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ZIMBABWE

ACT

To amend the Microfinance Act [*Chapter 24:30*] and to provide for matters connected therewith or incidental thereto.

ENACTED by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Microfinance Amendment Act, 2019.

2 Amendment of section 2 of Cap. 24:30

Section 2 (“Interpretation”) of the Microfinance Act [*Chapter 24:30*] (hereinafter called “the principal Act”) is amended—

(a) by the insertion of the following definitions—

““associate”, in relation to a microfinance institution, means—

- (a) its subsidiary, as defined in section 143 of the Companies Act [*Chapter 24:03*]; or
- (b) any company of which the microfinance institution is the single largest shareholder; or
- (c) its holding company, as defined in section 143 of the Companies Act [*Chapter 24:03*]; or

- (d) where the microfinance institution is itself a subsidiary of a holding company, as defined in section 143 of the Companies Act [*Chapter 24:03*], any other such subsidiary of the same holding company; or
- (e) any person who has power, directly or indirectly, to control the microfinance institution's management or policies;";
- (b) in the definition of "board" by the deletion of "corporate microfinancier or";
- (c) by the repeal of the definition of "corporate microfinancier";
- (d) by the repeal of the definition of "credit-only microfinance business" and the substitution of the following definitions—
 - ““credit-only microfinance business” means the business of providing loans or other credit facilities to persons who, for the most part—
 - (a) operate micro-enterprises, small enterprises or medium enterprises as defined in section 2 of the Small and Medium Enterprises Act [*Chapter 24:12*]; or
 - (b) are individuals whose monthly income is below the poverty datum line or belong to households whose combined monthly income does not exceed five times the poverty datum line, as fixed by the Zimbabwe National Statistics Agency in terms of the Census and Statistics Act [*Chapter 10:29*];

and who are not shareholders or members of the person providing the loans or credit facilities;

 - “credit-only microfinance institution” means a microfinance institution which conducts credit-only microfinance business;";
- (e) by the repeal of the definition of "deposit-taking microfinance business" and the substitution of the following definitions—
 - ““deposit-taking microfinance business” means the business of accepting deposits from persons who, for the most part—
 - (a) operate micro-enterprises, small enterprises or medium enterprises as defined in section 2 of the Small and Medium Enterprises Act [*Chapter 24:12*]; or
 - (b) are individuals whose monthly income is below the poverty datum line or belong to households whose combined monthly income does not exceed five times the poverty datum line, as fixed by the Zimbabwe National Statistics Agency in terms of the Census and Statistics Act [*Chapter 10:29*];

where the depositors are not shareholders or members of the person accepting the deposits;

 - “deposit-taking microfinance institution” means a microfinance institution which prioritises deposit-taking microfinance business and issuance of loans;";
- (f) by the insertion of the following definition—

- “disciplinary committee” means the committee appointed in terms of section 45;”;
- (g) by the repeal of the definitions of “microfinance business” and “microfinance institution” and the substitution of—
- “microfinance business” means credit-only microfinance business or deposit-taking microfinance business;
- “microfinance institution” means a person that conducts microfinance business;”;
- (h) by the repeal of the definitions of “microfinancier”, “micro-enterprise”, “small enterprise” and “medium enterprise”, “moneylender” and “moneylending business”;
- (i) by the insertion of the following definition—
- “minimum capital” means capital representing a permanent commitment of funds by the shareholders of the deposit-taking microfinance institution (net of any loans and advances given to an insider and borrowed capital) which is available to meet losses incurred without imposing a fixed unavoidable charge on the institution’s earnings, and includes such of the following elements as are available to the institution after making any required deductions—
- (a) issued and fully paid up ordinary shares or common stock;
- (b) paid up non-cumulative irredeemable preference shares;
- (c) reserves consisting of—
- (i) non-repayable share premiums;
- (ii) disclosed reserves created by a charge to net income in the financial year immediately preceding the current one;
- (iii) published retained earnings for the current year, including interim earnings, where these have been verified by external auditors; and
- (iv) such other elements as may be prescribed from time to time;”;
- (j) by the repeal of the definition of “undesirable method of conducting business” and the substitution of—
- “undesirable method of conducting business” means the conduct of microfinance business in a manner that does not comply with any provision of the First Schedule;”.

3 Amendment of section 3 of Cap. 24:30

- Section 3 (“Application of Act”) of the principal Act is amended in subsection (1)—
- (a) by the repeal of paragraph (a) and the substitution of—
- “(a) every person carrying on microfinance business; and”;
- (b) in paragraph (b)—
- (i) in subparagraph (ii) by the deletion of “established” and the substitution of “registered as such”;

- (ii) in subparagraph (iii) by the deletion of “registered as such under” and the substitution of “established by”;
- (iii) by the deletion of “referred to in paragraph (a)”;
- (c) by the repeal of paragraph (c).

