CHANGES TO ACCESS CREDIT, INCLUDING BONDS

National Credit Act, 34 of 2005: draft National Credit Regulations and Regulations for matters relating to the functions of the National Consumer Tribunal and Rules for the conduct of matters before the National Consumer Tribunal

As part of the Department of Trade and Industry’s drive to improve the credit lending market and limit reckless lending, draft regulations on obligatory affordability assessments that credit providers will have to undertake before they grant credit, have been published by the Department of Trade and Industry for public comment last week. Some controversy surrounds the introduction of such prescribed affordability assessment criteria, as many in the banking industry have argued that the industry should regulate this on its own, exercising a discretion based on its view of risk.

SUMMARY

The regulations flow from amendments to the National Credit Act, signed into law in May 2014. As such, in addition to the regulation of affordability assessments, the draft provisions also deal with the registration of payment distribution agents, retention periods for information held by credit bureaus and the listing of adverse information held by them. Much in line with standing practice, the regulations also oblige credit providers to take "practicable steps to assess the consumer or joint consumer’s allocatable income as well as their discretionary income to determine whether the consumer has the financial means and prospects to pay the proposed credit instalments". Consumers’ debt repayment history would also have to be investigated.

The regulations further focus on the functions of the National Consumer Tribunal and how matters before the tribunal are handled.

The regulations are open for comment until the end of August 2014. When made final, the regulations will be binding on credit providers.

You can view the regulations here (File size: 4.16MB, 224 page document).