juristic person is the credit provider and the juristic person is a consumer);
- ❑ Where the parties are in a **familial relationship** and a **co-dependent** on one another, or one is dependent on the other.

Threshold Determination

7. (1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine-

- ❑ a monetary asset value or annual turnover **threshold of not more than R 1 000 000** for the purpose of section 4(1);
- ❑ A large credit agreement is described under section 9(4) of the NCA as either a mortgage agreement or any other credit transaction except a pawn transaction or a credit guarantee, and the principal debt under that transaction or guarantee falls at or above the higher of the thresholds established in terms of section 7(1)(b);
- ❑ The threshold determined under section 7(1)(b) is currently at higher than R250 000.

Application of the NCA

- ❑ A juristic person with an annual turnover of R1 000 000 is not regarded as a consumer *i.t.o* the NCA.
- ❑ Even if the juristic person's annual turnover is below R1 000 000, certain credit agreements with that juristic person will also fall outside the scope of the NCA:
 - mortgage agreement; or
 - a credit agreements with principal exceeding R250 000.

Developmental Credit Agreements

Section 10:

(1) A credit agreement, irrespective of its form, type or category, is a developmental credit agreement if-

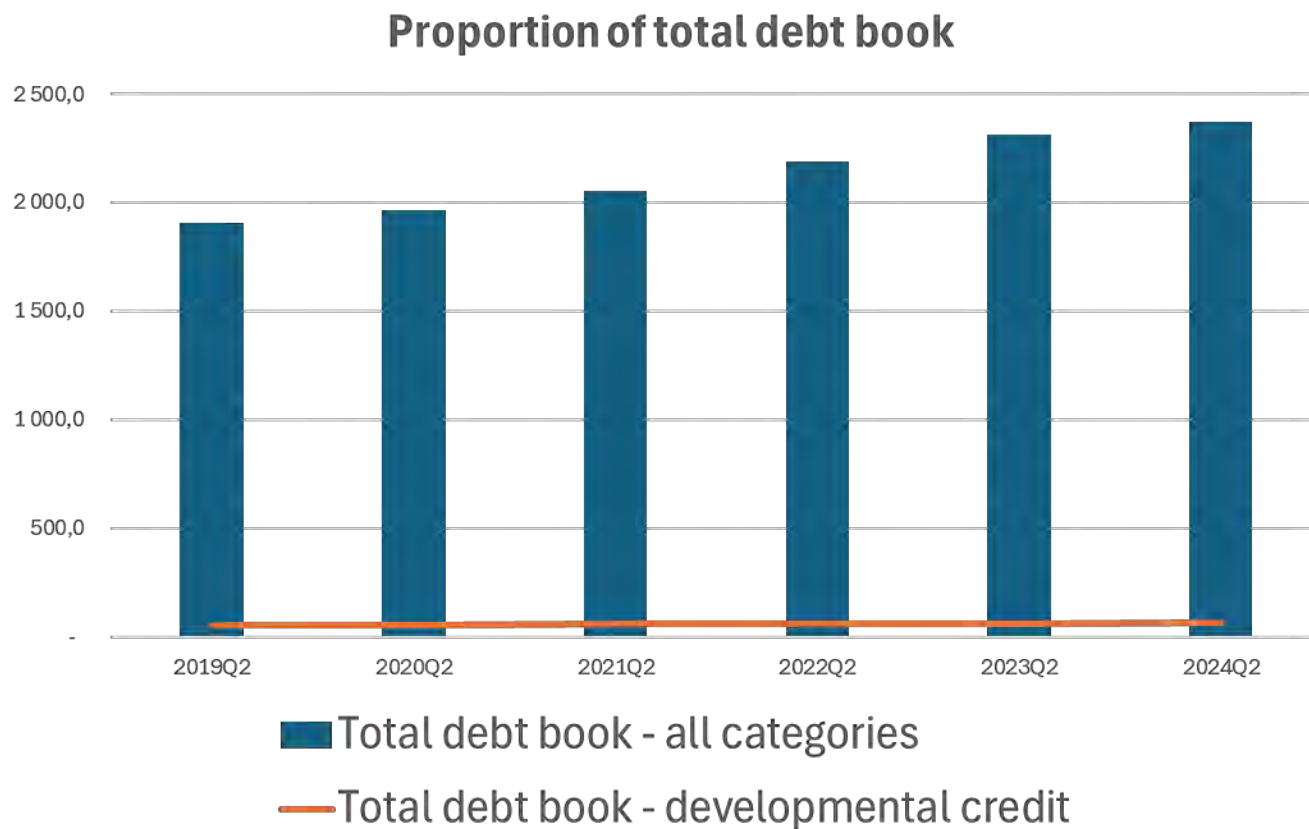
(a) at the time the agreement is entered into, the credit provider holds a **supplementary registration** certificate issued in terms of an application contemplated in s41; and

(b) the credit agreement is between a credit co-operative as credit provider, and a member of that credit co-operative as consumer, if profit is not the dominant purpose for entering into the agreement, and the principal debt under that agreement does not exceed the prescribed maximum amount; or ...