4 Amendment of section 5 of Cap. 24:30

Section 5 (“Exercise of functions by Registrar”) of the principal Act is amended by the insertion of the following subsections after subsection (2) —

“(3) The Registrar, on reasonable written notice to deposit taking microfinance institutions and controlling companies concerned, may adopt such sound prudential supervisory and regulatory practices that are considered appropriate for the purpose of monitoring and supervising the activities of banking institutions and controlling companies.

(4) The Registrar shall ensure that the standards and practices adopted in terms of subsection (1) are made known to the deposit taking microfinance institutions and controlling companies.”.

5 New section inserted in Part II of Cap. 24:30

Part II (“Administration”) of the principal Act is amended by the insertion after section 5 of the following section —

“5A Microfinance Advisory Council

(1) There is hereby established a council, to be known as the Microfinance Council, consisting of—

- (a) the Registrar, whose office shall be the Secretariat; and
- (b) a member nominated by the Minister from among the officers of his or her Ministry; and
- (c) a member nominated by the Minister responsible for small and medium enterprises; and
- (d) a member nominated by the Insurance and Pensions Commission Board established by section 5 of the Insurance and Pensions Commission Act [*Chapter 24:21*] from among the staff of that Commission; and
- (e) a member nominated by the Securities and Exchange Commission of Zimbabwe established by section 3 of the Securities and Exchange Act [*Chapter 24:25*] from among the staff of that Commission; and
- (f) a member nominated by the Board of Directors of the Deposit Protection Corporation established by section 4 of the Deposit Protection Corporation Act [*Chapter 24:29*] from among the staff of that Corporation; and
- (g) a member nominated by an association recognised by the Minister as representing banking institutions; and
- (h) a member nominated by an association of microfinance institutions recognised by the Minister; and
- (i) a member nominated by an association that represents consumers and is recognised by the Minister; and
- (j) such other members as the Minister may determine.

(2) If any person or organisation fails to nominate a person for membership of the Microfinance Advisory Council in terms of subsection (1), the Minister may appoint any person as a member to represent the person or organisation concerned.

(3) The functions of the Microfinance Advisory Council shall be—

- (a) to advise the Minister on strategies and policies to develop microfinance business; and
- (b) to promote good financial practices among microfinance institutions; and
- (c) to exercise any other function the Minister may confer or impose on the Council.

(4) Members of the Microfinance Advisory Council shall hold office for such period and on such terms and conditions as may be prescribed or as the Minister may fix.

(5) The procedure of the Microfinance Advisory Council, including the rotation of the Chairperson, shall be as prescribed or as fixed from time to time by the Council.”.

6 Amendment of section 7 of Cap. 24:30

Section 7 (“Application for registration as microfinancier”) of the principal Act is amended by the repeal of subsections (1) and (2) and the substitution of—

“(1) An application for registration as a microfinance institution shall be made to the Registrar in the prescribed form and manner and shall—

- (a) disclose—
 - (i) the names of the applicant’s directors, chief executive officer, chief accounting officer and such other officers as may be prescribed, together with their addresses and qualifications and such other particulars concerning them as may be prescribed; and
 - (ii) the name and address of every person who holds five *per centum* or more of the applicant’s shares; and
 - (iii) particulars of the applicant’s authorised and paid-up share capital; and
- (b) be accompanied by—
 - (i) certified copies of the applicant’s certificate of incorporation and its memorandum and articles of association; and
 - (ii) a business plan in the form set out in the Second Schedule; and
 - (iii) the prescribed fee; and
 - (iv) such other information and documents as may be prescribed or as the Registrar may reasonably require.

(2) Subject to subsection (3), if the Registrar is satisfied that an applicant has complied with the requirements of subsection (1) and that—

- (a) the applicant is a company; and
- (b) the applicant has, or on registration will have, sufficient capital to conduct the microfinance business it intends to conduct; and
- (c) the applicant’s business plan is appropriate for the microfinance business it intends to conduct; and

- (d) the applicant's directors are fit and proper persons to be directors of a microfinance institution; and
- (e) the persons who will be the applicant's chief executive officer, chief accounting officer and such other officers as may be prescribed—
 - (i) are fit and proper persons to hold the offices concerned; and
 - (ii) have sufficient qualifications and experience to manage the microfinance business the applicant intends to conduct;
- and
- (f) the applicant will conduct its microfinance business in a prudent manner and will not adopt any undesirable method of conducting business; and
- (g) generally, the applicant will comply with such of the provisions of this Act as are applicable to the microfinance business it intends to conduct;

the Registrar shall register the applicant as a microfinance institution and shall notify the applicant, in writing, that it has been registered and issue to the applicant a registration certificate.”.

