NATIONAL CREDIT ACT AMENDMENT BILL
RESPONSES TO SUBMISSIONS RECEIVED
INCLUSIVE OF
SUPPLEMENTARY SUBMISSIONS (nos. 30 to 43)

No.	Entity	Comment	Response
1	DTI	Section 6 of the Act already excludes business to business transaction for juristic entities of R1 million or larger.	It should be so but it is not so, hence the need to clarify. DTI refers to section 6 but means section 4(1) which is however "subject to section 5", which makes certain sections of the Act applicable to "incidental credit agreements" with the end result that the Act has been judged to apply to incidental credit agreement entered into by juristic persons with more than R1 million. The Bill will exclude this when the juristic person is not buying to consume but buys to on-sell.
2	DTI	The "suspension of interests" does not benefit consumers because they will need to pay it all after 5 years.	The Bill does not "suspend interests" but rather suspends the "accrual of interests", which means that interests do not accrue in the 5 year period. Therefore the consumer will benefit as at no time will she have to pay interests with respect to the up to 5 years period, if so recommended by the debt counselor and ordered by the magistrate after consideration of the circumstances of the case. Implicitly the DTI seems to support the amendment, once properly construed.
3	DTI	DTI is planning to review the entire Act and does not wish Parliament to do piecemeal amendments. DTI is considering an overhaul of the Act at a future time. The DTI needs to seek Cabinet authorization to start this process and, if it receives it, it will start drafting in 2013/2014 to introduce a Bill thereafter.	This is a core issue to define the function of MPs in our democracy. The argument that MPs can't put a Band-Aid on a body about to go to ICU reinforces the disempowering and constitutionally erroneous notion that Parliament must wait for the Executive to act, even when Parliament can do a little bit of its own to help here and now. Parliament is now seized with this Bill and must decide on it, wiz. whether to make its contribution. Suggesting that it should not because the Executive will deal with it more comprehensively at an unknown later date is not correct, especially when Cabinet has not even yet authorized the DTI to start the process and it is obvious that, if at all, Parliament can only be seized with this matter only after its lapsing in May 2014.

4	BASA	Same as No. 3 above	Same as No. 3 above
5	BASA	BASA "fully" supports the amendment set out in Clause 1 of the Bill	
6	BASA	BASA suggests defining "business-to-business transaction" and "person's intended consumption".	It would seem that these expressions could only be defined by restating the meaning emerging from their very wording, which may make it pleonastic.
7	BASA	The definition may complicate transactions, as credit provider may need to inquire about purposes of the credit.	Incidental credit agreements for distribution contracts are self evident in purpose. In fact contracts routinely indicate the purpose of a transaction. Where this does not occur, practice will develop to have a declaration of purpose.
8	BASA	Amendment impacts on other section of the Act	True, but with no negative effect is identified nor envisaged.
9	BASA	BASA suggests amending the definition of juristic persons to include trusts and sole proprietorships	This may be necessary in light of the new Company's Act but is beyond the present scope of the Bill
10	BASA	BASA suggests excluding any juristic persons from the entire scope of the Act.	This amendment would deprive juristic persons, including SMMEs, of the protection of the Act when they purchase to consume and find themselves to be as vulnerable as any physical person
11	BASA	BASA opposes clause 2 of the Bill as countering the object of the Act of promoting borrowing and landing responsibly, pointing out that reckless landing is already addressed and the amendment will have significant financial and economic impact on the credit providers	Clause 2 of the Bill does not relate to reckless landing. It relates to situations in which a debtor chooses to honor her debts and avoid resorting to insolvency to obliterate them. Insolvency would cause a real financial or economic impact on the credit providers. The present economic situation is harsh on most people and business who cannot pay their debts to no fault of their own. We need to share the burden of this situation. This amendment will encourage people to avoid resorting to insolvency thereby minimizing the cases in which credit providers end up with major losses. It will also facilitate debtors to carry their burden with the benefit of a small help given to them in a win-win situation. The debt counselor and the magistrate have the power to assess the

			circumstances of the case balancing the position of the credit provider and the debtor to determine whether the debtor deserves the aforesaid small help.
12	BASA	The discretion given to the magistrate to determine whether the interests should be suspended is too wide. There is a great backlog in Magistrate courts	One would not see why that would be the case when the magistrate is given the dame measure of discretion with respect of all the other functions she needs to perform with respect to a debt review, including that which regards reckless landing which enables the magistrate to effectively cancel the debts, both in respect of principals and interests. The backlog in Magistrate court is immaterial to, and unaffected by the Bill
13	BASA	The amendment may increase the cost of landing on account of increased loss ratio	The loss ratio will be decreased by the lower number of people forced to take the option of insolvency
14	Bentley	As no. 3 above	As no. 3 above
15	Bentley	It is not clear if incidental credit agreements will be excluded when entered into by businesses for non-consumer's purposes. It suggests additional language to clarify.	Said incidental credit agreements will be excluded because, by definition, said agreements apply with respect of "consumers" only. The additional language is not necessary.
16	Bentley	It is in favor of clause 1 of the Bill, but points out that the Act intended to do what it does.	The DTI indicates that it was not the intention of the Act to include the type of transactions clause 1 of the Bill excludes.
17	Bentley	The words "for such person's intended consumption" are vague	These expression will be interpreted within the purposes of the Act and in accordance with section 2 thereof
18	Bentley	The words "business-to-business transaction" require definition	A definition may complicate rather than simplify. The supposition is with own consumption.
19	Bentley	Same as No. 10	Same as no. 10
20	Bentley	Clause 2 favors those who resort to debt restructuring over those who honor their obligations	Debt restructuring, which a complex, time consuming, expensive and humiliating process, is not an expedient matter of choice but a harsh necessity for people in need. It is common to many aspect of the law to treat differently people in need, especially during the worst recession of our times