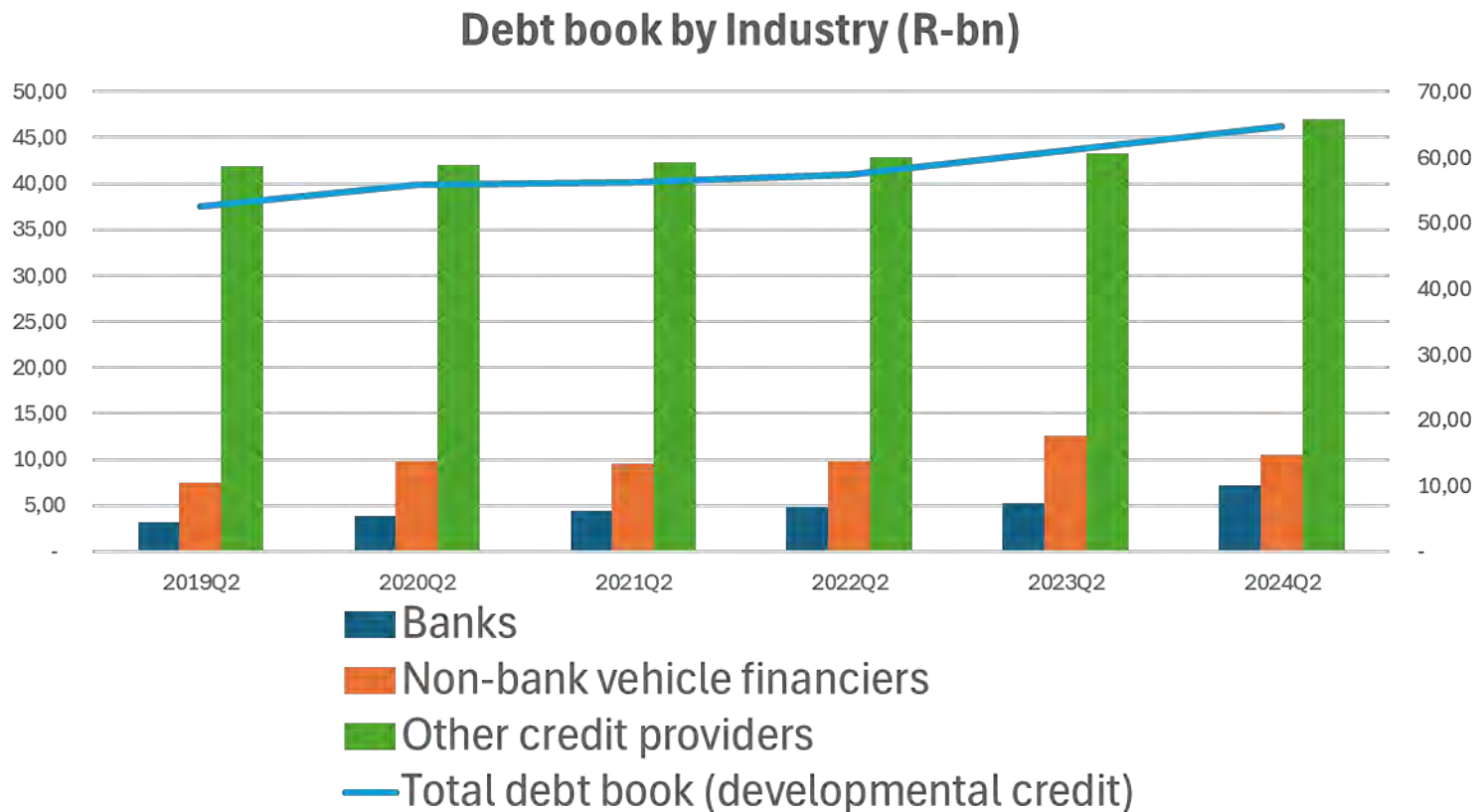
Developmental credit agreements

- ❑ The credit agreement is entered into for any of the following purposes:
 - development of a small business;
 - the acquisition, rehabilitation, building or expansion of low income housing; or
 - any other purpose prescribed in terms of subsection (2)(a).
- ❑ A small business is defined in section 1 as has the meaning set out in the National Small Business Act.

