ONGOING RECKLESS LENDING IN SOUTH AFRICA: MINISTERS' WISH LIST TO END ABUSE OF DEBT

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ABSTRACT
The paper attempts to summarize the issues that permeate reckless lending in South Africa. In so doing it attempts to discuss the Ministers' wish list to end abuse of debt. Considering the impact of over – indebtedness on households, the ministers of finance and of trade and industry issued a statement that reads like a wish list of all that needs to be done to stamp out abusive practices, but an action plan has yet to be drawn. The paper discusses this through the use of newspaper articles in the main and delineates the definition of debt

Key Words: Reckless, Lending, Wish List, Indebtedness, Households, Finance, Abusive Practices, Short – Term Loans

INTRODUCTION

It has to be realized by the public administration and public management student, including the government, financial institutions and consumers alike that, there may be differences of opinion among experts on the taxonomy of public functions and services, but this is not critical. The point is that taxonomy provides the first step for the scientific study of a subject. The issue is what are the common characteristics used in public administration and public management, as concerns the containment of debt across the economy. According to Gildenhuis and Knipe (2007: 48) "what can be categorized as protection objectives, social welfare objectives and economic welfare objectives and so on. The attainment of these objectives is aimed at realizing the general goal of creating a high quality of life for each individual." It follows that governments all over the world have been charged with a variety of order and protection functions, social welfare functions and economic welfare functions. In capitalist countries where the laissez – faire ideology is dominant, governments will concentrate mainly on protecting the individual's person and property. In social welfare states governments will, in addition, concentrate on increasing the social welfare of the poor and the indigent. In economic welfare states they will concentrate more on the economic welfare of the individual. "The idea is to help people to help themselves so that they can look after themselves without government handouts." It is against this background that the paper attempts to look at the debt trap those individuals as citizens of the state find themselves in due to reckless lending by financial institutions and the role of government to address this situation. This is the challenge in South Africa given the rising unemployment, inequality, poverty and corruption, exacerbated by the prolonged recession that has confronted the country.

Perhaps initially it must be assumed that public debt management relates more to macroeconomics. That debt management pertains to economists rather than to people per se. However, Visser and Erasmus (2009: 136) point out that "the concept of debt is wider than the mere obtaining of loans and their repayment over varied time spans, and that repayment of debt influences the future financial planning and budgeting of government, since a percentage of the national budget is allocated to interest repayments, meaning that future taxpayers are pre – committed to future debt repayments. The importance of financial management in the public sector is that debt repayment constitutes revenue and, therefore, influences cash flow management. According to Coe (1989: 157) debt management is crucial to senior officials and management because long – term debt proceeds are the primary source of funds required to meet the demands caused by growth and therefore growth is a key barometer of the community's quality of life. It is important to first establish the distinction between debt management and loans administration. "Public loans refer to the flotation and repayment of loans, while public debt is the result of government borrowing from private individuals and financial institutions with the promise of paying back the money borrowed plus interest" (Gildenhuys, 1993: 562).
According to Fourie and Mohr (1992: 303) public debt management concerns decisions and their implementation in connection with change and the timing thereof. Of prime importance, however, is the outstanding debt of government." "The difference between debt management and loans administration can be viewed from another perspective by regarding debt management as a macroeconomic policy instrument, while loans administration is related to an administrative approach." (Gildenhuys, 1993: 563). What then are the various objectives of debt management?

- The main objective of public debt management operations is to finance the so – called deficit before borrowing and debt repayment of the exchequer in a non – inflationary manner in order to exert better control over liquidity in the economy" (Fourie and Mohr, 199 : 58). However, public debt operations themselves are a function of the Reserve Bank.
- It is a meeting ground of fiscal and monetary policy.
- There has to be a link between debt management and fiscal policy.
- It must be geared to controlling the fiscal and monetary affairs of the country.
- The management of public debt should not conflict with the monetary policy operations of the Reserve Bank.
- Management of public debt is a serious responsibility.

WHAT ARE SHORT – TERM LOANS

They are microloans, which are sometimes referred to as 'pay day loans.' A short term loan is defined as "a credit transaction where the amount does not exceed R8000 and where the whole amount is payable within six months." (National Credit Act (1998). This is precisely the gist of this paper in terms of household loans that compromise s the consumer and by implication the economy of the4 country as a whole. The Act allows credit providers to charge interest of up to 5 percent a month on such a loan. Pay – day lenders tend to charge the highest interest rates they van, and provide loan extensions or roll – over's, which incur more fees and interest. This can keep individuals in debt. In the United Kingdom, pay – day lenders have been labeled legal loan sharks. Government has to intervene in respect to the number of times a loan can be rolled – over.
The conduct of some credit providers has been atrocious and over – indebted South Africans today are worse off than debtors in Dickensian times, which would get thrown into jail for their debt. "Now you work it off for life, without taking home a salary, referring to over – indebted

people whose salaries or wages are depleted by various emolument attachment orders (EAOs), often referred to as garnishee orders." (Momoniat, 2013:1). Some lenders business model is that one will default and get an EAO and then they will get first bite at an individual's salary (ahead of the creditors). It is a very serious problem and therefore there needs to be a tougher approach by government and the regulators. Momoniat's comments follow the issuing of a joint statement by the Minister of Finance and the Minister of Trade and Industry that listed a raft of measures to prevent households from becoming over – indebted and to help those who are trapped in debt. Angelique Arde (2013: 1) states that "Government is very concerned about the scale of over – indebtedness and is particularly concerned about the conduct of pay – day lenders. It is not only household debt that is rising, low to middle income earners are getting short – term loans that they cannot afford. These loans are being rolled over, and people are becoming enslaved by debt. A low income person cannot be declared insolvent and therefore ways have to be found for people to get out of this situation."

