Reckless credit

• Introduction
• National Credit Act 34 of 2005 came into full effective operation on 1 June 2007
• Introduction of novel provisions regarding reckless credit and over-indebtedness
• Prohibition re reckless credit granting
• Mandatory pre-agreement assessment: section 81
• Consumer to answer fully and truthfully failing which credit provider has complete defence against reckless credit
• Set point determination
• 3 types of reckless credit
• Sanctions and remedies
Evolution of Affordability Assessment

- Section 81: credit provider could determine own evaluative models, mechanisms and procedures – had to result in fair and objective assessment
- National Credit Regulator could issue non-binding guidelines re assessment
- Lack of guidance – courts had to intervene
- November 2012: Treasury, BASA and NCR media statement
- May 2013 - draft Guidelines
- September 2013 – more complete set of draft guidelines
- February 2014 - Credit Amnesty
- May 2014 –National Credit Amendment Act (only put in operation in March 2015)
- August 2014- draft Affordability Assessment Regulations
- March 2015 – Final Affordability Assessment Regulations put into effect on same date as National Credit Amendment Act
- Operative date for compliance with affordability assessment extended
Salient features of Final Affordability Assessment regulations (March 2015)

- Provides **minimum standards** with which credit provider must comply when doing affordability assessment into section 81
- **Features:**
  - applies to natural person consumers only
  - no distinction between secured and unsecured debt
  - certain exempt agreements
  - credit provider to assess consumer’s discretionary income (to determine whether consumer has FMP to pay instalments)
  - validation of gross income
  - consumer must accurately disclose all financial obligations
  - consumer must provide authentic documentation
Salient features (continued)

- credit provider to calculate consumer’s existing FMPO
- MUST use minimum living expense norms table, broken down by monthly gross income for various income bands (Table 1) when calculating obligations
- methodology
- adversity buffer
- questionnaire if living expenses less than set out in Table 1
- ‘summary’ of obligations of credit provider
- mandatory consultation of credit bureaux information + time limits
- avoidance of double counting
- disclosure of credit cost multiple + total cost of credit
- “grievance procedure” regarding outcome of assessment
Table 1

<table>
<thead>
<tr>
<th>Minimum</th>
<th>Maximum</th>
<th>Minimum monthly Fixed Factor</th>
<th>Monthly Fixed Factor = % of Income Above Band minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td>R0.00</td>
<td>R800.00</td>
<td>R0.00</td>
<td>100%</td>
</tr>
<tr>
<td>R800.01</td>
<td>R6,250.00</td>
<td>R800.00</td>
<td>6.75%</td>
</tr>
<tr>
<td>R6250.01</td>
<td>R25,000.00</td>
<td>R1, 167.88</td>
<td>9.00%</td>
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<tr>
<td>R25,000.01</td>
<td>R50,000.00</td>
<td>R2,855.38</td>
<td>8.20%</td>
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<tr>
<td>R50,000.01</td>
<td>Unlimited</td>
<td>R4905.38</td>
<td>6.75%</td>
</tr>
</tbody>
</table>
Problematic aspects

- Affordability assessment regulations are mandatory
- Sets minimum standards
- Very rigid one size-fits-all approach: does not take individual factors into account eg age, gender, number of dependants etc
- No indication of exactly what has been taken into account in determining living expenses
- Minimum living expense norms appear unrealistically low
- Adversity buffer appears unrealistically low
- Application of table unclear
- Set point determination – not dynamic