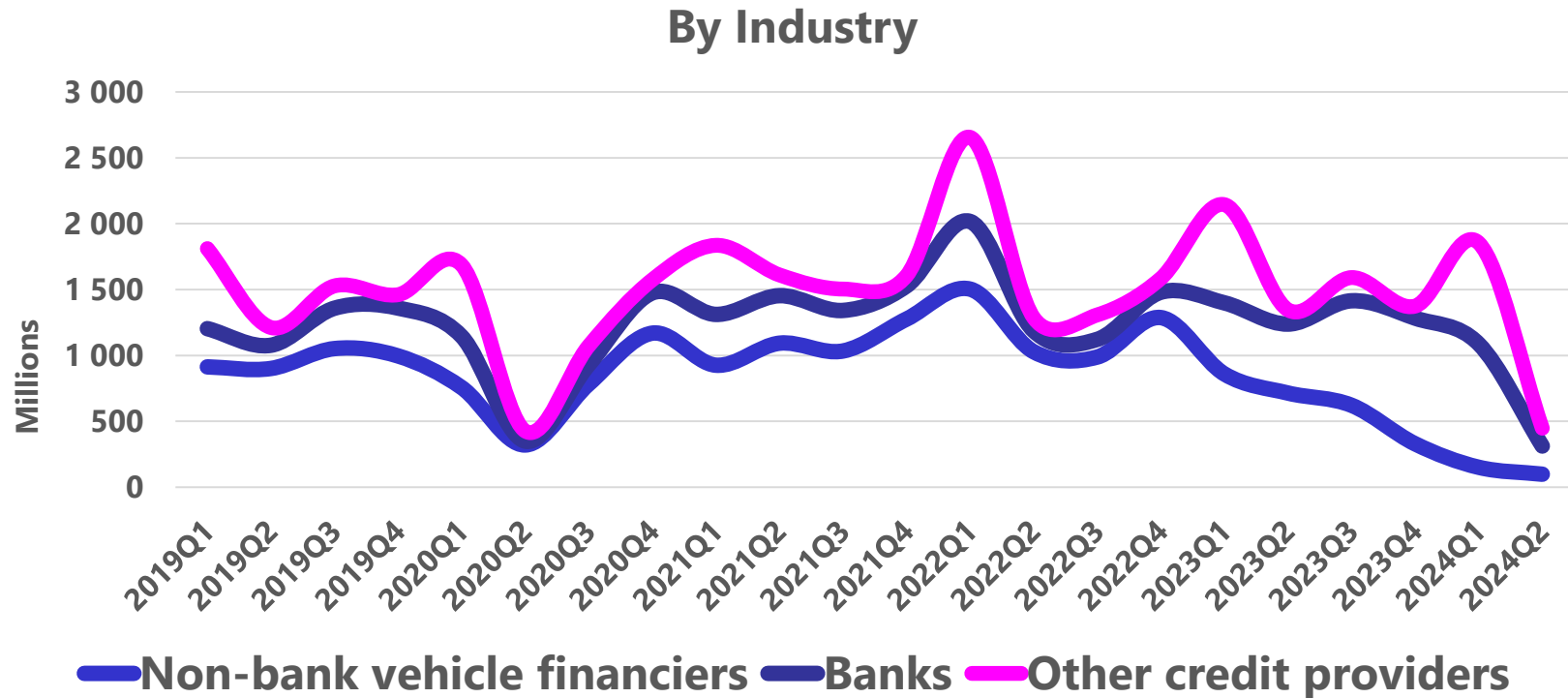
Developmental credit debtors' book



Developmental credit debt book

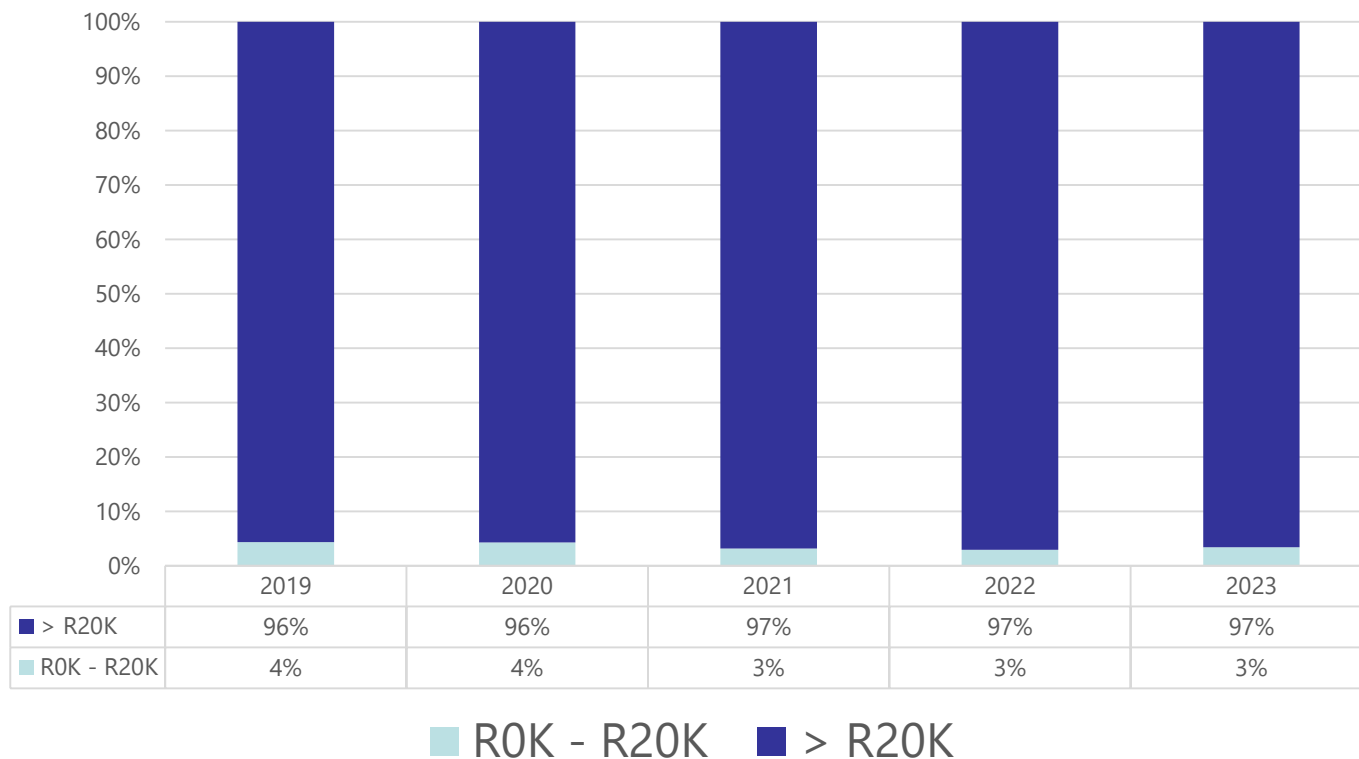


Developmental credit granted



Developmental credit granted

By loan size



Developmental Credit Study: Recommendations

- ❑ The low uptake of developmental credit identified in NCR's quarterly statistics prompted NCR to commission a research study to investigate underlying impediments.
- ❑ The following slides of the presentation outline the recommendations for regulatory reform from the study:

Developmental Credit Study: Recommendations

❑ **Update thresholds to reflect inflation:**

- The maximum threshold contained in Section 7(1)(a) of the NCA be increased to R 2 500 000; and
- large credit agreement threshold be increased to R 600 000.

❑ **Expand NCA Applicability**

- Raise threshold for (small business) juristic persons in terms of Section 4(1)(a)(i) read with Section 10(1)(b)(ii)(aa);
- To enable more innovative business development loans.

Developmental Credit Study: Recommendations

- ❑ **Exempt developmental credit from reckless lending provisions:**
 - All types of developmental credit should be excluded from the credit assessment and reckless credit provisions in Chapter 4 Part D, and accordingly section 78(2) of the NCA should be aligned with regulation 23A.
- ❑ **Broaden scope of developmental credit:**
 - Amend Section 78(2) to include all developmental credit agreements;
 - Move beyond specific reference to *school loans* or *student loans* only.

Business Credit & Risk Information (BusCRI)

- ❑ **Background:** 2011, the National Treasury, Department of Trade, Industry and Competition (dtic) recognised the need for business credit report information sharing to aid SMME access to credit.
- ❑ NCR and IFC MoU, working with SACRRA to enhance SMME access to credit by establishing comprehensive credit reporting.
- ❑ IFC providing the NCR with technical support:
 - Diagnostics for SMME credit reporting;
 - Regulatory and legal reforms (if necessary);
 - Reviewing credit bureau licencing framework;
 - Developing data layout.

Thank You!



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