21	Bentley	Bentley points to many other problems in the Act	This is beyond the limited scope of the Bill
22	CBA	Same as no. 18	Same as No. 10
23	CBA	CBA wonders how the guarantor will be affected by the changed definition of consumer	A guarantor is not a debtor and his obligation accedes to another's. Therefore, she herself needs not to be a consumer, however consumer is defined. Hence, requiring consumers to actually consume the relevant goods and services has no bearing on the fact that the guarantor does not consume them.
24	CBA	Same as No. 7	Same as No. 7
25	CBA	Same as no. 2	Same as No. 2
27	WC	Same as 15 with the additional notation that credit agreements should not continue to apply where the debtor is a juristic person	Same as No. 15. Moreover, the definition of incidental credit agreement and other relevant definitions contain the word "consumer ". Therefore by limiting the meaning of consumer such definitions are equally limited. Moreover, as per No. 10 above, the intention is not that to exclude juristic persons all together.
28	WC	The suspension in Clause 2 of the Bill should not be an automatic 5-year period.	It is not a 5-year period. It is a period "up to" 5 years, as determined by the magistrate under the circumstances and on recommendation of the debt counselor.
29	WC	Many municipalities are already implementing Clause 2 on a voluntary basis,	This proves the needs for the Bill with respect of the other debtors whose creditors are not as considerate and responsible as such municipalities.
30	NDMA	Parliament should wait for end of policy review by DTI. The Bill is "little more than a 'tweaking' of a fundamentally flawed process"	Policy review has not yet even been tabled in Cabinet. Drafting of legislation will begin only if and after Cabinet approval is secured. Draft legislation will need to be canvassed with stakeholders before tabling. There is no need for Parliament to wait for all this, if Parliament can do something good now. Parliament is seized with the Bill now and will need to decide on it on way or the other. As it does so, it should not pass on making its own contribution.
31	NDMA	Agrees that the definition of consumer has difficulties. Juristic persons can be excluded from the definition with respect to certain	It is correct that a number of chapters of the NCA do not apply to juristic persons with a turnover above what is determined by the Minister, but others do, including what concerns incidental credit agreements. This is the problem the Bill intends addressing, which problem is not otherwise addressed.

		chapters. Problem can be addressed by lowering threshold in 4(1)(a)(1)	
32	NDMA	Calls for change of focus to make resolution by consensus the rule, which would likely accommodate the type of benefit set out in clause 2.	While undoubtedly forcing parties to a "give-and-take", making all debt restructuring a matter of negotiated consensus goes beyond the scope of this Bill and would be undesirable as it would enable either party to frustrate the process by withholding its consent.
33	DC	Somehow akin to Para 30 above.	Same as Para 30 above
34	DC	Supports clause 1 of the Bill	No comment required
33	DC	Supports clause 2 stating that it "imperative" to the objectives of the Act but wording must be unambiguous	No comment required
34	TCG	Welcomes clause 1	No comment required
35	TCG	Clause 2 will adversely affect credit providers and, consequently, consumers	While this may be true, it is also true that by spreading the cost of debt restructuring among all parties concerned in what remains a limited measure, many insolvencies will be averted. A few more insolvencies affect credit providers, and consequentially consumers, more than the compound effect of these to which clause 2 will apply.
35	TGC	Clause 2 is a taking covered by section 25 of the Constitution	The taking is not effected by or for the benefit of the State. It is akin to insolvency which has universally passed muster of constitutionality but in a much lower measure and scope, and therefore is covered by the limitation clause
36	TGC	Clause 2 should spell out the criteria that the magistrate should use in exercising her discretion	They are set out in the objective of the Act
37	TGC	Before the accrual of interests is suspended, interest rates should be reduced	The cascade approach suggested by TGC requires many steps, each of them designed to determine whether the debtor can rehabilitate herself under the preceding step before taking the following one. This is burdensome for all parties concerned, including the courts.

38	MKL	Clause 1 is confusing because there is no definition of business-to-business transaction	The definition is within the amendment: when goods or services are not acquired to consume them, for instance when they are acquired to on-sell them.
40	MKL	All juristic persons should not be excluded.	The amendment does not exclude any juristic person otherwise included in the Act and does not refer to "persons" but to "transactions", whomever such transactions are carried out by
41	MKL	With respect to clause 2, courts address the problems by declaring lending reckless	If courts do so when in fact the lending is not reckless, this proves the need for the amendment. If they limit themselves to reckless lending, then the problem is not addressed as it relates the meritorious case when the debtor cannot carry his burden under her present possibly changed circumstances even though her borrowing was not reckless.
42	MKL	The consumer will still need to pay the full amount	The comment misinterprets the amendment which suspends the "accrual" of interests not the interests themselves: hence such interests do not accrue and are not due. The committee may consider changing the word "accrual" with "occurrence" or similar words for greater clarity.
43	MKL	Akin to 30 Para above	Same as Para30 above