7 Amendment of section 9 of Cap. 24:30

Section 9 (“Register of Microfinanciers”) of the principal Act is amended in subsection (1) by the repeal of paragraph (a) and the substitution of—

- “(a) the name of the microfinance institution and whether it is registered as a credit-only microfinance institution or a deposit-taking microfinance institution; and”.

8 New sections substituted for section 10 of Cap. 24:30

Section 10 (“Renewal of registration”) of the principal Act is repealed and the following sections are substituted—

“10 Period of registration

(1) The registration of microfinance institutions shall remain in force until it is cancelled in terms of this Act.

(2) Every registered microfinance institution shall pay the Registrar each year an annual fee of the prescribed amount.

(3) The annual fee referred to in subsection (2) shall be paid by such date and in such manner as may be prescribed.

10A Renewal of registration of credit-only microfinance institution

(1) A credit-only microfinance institution that wishes to renew its registration shall apply to the Registrar for renewal at least three months before the registration expires.

(2) An application for renewal under subsection (1) shall be made in the prescribed form and shall be accompanied by the prescribed fee.

(3) In an application for renewal under subsection (1), the applicant shall disclose any material changes that may have occurred in any of the particulars that were stated in—

- (a) its application for registration as a credit-only microfinance institution; or
- (b) its last application for renewal of its registration;

as the case may be, and if the Registrar considers such changes to be sufficiently great, he or she may treat the application as one for registration as a credit-only microfinance institution, in which event section 7 shall apply to the application.

(4) Subject to subsection (3), the Registrar shall issue a new registration certificate within sixty days to a microfinance institution that applies for renewal under subsection (1), unless the Registrar has reasonable grounds for believing that its registration should be cancelled under section 12 (“Cancellation of registration”), in which event he or she may cancel its registration after complying with the provisions of that section.”.

9 Amendment of section 12 of Cap. 24:30

Section 12 (“Cancellation of registration”) of the principal Act is amended by the repeal of subsection (1) and the substitution of—

“(1) Subject to subsections (2) and (3), the Registrar may, by notice in writing to the microfinance institution concerned, cancel the registration of a microfinance institution if he or she has reasonable grounds for believing that—

- (a) the registration was obtained in error or through fraud or the misrepresentation of a material fact; or
- (b) the microfinance institution—
 - (i) has contravened any provision of this Act or any other enactment with which it is its duty to comply; or
 - (ii) has contravened or failed to comply with a term or condition of its registration; or
 - (iii) without lawful cause—
 - A. has contravened or failed to comply with any instruction, requirement or condition imposed by the Registrar in terms of this Act; or
 - B. has refused or failed to pay a monetary penalty imposed upon it in terms of this Act;
- or
- (iv) in an application for the renewal of its registration, failed to disclose a material change in the particulars that were stated in—
 - A. its application for registration as a credit-only microfinance institution; or
 - B. its last application for renewal of its registration;
 as the case may be; or
- (v) misrepresents the facilities it offers the public; or
- (vi) is engaging in undesirable methods of conducting business; or
- (vii) is not conducting its microfinance business in accordance with sound administrative, accounting or risk-management practices; or
- (viii) has not conducted any microfinance business for one hundred and eighty consecutive days;
- or
- (c) it is in the public interest that the registration should be cancelled.”.

10 New section substituted for section 13 of Cap. 24:30

Section 13 of the principal Act is repealed and the following section is substituted—

“13 Public notice of registration and cancellation of registration

(1) Whenever the Registrar registers a microfinance institution or cancels its registration, he or she shall cause notice of the registration or cancellation to be published in the *Gazette*.

(2) The Reserve Bank shall publish a list of registered microfinance institutions in each monetary policy statement and in such other manner as the Bank considers appropriate.”.

11 New section inserted in Cap. 24:30

Part IV (“Conduct of Microfinanciers Generally”) of the principal Act is amended by the insertion before section 15 of the following section—

“14A Annual fee payable by microfinance institutions

(1) Every registered microfinance institution shall pay the Registrar each year a fee of the prescribed amount.

(2) The annual fee referred to in subsection (1) shall be paid by such date and in such manner as may be prescribed.

(3) Annual fees paid in terms of this section shall form part of the funds of the Reserve Bank.”.

12 Amendment of section 15 of Cap. 24:30

Section 15 (“Information to be displayed or published by microfinanciers”) of the principal Act is amended—

- (a) in subsection (2) by the deletion from paragraph (d) of “in the case of a corporate microfinancier,”;
- (b) by the repeal of subsection (4) and the substitution of—

“(4) Where a microfinance institution contravenes subsection (1), (2) or (3)—

- (a) the institution shall be guilty of an offence and liable to a fine not exceeding level 5;
- (b) each of its directors shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment:

Provided that, if it is proved that a director took no part in the contravention, this paragraph shall not apply to him or her.”.

