Debt Forgiveness Programme

Presentation to the Portfolio Committee on Trade & Industry

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OBJECTIVES

- Investigate the feasibility of a debt forgiveness programme in South Africa based on the level of over-indebtedness of consumers;
- Research is based on desktop review of a range of debt relief measures globally;
- Impact of these programmes;
- Recommendations
DEBT RELIEF MEASURES IN SA

• **Sequestration – Insolvency Act**: Debtor’s assets insufficient to satisfy the claims of creditors;

• **Debt Administration – Magistrates’ Court Act**: Outstanding debt ≤R50 000; admin charges a fee of 12.5%; involves restructuring of a debt; not regulated;

• **Debt Review – National Credit Act**: Main aim include addressing and preventing over-indebtedness & providing mechanisms for resolving over-indebtedness; involves restructuring of a debt;

- Credit extended responsibly: over-indebted consumers do not receive a debt discharge but can negotiate alternative payment arrangement
- Debt Counsellor uncovers reckless lending: Credit agreement set aside of restructured.
DEBT FORGIVENESS PROGRAMMES: INTERNATIONAL CASE STUDIES

Croatia A “Fresh Start” scheme (2015)

- To provide a debt discharge to the poorest individuals;
- Objective: to provide stimulus to employment and economic growth;
- Municipalities, utility and telecoms providers, tax authorities, banks required to clear some of the debt & absorb the losses themselves;
- Eligibility: Must have had debt <R76 000, monthly income <R2 770, no property and no savings;
- Results: Scheme was applicable to 60 000 citizens (2% of the adult population), at approx. cost of R467 million.

Impact: Too soon to assess – Could have effect on economic growth; requirement that banks and other private sector institutions write off debt might lead to imposition of higher interest rates/fees to other consumers; increased reluctance by credit providers to lend to worthy low income consumers in the future.
DEBT FORGIVENESS PROGRAMMES: INTERNATIONAL CASE STUDIES

India: Debt Waiver and Debt Relief Scheme to Small & Marginal Farmers (2008)

- Target: Over-indebted farmers in rural areas (justified in part by suicides);
- Over-indebtedness caused by unpredictable rainfall, high interest rates;
- One of largest debt relief schemes in history: affected 36-40million farmers;
- Covered outstanding debt of ₹156billion

Criteria:
- Loan issued before December 2007 still due as of Feb. 2008;
- Borrowers who pledged < 2 hectares of land as collateral = unconditional 100% debt relief;
- Borrowers who pledged > 2 hectares = 25% conditional debt relief: subject to repayment of o/balance
- The government recapitalized the loans written off for the full amount.

Impact: World Bank published a study on the effect of the debt forgiveness scheme: Borrowers in areas with high-number of debt relief cases started defaulting in large numbers; banks reallocated their credit away from these districts.
USA: Obama Student Loan Forgiveness Scheme (2010)
Assists student borrowers to manage repayments so that loan debt is not a deterrent for pursuing higher education

- **Target:** Students with study debt obligations; borrowers that are permanently disabled; private loan borrowers not to benefit.
- **Applies to federal loans:** loan consolidations, revised payment plans, loan and interest forgiveness;
- **Student pays diligently (according to agreed payment plan):** balance at end of loan period (typically 20-25 years) is written off by State;
- **Income adjusted for family size;**
- **Additional vocational-based student debt relief benefits were made available to former students engaged in certain professions;**
- **E.g Public Service employees:** if in public service for at least 10yrs, made 120 payments – balance of student debt discharged.
USA: Obama Student Loan Forgiveness Scheme

The loan program offers five different repayment plans:

- **Standard Repayment**: Fixed amounts are paid each month for the life of the loan;
- **Graduated Repayment**: Amounts <Standard repayment plan are made, but gradually increase every 2 years;
- **Income contingent (ICR)**: Payments are based on borrower’s income, family size, loan balance, and interest rate; The borrower is required to pay 15% of their discretionary income to their federal student loan;
- **Income Based (IBR)**: Payment is strictly based on borrower’s income and family size. Consideration on loan balance and interest are excluded in calculating the monthly payments.
- **Pay as you Earn (PAYE)**: This is usually the lowest monthly plan and is based on the borrowers income. It uses 10% of discretionary income (IBR is 15%) as a payment.
Impact: In September 2015, 295k borrowers were on track to have their debt forgiven; number is projected to increase to 600 000 over next decade. Typical borrower in the programme owes R853k to R995k in student debt.