According to The Independent (2013: 1) "Government feels that regulators should be enforcing the various laws more stringently and must coordinate efforts. The Independent adds that "the message from the Cabinet is either the law is being too weakly applied or there are regulatory gaps." Simply put, it's a call for all regulators to sharpen their teeth. "The statement by the ministers is that preventative steps to minimize the risk of over – indebtedness in the future must include the following:

PREVENTATIVE STEPS

- Setting affordability criteria that all retail lenders will have to adhere to and clearly defining a reckless loan, thus enhancing reckless lending controls under the National Credit Act (NCA). The absence of affordability guidelines has resulted in some consumers getting credit that they cannot afford.
- Ensuring that the provision of credit is not only affordable but suitable. "For example, it is clearly inappropriate to promote a short – term (30 day) loan as being suitable for supporting borrowing over longer periods. (The Independent, 2013: 1).
- Consumers often do not know what options are available to them or what the best product is for them. The issue is one of disclosure. Credit providers have a responsibility to consumers to explain the pros and cons of a product and provide information in the simplest way. Government wants credit providers to enhance disclosure, explain the product and offer consumers products that suit their circumstances.
- Reviewing the pricing caps (interest rate limits) under the NCA to ensure that they are appropriate, especially for pay – day loans where rates are excessive. Low income earners pay the most for credit, and the Department of Trade and Industry (DTI) is reviewing the formula used to calculate the maximum interest rates that credit providers can charge. The formula is under review in terms of the NCA Amendment Bill.
- Strengthening regulatory monitoring, supervision and enforcement to ensure the shutting down of unregistered credit providers and full compliance by registered credit providers. There has to be better coordination and cooperation between all sector regulators, in order to regulate the credit market more effectively according to the South African Cabinet.
- If the regulators act together, they can have a bigger impact in terms of practical operations, enforcement strategies and enhanced powers to deal with reckless lenders.
- Reviewing the regulatory framework for credit insurance policies that are sold with, or linked to, credit. This review has been completed by government in terms of the credit

insurance market. The task team was set up because of the widespread abuse of consumers. This market cannot be left unregulated.

- Setting norms and standards for access to the payments system, including debit orders. Persistent reckless lenders should be denied access to the payments system.
- Setting norms and standards for EAOs issued for credit. Almost half a million employees in the private sector and almost 200 000 people employed by provincial and national government have EAOs against their salaries, according to recent research by the Pretoria Law Clinic. Abuse of consumers who have EAOs is rife. Many of these orders have been found to be fraudulent and there is a need for mechanisms to protect consumers.
- Extending and strengthening the debt collection laws to apply to law firms. Debt collection fees are regulated by the Debt Collectors Act, but when attorneys do debt collection, their fees are regulated differently. The NCA provides an extension of the in duplum rule by limiting the interest and all other costs that a creditor may charge on an account that is in arrears. This includes collection costs. The limit is meant to protect debtors from exploitation by creditors. The maximum amount that can be collected is double the capital amount outstanding at the time the consumer defaulted, including any interest or collection costs.
- Regulating credit – linked deductions allowed on employer payroll systems.
- Investigating simpler and lower – cost insolvency arrangements for lower – income and middle – income people." (Arde in the Independent, 2013: 1).

RESCUE EFFORTS

The statement by the Ministers according to Arde (2013: 1) says that government is:

- Engaging with lenders and their industry associations to provide relief to qualified distressed borrowers by reducing their installment burden, without additional cost to the borrower.
- Engaging with lenders to take steps to withdraw certain categories of existing EAOs for credit, and to use such orders for future credit only as a last resort and according to a robust code of conduct.
- Encouraging employers to investigate the legitimacy of all EAOs they may be enforcing against their employees (for purposes of credit, not child or spousal maintenance) and to write to credit providers to reduce or even remove all onerous orders. Public sector employers will be expected to lead by example and implement the above proposals early 2014, as soon as guidelines for the public sector are published.
- Government is also considering regulating debt – collection firms, including law firms, to ensure that they do not indulge in unscrupulous debt – collection practices.
- Enabling major lenders to provide voluntary debt relief measures to distressed borrowers without charge, in addition to the current debt counseling process, subject to compliance with the NCA and Financial Advisory and Intermediary Services Act."

CONCLUSION

All of this is important for the economy on the basis that household disposable income in South Africa – to debt ratio has raised to 76 percent from 50 percent in 2003. According to Angelique Arde (2013: 1) "the economic slowdown after the 2008 global financial crisis resulted in many households falling into arrears and / or defaulting or deleveraging." However, reckless lending and the abuses in pay – day loans have aggravated this problem, driving many over – indebted households into a vicious cycle of debt.

While government recognizes that access to credit is critical for household consumption expenditure and economic growth, government is concerned about the very high levels of household debt and over – indebtedness. The ministers will develop a detailed implementation framework in 2014. Their statement reads like a wish list of all that needs to be done to stamp out abusive practices. It appears to be a utopian ideal and in all probability their attempts will come to naught on the basis that the horse has already bolted from the socialist mire and that it has played into the hands of the captains of a predominantly capitalist South African economy. It can be expected in no uncertain terms that the situation of households and workers will worsen in 2014.

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