13 New section substituted for section 16 of Cap. 24:30

Section 16 of the principal Act is repealed and the following is substituted—

“16 Requirements for agreements

(1) In this section—

“agreement means—

- (a) loan agreement; or
- (b) financial lease agreement.

(2) Every agreement entered into by a microfinance institution in the course of its microfinance business shall—

- (a) be in writing, setting out clearly all its material terms and conditions; and
- (b) permit the borrower to make partial or total pre-payments of any amounts owed by him or her under the contract; and
- (c) specify any penalties for prepayments of amounts owed by the borrower under the contract; and
- (d) contain such terms and conditions as may be prescribed.

(3) Any provision of an agreement which purports to allow the microfinance institution unilaterally to alter the rate of interest payable by the borrower, the repayment period, or any other obligation of the borrower, shall be void.

(4) If a microfinance institution makes a loan or advances credit under an agreement which does not comply with subsection (2) or (3), no interest or other charge or fee whatsoever in connection with the loan or credit shall be payable on the loan or credit.”.

14 Repeal of section 18 of Cap. 24:30

Section 18 of the principal Act is repealed.

15 Amendment of section 20 of Cap. 24:30

Section 20 (“Board of corporate microfinancier”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—

“(1) The operations of every microfinance institution shall be directed by a board consisting of at least—

- (a) three directors, in the case of a credit-only microfinance institution;
- (b) five directors, in the case of a deposit-taking microfinance institution;

who shall be responsible for formulating policies relating to the institution’s microfinance business and supervising that business.”;

- (b) by the insertion of a new subsection after subsection (1) as follows—

“(1a) The Minister may prescribe the number of executive, non-executive and independent directors to be in the board of every microfinance institution.”;

- (c) by the repeal of subsection (5) and the substitution of—

“(5) Where a person has knowingly contravened subsection (2)—

- (a) the microfinance institution concerned shall be guilty of an offence and liable to a fine not exceeding level 5;
- (b) that person and every other director of the microfinance institution concerned shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment:

Provided that, if it is proved that a director had no knowledge of the contravention, this paragraph shall not apply to him or her.”;

- (c) by the insertion of the following subsection after subsection (6)—

“(7) The Chairperson of the Board of Directors of a deposit taking microfinance institution must be a non-executive and independent.”.

16 New sections inserted in Cap. 24:30

The principal Act is amended by the insertion after section 20 of the following sections—

“20A Responsibilities of directors and shareholders of microfinance institutions

- (1) In this section—

“principal officer”, in relation to a microfinance institution, means an officer referred to in section 31.

(2) Each director and principal officer of a microfinance institution owes a fiduciary duty and a duty of care and skill to the institution and, in particular, owes a duty to—

- (a) act *bona fide* for the benefit of the institution and for the benefit of its depositors and shareholders; and
- (b) avoid any conflict between his or her personal interests and the interests of the institution and its depositors and shareholders; and
- (c) possess and maintain the knowledge and skill that may reasonably be expected of a person holding a similar appointment and carrying out similar functions as those that he or she carries out; and
- (d) exercise such care in the carrying out of his or her functions in relation to the institution as may reasonably be expected of a diligent person who holds the same appointment under similar circumstances, and who possesses both the knowledge and skill mentioned in paragraph (c) and any additional knowledge and skill that he or she may have.

(3) Without derogation from subsection (2), the directors and principal officers of all microfinance institutions shall, in the performance of their functions as such, observe any guidelines and comply with any requirements that are prescribed.

(4) A director of a microfinance institution who fails, without just cause, to attend at least three-quarters of the meetings of the board of his or her institution that are convened during any period of a year shall be regarded as not having exercised the degree of diligence required of him or her by subsection (2)(d).

(5) Without derogation from section 318 of the Companies Act [*Chapter 24:03*], where a microfinance institution has been placed under curatorship or judicial management or has been wound up, and it is established that the business of the institution or company has been carried on negligently, fraudulently or without regard for the requirements provided for in this Act—

- (a) every person who was a director or principal officer of the institution when its business was being carried on in that manner; and
- (b) every shareholder who was knowingly a party to the carrying on of the business of the institution in that manner;

shall be jointly and severally liable with the institution for any loss or damage suffered by creditors, including depositors, of the institution:

Provided that this subsection shall not apply to a director or officer who—

- (a) was not responsible for the manner in which the business of the institution was carried on; and
- (b) complied with his or her duties under subsections (2) and (3).