REPAYE (revised pay as you earn) plan (December 2015) – To enable 5 million more debt loan borrowers to cap their monthly payment of 10% of monthly discretionary income;

REPAYE PLAN: provides new interest subsidy benefit to prevent ballooning balance for those whose payments cannot keep up with accruing interest.
MECHANISMS FOR DEBT RELIEF: INTERNATIONAL CASE STUDIES

New Zealand, England and Wales: No Income, No Assets Debt Relief (NINA debtors)

- According to the World Bank, it is better to avoid discrimination by providing the same relief to all debtors when dealing with NINA debtors.
- NINA process is targeted at the debtor whose over-indebtedness has resulted from changes in circumstances rather than unnecessary borrowing.
- New Zealand is reported to have been the first jurisdiction to have specifically provided for the NINA debtor.
- Bankruptcy process is inappropriate to NINA debtors;
- Appropriate mechanisms for these debtors to apply for debt relief if unable to pay their debt obligations. Common Characteristics:
  - Debt relief if liabilities are < certain threshold;
  - Monthly income and disposable income is < certain threshold;
  - Debtor has not previously been admitted to the NINA process (N/Zealand) or has not been admitted in the last 6 yrs (England and Wales).
Debt Relief orders also subject to certain restrictions wrt individual behavior

- Debtor fails to notify relevant authorities of change in circumstances that would allow debtor to repay towards debt – Offence committed and maximum prison term of one year and/or max. fine of R50k;
- If debtor adheres to all requirements of NINA process – debts discharged;
- In N/Zealand, this happens after 12 months of the inception of the process.
MECHANISMS FOR DEBT RELIEF: INTERNATIONAL CASE STUDIES

New Zealand, England and Wales: Mechanisms for debt relief for debtors with No Income and No Asset (NINA debtors)
- For debtors who are unable to pay their debt obligations due to change in debtor’s circumstances rather than irresponsible borrowing.

Criteria for eligibility
• Debt relief granted if the debtor has liabilities < certain threshold;
• The debtor has monthly income & disposable income < certain threshold;
• Value of assets held by a debtor < certain threshold; and
• The debtor has not previously been admitted to the NINA process (N/Zealand) or not been admitted in last 6 years (England & Wales).
1. **DEBT RELIEF UNDER THE NCA:**
   - Prescribed Debts
   - Social grant beneficiaries
   - Loans to students under N SFAS scheme
   - Garnishees
   - Mis-selling of insurance
   - Reckless lending

**Proposal: extension of NCR powers**

1) Other regulators in RSA have been granted such powers resulting in effective and efficient cost effective regulation of their respective jurisdictions:
   - Reserve Bank Act: section 10A(9) empowers the Governor to impose fines on the banks
   - Tax Administration Act: section 210 empowers SARS to impose penalties for contraventions of its legislation
   - FSB Act: section 10A allows the FSB to establish an Enforcement Committee which has the powers to impose penalties/fines
2) Once the NCR has determined whether the entity has contravened the NCA, instead of referring such case to the NCT, it must instead be allowed to impose the necessary sanctions.

3) The sanctions imposed by the NCR may be appealable to the NCT and High Court.

4) In imposing sanctions the following considerations must apply:
   - Nature, duration, gravity and extent of the contravention
   - Any loss suffered as a result of the contravention
   - Behavior of the entity
   - Degree of cooperation
   - Previous fines or sanctions imposed
   - Profit derived from the contravention
2. DEBT FORGIVENESS PROGRAMMES

- Program for NINA debtors;
- Graduate debt forgiveness program;
- African Bank Bad Book;
- Retrenched Steel and Mine Workers;
- Moratorium on Gauteng E-tolls;

Proposal: further detailed research to be conducted, especially on NINA debtors program; engagement with relevant key stakeholders in all above programmes.
Thank You