(6) The Registrar and the chief executive officer of the Deposit Protection Corporation may institute proceedings—

- (a) against a director, principal officer or shareholder of a microfinance institution in respect of any liability incurred by that person under subsection (5); and
- (b) in terms of section 318 of the Companies Act [*Chapter 24:03*] against any director or principal officer of a microfinance institution who was knowingly a party to the carrying on of the business of the institution in the manner envisaged in that section.

(7) Any amount recovered as a result of proceedings instituted by the Registrar or the Deposit Protection Corporation as envisaged in subsection (6), shall be applied—

- (a) first to reimburse all expenses reasonably incurred by the Registrar or the Deposit Protection Corporation, as the case may be, in bringing the proceedings; and
- (b) thereafter to set off against any amount paid to depositors by the Deposit Protection Corporation or any governmental body, as part or full compensation for the losses suffered by depositors as a result of the microfinance institution concerned being unable to repay their deposits; and
- (c) thereafter for the *pro rata* repayment of the losses of creditors of the microfinance institution concerned.

(8) This section is additional to, and shall not be regarded as limiting—

- (a) the provisions of any other law concerning the duties of directors, officers and shareholders of microfinance institutions; or
- (b) the right of a creditor of a microfinance institution to institute proceedings against the institution for the recovery of any loss or damage the creditor may have suffered.

20B Corporate governance

(1) Every microfinance institution shall establish and maintain adequate and effective procedures of corporate governance consistent with such prudential standards as may be prescribed and with the

nature, complexity and risks inherent in the activities and business of the microfinance institution.

(2) The procedures of corporate governance referred to in subsection (1) shall be directed towards achieving the strategic and business objectives of the microfinance institution efficiently, effectively, ethically and equitably, within acceptable risk parameters, so as to ensure—

- (a) commitment by the chief executive officer of the microfinance institution to adhere to corporate behaviour that is universally recognised and accepted as correct and proper; and
- (b) accountability on the part of the board and chief executive officer of the microfinance institution towards shareholders; and
- (c) a balance between the interests of shareholders and other persons who may be affected by the conduct of the board and chief executive officer of the microfinance institution; and
- (d) the establishment and maintenance of mechanisms and procedures to minimise or avoid potential conflicts of interest between the business interests of the microfinance institution and the personal interests of directors and chief executive officer; and
- (e) responsible conduct by the directors and chief executive officer of the microfinance institution; and
- (f) the achievement of the maximum level of efficiency and profitability of the microfinance institution within an acceptable risk profile; and
- (g) the timely, accurate and meaningful disclosure of matters that are material to the business of the microfinance institution or the interests of its shareholders and other interested persons; and
- (h) retention by the board of control over the strategic and business direction of the microfinance institution, whilst enabling its chief executive officer to manage its business and activities; and
- (i) compliance with this Act and any other enactments relating to microfinance institutions.

20C Compliance function

(1) The board of every deposit taking microfinance institution shall establish, as part of risk management framework, an independent compliance function, headed by a compliance officer, to—

- (a) identify, assess, monitor and advise the board on compliance risk; and
- (b) advise the board on ways to comply with all applicable laws, codes of conduct and standards of good practice, and assist the board in complying with them.

(2) The compliance officer of a deposit taking microfinance institution shall perform his or her functions subject to such requirements and conditions as may be prescribed.

20D Risk committee

(1) Subject to subsection (3), the board of every deposit taking microfinance institution and controlling company shall appoint three or more of its members, all of whom shall be non-executive directors, to serve on a risk committee.

(2) The functions of the risk committee shall be to assist the board of the deposit taking microfinance institution—

- (a) to evaluate the adequacy and efficiency of the risk policies, procedures, practices and controls applied within the institution in the day to day management of its business; and
- (b) to identify and assess the risks to which the institution is exposed; and
- (c) to develop mitigation strategies to ensure that the institution manages optimally the risks to which it is exposed; and
- (d) to ensure that the institution undertakes a formal risk assessment at least annually; and
- (e) to identify and regularly monitor all key risks and key performance indicators to ensure that the institution maintains at a high level its decision making capability and the accuracy of its reporting; and
- (f) to facilitate and promote communication, through reporting structures, regarding the matters referred to in paragraph (a) and any other related matter, between the board and the officers and employees of the institution; and
- (g) where the institution is a member of a group of companies, to coordinate the monitoring of risk management on a group basis; and
- (h) to establish and implement a process of internal controls and reviews to ensure the efficacy of the overall risk and capital management process; and
- (i) to establish and implement policies and procedures designed to ensure that the institution identifies, measures, and reports all material risks; and
- (j) to establish and implement a process that relates capital to the level of risk; and
- (k) to perform such other functions as may be prescribed.”.

17 Amendment of section 23 of Cap. 24:30

Section 23 (“Audit of accounts of microfinance institutions”) of the principal Act is amended by the insertion after subsection (2) of the following subsection—

“(3) The provisions of sections 40 to 44 of the Banking Act [*Chapter 24:20*] shall apply with necessary changes to every microfinance institution.”.

18 Repeal of section 24 of Cap. 24:30

Section 24 is repealed.

19 Amendment of section 25 of Cap. 24:30

Section 25 (“Restriction on type of business that may be carried on by microfinance institutions”) of the principal Act is amended—

- (a) in subsection (1) by the repeal of paragraph (j) and the substitution of—
“(j) such other business as may be prescribed.”;
- (b) by the repeal of subsection (2) and the substitution of—
“(2) Where a microfinance institution has contravened subsection (1)—
(a) the institution shall be guilty of an offence and liable to a fine not exceeding level 12;
(b) every director of the institution shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment:

Provided that, if it is proved that a director had no knowledge of the contravention, this paragraph shall not apply to him or her.”.

20 Amendment of section 26 of Cap. 24:30

Section 26 (“Requirements for lending by microfinance institution”) of the principal Act is amended in subsection (3) by the repeal of paragraph (b) and the substitution of—

- “(b) the capital sum of the loan or advance shall be recoverable from the borrower in a manner that will be agreed upon between the microfinance institution and borrower, failure of which, the loan or advance will be recoverable through an application by the lender to a competent court on the terms that safeguard the interests of both parties;”.

21 Amendment of section 30 of Cap. 24:30

Section 30 (“Restriction on microfinance institution extending credit to officers, employees and certain shareholders and their relatives”) of the principal Act is amended—

- (a) by the repeal of subsection (2) and the substitution of—
“(2) Subject to subsection (3), no deposit taking microfinance institution shall knowingly extend credit to or for the benefit of—
(a) any of its officers or directors; or
(b) any person who holds a significant interest in the institution; or
(c) any relative of persons referred to in paragraph (a) or (b);
on terms and conditions that are more favourable than those on which the institution, applying criteria normally applied in the deposit taking microfinance industry, would extend credit to other persons of the same financial standing:

Provided that this subsection shall not prevent a deposit taking microfinance institution from extending credit to one of its employees, where the credit is extended as part of the employee’s conditions of service and is available to other employees.”;

- (b) by the insertion after subsection (2) of the following subsection—

- “(3) In addition to complying with the requirements of subsection (2)—
- (a) any loan advanced to a person referred to in that subsection shall be secured by property at least equal in value to the amount of the loan;
 - (b) the deposit taking microfinance institution shall not advance a loan in terms of subsection (2) without prior approval from the Registrar.”.

22 New section substituted for section 31 of Cap. 24:30

Section 31 (“Principal officers of microfinance institution”) of the principal Act is repealed and the following section is substituted—

“31 Principal officers of microfinance institutions

(1) Every microfinance institution shall appoint persons approved by the Registrar to be—

- (a) chief executive officer; and
- (b) chief accounting officer; and
- (c) such other officers as may be prescribed;

and no person shall be appointed to hold two or more such offices at the same time.

(2) Without the written permission of the Registrar, no microfinance institution shall appoint a person to an office referred to in subsection (1) if that person directly or indirectly holds more than five *per centum* of the shares in the institution.”.

23 Amendment of section 32 of Cap. 24:30

Section 32 (“Alteration of memorandum or articles of association by microfinance institution”) of the principal Act is amended by the repeal of subsection (4) and the substitution of—

“(4) Where a deposit-taking microfinance institution has contravened subsection (1)—

- (a) the institution shall be guilty of an offence and liable to a fine not exceeding level 5; and
- (b) every director of the institution shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment:

Provided that, if it is proved that a director had no knowledge of the contravention, this paragraph shall not apply to him or her.”.

24 Amendment of section 33 of Cap. 24:30

Section 33 (“Minimum capital and reserves of microfinance institutions”) of the principal Act is amended by the repeal of subsection (2) and the substitution of—

“(2) Where a microfinance institution has contravened subsection (1)—

- (a) the institution shall be guilty of an offence and liable to a fine not exceeding level 10; and
- (b) every director of the institution shall be guilty of an offence and liable to a fine not exceeding level 5 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment:

Provided that, if it is proved that a director had no knowledge of the contravention, this paragraph shall not apply to him or her.”.

25 Amendment of section 34 of Cap. 24:30

Section 34 (“Limits on shareholding and transfer of shares in microfinance institutions and corporate microfinanciers”) of the principal Act is amended—

- (a) by the repeal of subsection (1) and the substitution of—
 - “(1) Subject to this section, no person shall hold more than such percentage of the shares in a microfinance institution as may be prescribed.”;
- (b) in subsection (2) by the deletion of “25 per centum” and the substitution of “the prescribed percentage”;
- (c) in subsection (3)—
 - (i) by the deletion from paragraph (b) of “or corporate microfinanciers;
 - (ii) by the insertion of a new paragraph after paragraph (a) as follows—
 - “(a1) any acquisition of shareholding pursuant to resolution of a failed or troubled institution.”;
- (d) by the insertion of the following subsection after subsection (6)—
 - “(7) Shareholders of the microfinance institution are to be fit and proper persons.”.

26 Amendment of section 35 of Cap. 24:30

Section 35 (“Curatorship and winding up of microfinance institutions”) of the principal Act is amended by the deletion of “microfinance institution” and the substitution of “deposit-taking microfinance institution”.

27 Amendment of section 36 of Cap. 24:30

Section 36 (“Responsibilities of Reserve Bank”) of the principal Act is amended—

- (a) in subsection (1) by the insertion after paragraph (a) of the following paragraph—
 - “(a1) monitoring and supervising any associate of a microfinance institution in order to determine the microfinance institution’s financial condition and monitor the conduct of its business; and”;
- (b) in subsection (2)—
 - (i) by the deletion of “microfinanciers” where it occurs for the first time and the substitution of “microfinance institutions and their associates”;
 - (ii) in paragraph (b) by the deletion of “microfinanciers” and the substitution of “the microfinance institutions and associates”;
- (c) in subsection (3)—
 - (i) by the deletion of “microfinancier” where it occurs for the first time and the substitution of “microfinance institution”;
 - (ii) in paragraph (a), by the deletion of “microfinanciers” and the substitution of “institution”;
 - (iii) in paragraphs (a), (b), (e), (f), (g) by the deletion of “microfinancier’s” wherever it occurs and the substitution of “institution’s”;
 - (iv) in paragraph (b), (c), (g), by the deletion of “microfinancier” and the substitution of “institution”;

- (d) by the deletion of “microfinancier” and the substitution of “microfinance institution”;
- (e) by the insertion after subsection (4) of the following subsection—

“(5) The powers conferred by subsection (3) may be exercised, subject to subsection (4), in relation to any associate of a microfinance institution, if the supervisor believes, on reasonable grounds, that the exercise of the powers is necessary for the purpose of monitoring and supervising the activities of the microfinance institution.”.

28 Amendment of section 38 of Cap. 24:30

Section 38 (“Investigation into microfinancier”) of the principal Act is amended by the deletion in subsection (1)(d) of “microfinance institution” and the substitution of “deposit-taking microfinance institution.”.

29 Amendment of section 41 of Cap. 24:30

Section 41 (“Expenses of Investigation”) of the principal Act is amended by the insertion after subsection (2) of the following subsection—

“(3) The Registrar may recover the expenses of the investigation from monetary penalties imposed on microfinance institutions in terms of section 37 of the Act.”.

30 Repeal of section 44 of Cap. 24:30

Section 44 of the principal Act is repealed.

31 Amendment of section 45 of Cap. 24:30

Section 45 (“Disciplinary committee”) of the principal Act is amended by the insertion after paragraph (b) of the following paragraph—

“(b1) a member nominated by an association, recognised by the Minister, that represents consumers; and”.

32 Amendment of section 53 of Cap. 24:30

Section 53 (“Powers of Registrar where unregistered person is suspected of conducting microfinance business”) of the principal Act is amended by the repeal of subsection (3) and the substitution of—

“(3) For the purposes of an examination in terms of subsection (1)(b), a supervisor may exercise any of the powers conferred on supervisors by section 36, any references in that section to a microfinance institution being construed as references to a person conducting or suspected of conducting microfinance business.”.

33 Amendment of section 54 of Cap. 24:30

Section 54 (“Preservation of secrecy and use of confidential information for personal gain”) of the principal Act is amended in subsection (3) by the insertion after paragraph (b) of the following paragraph—

“(b1) in the case of an auditor, the disclosure of information that he or she is professionally required to disclose following an audit; or”.

34 Amendment of Second Schedule to Cap. 24:30

The Second Schedule (“Contents of Business Plan of Microfinancier”) to the principal Act is amended by the repeal of the paragraph 4 and the substitution of—

Business plan

4. The business plan shall include, or be accompanied by, the following projections based on normal assumptions and showing, where necessary, compensation to be given to management and staff, expected mixes of assets and liabilities, volume of each type of service to be offered and fixed asset investment—

- (a) a projected annual balance sheet for the first three years of operation; and
- (b) a projected annual income statement (profit and loss account) for the first three years of operation; and
- (c) a projected cash flow statement for the first three years of operation:

Provided that in the case of a business plan for an external operation, the above projections may be based on the first three years of the external operation.”.

35 Minor amendments to Cap. 24:30

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent set out opposite thereto in the second column.

36 Savings and transitional provisions

(1) Every person who, immediately before the date of commencement of this Act, was registered under the principal Act as a moneylender or corporate microfinancier may continue his or her microfinance business until the expiry of his or her current registration certificate.

(2) If, before the expiry of his or her current registration certificate, a person referred to in subsection (1) applies for registration as a microfinance institution in terms of section 7 of the principal Act as amended by this Act, he or she may continue his or her microfinance business under his or her current registration certificate pending the grant or refusal of the application.

(3) Until a percentage is prescribed for the purpose of section 34(1) of the principal Act as amended by this Act, no person shall hold more than twenty-five *per centum* of the shares in a microfinance institution.

SCHEDULE (Section 31)

MINOR AMENDMENTS TO MICROFINANCE ACT [CHAPTER 24:30]

| <i>Provision</i> | <i>Extent of Amendment</i> |
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| Sections 2 (in the definitions of “borrower”, “financial year”, “loan agreement”, “material change” and “registered”), 8, 11, 12(2), (3) & (4), 14, 15(1) & (2), 16(2) & (3), 17, 37(1) & (2), 38, 39, 40, 41(1), 42, 44(1), 45(b), 46, 47, 48(1), (2), (6) & (10), 51, 54(1), (2) & (5), 55 and 60(2)(b), First Schedule and Second Schedule (para 1(1) & (3)) | By the deletion of “microfinancier” wherever it occurs and the substitution of “microfinance institution”. |

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| Section 2 (in the definition of “chief executive officer”) | By the deletion of “banking” and the substitution of “microfinance”. |
| Section 2 (in the definition of “inspector”) | By the deletion of “or deemed to have been appointed”. |
| Sections 2 (in the definition of “Register”) and 9(1) | By the deletion of “a Register of Microfinanciers” and the substitution of “the Register of Microfinance Institutions”. |
| Section 2 (in the definition of “Secretary”) | By the deletion of “to which this Act is assigned” and the substitution of “for which the Minister is responsible”. |
| Sections 2 (in the definition of “Registrar”) and 4(1) | By the deletion of “Microfinanciers” and the substitution of “Microfinance Institutions”. |
| Sections 4(2), 12(2) & (4), 43(1)(a), 45, 55 and 60(2) (c), (e) and (f) and (4), First Schedule | By the deletion of “microfinanciers” wherever it occurs and the substitution of “microfinance institutions”. |
| Section 7(3)(b) | By the deletion of “or moneylender, as the case may be”. |
| Sections 11, 22(1)(b), 37(1)(g) and (j) and 58(2)(b) and (c), First Schedule | By the deletion of “microfinancier’s” wherever it occurs and the substitution of “microfinance institution’s”. |
| Sections 19, 20(2), (3), (4) & (6), 21(1) & (2) and 22(1) and First Schedule (paras 8(2) and 9) | By the deletion of “corporate microfinancier” wherever it occurs and the substitution of “microfinance institution”. |
| Section 20(3) | By the deletion of “microfinancier in question” and the substitution of “institution in question”. |
| Section 21(1)(b) | By the deletion of “the microfinancier” and the substitution of “the microfinance institution”. |
| Section 22(2) | By the deletion of “Without derogating from Part IV of the Companies Act [<i>Chapter 24:03</i>] dealing with group accounts, where a corporate microfinancier” and the substitution of “Where a microfinance institution”. |
| Sections 25(1), 28, 32(1), 35, | By the deletion of “microfinance institution” and the substitution of “deposit-taking microfinance institution”. |
| Section 38(1)(h)) | By the deletion of “section 9” and the substitution of “section 10”. |

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| Section 42(2) | By the deletion of “microfinance institutions” and the substitution of “deposit-taking microfinance institutions”. |
| Section 42(3) | By the deletion of “microfinancier’s” and the substitution of “institution’s”. |
| Section 43(1)(b) | By the deletion of “microfinancier or class of such microfinancier” and the substitution of “microfinance institution or class of such institution”. |
| Section 47(b)(iii) | By the deletion of “member of its responsible authority” and the substitution of “director, principal officer or other employee”. |
| Sections 56(2) and 59(2) | By the deletion of “House of Assembly” and the substitution of “National Assembly”. |
| Section 59(2) | By the deletion of “the House” wherever it occurs and the substitution of “National Assembly”. |
| Second Schedule (para 1(2)) | By the deletion of “, if it is a corporate microfinancier”. |